

MONTEREY COUNTY BOARD OF SUPERVISORS

MEETING:	June 14, 2011	AGENDA NO.:
SUBJECT:	Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment #1 to the Agreement with Databank IMX for Software License and Maintenance Services at NMC in an amount not to exceed \$229,563.65 in the aggregate and \$143,123.65 for the period July 1, 2011 to December 31, 2014.	
DEPARTMENT:	Natividad Medical Center	

RECOMMENDATION:

It is recommended that the Board of Supervisors authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment #1 to the Agreement with Databank IMX for Software License and Maintenance Services at NMC in an amount not to exceed \$229,563.65 in the aggregate and \$143,123.65 for the period July 1, 2011 to December 31, 2014.

SUMMARY/DISCUSSION:

Databank IMX is the provider of the OnBase Enterprise Content Management System which NMC purchased a few years ago to provide storage for archiving of records for all NMC departments with the exception of Medical Records. The utilization of this system provides electronic storage system for NMC to help reduce the need for space and physical storage. The system provides systems to track both and purge data as needed in accordance with the approved County policies.

Approval of this agreement will allow NMC to maintain the scanners, systems and on-line access to the system to continue to add documents and retrieve documents for all NMC departments.

OTHER AGENCY INVOLVEMENT:

The Amendment has been reviewed and approved by County Counsel, the Auditor/Controller's office and the Natividad Medical Center Board of Trustees.

FINANCING:

The cost for this Amendment is \$143,123.65 and is included in the 2011/2012 Fiscal Year Recommended Budget. This action will not require any additional General Fund subsidy.

Prepared by:

Janine Bouyea, HR Director 755-4280

May 19, 2011



Harry Weis

Chief Executive Officer

Attachments: Amendments #1, Original Agreement, Board Order

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Agreement No. A-12015

Authorize the Purchasing Manager for Natividad)
Medical Center (NMC) to execute Amendment No.)
1 to the Agreement with Databank IMX for Software)
License and Maintenance Services at NMC in an)
amount not to exceed \$229,563.65 in the aggregate)
and \$143,123.65 for the period July 1, 2011 to)
December 31, 2014.....)

Upon motion of Supervisor Salinas, seconded by Supervisor Calcagno, and carried by those members present, the Board hereby;

Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute Amendment No. 1 to the Agreement with Databank IMX for Software License and Maintenance Services at NMC in an amount not to exceed \$229,563.65 in the aggregate and \$143,123.65 for the period July 1, 2011 to December 31, 2014.

PASSED AND ADOPTED on this 28th day of June, 2011, by the following vote, to wit:

AYES: Supervisors Calcagno, Salinas, and Parker

NOES: None

ABSENT: Supervisors Armenta and Potter

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 75 for the meeting on June 28, 2011.

Dated: July 7, 2011

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

By 
Deputy

**RENEWAL AMENDMENT NO. 1
FOR PROFESSIONAL SERVICE AGREEMENT
BETWEEN Databank IMX LLC AND
THE NATIVIDAD MEDICAL CENTER
FOR
Software License and Maintenance Services**

The parties to Professional Service Agreement, dated June 1, 2010 between the County of Monterey, on behalf of Natividad Medical Center ("NMC"), and Databank IMX LLC (Contractor), hereby agree to renew their Agreement No. (SC1078) on the following terms and conditions:

1. Contractor will continue to provide NMC with the same scope of service as stated in the original Agreement No. (SC1078). Additionally, the Contractor will provide the services described on Attachment A attached to this Amendment #1.
2. This Amendment shall become effective on June 1, 2011 and shall continue in full force until December 31, 2014.
3. The total amount payable by County to Contractor under Agreement No. (SC1078) shall not exceed the total sum of \$229,563.65 for the full term of the Agreement and \$143,123.65 for fiscal year 2011-2012.
4. All other terms and conditions of the Agreement shall continue in full force and effect.
5. A copy of this Amendment shall be attached to the original Agreement No. (SC1078).

IN WITNESS WHEREOF, the parties hereto are in agreement with this Amendment and Professional Service Agreement on the basis set forth in this document and have executed this amendment on the day and year set forth herein.

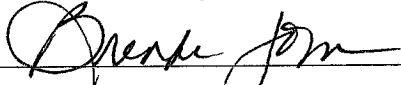
CONTRACTOR

Signature 1 

Dated 5/2/11

Printed Name STEVE Attwood

Title General Manager

Signature 2 

Dated 5-2-11

Printed Name Brenda Johnson

Title Prod. Mgr

****INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in and individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement.*

NATIVIDAD MEDICAL CENTER

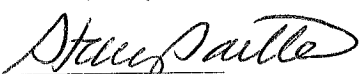
Signature _____
Purchasing Manager


Dated _____

Signature 
NMC - CEO

Dated 5/4/11

Approved as to Legal Form:
Charles J. McKee, County Counsel

By 
Stacy Saetta, Deputy
Attorneys for County and NMC

Reviewed as to fiscal provisions
 5-19-11
Auditor-Controller
County of Monterey

Dated: 5/18, 2011



**Proposal for OnBase Software
& Scanning Hardware (Scanners) Maintenance
and Professional Services**

Proposal Provided by:



**Laurel E. McAdams
Senior Account Executive
1001 Bayhill Drive, Second Floor
San Bruno, CA 94066
(415) 760-7075
lmcadams@datbankimx.com**

April 28, 2011

Confidentiality Statement

This document of DataBank IMX, LLC contains confidential information that is provided for the sole purpose of allowing the recipient to evaluate the solution profiles, product/service offerings and statement of work submitted herein. In consideration of receipt of this document the recipient agrees to maintain the information in confidence and to not reproduce or otherwise disclose this information to any person outside the people directly responsible for evaluation of its contents. The proposed approaches presented in this proposal are proprietary information and may not be disclosed to individuals outside Natividad Medical Center (NMC) without written approval from DataBank IMX, LLC.

