

*Comment: This sample Addendum is one example of how a clinic might respond to a typical, one-sided, unfair, pro-vendor License Agreement. Most vendors will not accept clinics' form of agreement, but will consider "addenda" modifying their form agreements. Why? Perhaps it is easier for the vendors' contract administrators to monitor addenda to their companies' form agreements than to monitor customized agreement that they are not familiar with. Therefore, these materials have adopted the "addendum" approach to modifying vendor's form of agreement.*

**SAMPLE CLINIC ADDENDUM TO THE SAMPLE PRO-VENDOR LICENSE AGREEMENT\***

This "Addendum to the Sample License Agreement By and Between Vendor and Customer ("Addendum") amends that certain form agreement of Vendor entitled "Sample License Agreement" ("the Agreement") executed on \_\_\_\_\_, 200\_\_ ("Effective Date") between Vendor and Customer.

This Addendum is an integral part of the Agreement and except as set forth herein, subject to its terms and conditions. In the event of any conflict between the Agreement, the RFP Responses (as defined below), and/or this Addendum, this Addendum shall control. Except as to those portions of the Agreement which are modified by this Addendum, the terms and conditions of the Agreement shall continue in full force and effect. The Agreement, as modified by this Addendum, and this Addendum, including its Appendices and attachments, is sometimes referred to as "the Agreement."

The numbering of the Sections below correspond to the numbering in the Agreement.

**Definitions.** The following definitions shall be added to the Agreement.

*Comment: When first reading any agreement which contains "definitions," it is generally helpful to first proceed to the main body of the agreement and as each defined term is encountered, to then refer back to the definitions section. Having the benefit of context and background will make the defined terms more understandable.*

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\* **CAVEAT:** This form of Agreement is provided merely as a guide in identifying some of the issues that arise in software licensing. However, because every transaction will have its own unique structure, features and issues, this form and its provisions will not be applicable to all situations and may not contain all of the provisions necessary or advisable with respect to a particular transaction. Therefore, this form Agreement is not a substitute for obtaining competent legal advice, and should not be used without review by competent counsel.

**“Acceptance Date”** shall have the meaning as set forth in Section 1.7(g)(2)(iii) of this Addendum.

**“Acceptance Deadline”** shall have the meaning as set forth in Section 1.7(g)(2)(ii) of this Addendum.

**“Acceptance Test Requirements”** shall have the meaning as set forth in Section 1.7(a)(2)(x) of this Addendum.

**“Acceptance Testing Period”** shall have the meaning as set forth in Section 1.7(g)(2)(i) of this Addendum.

**“Conversion Plan”** shall have the meaning set forth in Section 1.7(d)(3) of this Addendum.

**“Conversion Requirements”** shall have the meaning as set forth in Section 1.7(a)(2)(iii) of this Addendum.

**“Customization and Modifications to the Software”** shall have the meaning as set forth in Section 1.7(c) of this Addendum.

**“Data Conversion Test”** shall have the meaning as set forth in Section 1.7(g)(1)(ii) of this Addendum.

**“Defect”** means a non-conformity of the Software (or any module thereof) with the Specifications.

**“Defect Notice”** means a written notice from Customer to Vendor describing in detail the Defect.

**“Design and Configuration Requirements”** shall have the meaning set forth in Section 1.7(a)(2)(iv) of this Addendum.

**“Functional Specifications”** means the specifications as set forth in Appendix A.

*Comment: Community-based clinics should bear in mind that software marketed to them may not have been designed to meet their specific needs, having been intended for hospitals or other providers which have very different requirements. Therefore, it is particularly important that clinics develop a set of detailed, “mission-critical” or “must-have” specifications that the Vendor must meet, (e.g. that the Software can produce specified reports) and which are reduced to writing and attached as an Appendix to the Agreement as Functional Specifications.”*

**“Functional Specifications Test”** shall have the meaning as set forth in Section 1.7(g)(1)(i) of this Addendum.

**“Go Live”** shall mean the first productive use of the Software to support real-time clinical workflow after cutover to the System.

**“Go-Live Date”** means the date for the Software and the System to Go Live which shall be at least thirty (30) days after the date that all of the following has occurred as mutually agreed in writing by the parties: (1) the Software has passed the Production Simulation Test; (2) the master table file (builds) as described in Section 1.7(d)(4) of this Addendum has been completed; and (3) the training of Customer’s end-user personnel as set forth in Appendix B (“Training”) has been completed.

*Comment: A software implementation is loosely analogous to building a house. The tasks for the successful completion of both projects requires that the tasks be done in proper sequence, each satisfactorily completed, before the next task is commenced. For example, just as you would not erect the walls of a house before the foundation is poured and inspected, you would not schedule a “go-live date” before the software has been configured to your satisfaction, and such tasks as data conversion, training, and testing have successfully been completed. Nevertheless, many software agreements refer to “Go-Live Dates” as a date unilaterally set by the Vendor, as if such a date could be scheduled independent of other tasks that have to occur before the Go-Live Date is set. The definition of the “Go-Live Date” as set forth above is intended to require the Vendor to have satisfactorily completed key steps before the Go-Live Date is set.*

**“Implementation Plan”** shall have the meaning as set forth in Section 1.7(a) of this Addendum.

**“Integration Test”** shall have the meaning as set forth in Section 1.7(g)(1)(iii) of this Addendum.

**“Interface(s)”** means Vendor’s portion of any software designed to exchange data between the Software and a third party’s software and/or hardware. Any Interface licensed by Customer from Vendor shall be set forth in Appendix C and shall be deemed “Software.”

**“Key Milestones”** shall have the meaning as set forth in Section 1.7(a)(2)(xvi) of this Addendum.

**“Production Simulation Test”** shall have the meaning as set forth in Section 1.7(g)(1) of this Addendum.

**“Provider(s)”** means a person or group of persons who renders health care services directly to patients or makes clinical decisions regarding patients, including, without limitation, doctors, DOs, optometrists, physical therapists, nurses, nurse practitioners and physician assistants.

**“Provider License”** means the license permitting Providers to access and use the Software.

**“Releases”** means updates, corrections, feature enhancements and upgrades, including those with additional functionality to the Software, as the Vendor may, from time to time, produce and make generally available to Customer.

**“Regulatory Requirements”** means the then-current applicable federal, state and laws, rules, regulations, including without limitation, provisions pertaining to Medi-Cal, Family PACT claims processing requirements, HIPAA, any required output format for patient data, etc.

**“RFP Responses”** means the Vendor’s written responses as set forth in Appendix D Customer’s request for proposal.

**“Services”** means all of the services and tasks necessary to implement the Software and the System in accordance with the Specifications, including, without limitation, delivery, installation, configuration of the Software with the System, connection, data conversion, programming and customization, training, providing the support necessary to perform acceptance tests specified hereunder, and carrying out any other Services necessary for the Software to meet the Specifications.

