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Details Reports

File #:	A 13-063	Name:	Provation; Wolters Kluwer Health Inc.
Type:	BoS Agreement	Status:	Consent Agenda
File created:	4/26/2013	In control:	Board of Supervisors
On agenda:	5/14/2013	Final action:	

Title: a. Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute the Wolters Kluwer Health Inc. (ProVation Order Sets Software License and Maintenance) Agreement and the Wolters Kluwer Health Inc. Third Party Product Service Agreement for Provation Order Sets Software Licensing & Installation, Professional and Maintenance Services at NMC in an amount not to exceed \$458,365 for the period April 15, 2013 to April 15, 2021; and b. Authorize a contingency (not to exceed 10% of the contract amount or \$45,835) to provide funding for maintenance charge increases after April 15, 2016.

Sponsors: Sid Cato

Attachments: [1. 5-14-13 ProVation Attachment A](#), [2. 5-14-13 ProVation Attachment C The Advisory Board-Clinical Content Vendors](#), [3. Provation - Wolters Kluwer Health Inc.](#), [4. Provation Attachment B 5-4-13](#)

History (0) Text

Title

a. Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute the Wolters Kluwer Health Inc. (ProVation Order Sets Software License and Maintenance) Agreement and the Wolters Kluwer Health Inc. Third Party Product Service Agreement for Provation Order Sets Software Licensing & Installation, Professional and Maintenance Services at NMC in an amount not to exceed \$458,365 for the period April 15, 2013 to April 15, 2021; and
 b. Authorize a contingency (not to exceed 10% of the contract amount or \$45,835) to provide funding for maintenance charge increases after April 15, 2016.

Report

RECOMMENDATION:

It is recommended the Board of Supervisors:

1. Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute the Wolters Kluwer Health Inc. (ProVation Order Sets Software License and Maintenance) Agreement and the Wolters Kluwer Health Inc. Third Party Product Service Agreement for Provation Order Sets Software Licensing & Installation, Professional and Maintenance Services at NMC in an amount not to exceed \$458,365 for the period April 15, 2013 to April 15, 2021; and
2. Authorize a contingency (not to exceed 10% of the contract amount or \$45,835) to provide funding for maintenance charge increases after April 15, 2016.

SUMMARY/DISCUSSION:

ProVation Order Sets is a software system (building tool) that ultimately allows for Physician's electronic entry of patient care orders, in turn, the order set allows hospital staff to follow the Dr's Orders for care of a patient, i.e. medication(s), diet, activity, physical therapy, laboratory and/or radiology testing needed, etc. The ProVation Order Set Software is the foundation to the order set build or a component of the ultimate goal of a fully implemented Electronic Health Record (EHR) System. It should also be stated that all ProVation Order Sets Software interfaces with MediTech (NMC's current system for a fully operational EHR).

Order Set Software is essential to building what will ultimately be used for NMC's Computerized Physician Order Entry (CPOE). *Please see Attachment A for a detailed explanation of Order Sets Software and CPOE.*

There are two primary order sets software products on the market, ProVation and Zynx. Currently, NMC is using Zynx and is nearing the end of a 5 year contract; ending in October 2013. ProVation order sets did not exist in 2008 when the decision to purchase Zynx was made. Since ProVation came into the market, they have quickly become the leader for Order Sets and many hospitals have abandoned Zynx and have replaced it with ProVation. Mayo Clinic, Duke University and Scripps University are examples of recent ProVation adopters. Zynx has not kept up with market demands regarding web-based usability and functionality.

Although Zynx is now an inferior product during the term of the Zynx agreement 90-100 Nursing Care Plans were created and will be integrated into the new MediTech EHR along with the new ProVation Order Sets

It is NMC's recommendation that ProVation Order Sets Software is the superior product based on other hospital reviews, research including The Advisory Board Report: *Clinical Content Vendors* (Attachment C) and web demonstrations. Outlined below are several reasons that support NMC's recommendation:

- Cost: ProVation is less expensive - ProVation (\$55,700 annually) vs. Zynx (\$96,000 annually)
- ProVation's clinical evidence web-based research tool (Up To Date) is currently already utilized by most physicians nation-wide including NMC.
- ProVation's build management module is more efficient and user friendly.
- ProVation's order set knowledge management following the order set build is superior secondary to the ease of update. This decreases the number of human resources needed for post implementation support regarding order set changes that will become necessary as clinical evidence evolves.

Costs for the ProVation Order Sets Software and the Wolters Kluwer Health Inc. Third Party Product Service agreements are described in detail on Attachment B; *ProVation Order Sets Software and Maintenance Charges*.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed the Agreements as to legal form. The Auditor-Controller has reviewed and approved the Agreements as to fiscal provisions. The Agreements have also been reviewed and approved by Natividad Medical Center's Board of Trustees.

FINANCING:

The cost for these two Agreements including the 10% Contingency is \$504,200. \$240,686 is included in the Fiscal Year 2012/2013 Adopted Budget. Amounts for remaining years of the Agreement will be included in those budgets as appropriate. There is no impact to the General Fund.

Prepared by: Jim Fenstermaker, NMC Information Technology, 783-2559

Approved by: Harry Weis, Chief Executive Officer, 783-2553

Attachments: Agreements, Attachments A, B and C
Attachments on file with the Clerk to the Boards Office



Monterey County

Board Order

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Agreement No.: A-12452, A-12453

Upon motion of Supervisor Potter, seconded by Supervisor Parker, and carried by those members present, the Board of Supervisors hereby:

- a. Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute the Wolters Kluwer Health Inc. (ProVation Order Sets Software License and Maintenance (A-12452) Agreement and the Wolters Kluwer Health Inc. Third Party Product Service Agreement for Provation Order Sets Software Licensing & Installation, Professional and Maintenance Services (A-12453) at NMC in an amount not to exceed \$458,365 for the period April 15, 2013 to April 15, 2021; and
- b. Authorized a contingency (not to exceed 10% of the contract amount or \$45,835) to provide funding for maintenance charge increases after April 15, 2016.

PASSED AND ADOPTED on this 14th day of May 2013, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker and Potter
NOES: None
ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on May 14, 2013.

Dated: May 14, 2013
File Number: A 13-063

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

Provation Order Sets Software and Maintenance Charges

	Provation & Oracle Order Sets Software Installation & Maintenance 4-15-13 thru 4-14-14	Continued Annual Maintenance Charges 4-15-14 through 4-14-2021
Virtual Server Oracle Licensing	\$5,121.00	\$0.00
Annual Oracle Support	\$973.00	\$6,811.00
ProVation Software License	\$150,618.00	\$0.00
Provation Order Sets Software Maintenance	\$25,299.00	\$177,093.00
Provation Professional Services	\$53,850.00	\$0.00
Provation Care Plans Software Maintenance	\$4,825.00	\$33,775.00
Sub-Total of Charges		<u>\$217,679.00</u>
Total Charges thru 3-31-2016	<u>\$240,686.00</u>	
Total Not to Exceed Amount through 3-31-2021		\$458,365.00

ProVation Order Sets Software License and Maintenance Agreement and Clin-eGUIDE Subscription Agreement

EFFECTIVE DATE: April 15, 2013

("Licensee")

Natividad Medical Center
County of Monterey
1441 Constitution Blvd
Salinas, CA 93906-3100

Contact:
Phone:
Email:

This agreement ("**Agreement**") is entered into as of the Effective Date (listed above) by and between Wolters Kluwer Health, Inc., a Delaware corporation, with offices and a place of business at 800 Washington Avenue North, Suite 400, Minneapolis, MN 55401 ("**WKH**") and Licensee (listed above) ("**Licensee**"). WKH and Licensee may each be referred to as "**Party**" or collectively as "**Parties**" in this Agreement.

RECITALS:

WHEREAS, Licensee wishes to obtain, and WKH wishes to grant, a limited license to ProVation Order Sets for Licensee's internal use, and a subscription for limited access to WKH's proprietary Clin-eGUIDE Content, subject to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the premises and covenants herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

AGREEMENT:

1. Grant of License and Term. As set forth herein, WKH grants a limited, non-exclusive, non-transferable, non-assignable, non-sublicensable, license to ProVation Order Sets ("ProVation Order Sets") including all new versions, revisions, updates or upgrades that WKH furnishes to Licensee under the terms of this Agreement and does not otherwise market as a separate or new product, only within the United States, in object code form only, and solely for Licensee's internal business purposes at the installation site(s) and number of beds specified in Exhibit B. Licensee may permit remote access via a remote access connection from locations outside Licensee's business premises by Licensee's employees or contractors whose primary place of employment is specified in Exhibit B and whom are acting in the course of Licensee's business.