OnBase Software Overview

DataBank IMX is pleased to recommend a core solution to achieve the strategic imaging solution vision for Natividad Medical Center based upon the OnBase software suite, A Hyland Software solution. The OnBase solution is ideal for the county technically, functionally and strategically. Technically, it aligns with your existing technical environment, functionally it will deliver on each of the desired capabilities and benefits outlined and strategically it readily supports phased deployment, due to its modular design.

OnBase allows us to rapidly implement solutions flexibly, with most any platform and SQL database engine, while insuring leading-edge performance and nearly unlimited expansion. With OnBase, you enjoy a singular, integrated and Web enabled application to manage and view all of your objects, avoid a proprietary image format and enjoy unparalleled extensibility. Keys to understanding the value of OnBase solution are suggested below:

1. OnBase is **Inherently Scalable** - Architected to support thousands of users, providing nearly unlimited growth—yet clients can be added one at a time to achieve application objectives and match investment to value delivered.
2. OnBase provides a **Total Solution** - Over 200 fully integrated modules support both expansion and extension of system functionality ready to run “out-of-the-box”—start with just what you need to achieve objectives with the proof of concept and add applications as priorities and funding dictate.
3. OnBase is **Point and Click Configurable** - Deploy applications specific to your organization and its departments through ‘point and click’ setup and *WITHOUT* Programming—including integration with your point solutions for document retrieval.
4. OnBase offers **Open Deployment** - Leverage SQL databases, existing infrastructure and storage solutions already in place within the enterprise.
5. OnBase is **Web Enabled** - Deliver comprehensive client functionality through the desktop browser to internal and external users.

OnBase offers configurations from a single user to thousands of users. It provides unparalleled growth potential, modularity and implementation flexibility in Computer-Off-The-Shelf imaging software. This matches well to clients planning for an initial solution and affordable, phased expansion. It is configurable, allowing us to fit virtually every need, all without long delays, expensive customization and continued programming efforts.

OnBase offers fully integrated document imaging, COLD, Workflow, EDM, Web, Application Enabling, Electronic Signature, Document Distribution, Document Retention, Historical Tracking, etc. in a singular application--from a single source. Select just the modules you need to start and add whenever and wherever you want. If you can identify a need for specific capability, we can deliver it, rapidly and reliably.

OnBase manages each object in a common manner, regardless of the original format and input source, making information accessible through a single client interface. All of the functionality of the various OnBase modules flows through the client interface, insuring rapid deployment of new capabilities to users already familiar with the application.

OnBase Module Descriptions

MODULES	PRODUCT DESCRIPTION	ONBASE / 3RD PARTY REQUIREMENTS
Batch OCR	Converts images to text in order to facilitate text searching and/or full text indexing. Supports multiple languages, processing of bi-tonal, grayscale and color images, and creation of multiple output formats (ASCII text, Adobe PDF, HTML or Microsoft Word). Enables batch processing and also ad-hoc document OCR from a select list.	OnBase: Requires installation of OnBase OCR software (included) on user Workstation. Requires a valid Client license.
Document Retention	Manages the retention and disposition of stored documents according to pre-defined business rules, involving the passage of time, allowing for automatic destruction and/or removal from the OnBase document repository.	OnBase: Requires a valid Client license.
Physical Records Management	Enables organizations to manage the tracking, locating and access of physical records using OnBase as the single interface.	OnBase: Requires a valid Client license. Thick Client users require OnBase v 3.9. Thin Client users require OnBase v 4.3.9 to access viewer-only functionality. The Document Retention module is optional for implementing retention and/or disposition plans for physical records.
Production Document Imaging (Kofax or TWAIN) (1)	Scans (digitizes) paper documents using Kofax or TWAIN compatible devices. Advanced features include distributed capture and indexing, image enhancement, bar code recognition (Kofax), blank page separation and auto-enabled indexing.	OnBase: Includes a Workstation Client license. 3rd Party: If utilizing Kofax, the Kofax software or a Kofax image processing board is required.
Workflow Named User Client SL (1-20)	Provides electronic document routing through a configurable work process. Includes pre-configured rules, actions, transitions, and notifications and additional capabilities for Visual Basic scripts. Provides access to Workflow functions in order to perform work and complete tasks on documents. Includes E-Forms.	OnBase: Requires a valid Client license.
Workflow Workstation Client SL (1-20)	Provides electronic document routing through a configurable work process. Includes pre-configured rules, actions, transitions, and notifications and additional capabilities for Visual Basic scripts. Provides access to Workflow functions in order to perform work and complete tasks on documents. Includes E-Forms.	OnBase: Requires a valid Client license.

Maintenance Pricing

All OnBase modules are required to be under a Maintenance Agreement. Annual maintenance allows for:

- Software Upgrades at no charge (professional services not included)
- Technical Support

OnBase Software Maintenance - Term Ending December 31, 2014

<u>Product Name</u>	<u>Prod. Code</u>	<u>Maintenance Fee</u>
Document Retention	DRIP1	\$ 6,937.50
Physical Records Management	PRIP1	\$10,406.25
Batch OCR	OCIPW1	\$ 1,040.63
Workflow Named User Client SL (1-20)	WLIPN1	\$ 1,734.38
Workflow Workstation Client SL (1-20)	WLIPW1	\$ 867.19
Prod Doc Imaging (Kofax or TWAIN) (2+)	DIIPW2	\$19,425.00

Scanner Maintenance – 3 years from date of purchase

Fujitsu 6130 Scanner	S6130-AEPWNBD-3	\$ 1,990.00
Kodak Truper 3610 Scanner w/ VRS	8971319-VCK	\$ 2,957.00