**“Software”** means the software specified in Appendix C.

**“Specifications”** means Vendor’s published specifications, the Functional Specifications, and the RFP Responses.

**“System”** means collectively, the Hardware, Third Party Software, Software, the hardware and third party software configuration set forth in Appendix E (“Hardware and Third Party Software Configuration”), whether provided by Customer or purchased from the Vendor as “Hardware” and/or “Third Party Software,” integrated together so as to perform in accordance with the Specifications.

**“Third Party Software”** means the third party software specified in Appendix C.

“**Total Prices**” means the total prices for the Hardware, the Software and the Services as set forth in Appendix C.

“**Warranty Period**” shall have the meaning as set forth in Section 4.1(c) of this Addendum.

“**Warranty Repair**” shall have the meaning as set forth in Section 4.1(c) of this Addendum.

**1.2 Charges.** Section 1.2 of the Agreement shall be deleted in its entirety and the following substituted in its place:

(a) Vendor agrees to provide to Customer, and Customer agrees to acquire from Vendor, the Hardware, the Software, the Third Party Software, and the Services, including without limitation, the System configuration, Software customization, Hardware and Software installation, data conversion, training, testing, implementation, maintenance and other services to be performed by Vendor for the total prices and hourly rates as specified in Appendix C (“Total Prices”). Vendor acknowledges and agrees that each of the Software products licensed to Customer pursuant to the Agreement is licensed to Customer in perpetuity, subject only to a one-time, paid-up, perpetual license fee as specified in Appendix A which is not subject to any recurring annual license charge.

*Comment: In order to control costs and avoid nasty surprises, clinics should insist that all purchases and licenses are listed in an Appendix, along with corresponding prices and discounts.*

(b) For services to be charged on a hourly basis, the hourly rates specified in Appendix A shall be applied, provided however that Customer shall not be charged in excess of the “not to exceed” amounts specified in the Total Charges, nor shall Customer be charged for travel time. Reimbursement by Customer to Vendor shall not exceed Customer’s standard travel, meals and lodging reimbursement policy attached to Appendix C as C-1.

*Comment: See Comment after 1.2(a) above*

(c) If any hours for Services are contracted for but are not utilized by Customer, at Customer’s option, Vendor will provide Customer with a credit against Customer’s future Software “Maintenance” (as defined in the Maintenance Agreement) or a refund for such unused hours.

(d) If modules of the Software are implemented in a staggered fashion over a period of time in lieu of implementing all of the Software at the same time (for example, any Services attributable to the implementation, installation, testing or ensuring

conformity to the Specifications of such modules shall be included in the charges set forth in the Total Prices.

(e) Vendor shall not increase its rates for the Services above the rates specified in the Total Prices, charge any amounts for Services not specified in the Total Charges, draw upon the “not to exceed” amounts reserved for the performance of Services in one category and apply them to Services rendered for another; (e.g. Vendor shall not draw upon amounts reserved to pay for Services pertaining to EMR implementation and apply it towards its EPM implementation), nor charge any amounts in excess of the “not to exceed” amounts specified in the Total Prices, except upon Customer’s prior written authorization.

(f) For one (1) five (5) year period commencing from the Acceptance Date, Vendor will allow Customer to purchase additional licenses and Services at the same discounted rate set forth in Appendix C.

**1.3 Payment Terms.** Section 1.3 of the Agreement shall be deleted in its entirety and the following substituted in its place:

The payment terms for those items set forth in the attached appendices shall be as follows:

Items	On Signing	Upon Customer’s written approval of the Implementation Plan (Section ___)	Upon passage of the Production Simulation Test	Upon the occurrence of the Acceptance Date for Software modules or functions other than Post-Go-Live Deliverables	Upon the occurrence of the Acceptance Date for the last of the items of Post-Go-Live-Date Deliverables
EPM Software	10%	20%	20%	30%	20%
EMR Software	10%	20%	20%	30%	20%
Interfaces			100%		
Conversion			100%		
Hardware	Invoiced as delivered according to Implementation Plan; net 30.				
Third Party Software	Invoiced as delivered according to Implementation Plan, net 30.				
Services	Invoiced monthly as Services rendered, in accordance with Total Prices, net 30.				

*Comment: Many vendor agreements specify that the clinics shall pay 50% or more in advance before the vendor has done anything, and before the clinics can verify that the software even works properly! Just as it would not be wise to pay a construction contractor most or all of your money before he has even picked up a hammer or driven a single nail, it is unwise to pay the software vendor substantial amounts of*

*money before the vendor has performed. Therefore, the above chart in one example of proposed installment payments payable upon the successful completion of specified milestones. Note that just as in a contract to construct a house, there should be a significant “withhold” to be paid only upon satisfactory completion of the work. Despite what software vendors may say, installment or milestone payments are the norm, and clinics should insist upon them. Like virtually all of the terms in the maintenance agreement and license agreement, the timing of when payments are due will be the subject of negotiation, and the amount of concessions that the clinics will receive will depend upon their economic leverage and the level of their resolve.*

**1.5 Term and Termination.** Section 1.5 of the Agreement shall be deleted in its entirety and the following substituted in its place:

This Agreement shall commence on the Effective Date and continue until terminated as provided below. This Agreement shall terminate upon the first to occur of the following: (1) in case of a breach of this Agreement which remains uncured for thirty (30) days after Notice of breach was given to the Party in breach, the non-breaching Party may terminate this Agreement immediately upon written Notice to the Party in breach; and (2) in accordance with Section 1.7(g) below of this Addendum. Termination shall be in addition to and not in lieu of any other rights or remedies available to the Parties under the Agreements or at law or equity.

