COUNTY OF HUMBOLDT

For the meeting of: June 12, 2018

Date: May 3, 2018

To: Board of Supervisors

From: Connie Beck, Director
Department of Health and Human Services

Subject: Software Maintenance Agreement with Common Cents Systems, Inc. for the Public Health Laboratory

RECOMMENDATION(S):

That the Board of Supervisors:

1) Approve and authorize the Department of Health and Human Services (DHHS) – Public Health Director to sign three (3) original signature pages of the Software Maintenance Agreement with Common Cents Systems, Inc. for the period of July 1, 2018 through June 30, 2021; and

2) Authorize the DHHS – Public Health Director or designee to sign all future amendments to this agreement upon County Counsel and Risk Management review and approval; and

3) Direct the Clerk of the Board to return one (1) copy of the executed Board Agenda Item to the DHHS – Contract Unit for transmittal to DHHS – Public Health.

SOURCE OF FUNDING:

Public Health Funds

Prepared by _____Lara Zintsmaster AA_____   CAO Approval _____

REVIEW:
Auditor _____ County Counsel __JN__ Human Resources __KKG__ Other _____

TYPE OF ITEM:
_x_ Consent
___ Departmental
___ Public Hearing
___ Other _____

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor _Fennell_ Seconded by Supervisor _Wilson_

Ayes _Fennell, Sundberg, Bohn, Wilson_
Nays
Abstain
Absent _Bass_

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: _6/12/18_
By: _____
Kathy Hayes, Clerk of the Board

1

<u>DISCUSSION</u>:

The DHHS – Public Health Laboratory provides a variety of testing services to health care providers and community members within Humboldt County. The Public Health Laboratory relies on Apollo, a Laboratory Information Management System (ApolloLIMS) developed by Common Cents Systems, Inc. in order to electronically organize testing requests and report results in a useful and efficient manner. The ApolloLIMS software system includes functionality for security, specimen processing, results processing, reporting inquiry and customer service. The Public Health Laboratory has worked with the ApolloLIMS software since 2009 and has a long-established relationship with Common Cents Systems, Inc.

The agreement before your Board today allows the Public Health Laboratory to renew their Software Maintenance Agreement with Common Cents Systems, Inc. for continued support of ApolloLIMS for the period of July 1, 2018 through June 30, 2021. The Humboldt County Purchasing Agent signed previous agreements with Common Cents Systems, Inc., however, due to additional maintenance costs of a new incoming interface built in Fiscal Year (FY) 2017-18 this three-year agreement requires Board approval.

<u>FINANCIAL IMPACT</u>:

Approval of the three-year Software Maintenance Agreement will allow DHHS-Public Health Laboratory to reimburse Common Cents Systems, Inc. up to $51,561 for the period of July 1, 2018 through June 30, 2021. The maximum reimbursable amount for this agreement takes into account the maximum allowable 5% annual increase to be implemented at the discretion of Common Cents Systems, Inc. This expense in the amount of $17,277.24 for FY 2018-19 was included in the proposed county budget for FY 2018-19 in Fund 1175, Budget Unit 435- Public Health Laboratory. The remaining expense will be included in the county budget process for FY 2019-20 and FY 2020-21. There is no impact to the General Fund.

This agreement supports the Board's Strategic Framework by providing community-appropriate levels of service.

<u>OTHER AGENCY INVOLVEMENT</u>:

N/A

<u>ALTERNATIVES TO STAFF RECOMMENDATIONS</u>:

The Board could choose not to approve the agreement, however this is not recommended, as it would cause disruption of services to the community.

<u>ATTACHMENTS</u>:

One (1) copy of the Software Maintenance Agreement between Common Cents Systems, Inc.and DHHS – Public Health

Common Cents Systems, Inc.

Software Maintenance Agreement

This Software Maintenance Agreement made and entered into between **Humboldt County Public Health Laboratory** (Purchaser) and **Common Cents Systems, Inc.** (Vendor), sets forth the terms and conditions under which the Vendor will provide certain consulting services to the Purchaser.