Professional Services

<u>Description</u>	<u>Department</u>	<u>Qty.</u>	<u>Unit Cost</u>	<u>Extended Cost</u>
Professional Services	Up to 23 depts.	460 hours	\$187.50 / hr	\$86,250.00

Software Maintenance:	\$40,410.95
Hardware (Scanners) Maintenance:	\$ 4,947.00
Professional Services:	<u>\$86,250.00</u>
Total:	\$131,607.95
Sales Tax @ 8.75%	\$ 11,515.70
Grand Total:	<u>\$143,123.65</u>


Natividad MEDICAL CENTER

COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES
(NOT TO EXCEED \$100,000)

This Professional Services Agreement (hereinafter "Agreement") is made by and between Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County of Monterey, which is a political subdivision of the State of California and **DataBank IMX**
 _____ hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

SERVICES TO BE PROVIDED. NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A in conformity with the terms of the Agreement. The services are generally described as follows: Scanner Maintenance

1. PAYMENTS BY NMC. NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of \$31,440
2. TERM OF AGREEMENT. The term of this Agreement is from Dec 20, 2010 to Feb 28, 2012 unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and NMC and with NMC signing last and CONTRACTOR may not commence work before NMC signs this Agreement.
3. ADDITIONAL PROVISIONS/EXHIBITS. The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A/Schedule A: Scope of Services/Payment Provisions

4. PERFORMANCE STANDARDS.

- 4.1. CONTRACTOR warrants that CONTRACTOR and Contractor's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC.
- 4.2. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

4.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use NMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

5. PAYMENT CONDITIONS.

5.1. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to NMC. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

5.2. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

6. TERMINATION.

6.1. During the term of this Agreement, NMC may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

6.2. NMC may cancel and terminate this Agreement for good cause effective immediately upon written notice to Contractor. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If NMC terminates this Agreement for good cause, NMC may be relieved of the payment of any consideration to Contractor, and NMC may proceed with the work in any manner, which NMC deems proper. The cost to NMC shall be deducted from any sum due the CONTRACTOR under this Agreement.

7. INDEMNIFICATION: CONTRACTOR shall indemnify, defend and hold harmless. NMC and the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by CONTRACTOR and/or its agent, employees or sub-contractors, excepting only low, injury or damage caused by the negligence or willful misconduct of personnel employed by NMC. It is the intent of the parties to this Agreement to provide the broadest possible coverage for NMC. The CONTRACTOR shall reimburse NMC for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the CONTRACTOR is obligated to indemnify, defend and hold harmless NMC and the County under this Agreement.

8. INSURANCE.

8.1. Evidence of Coverage:

Prior to commencement of this Agreement, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements

executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to NMC's Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and NMC has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

8.2. Qualifying Insurers: All coverage's except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by NMC's Contracts/Purchasing Director.

8.3. Insurance Coverage Requirements: Without limiting Contractor's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, If CONTRACTOR employs other in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Exemption/Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Exemption/Modification (Justification attached; subject to approval).

8.4. Other Insurance Requirements:

All insurance required by this Agreement shall be with a company acceptable to NMC and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that NMC shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by NMC, CONTRACTOR shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by NMC, annual certificates to NMC's Contracts/Purchasing Department. If the certificate is not received by the expiration date, NMC shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles NMC, at its sole discretion, to terminate the Agreement immediately.

9. RECORDS AND CONFIDENTIALITY.

9.1. Confidentiality, CONTRACTOR and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from NMC or prepared in connection with the performance of this Agreement, unless NMC specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to NMC any and all requests for disclosure of any such

confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out Contractor's obligations under this Agreement.

- 9.2. NMC Records . When this Agreement expires or terminates, CONTRACTOR shall return to NMC any NMC records which CONTRACTOR used or received from NMC to perform services under this Agreement.
 - 9.3. Maintenance of Records . CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
 - 9.4. Access to and Audit of Records . NMC shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of NMC or as part of any audit of NMC, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
 - 9.5. Royalties and Inventions . NMC shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize other to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of NMC.
10. **NON-DISCRIMINATION**. During the performance of this Agreement, Contractor, 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 Contractor's employment practices or in the furnishing of services to recipients. CONTRACTOR 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. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, full comply with all federal, state, and local laws and regulations which prohibit discrimination. 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.
11. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT**. If this Agreement has been or will be funded with monies received by NMC pursuant to a contract with the state or federal government in which NMC is the grantee, CONTRACTOR will comply with all the provisions of said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, NMC will deliver a copy of said contract to Contractor, at no cost to Contractor.
12. **INDEPENDENT CONTRACTOR**. In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent CONTRACTOR and not as an employee of NMC. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled

by virtue of this Agreement to receive from NMC any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR 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 Contractor's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of Contractor's failure to pay such taxes.

13. NOTICES. Notices required under this Agreement shall be delivered personally or by first-class, postage per-paid mail to NMC and Contractor's contract administrators at the addresses listed below.