*Comment: The clause in the Sample Vendor’s License Agreement allows the Vendor to terminate the Agreement for no good reason on 90 days notice. From the clinic’s point of view, this is not acceptable. By the time a clinic enters into an agreement with a Vendor, it will have spent a great deal of time, money and resources identifying its software needs, developing Functional Specifications, negotiating the business and legal terms of the contract with Vendor, and signing and commencing implementation. After these events occur, the clinic will want the Agreement to be binding on Vendor so it can’t simply walk away from its obligations. See Addendum for proposed revision.*

**1.7 Installation.** Section 1.7 of the Agreement shall be deleted in its entirety and the following substituted in its place:

*Comment: You will notice that Vendor’s sample License Agreement says that installation of the software is the sole responsibility of Customer, and therefore, there is virtually no details as to how the installation and implementation will*

*proceed. In short, the vendor drops off the software and the rest is Customer's risk and responsibility. Obviously, this is not acceptable. The reality is that a software installation project that is not properly managed is likely to fail. The following contains some of the key elements to be mindful of in (1) identifying the tasks that have to be done; (2) determining the proper sequence for the performance of those tasks; (3) allocating whose responsibility it is to perform those tasks; (4) verifying that those tasks have been properly performed before allowing the project to move on to the next phase; and (5) developing the management plans to make sure that these activities all occur.*

(a) **Implementation Plan.** Within ten (10) business days after Customer's execution of this Agreement, Vendor shall provide Customer with at least two (2) names, resumes, references and contact information of Vendor's proposed project manager, account manager or other individual designated as Customer's primary contact for the project. Customer may contact such personnel and shall have the right to reasonably reject such personnel. Upon receiving Customer's written notification of such rejection, Vendor shall use reasonable efforts to promptly provide qualified substitute personnel. Within ten (10) business days after Customer's execution of this Agreement, Vendor shall deliver to Customer a copy of Vendor's proposed implementation plan that contains a detailed breakdown of the steps to get Customer's practice up and running on the Software, including a proposed timetable for the delivery, installation, configuration, and testing of the Software, Hardware, Third Party Hardware (or hardware or software that Customer provides), including without limitation, the completion of milestones, the scheduling of meetings between the parties for the purpose of reaching mutual agreement on the items set forth below, the number of days required to accomplish each task, and designating the party (or parties) responsible for accomplishing each task ("**the Implementation Plan**").

(1) Customer shall provide its proposed revisions to the Implementation Plan, and the parties shall work together in good faith to develop a mutually acceptable Implementation Plan which shall be the first deliverable to be performed prior to any other task following the execution of this Agreement. After Customer's approves in writing the Implementation Plan including each Appendix to be created and agreed upon by the parties as set forth hereunder, it shall be attached as an Appendix to this Addendum. Any revisions to the Implementation Plan shall require Customer's prior written approval.

(2) The Implementation Plan shall include, but not be limited to, the following:

(i) Initiation of project, including finalizing the Implementation Plan and scheduling configuration and design meetings, table build meetings, and core group trainings;

(ii) Establishing technical environment, including set-up of server and network environment;

(iii) Determination of conversion approach, including evaluation of conversion alternatives, selection of conversion approach, the creation of a conversion specification, and delivery of the converted data (“**Conversion Requirements**”). The Conversion Requirements shall be a deliverable under this Addendum. After Customer approves in writing of the Conversion Requirements, it shall be attached as an Appendix to this Addendum;

*Comment: In order to properly convert the clinic’s data, the clinic will have to put the data in a format that will allow such conversion to occur. Section 1.7(a)(2)(iii) requires the parties to meet and reach mutual agreement on the conversion specifications which shall be reduced to writing and attached to this Agreement as an Appendix.*

(iv) Reaching mutual agreement on the design and configuration of the Software to enable the System to produce the screen lay-outs, reports, formats and other functions and features in order to meet the requirements of the Specifications (“**the Design and Configuration Requirements**”). The Design and Configuration Requirements shall be a deliverable under this Addendum. After Customer approves in writing of the Design and Configuration Requirements, it shall be attached as an Appendix to this Addendum.

*Comment: Section 1.7(a)(2)(iv) requires the parties to meet to discuss and reach agreement on the configuration of the Software which would include such things as the look of screen formats, how certain functions are performed (within the limits of the software capabilities, and other adjustments to the software that will need to be made to meet the Functional Specification of the clinic. After such mutual agreement is achieved, the details of the configurations should be reduced to writing and attached to this Agreement as an Appendix.*

(v) Conducting definition work shops and assigning table build responsibilities;

(vi) Building tables, including decision-making on format, building all tables and verification of completeness and appropriateness of tables, including incorporation of the business rules of Customer's payors;

(vii) Conducting core group training, including verifying environment readiness and planning for end-user training;

(viii) Developing policies and procedures, including identifying procedural changes, documenting new policies and procedures;

(ix) Loading the Software, including testing as set forth in Section 1.7(g) below;

(x) Reaching mutual agreement on the acceptance test requirements for the System and its components, which shall include, but not be limited to the requirements set forth in Section 1.7(g) below ("**Acceptance Test Requirements**"). The Acceptance Test Requirements shall specify the preparation of the System test plan, identify testers and written test scripts, the preparations necessary for the test environment, specify the test standards (e.g. percentage of FPACT remittance electronically received by Customer resulting from System billing), the steps to be taken in testing of the System, its components, and accuracy of data conversion, and the troubleshooting and resolution of identified non-compliances with the Specifications. The Acceptance Test Requirements shall be a deliverable under this Addendum. After Customer approves in writing of the Acceptance Test Requirements, it shall be attached as an Appendix to this Addendum;

*Comment: The foregoing Section 1.7(a)(2)(x) requires the parties to meet and to agree on acceptance testing standards, particularly with respect to verification that the clinic's Functional Specifications are being met. The clinic should insist on being present on all acceptance testing, and also that some of the testing be conducted by the clinic. In this regard, the Vendor must first train the clinic's staff so it is sufficiently knowledgeable to make the determination as to whether the Software has passed acceptance testing.*

(xi) Vendor's end-user training, including finalizing training plan, identifying users and skills, scheduling training, preparing training materials and training environment and conducting of training;

(xii) Preparation for Go Live, including creating Go Live plan, timeline and testing data conversions in accordance with the Conversion Requirements;

*Comment: A software implementation is loosely analogous to building a house. The tasks for the successful completion of both projects requires that the tasks be done in proper sequence, each satisfactorily completed, before the next task is commenced. For example, just as you would not erect the walls of a house before the foundation is poured and inspected, you would not schedule a "go-live date" before the software has been configured to your satisfaction, and such tasks as data conversion, training, and testing have successfully been completed. Nevertheless, many software agreements refer to "Go-Live Dates" as a date unilaterally set by the Vendor, as if such a date could be scheduled independent of other tasks that have to occur before the Go-Live Date is set. The definition of the "Go-Live Date" as set forth above is intended to require the Vendor to have satisfactorily completed key steps before the Go-Live Date is set.*

(xiii) Conducting Go Live, including verifying all processes, monitoring user performance, identifying and documenting any non-compliances of the System (or any of its components) with the Specifications, and resolving such non-compliances in accordance with Acceptance Testing Requirements;

(xiv) Conducting post-Go Live audit, including reviewing tables, master files, master lists, etc., reviewing any outstanding non-compliances with the Specifications, and scheduling resolution of such non-compliances;

(xv) Turnover to support, including all remaining post-live issues, including any non-compliances of the System with the Specifications, and transitioning to the Vendor's support team.