This Agreement will remain in effect for eight (8) years after the date above ending all Licensee rights to the ProVation Order Sets on April 15, 2021 unless earlier terminated as set forth in Section 6.

2. Proprietary Expression and Information. Except as provided herein, WKH is the owner of all intellectual property rights including ideas, procedures, processes, systems, methods of operation, and concepts embodied within are trade secrets of WKH. This is a license, not a sale of a copy and does not render Licensee the owner of a copy. Ownership of and all copies thereof will at all times remain with WKH, regardless of who may be deemed the owner of the tangible media in or on which it may be copied, encoded or otherwise fixed. Further, WKH shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate suggestions, enhancement requests, recommendations or other feedback provided by Licensee.

3. Licensee Restrictions with regard to ProVation Order Sets. Licensee may make copies of ProVation Order Sets for its own internal use as permitted under this Agreement (including for archival and disaster recovery purposes) which must bear the same copyright and proprietary notices that appear on the copy furnished by WKH. Licensee may not (except as specifically set forth in this Section 3) : a) make an unauthorized disclosure, copy ProVation Order Sets, library of order sets or content within ProVation Order Sets; b) duplicate, modify, adapt, distribute externally, permit access to those externally, disassemble, decompile, or translate; c) reverse engineer or derive source code.

Licensee may create Derivative Works (defined as Licensee's own library of order sets and other content that is based upon ProVation Order Sets with all WKH (including ProVation and UpToDate) copyright, trademark and proprietary notices removed) for use in patient care by Licensee's physicians and medical staff with current privileges at Licensee's facilities, whom may or may not be employees of Licensee. Licensee may not a) make available to third parties outside Licensee's organization, distribute, permit access to; or b) make assignment of rights.

This Paragraph 3 applies regardless of whether Licensee pays annual maintenance service fees and is intended to protect WKH's intellectual property rights indefinitely.

4. Restriction on Transfer. Licensee will not lease, rent, sell, pledge, assign, sublicense, loan or otherwise transfer to any third party without the prior written consent of WKH.

5. Third Party Software. Licensee acknowledges that the ProVation Order Sets requires certain third party software ("Third Party Software"), including without limitation certain Oracle® software products (the "Oracle Software"). Except as and to the extent provided on Exhibit C, the Third Party Software will be treated as ProVation Order Sets under this Agreement.

6. Termination of License. The license granted herein will terminate automatically and immediately in the event that: (a) Licensee violates any of the provisions of Sections 1, 3, 4, or 28 or fails to pay any license fees due and payable hereunder; (b) WKH notifies Licensee of an election to terminate this license pursuant to Section 26; or (c) Licensee otherwise materially breaches this Agreement and does not cure such breach within thirty (30) days of written notice thereof. In the event of termination of the license granted hereunder for any reason, within fifteen (15) days, Licensee will certify destruction to WKH in writing.

7. Installation. WKH will install on Licensee's server the ProVation Order Sets in Exhibit A. Licensee acknowledges that its computer equipment must meet or exceed the minimum requirements set forth on Exhibit D. Upon written request by Licensee, WKH will assist Licensee in procuring hardware required to operate the ProVation Order Sets pursuant to separate, mutually agreed terms and conditions identified in the Third Party Product Service Agreement.

8. Subcontracting. WKH shall not assign, sell or transfer its obligations or interest in this Agreement without the prior written consent of Licensee. None of the Professional Services covered hereunder shall be

subcontracted without the prior written approval of Licensee. Notwithstanding any such subcontract, WKH shall continue to be liable for the performance of all requirements of this Agreement.

9. Professional Services. WKH agrees to furnish, the services described on Exhibit A, if any (together with any additional services, excluding maintenance services, that may be purchased by Licensee from WKH following the Effective Date, the "**Professional Services**").

10. Purchase of Maintenance. Licensee hereby purchases from WKH software maintenance services for ProVation Order Sets according to the terms and conditions set forth herein.

11. Maintenance Term. The initial maintenance term for ProVation Order Sets will commence upon installation. Maintenance services will be in effect for an initial term that will expire on the one-year anniversary date and will renew upon mutual agreement between WKH and Licensee for successive one (1) year renewal terms until terminated as provided in Section 15.

12. ProVation Order Sets Maintenance Services. Throughout the maintenance term, and subject to the exclusions in Section 13, WKH will provide the following with respect to ProVation Order Sets: (a) WKH will correct reported verifiable failures of ProVation Order Sets to substantially conform in accordance with the Documentation; (b) WKH will furnish to Licensee, at no additional charge, all new modules for which WKH does not charge a licensee fee, and versions, revisions, content updates, software updates or upgrades to the ProVation Order Sets that WKH distributes generally to licensees under maintenance (collectively, "**Updates**"); provided, however, that installation, implementation, and other services or out-of-pocket costs in connection with the Updates are not included; and (c) WKH will provide telephone support and/or remote access support to Licensee in its use of the ProVation Order Sets. WKH's obligation to provide the maintenance services described herein applies only to the current version of the ProVation Order Sets and the immediate prior version. Maintenance services are described in WKH's ProVation Order Sets Customer Support Handbook, which may be revised by WKH from time to time and WKH will make available any revisions to the ProVation Order Sets Customer Support Handbook thirty (30) days prior to such revisions taking effect.

13. Exclusions. Maintenance services do not include: (a) resolution of problems resulting from: (i) any modification of or damage to the ProVation Order Sets or its operating environment, (ii) Licensee's failure to operate the ProVation Order Sets in the proper hardware and software environment, (iii) Licensee's failure to operate the ProVation Order Sets in accordance with WKH's documentation and/or instructions, (iv) Licensee's failure to use the current or immediate prior version of ProVation Order Sets or to otherwise implement any Updates, improvements, modifications, patches and/or bug fixes provided by WKH; or (v) use of the ProVation Order Sets with third-party hardware or software not provided or approved by WKH; (b) new modules in the ProVation Order Sets for which WKH establishes a separate license fee; (c) any Updates, if Licensee is in default with respect to payment of maintenance fees; or (d) the Professional Services.

14. Licensee Duties. Throughout the maintenance term, Licensee will: (a) at Licensee's expense, maintain an approved, secure internet connection, with the ability to resolve DNS to enable WKH to gain remote access to the computer system(s) on which the ProVation Order Sets is installed for diagnostic, error correction, software downloading, error logging and other maintenance purposes; (b) cooperate with WKH in identifying the cause of any claimed failure of the ProVation Order Sets to perform per the warranty herein; and (c) allow WKH remote and on-site access to the ProVation Order Sets and to Licensee's systems for the purpose of performing maintenance.

15. Termination of Maintenance. If Licensee's license to use ProVation Order Sets is terminated for any reason or the term in Section 1 expires, maintenance services will terminate. WKH may suspend maintenance services if Licensee fails to pay maintenance fees within sixty (60) days after the date of a WKH invoice for maintenance services.

16. Clin-eguide. When Licensee is current with maintenance service payments, WKH shall make WKH's proprietary internet-based, database and content access service ("Clin-eguide") to evidence based guidelines ("Content") available to Licensee, at no cost, which shall be available via direct link from within ProVation Order Sets to specific documents within the Content but excludes the ability to search Content or access Content on a mobile device. WKH reserves the right to update, modify or replace Clin-eguide and Content from time to time and access is subject to planned and unplanned maintenance, telecommunication disruptions and other reasonable downtime. Refer to the Clin-eguide "help" menu for use instructions.

Licensee won't: (a) use, or permit use or access except in accordance with this Agreement; (b) download or print in whole or substantial part, copy or permit copying of; (c) modify, translate, reverse engineer, de-compile, disassemble, create derivative works of, or otherwise attempt to derive or alter any source code of; (d) use to provide service bureau, time sharing, or similar services to third parties; or (e) alter, remove, or hinder display of any copyright, disclaimer, or other proprietary notice.

When Licensee is no longer covered under maintenance services, WKH shall deny or block all access and invalidate password or other authentication to Clin-eguide and Content and Licensee shall immediately cease use, remove access and destroy copies obtained through Clin-eguide.

In the event that there are any conflicts between the provisions of Section 16 and the provisions of the rest of this Agreement, the provisions of Section 16 shall control with respect to Clin-eguide and Content.

17. PVOS License Fees. Licensee agrees to pay WKH the license fee specified in Exhibit A. 100% due upon execution of this Agreement.