FOR NATIVIDAD MEDICAL CENTER: Contracts/Purchasing Manager	FOR CONTRACTOR:
Name	Laurel McAdams, Acct. Mgr.
1441 Constitution Blvd. Salinas, CA. 93906	1001 Bayhill San Bruno CA
Address	Address
831.755.4111	(415) 760-7075
Phone	Phone
	94066

14. MISCELLANEOUS PROVISIONS.

- 14.1. Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 14.2. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by NMC and the Contractor.
- 14.3. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC and the Contractor. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 14.4. Contractor. The term "Contractor" as used in this Agreement includes Contractor's officers, agents, and employees acting on Contractor's behalf in the performance of this Agreement.
- 14.5. Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 14.6. Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of NMC. None of the services covered by this Agreement shall be subcontracted without the prior written approval of

NMC. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

- 14.7. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of NMC and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 14.8. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 14.9. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 14.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 14.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 14.12. Non-exclusive Agreement. This Agreement is non-exclusive and both NMC and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 14.13. Construction of Agreement. NMC and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 14.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 14.15. Integration. This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between NMC and CONTRACTOR as of the effective date of this Agreement, which is the date that NMC signs the Agreement.
- 14.16. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

NATIVIDAD MEDICAL CENTER

By: [Signature]
NMC Contracts/Purchasing Agent

Date: 12/28/10

By: [Signature]
Department Head (if applicable)

Date: 12/8/10

Approved as to Legal Form

By: [Signature]
Stacy Saetta
Deputy County Counsel

Date: 12/17/10

Approved as to Fiscal Provisions

By: [Signature]
Auditor/Controller

Date: 12-20-10

CONTRACTOR

DataBank IMX LLC
Contractor's Business Name***

[Signature]
Signature of Chair, President, or Vice-President

Laurel McAdams, Acct. Mgr.
Name and Title

Date: 12/8/10

By: _____
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Name and Title

Date: _____

***INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in and individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement.

**OnBase® Information Management System
SOFTWARE MAINTENANCE AGREEMENT**

This Software Maintenance Agreement ("Agreement") is made and entered into this 1st day of June, 2010, by and between DataBank IMX, ("Service Provider"), and The County of Monterey, on behalf of Natividad Medical Center with its principal offices at 1440 Constitution Blvd, Salinas, CA 93906 and the company, person or entity executing this Agreement as the "Licensee" in the space provided below ("Licensee"):

RECITAL:

WHEREAS, Service Provider is an authorized solution provider of Hyland Software, Inc. and has marketed and resold to Licensee certain OnBase® Information Management System software modules of Hyland Software, Inc.;

WHEREAS, Licensee has licensed the specified software from Hyland Software, Inc. pursuant to the terms of an OnBase® End User License Agreement (as the same may be amended or modified from time to time, the "EULA"); and

WHEREAS, Licensee desires to obtain, and Service Provider is willing to provide, maintenance and technical support services for the specified software and the delivery of generally released upgrades and enhancements with respect to such software from Hyland Software, Inc.;

NOW, THEREFORE, the parties mutually agree as follows:

1. **DEFINED TERMS.** The following terms shall have the meanings set forth below for all purposes of this Agreement:

(a) Documentation. "Documentation" means for the "Help Files" included in the Software and that relate to the functional, operational or performance characteristics of the Software.

(b) Error. "Error" means any defect or condition inherent in the Software that causes the Software to fail to perform in accordance with the current Documentation published by Hyland Software, Inc.

(c) EULA. "EULA" is defined in the recitals to this Agreement.

(d) Maintenance and Support Services. "Maintenance and Support Services" means all professional services provided under this Agreement by Service Provider.

(e) Software. "Software" means (1) the current released version of the computer software licensed by Licensee from Hyland Software, Inc. from time to time under the EULA (the initial list of which is included on Exhibit A attached hereto), and (2) at any time after Service Provider has delivered to Licensee a new version of such computer software as an Upgrade and Enhancement under this Agreement, the released version of such computer software last released prior to the current released version; provided, that the Software will not include any prior released version of such computer software that has been superseded for more than two (2) years (as determined from the date that Hyland Software, Inc. first announced publicly, through its web site or otherwise, the general release of the next later version of such computer software) by any later released version of such computer software.

(f) Upgrades and Enhancements. "Upgrades and Enhancements" means any and all new versions, improvements, modifications, upgrades, updates, fixes and additions to the Software that Hyland Software, Inc. commercially releases to its end users generally during the term of this Agreement to correct deficiencies or enhance the capabilities of the Software, together with updates of the Documentation to reflect such new versions, improvements, modifications, upgrades, fixes or additions; provided, however, that the foregoing shall not include new, separate product offerings, new modules, re-platformed Software or new functionality.

2. **MAINTENANCE AND SUPPORT SERVICES.**

(a) Generally. Service Provider shall: (1) use its commercially reasonable efforts to correct any properly reported Error(s) in the Software reported in accordance with Service Provider's current policies for the reporting of Errors, and which are confirmed by Hyland Software, Inc., in the exercise of its commercially reasonable judgment; (2) use its commercially reasonable efforts to correct any properly reported defect(s) (non-conformity to functional specifications mutually agreed upon by Service Provider and Licensee) in any configurations of the Workflow or WorkView modules of the Software that are created by Service Provider or any integrations of the Software with other applications, software or hardware that are configured or created by Service Provider, which are confirmed by Service Provider, in the exercise of its commercially reasonable judgment; and (3) upon the request of Licensee, provide technical support and assistance and advice related to the operation and use of the Software by Licensee, or any problems with any of the

necessary to describe the circumstances under which the reported Error is manifest. Service Provider shall undertake to report to Hyland Software, Inc. for confirmation any reported Errors promptly after receipt of proper notice from Licensee. Service Provider shall undertake to confirm any reported defect(s) described in clause (2) above promptly after receipt of proper notice from Licensee in accordance with Service Provider's current defect reporting procedures. Service Provider shall perform services in an effort to correct confirmed Errors in the Software or defects in configurations or integrations created by Service Provider promptly after making such confirmation. Maintenance and Support Services generally will be available during the hours of 8:00 a.m. to 5:00 p.m., Pacific Time, Monday through Friday, excluding holidays, or as otherwise provided by Service Provider to its end users purchasing continuing Maintenance and Support Services in the normal course of its business, by on-line connectivity, telephonically or both. Licensee acknowledges and agrees that Service Provider and Hyland Software, Inc. require on-line access to the Software installed on Licensee's systems in order for Service Provider to provide Maintenance and Support Services hereunder. Accordingly, Licensee shall install and maintain, at Licensee's sole cost and expense, appropriate communications software as specified by Service Provider; and Licensee shall establish and maintain, at Licensee's sole cost and expense, an adequate connection with Service Provider and Hyland Software, Inc. to facilitate Service Provider's on-line Maintenance and Support Services.