(xvi) The parties shall agree on the dates that Vendor shall deliver key deliverables or perform key tasks ("**Key Milestones**") and such Key Milestones shall be appended to this Addendum as an Appendix.

(b) **Design Process and Configuration Process.** As specified in Section 1.7(a)(2)(iv), Vendor and Customer shall meet and mutually agree upon the Design and Configuration Requirements. The Design and Configuration Requirements shall be a

deliverable under this Addendum. After Customer approves in writing of the Design and Configuration Requirements, it shall be attached as an Appendix to this Addendum.

*Comment: Section 1.7(a)(2)(iv) and 1.7(b) requires the parties to meet to discuss and reach agreement on the configuration of the Software which would include such things as the look of screen formats, how certain functions are performed (within the limits of the software capabilities, and other adjustments to the software that will need to be made to meet the Functional Specification of the clinic. After such mutual agreement is achieved, the details of the configurations should be reduced to writing and attached to this Agreement as an Appendix.*

(c) **Customization and Modifications to the Software and Development of Interfaces.** Vendor shall design, modify and customize the Software to provide such screen lay-outs, reports, formats and other features necessary to comply with the Specifications (“**Customization and Modifications to the Software**”), including any Interfaces, for the Total Prices specified in Appendix C. The Customization and Modifications to the Software shall be a deliverable under this Addendum. After Customer approves in writing of the Customization and Modification of the Software, it shall be attached as an Appendix to this Addendum.

*Comment: Acceptance testing should not commence until all custom programming is completed.*

(d) **Data Conversion.** Vendor shall perform the conversion of Customer’s data in accordance with the Conversion Requirements. Customer is responsible to review and validate all data, reports, and forms that may be generated by the Software, and will notify Vendor immediately if such errors are found. If such errors are the result of conversion services provided by Vendor, Vendor shall promptly correct them at no additional charge. It is anticipated that the parties shall generally follow the following procedures with respect to the conversion of Customer’s data:

(1) Vendor shall work with Customer to mutually agree upon the Conversion Requirements;

(2) In accordance with the Conversion Requirements, Vendor shall provide to Customer a plan to convert Customer’s data, including without limitation, a data format specifying the data fields that Customer shall follow in supplying data to Vendor for conversion (“**Conversion Plan**”);

(3) Customer shall provide data to Vendor in compliance with this Conversion Plan;

(4) Customer and Vendor shall work together to build the master table files (Vendor to provide training to Customer's staff on this process in accordance with the Implementation Plan);

(5) Vendor shall create a program to load Customer's converted data in accordance with the agreed-upon formats onto the server; and

(6) Vendor shall perform such other tasks as may be necessary for Vendor to convert Customer's data as contemplated by the Conversion Requirements.

(e) **Training.** In accordance with the timetable set forth in the Implementation Plan, Vendor shall provide (1) core group or super-user training and (2) end-user training to Customer's personnel in the operational procedures of the System in accordance with the specifications set forth in Appendix B. At least one (1) month prior to the commencement of such training, Vendor shall provide the names of at least two (2) persons that it proposes to use as trainers, along with copies of their resumes and references. Customer may contact such personnel and shall have the right to reasonably reject such personnel. Upon receiving Customer's written notification of such rejection, Vendor shall use reasonable efforts to promptly provide qualified substitute personnel.

*Comment: Before acceptance testing commences (see below), the Vendor should be required to train the clinic's staff so it is sufficiently knowledgeable to make the determination as to whether the Software has passed acceptance testing.*

(f) **Vendor's Completion of Preparatory Tasks; Sign-Offs By Customer.** Prior to the commencement of testing as set forth in Section 1.7(g), Vendor shall have completed each of the tasks hereunder in accordance with the terms of this Addendum and applicable Appendices, demonstrated the same to Customer, and secured Customer's prior written approval or sign-off:

(1) Completion of infrastructure preparation, including installation of Hardware, the Software, Third Party Software, network components, etc. as specified in Appendix E;

(2) Completion of design and configuration of the Software in accordance with the Design and Configuration Requirements.

(3) Completion of custom programming, modifications and any Interfaces in accordance Section 1.7(c); and

(4) Completion of data conversion in accordance with the Conversion Requirements and the Conversion Plan;

(5) Completion of core group or super-user training in accordance with Appendix B.

*Comment: the above clause is designed to prevent the Vendor from proceeding to the next step (testing) before necessary prior steps have been completed. For example, unless training of staff has been completed, the clinics may not be able to determine whether or not the software has successfully passed the acceptance tests specified below.*

**(g) Testing.**

*Comment: After preparatory tasks have been properly completed (e.g. data conversion, design and configuration, training, etc.), the clinics should insist on testing (as indicated below) to determine (1) that the Software meets the Functional Specifications; (2) that data has been properly converted; and (3) that the System as a whole works. In short, the discrete parts of the System should be tested individually, followed by a test of the entire System as a whole from end to end. No technology is perfect, and the clinics should not be required to pay for software which doesn't work.*

**(1) The Production Simulation Test; Three Phases.** Subject to the Vendor's compliance with the requirements of Section 1.7(f), Vendor shall conduct testing of the Software and the System in accordance with the Acceptance Testing Requirements which shall minimally include the following three (3) phases as set forth hereunder (collectively referred to as "**the Production Simulation Test**" consisting of the Functional Specifications Test, the Data Conversion Test and the Integration Test). Customer shall have the right to witness and participate in the performance of all such tests. Vendor shall correct all Defects which arise during such testing and shall verify the correction of those Defects by re-running necessary portions of such test procedure and shall notify Customer in writing of such corrections. When all such Defects have been corrected, Vendor shall deliver to Customer a certificate for each phase, indicating that it believes that the System and Software has passed the respective phase of the Production Simulation Test. Such certificates shall be subject to Customer's written approval which shall not be unreasonably withheld, conditioned or delayed.

**(i) The Functional Specifications Test.** To verify that the Software conforms to the Functional Specifications, Vendor shall demonstrate the successful execution of each of the functions of the Functional Specifications in accordance with the Acceptance Testing Requirements ("**the Functional Specifications Test**"). If the Software exhibits a Defect, Vendor at its sole cost shall cure such Defect. If Vendor is unable to cure such Defect within thirty (30) calendar days of the commencement of the Functional Specifications Test, Customer may terminate the Agreement by delivering written notice of such termination to Vendor. Upon

termination, the parties shall have the rights and remedies specified in Section 1.7(h) of this Addendum.