18. RESERVED

19. Professional Services Fees. Licensee will pay WKH 100% of the fixed fee specified in Exhibit A commencing upon the workflow analysis meeting. If completed in fewer months than reflected in Exhibit A, Licensee shall still pay the entire amount. In the event WKH is solely responsible for the failure of the Professional Services to be completed in the number of months reflected in Exhibit A, WKH shall complete at no additional charge to Licensee. In the event Licensee is solely responsible for the failure of the Professional Services to be performed in the number of months reflected in Exhibit A, Licensee will pay WKH at WKH's then list price plus additional related expenses, if any, to complete. In the event both parties are responsible, the parties shall work to mutually agree to a reasonable estimate of the additional fees required from Licensee to perform such Professional Services. Such fees are based on the assumption that Licensee will meet its obligations in Exhibit E. If Licensee fails, Licensee agrees to pay WKH at WKH's then-standard hourly rates for any additional time expended by WKH as a result of Licensee's failure.

20. Maintenance Fees. Licensee will pay WKH the maintenance fee specified in Exhibit A which cover the initial 12 month period. Maintenance fees for the second through eighth annual maintenance terms for the same ProVation Order Sets shown in Exhibit A and for the number of beds shown in Exhibit B shall remain fixed at the price set forth in Exhibit A and all 8 years shall be pre-paid upon installation of the ProVation Order Sets.



21. INTENTIONALLY DELETED.

22. Payment Terms. WKH will invoice Licensee, and Licensee shall certify the invoice, either in the requested amount or in such other amount as Licensee approves in conformity with this Agreement, and Licensee shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified by Licensee within 30 days of receiving the invoice from Licensee. During such thirty (30) days Licensee shall notify WKH of any disputed items. Licensee will pay or reimburse WKH for all sales, use, excise and other taxes and governmental charges which WKH is at any time required to pay or collect in connection with the sale, licensing or furnishing of products or services under this Agreement, excluding any taxes based on WKH's income or if Licensee is sales tax exempt then Licensee shall provide evidence to WKH of its exemption from state sales tax requirements. The invoice shall set forth the amounts claimed by WKH for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. If Licensee fails to pay any undisputed invoiced amounts within sixty (60) days following the date of the invoice, WKH will have the right to withhold all professional services and maintenance services until such time as said fees are paid in full. Placement on the WKH schedule and commencement of the Professional Services shall not begin until WKH receives a completed accounting packet which consists of the following: signed Agreement, purchase order covering all fees under the Agreement, initial Licensed Software payment, and Third Party Product Services Agreement, if applicable. With respect to any purchase made under this Agreement, the terms of Licensee purchase orders are void.

23. Limited Warranties.

23.1 Ownership. WKH warrants that it is the lawful owner or licensee of the ProVation Order Sets and Clin-eguide (excludes Content) or has the right to grant the license granted herein.

23.2 Performance of ProVation Order Sets. For so long as the ProVation Order Sets are under maintenance according to the terms of this Agreement and Licensee is current on all payments owing hereunder, ProVation Order Sets, when used as permitted under this Agreement (including without limitation use on and in connection with equipment that meets Exhibit D) and in accordance with both the then current Software Administrator Guide and the User Manual (collectively "Documentation"), will perform substantially in conformance with the Documentation. Notwithstanding the foregoing, this warranty does not apply to problems resulting from: (i) modification of or damage (except modifications or damages caused by WKH) to the ProVation Order Sets or its operating environment, (ii) Licensee's failure to operate the ProVation Order Sets in the proper hardware and software environment, (iii) Licensee's failure to operate the ProVation Order Sets in accordance with WKH's Documentation, or (iv) Licensee's failure to be making use of the current or immediate prior version of ProVation Order Sets or to otherwise implement any updates, improvements, modifications, patches and/or bug fixes provided by WKH. Licensee's sole remedy, and WKH's sole liability, for a breach of WKH's warranty under this Section will be limited to the performance and/or re-performance of maintenance services sufficient to cause ProVation Order Sets to so perform.

23.3 Intellectual Property. ProVation Order Sets and Clin-eguide (excludes Content) do not infringe upon any issued United States patent, copyright or trademark.

23.4 Services. The services provided by WKH hereunder will be performed in a professional manner by personnel appropriately trained in the performance of such services. WKH warrants that WKH and its contractor's agents, employees, and subcontractors performing services under this Agreement directly to Licensee are specially trained, experienced, competent, and appropriately licensed (if applicable) to perform the work and deliver the services required under this Agreement and to WKH's knowledge

are not employees of Licensee, or immediate family of an employee of Licensee. WKH, its agents, employees and subcontracts shall perform all work in a safe and skillful manner and in compliance with applicable laws and regulations.

23.5 EMR Integration. Licensee represents and warrants that it has all necessary rights and permissions to allow for the integration of the ProVation Order Sets into, and with, such EMR software, such that integration will not violate any agreement including agreements between Licensee and the provider of such solution (or any portion thereof).

24. Disclaimer of Warranties.

24.1 Generally. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 23, ALL PRODUCTS AND SERVICES UNDER THIS AGREEMENT ARE FURNISHED BY WKH AND ACCEPTED BY LICENSEE "AS IS" AND WITHOUT ANY WARRANTY WHATSOEVER. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 23, WKH AND ANY THIRD PARTY LICENSORS DISCLAIM ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE PROVATION ORDER SETS, OR THE INFORMATION CONTAINED THEREIN OR RESULTS DERIVED THEREFROM, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES REGARDING QUALITY, ACCURACY, CORRECTNESS, COMPLETENESS, COMPREHENSIVENESS, SUITABILITY, COMPATIBILITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR OTHERWISE OF THE PROVATION ORDER SETS, CLIN-EGUIDE, CONTENT OR THE INFORMATION CONTAINED THEREIN OR RESULTS DERIVED THEREFROM (IRRESPECTIVE OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE), EACH OF WHICH IS HEREBY EXPRESSLY EXCLUDED BY AGREEMENT OF THE PARTIES. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. NO WKH EMPLOYEE OR AGENT IS AUTHORIZED TO MAKE ANY STATEMENT THAT ADDS TO OR AMENDS THE WARRANTIES OR LIMITATIONS CONTAINED IN THIS AGREEMENT. IN ADDITION, LICENSEE ACKNOWLEDGES THAT CLIN-EGUIDE MAY BE SUBJECT TO LIMITATIONS, DELAYS, LATENCY ISSUES AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND THAT WKH IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

24.2 Content. WITHOUT IN ANY WAY LIMITING THE EFFECT OF SECTION 24.1 ABOVE, THE FOLLOWING ADDITIONAL DISCLAIMERS ARE APPLICABLE WITH RESPECT TO INFORMATIONAL CONTENT. LICENSEE ACKNOWLEDGES AND AGREES THAT WKH PROVIDES NO MEDICAL ADVICE IN CONNECTION WITH THIS AGREEMENT AND THAT LICENSEE IS RESPONSIBLE FOR THE USE OF ANY INFORMATION CONTAINED IN THE PROVATION ORDER SETS, CLIN-EGUIDE AND CONTENT AND THAT A LICENSED MEDICAL PROFESSIONAL IS RESPONSIBLE FOR INDEPENDENTLY REACHING ANY MEDICAL JUDGMENT, AND FOR ANY RESULTING DIAGNOSIS AND TREATMENTS, NOTWITHSTANDING ANY USE OF THE PROVATION ORDER SETS, CLIN-EGUIDE AND CONTENT OR THE INFORMATION CONTAINED THEREIN BY SUCH MEDICAL PROFESSIONAL. LICENSEE ACKNOWLEDGES AND AGREES THAT THE INFORMATION CONTAINED IN THE PROVATION ORDER SETS, CLIN-EGUIDE AND CONTENT MAY CONTAIN INACCURACIES AND OTHER ERRORS RELATED TO THE SOURCE OF SUCH INFORMATION.