(b) On-Site Services. Upon the reasonable request of Licensee, and submission of a purchase order for such services agreeing to pay for such services on a time and materials basis in accordance with Section 5(a)(4), Service Provider may provide on-site Maintenance and Support Services at Licensee's facilities in connection with the correction of any Error(s) involving a mission critical function of the Software that is not functioning in a production environment.

(c) Exclusions. Service Provider is not responsible for providing, or obligated to provide, Maintenance and Support Services or Upgrades and Enhancements under this Agreement: (a) in connection with any Errors or problems that result in whole or in part from any alteration, revision, change, enhancement or modification of any nature of the Software, including any configuration of the Workflow or WorkView modules of the Software that was not undertaken by Service Provider or Hyland Software, Inc. or authorized in writing in advance by Hyland Software, Inc.; (b) in connection with any Error if Service Provider (directly or through Hyland Software, Inc.) has previously provided corrections for such Error, which correction Licensee chooses not to implement; (c) in connection with any Errors or problems that have been caused by errors, defects, problems, alterations, revisions, changes, enhancements or modifications in the database, operating system, third party software (other than third party software bundled with the Software by Hyland Software, Inc.), hardware or any system or networking utilized by Licensee; (d) if the Software or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect; or (e) if any party other than Service Provider or Hyland Software, Inc. has provided any services in the nature of Maintenance and Support Services to Licensee with respect to the Software.

3. UPGRADES AND ENHANCEMENTS. Service Provider will provide to Licensee, in accordance with Hyland Software, Inc.'s then current policies, all Upgrades and Enhancements to the Software released by Hyland Software, Inc. during the term of this Agreement. Licensee acknowledges and agrees that Hyland Software, Inc. has the right, at any time, to change the specifications and operating characteristics of the Software and Hyland Software, Inc.'s policies respecting Upgrades and Enhancements and the release thereof to its end users. Any Upgrades and Enhancements to the Software and Documentation shall remain proprietary to Hyland Software, Inc. and the sole and exclusive property of Hyland Software, Inc., and shall be subject to all of the restrictions, limitations and protections of the EULA. All applicable rights to patents, copyrights, trademarks, other intellectual property rights, applications for any of the foregoing and trade secrets in the Software and Documentation and any Upgrades and Enhancements are and shall remain the exclusive property of Hyland Software, Inc.

4. LICENSEE'S RESPONSIBILITIES.

(a) Operation of the Software. Licensee acknowledges and agrees that it is solely responsible for the operation, supervision, management and control of the Software, including but not limited to providing training for its personnel, instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use. In addition, Licensee is solely responsible for its data, its database and for maintaining suitable backups of the data and database to prevent data loss in the event of any hardware or software malfunction. Service Provider and Hyland Software, Inc. shall have no responsibility or liability for data loss regardless of the reasons for said loss. Service Provider and Hyland Software, Inc. shall have no responsibility or liability for Licensee's selection or use of the Software or any hardware, third party software or systems.

(b) Licensee's Implementation of Error Corrections and Upgrades and Enhancements. In order to maintain the integrity and proper operation of the Software, Licensee agrees to implement, in the manner instructed by Service Provider, all Error corrections and Upgrades and Enhancements. Licensee's failure to implement any Error corrections or Upgrades and Enhancements of the Software as provided in this Section 4(b) shall relieve Service Provider of any responsibility or liability whatsoever for any failure or

malfunction of the Software, as modified by a subsequent Error correction or Upgrade and Enhancement, but in no such event shall Licensee be relieved of the responsibility for the payment of fees and charges otherwise properly invoiced during the term hereof.

(c) Notice of Errors; Documentation of Errors. Licensee shall provide prompt notice of any Errors in the Software discovered by Licensee, or otherwise brought to the attention of Licensee, in accordance with Service Provider's then current policies for reporting of Errors. Proper notice may include, without limitation, prompt telephonic and written notice to Service Provider of any alleged Error. If requested by Service Provider, Licensee agrees to provide written documentation of Errors to substantiate the Errors and to assist Service Provider in the detection and correction of said Errors.

(d) Access to Premises and Systems. Licensee shall make available reasonable access to and use of Licensee's premises, computer hardware, peripherals, Software and other software as Service Provider deems necessary to diagnose and correct any Errors or to otherwise provide Maintenance and Support Services. In addition, Licensee acknowledges and agrees that Hyland Software, Inc. may be retained by Service Provider to provide Error corrections or other Maintenance and Support Services directly to Licensee and, accordingly, Licensee shall provide such same access directly to Hyland Software, Inc. Such right of access and use shall be provided at no cost or charge to Service Provider or Hyland Software, Inc.

5. FEES, PAYMENTS, CURRENCY AND TAXES.

(a) Annual Maintenance Fees. Licensee shall pay to Service Provider annual maintenance fees in the amounts invoiced by Service Provider.

(1) Initial Software. The table on Exhibit A hereto sets forth the aggregate invoice amounts for initial annual maintenance fees for each Software module initially licensed, and for all Software modules initially licensed in the aggregate.

(2) Additional Software. Service Provider shall invoice Licensee for annual maintenance fees for all Software modules that Licensee additionally licenses under the EULA promptly upon acceptance of Licensee's purchase order for the purchase of Maintenance and Support Services for such Software.