**(ii) Data Conversion Test.** Upon the passing of the Functional Specifications Test as specified in Section 1.7(g)(1)(i) above, Vendor shall load Customer's converted data and test the converted data to verify that it has been properly converted in accordance with the Acceptance Testing Requirements (the "**Data Conversion Test**"). If the Software exhibits a Defect, Vendor at its sole cost shall cure such Defect. If Vendor is unable to cure such Defect within thirty (30) calendar days of the commencement of the Conversion Test, Customer may terminate the Agreement by delivering written notice of such termination to Vendor. Upon termination, the parties shall have the rights and remedies specified in Section 1.7(h) of this Addendum.

**(iii) Integration Test.** Upon the passing of the Data Conversion Test as specified in Section 1.7(g)(1)(ii) above, Vendor shall demonstrate the successful execution, using simulated production volumes in an "end-to-end" testing of the System in accordance with the Acceptance Testing Requirements to determine compliance with the Specifications, including, but not limited to, technology infrastructure, peripherals, data conversion, Interfaces, custom programming, Software configuration, redundancy/high availability, disaster recovery and the performance of the Functional Specifications in production, test, and training environments (collectively, the "**Integration Test**"). If the Software exhibits a Defect, Vendor at its sole cost shall cure such Defect. If Vendor is unable to cure such Defect within thirty (30) calendar days of the commencement of the Integration Test, Customer may terminate the Agreement by delivering written notice of such termination to Vendor. Upon termination, the parties shall have the rights and remedies specified in Section 1.7(h) of this Addendum. Upon the sooner of: (1) the expiration of the thirty (30) day period specified herein without the continuing existence of any uncured Defect, or (2) the expiration of such period without termination by Customer as provided herein, the Software shall be deemed to have passed the Production Simulation Test.

**(2) Acceptance Testing Period.**

*Comment: After the System passes tests which simulates live data or actual patient flow (see Production Simulation Test above), and assuming that the other preparatory tasks have been completed (see above comments), the clinic is ready to set the "Go-Live Date," and commence testing using actual data. It is at this stage that final "Acceptance Testing" begins. In short, if the System passes the Acceptance Tests, the Vendor has delivered what it has promised, and the clinic has to pay for it. On the other hand, if the System fails the Acceptance Tests, the clinic should have the right to reject the Software, terminate the Agreement and get its money back. No technology is perfect, and the clinics should not be required to pay for software which doesn't work.*

**(i) Compliance with the Specifications; Cure; Termination.**

Commencing upon the Go Live Date, Customer shall have a period of sixty (60) days, subject to extension of an additional thirty (30) days as provided below, (collectively, the initial 60 day period together with the 30 day extension (if any) is referred to as “the **Acceptance Testing Period**”), to conduct testing of the Software and the System in accordance with the Acceptance Testing Requirements to verify that the Software materially conforms with the Specifications and to reject the Software if it has any Defect. If during the Acceptance Testing Period the Software has any Defect, Customer shall provide Vendor with a Defect Notice, and after Customer’s delivery of such Defect Notice(s), Vendor shall at its sole cost, promptly and diligently attempt to cure such Defect. If any Defect arises during the last 30 days of the initial 60 days of the Acceptance Testing Period, (i.e. between 12:00 midnight on the 30<sup>th</sup> day to 12:00 midnight of the 60<sup>th</sup> day), the Acceptance Testing Period shall be extended by thirty (30) additional days. If after Vendor’s corrective efforts the Defect continues or a new Defect arises, Customer shall promptly deliver to Vendor another Defect Notice, and Vendor shall likewise, promptly attempt to cure such Defect.

**(ii) Termination for failure to cure a Defect.**

If Vendor is unable to cure a Defect(s) within the Acceptance Testing Period, Customer may terminate the Agreement by delivering written notice of such termination to Vendor no later than the thirtieth (30<sup>th</sup>) calendar day immediately following the expiration of the Acceptance Testing Period (the “**Acceptance Deadline**”).

**(iii) Acceptance Date.**

Upon the sooner of: (1) the date of expiration of the Acceptance Testing Period without the continuing existence of any uncured Defect(s), or (2) the date of the occurrence of the Acceptance Deadline without termination pursuant Section 1.7(g)(2)(ii) above, the Software shall be deemed to have met the Acceptance Testing Requirements (such date referred to as the “**Acceptance Date**”).

**(h) Rights Following Termination.**

Within thirty (30) days of Customer’s delivery to Vendor of Customer’s written notice of termination of this Agreement pursuant to this Section 1.7(g) (including any of its sub-sections) of this Addendum, Vendor shall provide Customer with a refund of the amount paid by Customer to Vendor up to the date of such termination. Vendor shall remove the Software, Third Party Software and any Hardware provided by Vendor.

**(h) Delays.**

Vendor acknowledges that the configuration, installation, testing and implementation of the Software is of singular importance, and Vendor agrees to commence work promptly and to continue working with reasonable diligence, to the end that the Software may be delivered, installed, tested and implemented in accordance with the Specifications within the timeframes provided in the Implementation Plan. Provided however, that after delivering to the other party with prompt written notice, neither party shall be liable for any delay in its performance of this Agreement if such delay results

from fire, flood, earthquake or any other event not within such party's reasonable control and without its fault or negligence ("**Force Majeure**"); provided, however, that the party so affected by Force Majeure shall use its best efforts to avoid or remove the causes and proceed to perform with all reasonable speed whenever such causes are removed or cease. Neither party shall be liable for any delay in the performance of its obligation under this Agreement if such delay results directly from a failure of the other party to perform its obligations under this Agreement. Subject to Customer's right to terminate this Agreement under Section 1.7(g) of this Addendum, in the event of the occurrence of an excusable delay, the time for performance set forth on the Implementation Plan shall be extended by a period of time equal to the duration of such delay.

(i) **Staggered Implementation of Modules of the Software.** If the Implementation Plan specifies that any of the modules or functions of the Software are to be implemented in a staggered fashion over a period of time in lieu of implementing all of the modules of the Software at the same time, then each such module shall undergo the Production Simulation Test, and be subject to its own Go Live Date, Acceptance Testing Period and Acceptance Date as set forth in Section 1.7(g)(2) of this Addendum, provided however that if the Acceptance Date for any module of the Software has occurred, Customer's right to terminate the Agreement as provided in Section 1.7(g) shall end, provided however, that with respect to any non-conformity with the Specifications of any module or functions implemented after such Acceptance Date, Customer shall remain entitled to (1) Warranty Repair during the Warranty Period.