25. Limitation of Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, WKH, ITS AFFILIATES, THIRD PARTY LICENSORS, OR ANY OF ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS WILL NOT BE LIABLE TO

LICENSEE OR ANY OTHER PERSON FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE AND/OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST SAVINGS AND/OR LOST DATA, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED BY WKH UNDER THIS AGREEMENT OR THE USE THEREOF, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; AND THE AGGREGATE LIABILITY OF WKH FOR ANY CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY PRODUCTS OR SERVICES FURNISHED OR TO BE FURNISHED BY WKH UNDER THIS AGREEMENT WILL IN NO EVENT EXCEED: (A) FOR CLAIMS ASSERTED DURING THE FIRST TWELVE (12) MONTHS FOLLOWING THE EFFECTIVE DATE, THE AMOUNT PAID BY LICENSEE TO WKH UNDER THIS AGREEMENT; OR (B) FOR CLAIMS ASSERTED AFTER TWELVE (12) MONTHS FOLLOWING THE EFFECTIVE DATE, THE AMOUNT OF THE MAINTENANCE FEES PAID BY LICENSEE TO WKH UNDER THIS AGREEMENT IN THE PRIOR TWELVE (12) MONTHS. THIS LIMITATION OF LIABILITY AND THE DISCLAIMERS SET FORTH IN SECTION 24 ARE INDEPENDENT OF ANY REMEDIES SET FORTH HEREIN, AND WILL SURVIVE AND APPLY EVEN IF SUCH REMEDIES ARE FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

26. Intellectual Property Indemnity. WKH will indemnify and hold Licensee harmless against costs, expenses (including reasonable attorneys' fees) and liabilities resulting from a finding by a court that ProVation Order Sets or Clin-eguide (excludes Content) infringes or violates a United States copyright right or patent right of a third party, *provided*: (a) Licensee notifies WKH promptly in writing of such claim; (b) Licensee cooperates with WKH in all reasonable respects in connection with the investigation and defense of any such claim; (c) WKH will have sole control of the defense and all negotiations for its settlement or compromise; and (d) should the ProVation Order Sets or Clin-eguide become, or in WKH's opinion be likely to become, the subject of a third party infringement claim WKH, at WKH's option and expense will: (i) procure for Licensee the right to continue using the ProVation Order Sets or Clin-eguide, (ii) replace or modify the same so that it becomes non-infringing; or (iii) terminate Licensee's license as to the affected ProVation Order Sets or Clin-eguide, accept the return of the affected ProVation Order Sets or Clin-eguide, and grant to Licensee a pro-rata refund of the license fee paid hereunder for the affected ProVation Order Sets (no fee is paid for Clin-eguide hence no refund is applicable hereunder), amortized on a straight-line basis over a three (3) year period. Notwithstanding anything herein to the contrary, WKH will have no obligation or liability if any otherwise covered claim is based on: (w) use in a manner other than that for which it was furnished by WKH; (x) modification by or for Licensee in such a way as to cause it to become infringing; (y) Licensee's failure to implement any Update delivered by WKH to Licensee that is designed to avoid such claim; or (z) use in conjunction with systems, products or components not furnished by WKH. This Section states WKH's exclusive liability, and Licensee's exclusive remedy, for infringement or other violation of the intellectual property rights of any third party.

27. WKH Not Engaged in Practice of Medicine; Indemnity. WKH does not, nor does it intend to, engage in the performance or delivery of medical or health care services. All products and services provided by WKH under this Agreement should not, in any case, be deemed or understood as a recommendation, endorsement, guarantee or warranty of the professional services of any providers who render health care services and are not intended as a substitute for professional medical judgment in patient diagnosis or treatment.

28. Proprietary Information.

28.1 Proprietary Information. Both Parties have made and will continue to make available to the other Party confidential and proprietary materials and information ("**Proprietary Information**"). Except as provided below, all material and information is designated as Proprietary Information. Notwithstanding the foregoing, Proprietary Information does not include information that: (i) is already, or

otherwise becomes, generally known by third parties as a result of no act or omission of the receiving Party; (ii) subsequent to disclosure hereunder, is lawfully received from a third party having the right to disseminate the information without restriction on disclosure; (iii) is generally furnished to others by the disclosing Party without restriction on disclosure; (iv) was already known by the receiving Party prior to receiving it from the disclosing Party and was not received from a third party in breach of that third party's obligations of confidentiality; (v) is independently developed by the receiving Party without the use of Proprietary Information of the disclosing Party.

28.2 Restrictions on Use and Disclosure. Each Party will maintain the confidentiality of the other's Proprietary Information and will not use or disclose without the written consent of the other Party, except that a Party may use Proprietary Information as necessary to perform its obligations hereunder or as otherwise permitted hereunder. Each Party will also keep confidential the terms of this Agreement, including any exhibits attached hereto except when required by law.

28.3 Access by Regulatory Agencies. Neither of the Parties' obligations of confidentiality will prevent or prohibit the Parties from providing access to Proprietary Information upon request of a state or federal regulatory agency or authority as may be required by law or judicial or administrative process provided such Party complies with the terms of Section 28.5.

28.4 Public Disclosures. WKH will have the right to issue public statements pertaining to the existence of the business relationship between WKH and Licensee, including the right to the limited use of Licensee's name, and other reasonable non-confidential information in press releases, web pages, advertisements, and other marketing materials. WKH will not claim Licensee's endorsement of WKH's products or services without Licensee's prior written consent.

28.5 Notification Obligation. If a Party receiving Proprietary Information hereunder has knowledge of unauthorized use or disclosure of the Proprietary Information, the receiving Party promptly will notify the disclosing Party of all facts known to it concerning such unauthorized use or disclosure. In addition, if the receiving Party or any of its employees, contractors or agents are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Proprietary Information of the disclosing Party, the receiving Party will not disclose such Proprietary Information without providing the disclosing Party with reasonable prior written notice of any such request or requirement so that the disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. Notwithstanding the foregoing, the receiving Party will exercise its reasonable efforts to preserve the confidentiality of the Proprietary Information including, without limitation, by cooperating with the disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Proprietary Information by such tribunal.

29. U.S. Government Restricted Rights. - The ProVation Order Sets are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions as set forth in subsection (c)(1)(ii) in The Rights in Technical Data and Computer Software Clause at DFARS 252.227-7013, or subsections (c)(1) and (2) of the Commercial Computer Software -- Restricted Rights at 48 CFR 52.227-19, as applicable. Contractor/manufacturer is Wolters Kluwer Health, Inc., 800 Washington Avenue North, Suite 400, Minneapolis, MN 55401.

30. Government Access to Records. The Parties agree that the Comptroller General of the United States, the United States Department of Health and Human Services ("HHS") and their duly authorized representatives will have, pursuant to 42 CFR § 420.302, upon request, until the expiration of four (4) years after the services under this Agreement are furnished, access to this Agreement and any other contract for the performance of any part of this Agreement, the cost or value of which is \$10,000 or more,

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between a party and a subcontractor, or any organization related to a party. The Comptroller General of the United States, HHS, and their duly authorized representatives will also have access to the books, documents, and records of a party relating to this Agreement and of any subcontractor, or organization related to a party, which a party contracts with to perform any part of this Agreement and which contract has a cost or value of ten thousand dollars (\$10,000) or more. Any contract between a party and a subcontractor with a value of ten thousand dollars (\$10,000) or more will contain a provision with language substantially similar to the language of this Section. Notwithstanding the foregoing, nothing contained herein will be deemed to grant a party the right to assign this Agreement or the license granted hereunder, or to subcontract any of the services hereunder, except as expressly set forth herein.

31. Insurance. WKH shall carry and maintain, at its own expense insurance with limits listed below and with insurers with an A.M. Best's Rating of not less than A- VIII and/or a Standard & Poor's rating of not less than A at all times. General Liability/Auto Liability: \$ 1 million per occurrence, umbrella: \$4 million per occurrence and in the annual aggregate, worker's compensation in compliance with all statutory requirements, errors & omissions/professional liability/media liability: \$1 million per occurrence, \$2 million in the annual aggregate, property damage/business Interruption: \$1 million per occurrence, crime: \$ 1 million per occurrence, \$2 million in the annual aggregate

32. Non-Waiver. The failure by either Party at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, will not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this Agreement. The waiver of any default by either Party will not be deemed a continuing waiver, but will apply solely to the instance to which such waiver is directed.

33. Severability. Every provision of this Agreement will be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Agreement so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision will be deemed severed from this Agreement, and all other provisions will remain in full force and effect.

34. Notice. All notices and other communications will be in writing and deemed to have been received: (a) upon delivery if delivered by a courier service; (b) upon transmission if sent via telecopier, with a confirmation copy sent via overnight mail; (c) on the business day following dispatch, if sent by a nationally recognized overnight courier, and (d) on the third business day following mailing, if sent via United States registered or certified mail, return receipt requested, postage pre-paid; in each case addressed to the recipient at the following addresses:

To WKH:

Wolters Kluwer Health, Inc.
800 Washington Avenue North
Suite 400
Minneapolis, MN 55401
Attn: Contracts
fax: 612 313 1592

To Licensee:

County of Monterey: Natividad Medical Center
1441 Constitution Blvd.
Salinas, CA. 93906
Attn: Contracts Manager

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Email: catosl@natividad.com

Phone: 831.783.2620 _____

Fax: _____

35. Dispute Resolution. Except with respect to claims for injunctive or other equitable relief brought by either Party, which shall be brought exclusively as set forth in Section 36 below, and, at the option of WKH, all controversies and disputes that cannot be informally resolved by appropriate senior management or executives of both Parties after a reasonable period of time (such time to be at least thirty (30) days after the dispute was known by both Parties or as otherwise agreed between the Parties) shall be settled by arbitration to be held in Monterey California, and in accordance with the then-current rules of the American Arbitration Association; provided, however, that (a) the arbitrator(s) shall be knowledgeable in industry standards and practices and the matters giving rise to the dispute; (b) the arbitrator(s) shall not have the power and authority to award punitive damages; (c) the authority of the arbitrator(s) shall be limited to construing and enforcing the terms and conditions of this Agreement; and (d) the arbitrator(s), if allowed by the rules, shall state the reasons for their award and their legal and factual conclusions underlying the award in a written opinion. The award of the arbitrator(s), or a majority of them, shall be final, and judgment upon the award may be entered in a court as set forth in Section 36.