(3) Renewal Periods. Service Provider shall invoice Licensee for annual maintenance fees for renewal terms at least forty-five (45) days prior to the end of the then-current term of this Agreement. In the event that any term of this Agreement for which annual maintenance fees are payable is a period of less than twelve (12) calendar months, the annual maintenance fees for such term will be pro rated based upon the number of calendar months in such period (including the calendar month in which such term of this Agreement commences only if such period commences prior to the 15th day of such month).

(4) Time and Materials Charges. Notwithstanding anything to the contrary, if Licensee requests (1) Maintenance and Support Services that Service Provider is not obligated to provide because of the provisions of Section 2(c), and Service Provider agrees to provide such requested Services notwithstanding the provisions of Section 2(c), (2) on-site Maintenance and Support Services in accordance with Section 2(b), or (3) any other services in the nature of Maintenance and Support Services that Service Provider is not obligated to provide, or is not obligated to provide in the manner requested, and Service Provider agrees to provide the requested Maintenance and Support Services, then in any such case Licensee agrees that such Maintenance and Support Services shall not be covered by the annual maintenance fees under Section 5(a) and Licensee agrees to pay for such Maintenance and Support Services at Service Provider's standard time and materials charges payable by end users who have not purchased a continuing Software Maintenance Agreement from Service Provider. Service Provider shall invoice Licensee for all time and materials charges hereunder.

(b) Incidental Costs and Expenses. Licensee shall be responsible for all incidental costs and expenses incurred by Service Provider in connection with the performance of this Agreement. Examples of incidental costs and expenses include, without limitation, all costs and expenses for tools, supplies, accessories, media and other expendables purchased or otherwise used by Service Provider, on-line connection charges and out-of-pocket expenses incurred at Licensee's request, including but not limited to travel, meals and lodging expenses for on-site Maintenance and Support Services. All travel and expenses shall be charged according to the Monterey County Travel Policy. Service Provider shall invoice Licensee for all incidental costs and expenses hereunder.

(c) Payments; Remedies.

(1) Annual Maintenance Fees. Licensee shall pay all invoices for annual maintenance fees according to the Monterey County Professional Services Agreement.

(2) Other Payments. Licensee shall pay all other invoices hereunder according to the Monterey County Professional Services Agreement.

(3) Remedies. In the event of any default by Licensee in the payment of any amounts due hereunder, which default continues unremedied for at least ten (10) calendar days after the due date of such payment, Service Provider shall have the right to cease to provide any Maintenance and Support Services and Upgrades and Enhancements to Licensee unless and until such default, and any and all other defaults by Licensee under this Agreement, shall have been cured.

(4) U.S. Dollars. All payments by Licensee to Service Provider shall be made in U.S. dollars.

(d) Taxes and Governmental Charges. In addition to any and all other payments required to be made by Licensee hereunder, Licensee shall pay all taxes and governmental charges, foreign, federal, state, local or otherwise (other than income or franchise taxes of Service Provider), however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement, including but not limited to sales and use taxes, excise taxes and customs duties or charges. Licensee agrees to make any and all required tax payments directly to the appropriate taxing authority.

6. LIMITED WARRANTY.

(a) Limited Warranty of Services. Service Provider warrants that the Maintenance and Support Services shall be performed in a good and workmanlike manner and substantially according to industry standards. In order to assert any claim that any Maintenance and Support Services fail to conform to this limited warranty, Licensee must notify Service Provider in writing of such claim within thirty (30) days after the date the alleged non-conforming Services are completed. If, after such timely notice from Licensee, the Maintenance and Support Services in question are determined not to conform to this limited warranty, Service Provider's sole obligation, and Licensee's sole remedy, shall be for Service Provider to use commercially reasonable efforts to re-perform the nonconforming Services in an attempt to correct the nonconformity. If Service Provider is unable to correct such nonconformity after a reasonable period of time, Licensee's sole and exclusive remedy shall be termination of this Agreement in accordance with Section 8(b)(3)(B). This warranty specifically excludes non-performance issues caused as a result of incorrect data or incorrect procedures used or provided by Licensee or a third party or failure of Licensee to perform and fulfill its obligations under this Agreement or the EULA.

(b) No Warranty of Upgrades and Enhancements. The EULA shall govern any limited warranty or disclaimers relating to Upgrades and Enhancements of the Software provided to Licensee under this Agreement, and no warranty is given under this Agreement with respect to Upgrades and Enhancements.

(c) DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6(a), SERVICE PROVIDER MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING ANY MAINTENANCE AND SUPPORT SERVICES, ANY SOFTWARE OR ANY UPGRADES AND ENHANCEMENTS PROVIDED UNDER THIS AGREEMENT. SERVICE PROVIDER DISCLAIMS AND EXCLUDES ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT MAY ARISE OR BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. SERVICE PROVIDER DOES NOT WARRANT THAT ANY MAINTENANCE AND SUPPORT SERVICES, SOFTWARE OR UPGRADES AND ENHANCEMENTS PROVIDED WILL SATISFY LICENSEE'S REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF ANY SOFTWARE OR UPGRADES AND ENHANCEMENTS WILL BE UNINTERRUPTED. SERVICE PROVIDER DOES NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD PARTY HARDWARE, FIRMWARE, SOFTWARE OR SERVICES.

7. LIMITATIONS OF LIABILITY. Indemnification is covered according to the Monterey County Professional Services Agreement.

8. TERM, RENEWAL AND TERMINATION.

Term. Subject to the early termination provisions of Section 8(b), the initial term of this Agreement (the "Initial Term") shall commence on June 1, 2010, and shall expire on May 31, 2011. All extensions of the "initial term" shall be done by written Amendment.

Early Termination.

(1) Automatic. This Agreement shall terminate automatically, without any other or further action on the part of either of the parties, immediately upon any termination of the EULA.