*Comment: It seems to be a common, albeit less than ideal, situation for community clinics to enter into license agreements for software functions that the clinics are not ready to implement. Consequently, clinics may pay for 100% of the software, but end up actually using significantly less function than that. If a clinic is not ready to implement the whole software package and if it has enough bargaining power, it may be able to negotiate a deal in which the implementation of software modules are staggered over time so that the clinic has sufficient time to get ready and avoid paying for software that it is not ready to use yet. In the same spirit, clinics should try to avoid paying for maintenance of software that it is not yet using and negotiate exclusions and discounts in the maintenance agreement.*

**2.5 Compatibility.** The following new Section 2.5 shall be added:

Customer has made Vendor aware that Customer may desire to provide independently the requisite hardware and third party software required to operate the Software. Customer understands that Vendor makes no representation on, and provides no warranty on any hardware and third party software not sold or manufactured by Vendor. Notwithstanding the foregoing, the hardware and third party software configuration set forth in Appendix E ("Hardware and Third Party Software Configuration"), whether provided by Customer or purchased from Vendor as "Hardware" and/or "Third Party Software," will be

compatible with the Software provided its installation, set up and requisite network connectivity are installed correctly, that Customer does not operate other software or software processes other than normal operating system software or other software required or specified by Vendor simultaneously on the same workstation and that Customer is using a current version of the Software.

*Comment: Assuming that the clinic will want to incorporate into the system software and hardware supplied or manufactured by a third party, clinic will want assurance from Vendor that the proposed components will all be compatible with each other.*

**3.1 Licensing.** The following shall be added at the end of Section 3.1 of the Agreement as follows:

“Notwithstanding anything herein to the contrary, with respect to Third Party Software used in the implementation of the System, Vendor shall procure for Customer’s benefit all software licenses necessary for Customer’s use of such software.”

*Comment: The clause in the Sample Vendor’s License Agreement says that the clinic is solely responsible for securing the licenses to use any software from third parties. Assuming that the clinic will want to incorporate into the system software and hardware supplied or manufactured by a third party, clinic will want assurance from Vendor that it has received all of the necessary licenses to incorporate these components into the system. Clinic should require the Vendor to take on this responsibility as part of its installation obligations.*

**3.2 Vendor License Grant.** Sections 3.2 (2), (3), (6) and (7) of the Agreement shall be deleted in their entirety and the following substituted in its place:

(2) The number of Provider Licenses that are purchased pursuant to this Agreement as specified in the Total Prices shall be calculated on the basis that one (1) Provider License shall equal one or more Providers rendering an aggregate of up to 2,080 annual work hours. Thus, for example, for purposes of calculating the number of Provider Licenses that Customer is required to purchase, five (5) part-time Providers, each working 416 hours annually, shall be counted as equal to one (1) Provider License. For each such Provider License, up to three (3) Providers who are actively rendering services shall be permitted to be listed as a user in the Software applications and to access and use the Software. For example, if Customer purchases twenty-four (24) Provider Licenses, up to seventy-two (72) active Providers may be listed in the Software applications and may access and use the Software. Should any Provider no longer actively provides services for Customer, Customer may replace the name of such inactive Provider with another who is authorized to access and use the Software, so long as the

total number of active Providers so listed does not exceed a ratio of three (3) named Providers for each Provider License purchased.

(3) The total number of workstations authorized to access the Software shall be up to ten (10) times the number of Provider Licenses purchased by Customer.

(6) Customer shall not re-license, sublicense, or otherwise transfer or distribute to any other Person all or any part of MSI-Owned Software Product, or any right, title or interest therein of any kind, (except to a direct successor, by merger, sale of substantially all of its assets, or otherwise by operation of law, of Customer's operations).

*Comment: Vendors naturally will try to maximize revenues by limiting the number of work stations or the number of medical providers that can access the Software. In this regard, if a clinic desires to exceed the arbitrary thresholds that the vendor has set for purposes of pricing, the clinic is required to pay more money. Therefore, the clinics should think through how many work stations it requires to have access to the Software, how many of its providers (both full-time and part-time) that will need access, and how to account for such things as personnel turnover or increases in staff and negotiate accordingly. The above clause is one example.*

**4.1** Sections 4.1 of the Agreement shall be deleted in their entirety and the following substituted in its place:

(a) Vendor warrants that, at the time of delivery, the Software shall not infringe the intellectual property rights of any other Person. This warranty shall not apply to any infringement resulting from either: (1) operation or use of the Software with Hardware, Software or equipment not provided by Vendor; (2) operation or use of the Software other than in accordance with the Specifications therefore; or (3) alteration or modification of the Software by Customer or any other Person other than Vendor.

(b) Vendor represents that the Software has the capability to perform in a manner consistent with the Specifications, provided that:

(1) Customer has been adequately trained on the use of the Software, Hardware and Third Party Software;

(2) Customer has purchased the capability described in this Agreement, Specifications and Appendices; Customer has customized the System using Vendor supplied customization utilities, according to Customer's requirements;

(3) Customer has purchased the necessary Hardware and Third Party Software that would be required to effectuate those capabilities; and

(4) Customer has performed all of the obligations and duties required of it under the Agreement;

(c) For one (1) year (“**Warranty Period**”) after the Acceptance Date of each module of the Software, including any Releases, upgrades, updates, enhancements, corrections or fixes, Vendor warrants that such module shall meet its requirements and Specifications. Vendor shall immediately repair or replace any module that does not meet the Specifications during the Warranty Period, without charge, including without limitation for labor and travel. During the Warranty Period, Vendor shall repair or replace the Software to correct any Defect (“**Warranty Repair**”). The Warranty Period for the Software shall be extended on a day-to-day basis for each failure of the Software to meet the Specifications during the Warranty Period and for each day that the Software (or module thereof) is unavailable for full use in accordance with the Specifications due to Warranty Repair being performed by Vendor during the Warranty Period.

(d) Vendor further represents and warrants that the Software, including any and all upgrades, enhancements, corrections, fixes, updates shall conform to Regulatory Requirements when and as released.

*Comment: Would you purchase a new car or other “big ticket item” without a warranty? Probably not. Similarly, why should clinics pay literally hundreds of thousands of dollars (or more) for complex, potentially problematic software which has no warranty? They should not. Nevertheless, it is very common for vendor license agreements to disclaim all warranties, and to state that the software is licensed “as-is,” meaning that all risk of software failing to meet the clinics’ expectations (or even failing completely) rests with the clinics. In short, clinics should insist upon adequate warranties as specified above.*

**4.3** Section 4.3 commencing with the words “Customer represents and warrants that it is a sophisticated purchaser,” shall be deleted in its entirety.

**4.4** **Limitation of Damages.** The following shall be added at the end of Section 4.4 of the Agreement as follows:

Notwithstanding anything herein to the contrary, this Section 4.4 shall not apply with respect to Vendor’s indemnity obligations under Section 4.5 of this Addendum.