In disputes related to claims involving: (i) ownership of the ProVation Order Sets or any other WKH-owned, licensed, operated or provided software; or (ii) collection actions for fees, costs, or charges owed hereunder, WKH shall have the option to initiate any legal proceedings in state or federal court of its choice, or seek any other available legal remedy.

36. Choice of Law. This Agreement is governed by and shall be construed in accordance with the laws of the United States of America and the state of California without respect to its choice of law provisions. The Parties agree that the Uniform Computer Information Transactions Act, or any version thereof, adopted by any state in any form ("UCITA") will not apply to this Agreement and, to the extent that UCITA is applicable, the Parties agree to opt out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Each Party hereby waives any rights to trial by jury.

37. Assignment. Neither Party may assign, delegate and/or otherwise transfer this Agreement or its rights and obligations hereunder without the prior written consent of the other; provided, however, that WKH may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder to any affiliate or any person or entity which purchases or otherwise succeeds to substantially all of the assets of WKH or obtains a right to control WKH through the acquisition of stock or otherwise.

38. Binding Effect; No Third Party Beneficiaries. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. With the exception of Oracle®, which is deemed a third party beneficiary hereunder, no third party beneficiaries are intended or will be construed as created by virtue of this Agreement.

39. Credentialing. In the event Licensee requires WKH to register with a vendor credentialing program all fees incurred by WKH as a result shall be invoiced to Licensee and reimbursed to WKH pursuant to the terms of section 22. Further, any representations made by WKH or its employees in such credentialing shall not be deemed as a representation or warranty by WKH.

40. Survival. Any terms of this Agreement that would, by their nature, survive the expiration or termination of this Agreement will so survive.

41. Entire Agreement, Amendment. This Agreement, including the Exhibits, which are incorporated herein by reference, sets forth the entire agreement and understanding between WKH and Licensee. Licensee acknowledges that it has not been induced to enter into this Agreement by any representations or statements, oral or written, not expressly contained in this Agreement. This Agreement may only be modified or amended by a writing that expressly states that it is a modification or amendment of this Agreement and that is signed by both parties. The terms and conditions of any invoice, purchase order, quotation, acknowledgment, receipt, or any other form, fulfillment, or sales document shall in no way supersede, amend or replace the terms and conditions of this Agreement.

42. Force Majeure. Neither Party shall be held responsible for any delay or failure in performance of any part of this Agreement (except for Licensee's payment obligations) to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, or other causes beyond its control and without the fault or negligence of the delayed or non performing Party or its subcontractors.

43. Audits. WKH shall have the right, from time-to-time, upon reasonable prior written notice to Licensee, to perform an operational audit with respect to Licensee's compliance with the license restrictions set forth in this Agreement. Licensee shall grant WKH and its reps full and complete access to Licensee's relevant records and systems as they relate to this Agreement or as they may be required in order for WKH to ascertain any facts relative to Licensee's compliance with the license restrictions set forth in this Agreement. Licensee shall provide WKH, or its authorized representatives, such information and assistance as reasonably requested to perform such audits; provided, however, that any such audit shall be conducted during regular business hours at Licensee's facilities, or through remote access, and shall not unreasonably interfere with Licensee's business activities.

44. Non Discrimination. During the performance of this Agreement, WKH and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in WKH's employment practices or in furnishing of services to Subscriber. WKH shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. WKH and any subcontractor shall in the performance of this Agreement, full comply wit all federal, state and local laws and regulation which prohibit discrimination, as applicable. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

45. Independent Contractors. In the performance of work, duties, and obligations under this Agreement, WKH is at all times acting and performing as an independent contract and not as an employee of Subscriber. No offer or obligation of permanent employment with Subscriber or particular county department or agency is intended in any manner, and WKH shall not become entitled by virtue of this Agreement to received from Subscriber any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers compensation coverage, insurance or disability benefits, WKH shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of WKH's performance of this Agreement.

IN WITNESS WHEREOF, authorized representatives of the Parties have executed this Agreement as of the Effective Date.

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CONFIDENTIAL

WOLTERS KLUWER HEALTH, INC.

By (Print): MARK ZIMMERMAN

Position: DIRECTOR OF FINANCE

Signature: *Mark Zimmerman*

LICENSEE

By (Print): MARK WETS

Position: CEO

Signature: *[Signature]*

AB

*A Brauer
Deputy County Counsel
Legal Firm & Risk*

*Jim L Gray
Met Annex 4/12 / CONSULTANTS
5-13-13*

Reviewed as to fiscal provisions
[Signature]
Auditor-Controller
County of Monterey

4-10-13

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**EXHIBIT A
Fees**

All sales are subject to sales tax, if applicable

Licensed Software			
Description	Part #	ty	License Fee
ProVation Authoring Application	swosapp		
ProVation Web Reviewer <i>(no charge)</i>	pvosweb		
ProVation Care Plans Functionality	swoscp		
ProVation Inpatient Administration Order Sets	swosinpt		
ProVation Ambulatory Order Sets	swosamb		
ProVation Emergency Evaluation Order Sets	swosed		
ProVation Discharge Order Sets	swosdn		
Clin-eguide for Order Sets Only	cglite		\$ -
TOTAL SOFTWARE			\$ 150,618
Maintenance			
Description	Part #	ty	Fee
ProVation Order Sets Maintenance	mtpvos		\$ 25,299
<i>Telephone Support</i>	<i>rolled into fee above</i>		
<i>Updates</i>	<i>rolled into fee above</i>		
ProVation Care Plans Maintenance	mtcp		\$ 4,825
<i>Telephone Support</i>	<i>rolled into fee above</i>		
<i>Updates</i>	<i>rolled into fee above</i>		
TOTAL MAINTENANCE			\$ 30,124

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EXHIBIT A CONTINUED

Professional Services		
Flagging SQL Script Services	svflagsql	\$ 12,500
EMR Integration/Mapping Tools Services PVOS - up to 6 month project:	svosemrMT	\$ 4,752
Workflow Analysis Meeting & Mapping Application Training - up to 3 days		
Remote project guidance & management		
Remote Technical Implementation and Testing Assistance		
Order Set Management Services: - up to 6 month project duration:	svosimp	\$ 18,299
On-Site Workflow Analysis Meeting - up to 2 days		
On-Site OS Owner Training & Software Config. - up to 2 days		
OS Reviewer and Follow-up Owner Training - up to 2 days		
Advanced Owner and Follow-up Training - up to 2 days		
On-Site Checkpoint Review and Working Sessions - 2 visits of up to 2 days each		
Remote project guidance & management		
Remote Application Install on Servers & Technical Implementation Assist.		
Remote Software Administrator Training - up to 4 hours		
Care Plans Management Services: - up to 6 month project duration:	svcp	\$ 18,299
On-Site Workflow Analysis Meeting - up to 2 days		
On-Site OS Owner Training & Software Config. - up to 2 days		
OS Reviewer and Follow-up Owner Training - up to 2 days		
Advanced Owner and Follow-up Training - up to 2 days		
On-Site Checkpoint Review and Working Sessions - 2 visits of up to 2 days each		
Remote project guidance & management		
Remote Application Install on Servers & Technical Implementation Assist.		
Remote Software Administrator Training - up to 4 hours		
TOTAL SERVICES		\$ 53,850

The above service deliverables are offered as a fixed fee package with project duration not to exceed the timeframe defined above. If extended project services are required by Licensee they can be purchased at current rates. If service deliverables are completed in less than the defined project duration or are not completed during the defined project duration no service credit shall remain for future use.

If EMR integration and mapping tools services package is purchased, ProVation does not perform actual mapping of ProVation Order Sets catalog items to the Licensee's CPOE order catalog.