(2) By Service Provider For Cause. Service Provider shall be entitled to give written notice to Licensee of any breach by Licensee or other failure by Licensee to comply with any material term or condition of the EULA or this Agreement, specifying the nature of such breach or non-compliance and requiring Licensee to cure the breach or non-compliance. If Licensee has not cured, or commenced to cure (if a cure cannot be performed within the time period set forth below), the breach or non-compliance within (A) in the case of non-payment, any breach of Section 1 of the EULA, ten (10) calendar days after receipt of such written notice, or (B) in the case of any other breach or non-compliance, twenty (20) business days after receipt of such written notice, Service Provider shall be entitled, in addition to any other rights it may have under this Agreement, or otherwise at law or in equity, to immediately terminate this Agreement.

(3) By Licensee.

(A) For Convenience. Licensee may terminate this Agreement at any time, for any reason or for no reason, upon not less than sixty (60) days advance written notice to Service Provider.

(B) For Cause. Licensee shall be entitled to give written notice to Service Provider of any breach by Service Provider or other failure by Service Provider to comply with any material term or condition of this Agreement, specifying the nature of such breach or non-compliance and requiring Service Provider to cure the breach or non-compliance. If Service Provider has not cured, or commenced to cure (if a cure cannot be performed within the time period set forth below), the breach or non-compliance within twenty (20) business days after receipt of written notice, Licensee shall be entitled, in addition to any other rights it may have under this Agreement, or otherwise at law or in equity, to immediately terminate this Agreement; and thereafter, so long as Licensee has complied in all material respects with its obligations under the EULA and this Agreement and is current on all payment obligations under the EULA and this Agreement, Licensee shall be entitled to a refund from Service Provider of the "unused portion of the annual maintenance fees" for the then-current term of this Agreement. For these purposes, the "unused portion of the annual maintenance fees" shall mean that portion of the annual maintenance fees paid by Licensee under Section 5(a) with respect to the term of this Agreement during which such termination of this Agreement is effective, equal to the total of such annual maintenance fees multiplied by a fraction, the numerator of which shall be the number of calendar months during the then-current term of this Agreement that remain until the end of such then-current term, commencing with the calendar month after the calendar month in which such termination is effective, and the denominator of which shall be the total number of calendar months in such then-current term determined without regard to such termination.

(C) Non-Renewal. Licensee may elect not to renew this Agreement at the end of the then-current term of this Agreement by written notice to Service Provider on or prior to the date payment is due under Section 5(c)(1) of Service Provider's invoice for annual maintenance fees for the next succeeding renewal term of this Agreement.

(4) By Either Party in Accordance with Section 9. Either party may terminate this Agreement in accordance with the procedures set forth in Section 9.

(c) Effect of Termination.

(1) Payments. Notwithstanding any termination of this Agreement, Licensee shall be obligated to pay Service Provider for (A) all Maintenance and Support Services provided on a time and materials basis in accordance with this Agreement at any time on or prior to the effective date of termination; (B) all annual maintenance fees due with respect to any period commencing prior to the effective date of termination; and (C) all incidental costs and expenses incurred by Service Provider at any time on or prior to the effective date of termination. All such payments shall be made in accordance with Section 5, which shall survive any such termination for these purposes.

(2) Survival of Obligations. The termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either party existing under the Agreement at the time of termination. The provisions of this Agreement which by their nature extend beyond the termination of the Agreement will survive and remain in effect until all obligations are satisfied, including, but not limited to, Section 3 (as it relates to title and ownership), Section 5(d), Section 6(c), Section 7, Section 8, Section 10 and Section 11. No action arising out of this Agreement, regardless of the form of action, may be brought by Licensee more than one (1) year after the date the action accrued.

(3) Reinstatement of Agreement. In the event of the termination of this Agreement by Licensee under Section 8(b)(4)(C) (Non-Renewal), Licensee may at any time after the effective date of such termination elect to reinstate this Agreement in accordance with this Section 8(c)(3). To obtain reinstatement, Licensee shall deliver written notice to such effect to Service Provider, together with payment in full of: (A) annual maintenance fees, based upon Service Provider's Annual Maintenance Fee Schedule in effect as of the time of such reinstatement, for all periods (as determined under Section 8(a) as if the Agreement had not been terminated under Section 8(b)(4)(C)) that have elapsed from the effective date of such termination through the effective date of such reinstatement; and (B) an amount equal to one hundred ten percent (110%) of the annual maintenance fee, based upon Service Provider's Annual Maintenance Fee Schedule in effect as of the time of such reinstatement, for the renewal term of this Agreement commencing on the effective date of such reinstatement. Any reinstatement under this Section 8(c)(3) shall be effective as of the first business day after Service Provider has received the notice of reinstatement and all payments required to be made hereunder in connection with such reinstatement. The renewal term commencing with the effective date of this Agreement shall be for a period ending on the first annual anniversary of such effective date; and thereafter the term of this Agreement shall be renewed: (i) at the end of such first renewal term, for a period from the first day after the end of such first renewal term through December 31 of the calendar year in which such first renewal term ends; and (ii) thereafter, annually on a calendar year by calendar year basis.

EXCEPT AS EXPRESSLY PROVIDED BY THIS SECTION 8(c)(3), LICENSEE SHALL HAVE NO RIGHT TO REINSTATE THIS AGREEMENT FOLLOWING THE TERMINATION THEREOF FOR ANY REASON.