*Comment: Vendors will try to limit their liability by clauses which limit their damages to the amount they receive from the clinic. While this is “standard,” the clinics should try to insert a provision that this limitation should not apply to the Vendor’s indemnity obligations (see Section 4.5 below).*

**4.5 Indemnification.** Section 4.5 of the Agreement shall be deleted in its entirety and the following substituted in its place:

(a) **Indemnification of Vendor.** Customer agrees to indemnify, defend and hold harmless Vendor and its Affiliates, and their respective shareholders, directors, officers, employees, agents and other representatives from and against any damage, loss, expense or other liability, including reasonable attorneys' fees and costs ("Damages") arising, directly or indirectly, out of any breach of any of Customer's obligations under this Agreement, except to the extent that (a) such Damages arise out of any breach or alleged breach by Vendor of any representation, warranty or covenant made, or (b) obligation assumed, by Vendor pursuant to this Agreement or (c) any negligent or intentional act or omission or alleged act or omission of Vendor, its employees, agents and other representatives, or (d) as otherwise provided 4.5(b) hereof.

(b) **Indemnification of Customer.**

(1) **Infringement.** Vendor shall indemnify, defend and hold Customer harmless against any and all Damages arising from any claim that the Software infringes upon the intellectual property rights of any other Person. Customer shall notify Vendor of any such claim promptly in writing and shall allow Vendor to control such proceedings. If the Software, or any part thereof, is held to constitute an infringement or a misappropriation, and use of the Software by Customer is enjoined, Vendor shall within ten (10) days and at its sole expense, either: (a) procure for Customer the right to continue using the Software; (b) replace the Software with a non-infringing product whose performance specifications are equal or superior to the Software; (c) modify the Software so as to make it non-infringing; or, (d) if neither (a), (b) or (c) is commercially practical, remove the Software and refund to Customer all amounts paid by Customer pursuant to this Agreement.

(2) **Personal Injury or Property Damage.** Vendor shall indemnify, defend and hold Customer harmless against any and all Damages arising out of any personal injury or damage to tangible property caused intentionally or by the negligence of Vendor, its agents, servants, or employees.

*Comment: Indemnification provisions are powerful in that if the event requiring indemnity occurs, it is usually very expensive to the party providing the indemnity, and therefore they are hotly negotiated. Indemnity provisions usually require the indemnifying party to hire lawyers and to pay damages to protect the indemnified party against claims made by third parties. Even a frivolous lawsuit by a third party can be very expensive to defend against. Among the bigger risk for clinics is that the software infringes the intellectual property rights of others, or that the software (or its malfunction) causes a patient to suffer injury. Vendor will strive to limit its indemnity obligations by limiting its*

*obligation to the amount of money it has received from the clinic, or by refusing to provide any indemnity at all. Clinics should try to narrow their indemnity obligations to specific events such as in the event that they breach their obligations under the Agreement. They should try to avoid extending broad, open-ended indemnity obligations. Prior to signing an agreement with indemnity provisions, they should discuss the same with their insurance carriers to determine what indemnity obligations will be covered, and what are not covered.*

**5.1 Arbitration.** Section 5.1 of the Agreement shall be deleted in its entirety. and the following substituted in its place:

Except as otherwise expressly provided in this Agreement, all claims, controversies or disputes arising out of or related to this Agreement, or any breach thereof, shall be resolved by binding arbitration as provided herein and otherwise in accordance with the Commercial Arbitration rules of the American Arbitration Association. Venue for the arbitration shall be in \_\_\_\_\_, \_\_\_\_\_ [insert Customer’s headquarters]. Where the amount in controversy is less than \$100,000.00, the dispute shall be submitted to a single arbitrator. Otherwise the dispute shall be submitted to a panel of three arbitrators. The arbitrator(s) shall strictly enforce all provisions of this Agreement except to the extent applicable law requires otherwise. The arbitrator(s) shall have no authority to grant either Party punitive, exemplary, consequential or other special damages of any kind. Judgment upon the award of the arbitrator(s) may be entered in any court of competent jurisdiction.

*Comment: Some litigators will argue that arbitration clauses favor the Vendor; e.g. there is no chance for “a runaway jury,” damages tend to be much smaller, and it is sometimes (but not always) cheaper than court trials. All will agree that the parties will have significantly less rights in arbitration as compared to court proceedings, and that the proceedings will be faster than in court. Clinics should discuss with their counsel whether to reject an arbitration clause, but on balance, the issue is generally not a “deal-breaker.”*

**5.2 Jurisdiction and Venue.** Section 5.2 of the Agreement shall be deleted in its entirety and the following substituted in its place:

The Parties agree that any action or proceeding arising out of or related to this Agreement shall be instituted only in the federal district court in (or closest to) Vendor’s headquarters if the action is instituted by Customer and only in the federal district court in (or closest to) Customer’s headquarters if the action is instituted by Vendor. Each Party consents and submits to the jurisdiction of such court and agrees that venue therein shall be proper and convenient. In any such action or proceeding in such court, each

Party waives any right to raise any objection based upon improper venue, lack of jurisdiction, or inconvenient forum. In connection with any such action or proceeding, each Party consents to personal jurisdiction of such court and agrees service of process may be effected by United States mail. Notwithstanding the foregoing, the Parties agree to resort to such an action or proceeding only if (1) the arbitration provision of Section 5.1 is held to be invalid or unavailable, or (2) to enforce such an arbitration award.

*Comment: The last sentence of this clause specifies that a court proceeding will only occur if the arbitration clause is thrown out as invalid. See comment above. This proposed revision to Vendor's form is intended to provide some balance by stating that the party that brings the lawsuit, has to do it in the other party's neighborhood. It is a better alternative for the clinics than Vendor's form agreement which states that all litigation will be heard where the Vendor is headquartered.*

**6.2** Section 6.2 of the Agreement shall be deleted in its entirety.

**7.1. Document Precedence.** Section 7.1 of the Agreement shall be deleted in its entirety and the following substituted in its place:

In the event of a conflict between the Terms and Conditions and an Ancillary Document, the Ancillary Document shall control.

**7.2 Acceptance.** Section 7.2 of the Agreement shall be deleted in its entirety and the following substituted in its place:

A document otherwise constituting an Ancillary Document becomes effective as such when (and only when) it is provided by one Party to the other and Accepted by the recipient. Such a document is conclusively deemed Accepted by Customer upon (and only upon) such document (or an unambiguous and written confirmation thereof) being signed by Customer and returned to Vendor. A document otherwise constituting an Ancillary Document and provided by Customer to Vendor is conclusively deemed Accepted by Vendor upon (and only upon) such document (or an unambiguous and written confirmation thereof) being signed by Vendor and returned to Customer.