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EXHIBIT B

Installation Site(s):

Natividad Medical Center
1441 Constitution Blvd
Salinas, CA 93906-3100

Total Number of Beds: 172

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EXHIBIT C
Third Party Software – Additional Terms

- 1. Escrow.** No provision requiring the deposit or placement in escrow of source code materials will apply to Third Party Software.
- 2. Excluded Provisions.** The terms and conditions of Sections 23 (Warranties) and 26 (Intellectual Property Indemnity) of the Agreement will not apply to the Third Party Software.
- 3. Additional Oracle Restrictions.** In addition to restrictions set forth in the Agreement Licensee may not: a) use except in conjunction with the ProVation Order Sets b) use for any purpose other than the use as permitted under the Agreement; c) publish any benchmark tests or any other test results run on the Oracle; d) assign, give, rent, lease, timeshare, subscribe, service, host, outsource or transfer Oracle; (e) remove or modify any proprietary notices or transfer title; (f) make available in any manner to any third party.
- 4. Termination.** Licensee's right to use the Third Party Software will terminate if (i) Licensee's license to use the ProVation Order Sets is terminated for any reason, (ii) Oracle requires WKH to terminate Licensee's license to use the Oracle for any reason, (iii) the Oracle Software is no longer included in a supported version of the ProVation Order Sets according to the terms of the Agreement; or (iv) WKH's license to use any Third Party Software is terminated for any reason.
- 5. Oracle Warranty.** The Oracle Software will operate in all material respects as described in the applicable program documentation for one (1) year from delivery (via physical shipment or electronic download) provided any such deficiency from the documentation is reported during the one year warranty period.
- 6. Disclaimer of Warranties.** ANY WARRANTY SET FORTH IN THIS EXHIBIT DOES NOT GUARANTEE THAT THE THIRD PARTY SOFTWARE WILL PERFORM ERROR-FREE OR UNINTERRUPTED, OR THAT ALL PROGRAM ERRORS WILL BE CORRECTED. ANY WARRANTY SET FORTH IN THIS EXHIBIT IS EXCLUSIVE AND TAKES THE PLACE OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WITHOUT LIMITATION WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE. THE DISCLAIMERS OF WARRANTY SET FORTH IN THIS AGREEMENT WILL ACCRUE TO THE BENEFIT OF THE AMA AS WELL AS WKH.
- 7. Limitation of Liability.** The limitations of liability set forth in the Limitation of Liability section of this License Agreement will accrue to the benefit of Oracle as well as WKH with respect to the Oracle Third Party Software; and the aggregate liability of WKH and/or Oracle, collectively, with respect to the Oracle Third Party Software, will be absolutely limited to a) correction of error that caused the breach of Oracle warranty set forth above; or; b) if Oracle cannot substantially correct the breach in a commercially reasonable manner, and the Licensee terminates the Oracle license recovery of the fees paid to Oracle for the Oracle Third Party Software.
- 8. Export.** Licensee agrees that U.S. export control laws and other applicable export and import laws govern its use of the Third Party Software, including technical data. Licensee agrees that neither the Third Party Software nor any direct product thereof will be exported, directly or indirectly, in violation of these laws, or use for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation.
- 9. U.S. Government Rights Restricted.** This product includes CPT which is commercial technical data and /or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable which were developed exclusively at private expense by the American Medical Association, 515 North State Street, Chicago, IL 60610. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (November 1995) and/or subject to the restrictions of DFARS 237.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (December 2007) and/or subject to the restricted rights provisions of FAR 52.227-14 (December 2007) and FAR 52.227-19 (December 2007), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.
- 10. Audit.** Licensee agrees that, upon thirty (30) days' written notice, Oracle (whom may designate WKH) may audit Licensee's use and distribution of the Oracle Software, at no cost. Licensee agrees to cooperate with any such audit and provide reasonable assistance and access to information.
- 11. Oracle Third Party Technology.** As applicable, third party technology that may be appropriate or necessary for use with some Oracle programs as specified in the program documentation, readme files, notice files, installation details and is licensed under the terms of such third party technology.

EXHIBIT D
Hardware and Third Party Software Minimum Technical Specifications

The following information outlines the recommended hardware and 3rd party software needed for a *typical* installation of version 1.0 of WK Health's ProVation Order Sets (PVOS) application. These specifications will change based on the features being implemented.

Servers

Database Server

- PVOS database resides on this server
 - o Client must work w/ WK Health to size the server appropriately
- Windows Server 2003/2008 Standard or Enterprise Edition -- 32-bit only; Windows 2008 R2 64-bit
- Two Multi-core Processors
- 4 GB RAM
- 15K RPM hard drives (SAS recommended)
 - o 70 GB recommended - Refer to WK Health for a more detailed drive space estimate based on feature use
- RAID 1, 10, or 5 fault Tolerance implemented
- 100/1000 Mbps switched Ethernet connection (full duplex)
- Display with 1024 X 768 or greater resolution
- Dual Power Supply for fault tolerance
- Remote backup system
- Uninterruptible Power Supply (UPS)
- Unix/Linux can be used to house the Oracle database
 - o Refer to Oracle's website for a complete list of supported operating systems
 - o Unix and DBA expertise are to be provided entirely by the client
 - o Refer to WK Health Database Requirements paper

Application Server

- Windows Server 2003/2008 Standard or Enterprise Edition -- 32-bit only; Windows 2008 R2 64-bit
- Oracle Data Provider for .NET 2.0
- Internet Information Services
- Microsoft .NET Framework 4.0
- Two Multi-core Processors
- 2 GB RAM scalable to 4 GB
- 70 GB recommended - Refer to WK Health for a more detailed drive space estimate based on feature use
- RAID 1 or RAID 5 fault tolerance implemented
- 100/1000 Mbps switched Ethernet connection (full duplex)
- Display with 1024 X 768 or greater resolution
- Dual Power Supply for fault tolerance
- Uninterruptible Power Supply (UPS)
- PVOS .NET Services can be configured to run under SSL. Client is responsible for obtaining and configuring SSL certificate.
- Server cannot be configured as a domain controller
- SMTP must be configured for sending email via port 25

Test Server (recommended but not required)

- Includes all software and applications residing on Database and Application Server from above
 - o Client must work w/ WK Health to size the server appropriately
- Windows Server 2003/2008 Standard or Enterprise Edition -- 32-bit only; Windows 2008 R2 64-bit
- Oracle Data Provider for .NET 2.0
- Internet Information Services
- Microsoft .NET Framework 4.0

- Intel Xeon Processor (2.6 GHz or better)
- 2 GB RAM scalable to 4 GB
- Drive space should be similar to production database server
- 100 Mbps switched Ethernet connection
- THIS SERVER IS NOT SIZED TO BE USED IN A PRODUCTION ENVIRONMENT

Web Server (required for external network access of web review)

- Windows Server 2003/2008 Standard or Enterprise Edition -- 32-bit only; Windows 2008 R2 64-bit
- Intel Xeon Processor (2.6 GHz or better)
- 2 GB RAM scalable to 4 GB
- Internet Information Services
- Microsoft .NET Framework 4.0
- 100 Mbps switched Ethernet connection
- Web Review services can be configured to run under SSL. Client is responsible for obtaining and configuring SSL certificate.

Workstations/Laptops

PVOS: Workstation Specifications

- Windows XP Pro 32 bit Windows 7 (32 or 64 bit)
 - o Windows Home Editions are not supported
- Microsoft .NET Framework 4.0
- Pentium Core 2 Duo processor or better
- 2 GB RAM
- 20 GB free hard drive space
- Video card capable of 1024 x 768 display at 32-bit color
- 100 Mbps switched Ethernet connection
- 17" or larger (1280 x 1024 recommended)
- Internet Explorer 6.0/7.0/8.0
- Adobe Acrobat Reader v7.0 or greater
- Must be able to access <http://clineguide.ovid.com>

PVOS: Web Review/Web Print Workstation Specifications

- Internet Explorer 6.0/7.0/8.0
- Adobe Acrobat Reader v7.0 or greater
- Must be able to access <http://clineguide.ovid.com>
- Must be able to access the ProVation Order Sets Application server
 - o Sample Address for Web Review:
<http://PVOS Application Server Name/wkosaweb/osalogin.aspx>
 - o Sample Address for Web Print:
<http://PVOS Application Server Name/wkosawebprint/printlogin.aspx>

General Configurations

PVOS Workstations
<ul style="list-style-type: none"> • Read/Write/Modify/Delete to <Program Files>\ProVation Medical\OSA directory (ProVation Order Sets client) • Read/Write/Modify/Delete to <Documents and Settings\current user>\Application Data\ProVation Medical (Windows XP) • Read/Write/Modify/Delete to <Users\current user>\AppData\Roaming\ProVation Medical (Windows 7)

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PVOS Web Reviewer Workstations

- Internet Explorer 6.0/7.0/8.0 settings
 - Check for newer versions of stored pages every visit to the page
 - No passwords should be saved
 - Pop-up blockers disabled for ProVation PVOS website
 - PVOS website may need to be added to your firewall rules