9. **FORCE MAJEURE**. No failure, delay or default in performance of any obligation of a party to this Agreement (except the payment of money) shall constitute a default or breach to the extent that such failure to perform, delay or default arises out of a cause, existing or future, beyond the control (including, but not limited to: action or inaction of governmental, civil or military authority; fire; strike, lockout or other labor dispute; flood; war; riot; theft; earthquake; natural disaster or acts of God; national emergencies; unavailability of materials or utilities; sabotage; viruses; or the act, negligence or default of the other party) and without negligence or willful misconduct of the party otherwise chargeable with failure, delay or default. Either party desiring to rely upon any of the foregoing as an excuse for failure, default or delay in performance shall, when the cause arises, give to the other party prompt notice in writing of the facts which constitute such cause; and, when the cause ceases to exist, give prompt notice of that fact to the other party. This Section 9 shall in no way limit the right of either party to make any claim against third parties for any damages suffered due to said causes. If any performance date by a party under this Agreement is postponed or extended pursuant to this Section 9 for longer than ninety (90) calendar days, the other party, by written notice given during the postponement or extension, and at least thirty (30) days prior to the effective date of termination, may terminate this Agreement.

10. **NOTICES**. Unless otherwise agreed to by the parties in a writing signed by both parties, all notices required under this Agreement shall be deemed effective: (a) when sent and made in writing by either (1)(A) registered mail, (B) certified mail, return receipt requested, or (C) overnight courier, in any such case addressed and sent to the address set forth herein and to the attention of the person executing this Agreement on behalf of that party or that person's successor, or to such other address or such other person as the party entitled to receive such notice shall have notified the party sending such notice of; or (2) facsimile transmission appropriately directed to the attention of the person identified as the appropriate recipient and at the appropriate address under (a)(1) above, with a copy following by one of the other methods of notice under (a)(1) above; or (b) when personally delivered and made in writing to the person and address identified as appropriate under (a)(1) above.

11. GENERAL PROVISIONS.

(a) Jurisdiction. This Agreement and any claim, action, suit, proceeding or dispute arising out of this Agreement shall in all respects be governed by, and interpreted in accordance with, the substantive laws of the State of California, without regard to the conflicts of laws provisions thereof. Venue and jurisdiction for any action, suit or proceeding arising out of this Agreement shall vest exclusively in the federal or state courts of general jurisdiction located in Monterey County, California.

(b) Interpretation. The headings used in this Agreement are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof. All defined terms in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular or plural, in each instance as the context or particular facts may require. Use of the terms "hereunder," "herein," "hereby" and similar terms refer to this Agreement.

(c) Waiver. No waiver of any right or remedy on one occasion by either party shall be deemed a waiver of such right or remedy on any other occasion.

(d) Integration. This Agreement, including any and all exhibits and schedules referred to herein or therein set forth the entire agreement and understanding between the parties pertaining to the subject matter and merges all prior discussions between them on the same subject matter. Neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter other than as expressly provided in this Agreement. This Agreement may only be modified by a written document signed by duly authorized representatives of the parties. This Agreement shall not be supplemented or modified by any course of performance, course of dealing or trade usage. Variance from or addition to the terms and conditions of this Agreement in any purchase order or other written notification or documentation, from Licensee or otherwise, will be of no effect unless expressly agreed to in writing by both parties. This Agreement will prevail over any conflicting stipulations contained or referenced in any other document.

(e) Binding Agreement and Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Service Provider may assign this Agreement or its rights or obligations under this Agreement, in whole or in part, to any other person or entity. Licensee may not assign this Agreement or its rights or obligations under this Agreement, in whole or in part, to any other person or entity without the prior written consent of Service Provider. Any change in control of Licensee resulting from an acquisition, merger or otherwise shall constitute an assignment under the terms of this provision. Any assignment made without compliance with the provisions of this Section 11(e) shall be null and void and of no force or effect.

(f) Severability. In the event that any term or provision of this Agreement is deemed by a court of competent jurisdiction to be overly broad in scope, duration or area of applicability, the court considering the same will have the power and is hereby authorized and directed to limit such scope, duration or area of applicability, or all of them, so that such term or provision is no longer overly broad and to enforce the same as so limited. Subject to the foregoing sentence, in the event any provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will attach only to such provision and will not affect or render invalid or unenforceable any other provision of this Agreement.

(g) Independent Contractor. The parties acknowledge that Service Provider is an independent contractor and that it will be responsible for its obligations as employer for those individuals providing the Maintenance and Support Services.

(h) Export. Licensee agrees to comply fully with all relevant regulations of the U.S. Department of Commerce and all U.S. export control laws, including but not limited to the U.S. Export Administration Act, to assure that the Upgrades and Enhancements are not exported in violation of United States law.

(i) Injunctive Relief. The parties to this Agreement recognize that a remedy at law for a breach of the provisions of this Agreement relating to confidential information and intellectual property rights will not be adequate for Service Provider's protection and, accordingly, Service Provider shall have the right to obtain, in addition to any other relief and remedies available to it, specific performance or injunctive relief to enforce the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives:

Licensee

DATA BANK IMX
Service Provider

Business Address: _____

By: [Signature]

Print Name: Henry Wais

Title: CEO

Date: 2/1/10

By: [Signature]

Print Name: JOHN GERRY

Title: GENERAL MANAGER

Date: 6/28/10

APPROVED AS TO FORM AND LEGALITY

[Signature]
DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

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

7-2-10

[Signature]
Director of Purchasing
7/26/10

Exhibit A

SOFTWARE MODULES	ANNUAL MAINTENANCE FEES
14 Concurrent Client Licenses	\$3,024
45 Named Client Licenses	\$4,860
4 Production Document Imaging Licenses	\$1,980
1 Multi-User Server (OnBase Application)	\$ 900
1 Web Server	\$1,800

Exhibit A

SOFTWARE MODULES	ANNUAL MAINTENANCE FEES
14 Concurrent Client Licenses	\$3,024
45 Named Client Licenses	\$4,860
20 Workstation Client Licenses	\$2,160
4 Production Document Imaging Licenses	\$1,980
1 Document Import Processor	\$ 900
1 Multi-User Server (OnBase Application)	\$ 900
1 Web Server	\$1,800