*Comment: the purpose of this revision is to prevent the Vendor from unilaterally and without the clinic's consent, changing the terms of the Agreement.*

**7.9 Amendments.** Section 7.9 of the Agreement shall be deleted in its entirety and the following substituted in its place:

All amendments to the Agreements, or any of them, must be in writing and duly executed by both Parties to be effective.

*Comment: Please see the Vendor's form Agreement, Section 7.9. It is one the more outrageous clauses of an already grossly unfair agreement. Unrevised, Section 7.9 permits the Vendor to unilaterally change the Agreement without the consent of the clinic. Obviously, this should be a deal-breaker as clinics should not sign any agreement which permits the Vendor to unilaterally change the terms later.*

**7.11 Nonsolicitation.** Section 7.11 of the Agreement shall be deleted in its entirety and the following substituted in its place:

Neither party will solicit any of the other party's employees for employment; provided, however that this shall not prohibit wither party from hiring the other party's employees who respond to an advertisement placed by the hiring party in any mass media. Because actual damages that would result from the breach of this provision are difficult to determine, the parties agree that, in the event of a breach of this provision, the hiring party shall pay the other party liquidated damages in the amount of three (3) times the applicable employee's most recent annual salary. Notwithstanding the availability of liquidated damages, nothing contained in this Agreement shall prohibit either party from obtaining injunctive relief in the event of breach of this section and if liquidated damages are inadequate compensate the aggrieved Party.

*Comment: If a clinic has spent a considerable amount of money and/or time attracting, training and retaining good information technology personnel, it will be very unhappy if a Vendor "cherry-picks" such employees to join Vendor's staff. Therefore, this clause prevents both parties from soliciting the employees of the other.*

**IN WITNESS WHEREOF**, the parties hereto have caused this Addendum to be executed by their duly authorized representatives as of the Effective Date below.

Effective Date: \_\_\_\_\_, 200\_\_

**Vendor:** \_\_\_\_\_ **Customer:** \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_ Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **Appendix A Functional Specifications**

*Comment: Community-based clinics should bear in mind that software marketed to them may not have been designed to meet their specific needs, having been designed for hospitals or other providers which have different requirements. Therefore, it is particularly important that clinics develop a set of detailed “mission-critical” or “must-have” specifications that the Vendor must meet, and which are reduced to writing and attached as an Appendix to the Agreement as Functional Specifications.”*

## Appendix B Training

*Comment: Training is critical so it is important to specify in some detail the expectations of the clinic.*

**Training.** In accordance with the schedule set forth in the Implementation Plan, Vendor shall provide on-site training to Customer's personnel in the functional applications of the System including but not limited to the following:

1. File build, consisting of insurance companies, CPT and diagnosis coding, fee schedules, etc.
2. Incorporating business rules of Planned Parenthood payers into the file build
3. Charge entry
4. Demographics entry
5. Billing and claims management
6. Accounts receivable and collections
7. Managed care
8. Appointment scheduling
9. How the work flow module can best be deployed in the Planned Parenthood Clinical environment.
10. Creation and Maintenance of templates in EMR
11. Reporting and report writing tools including customized report creation and roll-up and drill down techniques
12. EPM and EMR features and functionality
13. System and security maintenance and monitoring

**Training Materials.** In preparation for the training, Vendor shall deliver 15 copies of all applicable training materials for Customer to review at least eight (8) weeks before the commencement of training, including both hard and soft copies of all user guides, training, instruction implementation or reference manuals, worksheets, work books, software manuals supplied by the vendors of Third Party Software, instruction manuals and such trouble-shooting guides to the extent the same are available. The documentation and instructional manuals described herein shall be at no additional charge to Customer. The documentation may be distributed by Customer in various media including, without limitation, printed material, electronic media, and via download from the Vendor Website through Internet access. Vendor hereby authorizes Customer to copy and customize Vendor's Microsoft Word formatted instructional guides and materials and to download information that may be provided at Vendor's sole discretion on the Vendorweb site for the purpose of Customer's internal training and support.

**Pre-site Interview; Evaluation Write-up; Homework.** Vendor shall conduct a pre-site interview in connection with the training of Customer's employees, provide a questionnaire for Customer's employees to complete and deliver to Vendor, and Vendor shall evaluate such completed questionnaires in preparation for the commencement of training. Vendor shall also provide "homework" to Customer's employees to be performed by such employees in preparation for training.

**(a) Trainings.**

**(i) Core Group and/or Super-User Training.** In accordance with the Implementation Plan, Vendor shall provide training to Customer's core group or super-user staff (e.g. IT personnel, department heads, etc.) on the topics as specified in the Implementation Plan.

**(ii) End-User Training.** After completion of the master table files (build) as specified in the Implementation Plan, Vendor shall support training provided by Customer's super users to Customer's remaining employees who will be the end-users of the Software which shall include a representative of the Vendor attending Customer's end-user training to audit it, providing feedback to Customer regarding such end-user training, providing additional training to Core Group or Super-Users, and providing feedback on any end-user training materials created by Customer.

**(iii) Evaluation.** Upon completion of each day of end-user training a mutually agreed upon participant evaluation shall be distributed and completed by the training participants. Results will be compiled and used by the Vendor's trainers to modify and/or expand upon the training as necessary to address trainee needs.

**(iii) Training Days and Charges.** Vendor shall provide Customer's personnel with training in accordance with the fees specified in Appendix C ("Total Prices").

**(v) Perform Sample Operations.** Promptly after the completion of training, Customer shall perform sample operations intended to mirror Customer's actual patient flow.

**Appendices C, C-1  
Total Prices  
And Standard Reimbursement Policy for Travel, Meals and Lodging.**

*Comment: The concept of this Appendix is to put in one place everything that the clinic is purchasing, the costs, including those subject to flat fees, and any hourly work (ideally with not to exceed limits, in order to avoid unexpected charges.*

**Vendor Software**

Description	Identification #	Price

**Third Party Software**

Description	Identification #	Price

**Hardware**

Description	Identification #	Price

**Services**

Description	Price

**Appendix D**  
**RFP Responses**  
**[attach]**

*Comment: The Vendor should be held to its RFP representations of what the Software can do, and in order to make them binding, it should be added to the Agreement in the form of an Appendix.*

**Appendix E**  
**Hardware and Third Party Software Configuration**

**Appendices to Be Created,  
Agreed Upon By the Parties  
And  
Appended as Deliverables to This Addendum**

Appendix \_\_\_\_, the Implementation Plan

Appendix \_\_\_\_, the Conversion Requirements

Appendix \_\_\_\_, the Design and Configuration Requirements

Appendix \_\_\_\_, the Acceptance Test Requirements

Appendix \_\_\_\_, the Key Milestones

Appendix \_\_\_\_, the Customization and Modifications to the Software