3rd Party Software

Oracle Database Specifications

- Oracle Database Standard Edition version 10.2.0.3/10.2.0.4/11.2.0.2
- Named User licensing (check with your WK Health Sales Representative to ensure an accurate count)
- CPU licensing is available for clients where there are more than 100 named-users or it is not possible to get an accurate count of users
- Value Based Pricing (VBP) licensing that allows use of the database on a virtual environment such as VMware
- Refer to the WK Health "Oracle Licensing Guide" available from WK Health for a more detailed outline of database requirements

Adobe Specifications

- Acrobat Reader
 - V7.0 or greater

Remote Connectivity Requirements

Connectivity

- Symmetric up and down bandwidth of at least 256 kbps
- Minimal restrictions; if the ISP allows PPTP tunnelling, this is an indication that they are not highly restrictive

Supported 3rd Party VPN's

- Nortel
- Cisco
- Checkpoint Secure Remote
- Sonic Wall
- Microsoft VPN

WK Health Event/Error Report Sending Requirements

- High Speed Internet Connectivity
- Access to FTP and HTTP for downloading PVOS software and updates.
- Ability to resolve DNS
 - The ProVation Order Sets software has the ability to send error message logs and upgrade/update information automatically via http to ProVation. Message logs are sent to <https://ugli.provationmedical.com>. This aids WK Health in proactively identifying and resolving software problems.
 - If users are required to connect to the Internet through a Proxy server, this connection must be established before beginning an upgrade/update on your server(s).
 - The Get Updates feature allows the customer to retrieve available updates for ProVation via the internet. For this to function, access to <http://ugli.provationmedical.com> and <http://updates.installshield.com> are required.

Citrix

ProVation Order Sets has been successfully deployed to customer locations using Citrix versions 5.0, 6.0, and 6.5. Procurement, setup, licensing and support of Citrix environments are the sole responsibility of the customer. Memory usage is approximately 300-350 Mb per user session.

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The WK Health Hardware Requirements are based on current available hardware from common, commercial vendors (i.e. Dell, HP, IBM). If you have existing hardware that you feel may meet WK Health's hardware requirements for the deployment of the WK Health solution please work with the WK Health technical resource to discuss options.

Refer to your Customer Support Handbook for a more detailed description of the roles and responsibilities of the client for installation, maintenance, and support of hardware and 3rd party software.

EXHIBIT E

Licensee Responsibilities: as applicable:

- (1) provide sufficient qualified resources to perform its obligations hereunder;
- (2) access to facilities;
- (3) cooperate as needed to enable WKH to fulfil its obligations under this Agreement; and
- (4) without limiting the generality of the foregoing, the following activities:

IMPLEMENTATION PLANNING AND PROJECT MANAGEMENT

Assign resources to the project as outlined in the attached resource grid

Participate in project meetings held via teleconference

Participate in on-site implementation events and provide suitable meeting space

Complete customer tasks identified during project planning

Complete detailed analysis and documentation of licensee's current order set development and review process

Identify, document and implement licensee's new order set development and review process with ProVation Order Sets application in place

TECHNICAL PREPARATION

Ensure correct hardware and third party software and network environment in place for remote software installation

Ensure workstations where application will be installed meet or exceed minimum requirements for the application

Ensure remote access is in place for server software installation and ongoing application support

Install ProVation Order Set software on workstations

Implement server backup protocol

Ongoing deployment of ProVation software updates

USER TRAINING

Identify customer education resource(s) who will participate in "train the trainer" sessions

Provide a suitable hands-on training environment with access a functional ProVation Order Sets application for the vendor-led training session

Ensure core customer project team attends all applicable vendor-led training sessions

Develop and deliver training for users beyond the core team included in the initial vendor-led application training session

SYSTEM INTEGRATION – CPOE INTEGRATION

Attend mapping tool training session

Complete mapping of PVOS order data to CPOE system

Define test plan scenarios

Determine deployment plan

Identify and document ongoing maintenance protocol to ensure mapping is updated as needed for PVOS and CPOE system updates

Design and build test environment

Conduct testing and deployment to production system

CATALOG MAPPING – IF APPLICABLE

Provide export of the order catalog from Licensee EMR CPOE system via .csv or xml format, as defined by WKH

Provide order catalog expert resources to answer WKH questions regarding catalog items and meanings

Participate in project meetings held via teleconference

Complete necessary consolidation or edits to Licensee order catalog during mapping process for all applicable orders such as Medications, Nursing, Lab, and Radiology and other orders

Provide formulary information from Licensee catalog to WKH as needed

Conduct testing and deployment to production system

FORMULARY FLAGGING – IF APPLICABLE

Provide export of medication orders from Licensee EMR CPOE system via .csv or xml format, as defined by WKH

Provide order catalog expert and pharmacy resources to answer WKH questions regarding medication orders

Participate in project meetings held via teleconference

Complete necessary consolidation or edits to Licensee order catalog for Medication orders

Provide formulary information from Licensee catalog to WKH as needed

Conduct testing and deployment to production system

ORDER SET CREATION AND IMPORT – IF APPLICABLE

Identify which approved order sets in priority order to be created by WKH by agreed upon timeframe

Provide export of these order sets from Licensee EMR CPOE system via .csv or xml format, or other format as defined by WKH

Provide order set and CPOE expert resources to answer WKH questions regarding order sets and/or catalog items and meanings

Participate in project meetings held via teleconference

Complete necessary consolidation or edits to Licensee order sets and/or order catalog during for all applicable orders such

Medications, Nursing, Lab, and Radiology and other orders

Conduct testing and deployment to production system

EXHIBIT E
PROVATION® ORDER SETS IMPLEMENTATION PROJECT RESOURCE GRID

Description of Role	*Estimated hours required during implementation	*Estimated hours required for ongoing maintenance	Notes about estimated hours	Description of Responsibilities	Description of Requirements
Project Manager	5-10 hrs/week	0	This may be more during the beginning of the project when allocating resources & planning.	Work with ProVation project manager to finalize implementation project plan; manage site resources and tasks to ensure completion within defined timeframe; participate in on-site and remote project reviews, on-site issue follow-up and escalation as needed to ensure timely, successful project completion; ensure process in place for ongoing system use and handoff to end users.	Leadership, communication, and project management skills and experience; strong attention to detail; ability to anticipate and mitigate project risks and escalate issues for resolution as needed; typically an IT or analyst staff member with project lead experience.
Clinical Champion	5-10 hrs/week	5-10 hrs/month		Make decisions needed to incorporate ProVation Order Set software into the order set development workflow; identify the order sets to work on; determine the order set workflow and gain approval for the new process; identify and assign order set owners; establish feedback loop to communicate authoring or point of care functionality and order set content needs for the facility.	Leadership and organizational skills; understanding of current order set development process; ability to gain buy-in and compliance with new authoring workflow; ability to mediate clinical discussions about order set content; typically a senior member of the informatics team or a senior physician liaison to the IT department. This person typically works closely with the Project Manager and the Order Set Facilitator to ensure the project continues to move forward.

Project Sponsor	5-40 hrs for the project	0		Review project status; participate in executive review meetings as needed; assist in eliminating organization's obstacles to project success	Authority to allocate resources; ability to gain support of key constituents from each clinical department involved in order set development (physicians, nurses, administration, etc.) Typically the CIO, CMIO, or other executive with overall responsibility for the implementation of a CPOE system if one is in place or being implemented.
Order Set Facilitator	20-40 hrs/week	10-40 hrs/week	The organization's process will impact the amount of time required for this position.	Manage the organization's library of order sets and the order set process. Monitor when changes are needed to order sets and when they are due for reassessment. During implementation, gather information recommendations for software configuration options to meet the site's unique requirements. Define security rights for the team of owners and reviewers. After implementation, assist in assessing, maintaining and optimizing use of the software. This person normally becomes the power user (subject matter expert) as well.	Computer aptitude; organized; understanding of the current order set process; ability to learn new software and assist others; ability to develop positive rapport with users who may be resistant to change (moving from manual to electronic processes). Strong communication skills and good at motivating others to complete their tasks in a timely manner.
Order Set Owners	1-6 hrs/order set to author 2-20 hrs to make edits based on reviewer feedback 1-4 hrs/order set to manage the process 4-30 hrs total/order set	1-3 hrs/order set 2-20 hrs to make edits based on reviewer feedback 1-4 hrs/order set to manage the process 4-30 hrs total/order set		The Order Set Owners will determine order set content, identify review resources, define and manage the review process, and edit and release order sets for facility use.	Knowledge of the structure and content of order sets; software expertise; attention to detail; ability to mediate clinical discussions about order set content; typically either an experienced physician or nurse, analyst or another staff person working under the direction of the informatics or medical staff. Parts of this role may be shared with the

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					order set facilitator.
**Pharmacist Owner	1-2 hrs/order set to author 1-2 hrs to make edits based on reviewer feedback 2-4 hrs total/order set	.25-1 hrs/order set	This may be more in the initial authoring of order sets and if using flagging.	Manage the medications on the organization's order sets. Remove medications that are not on formulary or used for the organization. Make edits to medications and add appropriate medications to order sets based on clinical input and training. Flag medications that are not to be used in any order sets using the flagging activity.	Knowledge of the formulary and dispensing practices of the health system. Computer aptitude, access to pharmacist resources to make clinical decisions on medications.
Order Set Reviewers	.5-4 hrs/order set	.5-4 hours/order set	Some reviewers may be asked to participate in multiple review steps for the same order set as it moves through the review process. This will increase the hours required.	Review and comment on order set content prepared by order set owners.	Subject matter expert with knowledge and authority to validate the clinical content of an order set for a specific department or functional area (Cardiovascular, Newuology, Pharmacy, Dietary, etc.); basic computer skills
Power User/Trainer	1 hr/reviewer training session 4-8 hrs/owner training session	1 hr/reviewer training session 4-8 hrs/owner training session	Prep time needed would be additional.	Using WKH "train the trainer" approach, responsible for training end users to use the software independently.	Computer aptitude; ability to learn new software and teach others; ability to develop positive rapport with users who may be resistant to change (moving from manual to electronic processes); available to work with users one on one as they learn

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					to use the software.
Software Administrator	5-20 hrs for the project	5-40 hrs/year		Ongoing software maintenance and on-site technical assistance with software updates and technical troubleshooting including hardware and third-party software maintenance; may also provide ongoing first level support to end users following implementation.	Hardware and software expertise; Oracle database expertise; troubleshooting skills; available during regular business hours.
IT Resource(s)	5-40 hrs for the project	normal server maintenance		Establish and maintain stable, secure environment for software installation and ongoing operation; responsible for hardware, network, operating system, remote support access, and network security including operating system security updates and antivirus protection.	General IT expertise in networking, hardware, and operating systems.
***CPOE Expert (if applicable)	.5-2 hrs/order set for mapping 8-40 hrs for the project for integration testing	1-3 hrs/month as new orders are added to the catalog	The hours per order set for mapping will decrease as the catalog becomes more fully mapped.	Map PVOS order catalog to CPOE order catalog; test and troubleshoot CPOE integration; update mappings as changes to both catalogs occur; transfer released order sets from PVOS to CPOE system.	In-depth knowledge of CPOE system; knowledge of the structure and content of the CPOE order catalog; combination of clinical and software expertise; typically someone with a clinical background who is working full-time on the implementation or maintenance of the CPOE system.
*Actual required hours may vary based on many different factors including, but not limited to, the organizations roll-out plans and order set processes, policies and procedures.					
**Using a pharmacist to edit medications is not required but may be involved due to their familiarity with the medications section of order sets.					
***The hour estimates do not include the time to integrate/build the order set in the CPOE system as this is done outside of PVOS and will vary by EMR vendor.					

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Exhibit E

PROVATION® CARE PLANS IMPLEMENTATION PROJECT RESOURCE GRID					
Description of Role	*Estimated hours required during implementation	*Estimated hours required for ongoing maintenance	Notes about estimated hours	Description of Responsibilities	Description of Requirements
Project Manager	5-10 hrs/week	0	This may be more during the beginning of the project when allocating resources & planning.	Work with ProVation project manager to finalize implementation project plan; manage site resources and tasks to ensure completion within defined timeframe; participate in on-site and remote project reviews, on-site issue follow-up and escalation as needed to ensure timely, successful project completion; ensure process in place for ongoing system use and handoff to end users.	Leadership, communication, and project management skills and experience; strong attention to detail; ability to anticipate and mitigate project risks and escalate issues for resolution as needed; typically an IT or analyst staff member with project lead experience.
Nurse/Informatics Champion (Project Sponsor)	5-10 hrs/week	5-10 hrs/month		Make decisions needed to incorporate ProVation software into the care plan development workflow; identify the care plans to work on; determine the care plan workflow and gain approval for the new process; identify and assign care plan owners; establish feedback loop to communicate authoring or point of care functionality and care plan content needs for the facility.	Leadership and organizational skills; understanding of current care plan development process; ability to gain buy-in and compliance with new authoring workflow; ability to mediate clinical discussions about care plan content; typically a senior member of the informatics team or a senior nurse liaison to the IT department. This person typically works closely with the Project Manager and the Care Plan Facilitator to ensure the project continues to move forward.
Executive Sponsor	5-40 hrs for the project	0		Review project status; participate in executive review meetings as needed; assist in eliminating organization's obstacles to project success	Authority to allocate resources; ability to gain support of key constituents from each clinical department involved in care plan development (physicians, nurses, administration, etc.) Typically the CIO, CNO, Director of Clinical Informatics, Director of Nursing Informatics, or other executive with overall responsibility for the implementation of the nursing components of an EMR system if one is in place or being implemented.

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Care Plan Facilitator	20-40 hrs/week	10-40 hrs/week	The organization's process will impact the amount of time required for this position.	Manage the organization's library of care plans and the care plan process. Monitor when changes are needed to care plans and when they are due for reassessment. During implementation, gather information recommendations for software configuration options to meet the site's unique requirements. Define security rights for the team of owners and reviewers. After implementation, assist in assessing, maintaining and optimizing use of the software. This person normally becomes the power user (subject matter expert) as well.	Computer aptitude; organized; understanding of the current care plan process; ability to learn new software and assist others; ability to develop positive rapport with users who may be resistant to change (moving from manual to electronic processes). Strong communication skills and good at motivating others to complete their tasks in a timely manner.
Care Plan Owners	1-6 hrs/care plan to author 2-20 hrs to make edits based on reviewer feedback 1-4 hrs/care plan to manage the process 4-30 hrs total/care plan	.5-3 hrs/care plan 2-20 hrs to make edits based on reviewer feedback 1-4 hrs/care plan to manage the process 4-30 hrs total/care plan		The Care Plan Owners will determine care plan content, identify review resources, define and manage the review process, and edit and release care plans for facility use.	Knowledge of the structure and content of care plans; software expertise; attention to detail; ability to mediate clinical discussions about care plan content; typically an experienced nurse, analyst or another staff person working under the direction of the informatics or medical staff. Parts of this role may be shared with the care plan facilitator.
Care Plan Reviewers	.5-4 hrs/care plan	.5-4 hrs/care plan	Some reviewers may be asked to participate in multiple review steps for the same care plan as it moves through the review process. This will increase the hours required.	Review and comment on care plan content prepared by care plan owners.	Respected subject matter expert and/or representative for applicable specialty areas with knowledge and authority to validate the clinical content of a care plan for a specific department or functional area (Cardiovascular, Neurology, Dietary, etc.); basic computer skills.
Clinical	1 hr/reviewer training	1 hr/reviewer training	Prep time needed would be	Using WKH "train the trainer" approach, responsible for training end users to use the	Computer aptitude; ability to learn new software and teach others; ability to de-

Educator	session 4-8 hrs/owner training session	session 4-8 hrs/owner training session	additional.	software independently.	velop positive rapport with users who may be resistant to change (moving from manual to electronic processes); available to work with users one on one as they learn to use the software.
Software Administrator	5-20 hrs for the project	5-40 hrs/year		Ongoing software maintenance and on-site technical assistance with software updates and technical troubleshooting including hardware and third-party software maintenance; may also provide ongoing first level support to end users following implementation.	Hardware and software expertise; Oracle database expertise; troubleshooting skills; available during regular business hours.
IT Resource(s)	5-40 hrs for the project	normal server maintenance		Establish and maintain stable, secure environment for software installation and ongoing operation; responsible for hardware, network, operating system, remote support access, and network security including operating system security updates and antivirus protection.	General IT expertise in networking, hardware, and operating systems.
**Nursing Documentation and/or EMR nursing component expert (if applicable)	.5-2 hrs/care plan for mapping 8-40 hrs for the project for integration testing	1-3 hrs/month as new items are added to the catalog	The hours per care plan for mapping will decrease as the catalog becomes more fully mapped.	Assistance in developing build standards. Map ProVation item catalog to EMR/Nursing item catalog; test and troubleshoot integration if available; update mappings as changes to both catalogs occur; transfer released care plans from ProVation to Nursing applications within EMR system.	In-depth knowledge of electronic nursing systems; knowledge of the structure and content of the nursing item catalog; combination of clinical and software expertise; typically someone with a clinical background who is working full-time on the implementation or maintenance of the nursing componentst of the EMR system.
*Actual required hours may vary based on many different factors including, but not limited to, the organizations roll-out plans and care plan processes, policies and procedures.					
**The hour estimates do not include the time to integrate/build the care plan in the nursing components of an EMR system as this is done outside of ProVation and will vary by EMR vendor.					