1. TERM

This agreement shall become effective July 1, 2018 and shall remain in effect until June 30, 2021 -or- until terminated by either party pursuant to Article 5 or as modified in writing pursuant to Article 20.

2. PAYMENTS

Vendor shall be paid by the Purchaser for the services provided hereunder pursuant to Article 9. Vendor is not required to perform the services during a fixed hourly or daily time; however, it is expected that the Vendor will expend the time and energy necessary to perform the responsibilities and complete the duties contracted for hereunder.

Vendor shall submit a detailed invoice to the Purchaser monthly. The Purchaser shall make payments of all undisputed amounts in accordance to Article 9. Vendor shall be responsible for the collection of any and all taxes imposed or assessed by reason of the Agreement from Purchaser. All charges listed in this Agreement do not include any applicable taxes. Vendor and the Purchaser specifically agree that Vendor or representatives of Vendor are not employees of the Purchaser.

Due to this being a multi-year Agreement, Vendor reserves the right to adjust the price annually. Any price adjustments will be capped at a 5% increase to the current price.

3. VENDOR'S REPRESENTATION

Vendor represents that it shall at all times exert its best efforts to diligently perform and complete its assignments in an acceptable and timely manner.

Vendor represents that all Developed Items shall be the original work product of Vendor, and Vendor shall, both during and after the termination of this agreement, defend and hold the Purchaser harmless for and against any claims, suits or proceedings brought against the Purchaser that any Developed Item or the use thereof infringes upon or constitutes a misappropriation of any patent or copyright, or the trade secret or other proprietary right of a third party, and Vendor shall pay all losses, costs and damages incurred by the Purchaser relating to or arising from such claims, suits or proceedings.

4. CONFIDENTIALITY

Vendor acknowledges that in connections with the performance of its duties hereunder it may learn, be provided or have access to information which is confidential and proprietary to the Purchaser or third party the Purchaser contracts with, including (but not limited to): research; development; trade secrets; business plans; computer programs and related documentation and protected health information.

Vendor hereby agrees to protect all confidential information in conformance with any and all local, state, and federal laws and regulations regarding confidential information, including any and all applicable local, state, and federal laws governing protected health information.

Vendor agrees that without the express written consent of the Purchaser, Vendor shall not distribute, sell, assign, disclose, disseminate, give or transfer any such Confidential Material or any portion or derivative thereof to any third party, at any time.

5. TERMINATION

Termination does not cancel any previous obligations (incurred before termination) to either party under this or other agreements. This agreement may be terminated in the following manner:

(a)   by mutual written consent of the parties; or
(b)   by either party upon giving the other sixty (60) days prior written notice.

Vendor understands and agrees that upon the termination of the Agreement it will surrender or destroy all Confidential Material and all related notes and papers.

6. LIABILITY

Except for breach under this Agreement, neither party shall be liable for any actual damages including but not limited to: direct, indirect, punitive, special or consequential damages.

7. INDEPENDENT CONTRACTOR

It is specifically agreed by the parties that the relationship of Vendor to the Purchaser is that of an independent contractor. Vendor and its' employees is not and shall not be deemed to be employees of the Purchaser. Nor shall the Vendor be entitled to any of the employee benefits provided by the Purchaser to employees. The Purchaser is hereby contracting with Vendor for the services described in Article 8. Vendor reserves the right to determine the method, manner and means by which those services will be performed. Vendor will, however, work with the Purchaser or the Purchaser's designee(s) in defining the specific and/or conceptual services to be performed hereunder.

8. SCOPE OF SERVICES

The Vendor will provide Customer Support between the hours of 8:00am CT to 5:30pm CT Monday-Friday with the exception of major holidays. Customer support includes answering questions relating to ApolloLIMS, researching Laboratory Information Management System ("LIMS") issues and assisting the site in routine LIMS System Maintenance. Incident ticket numbers are created for all issues reported to the support desk.

If Purchaser requests critical Technical Support outside of Vendor's regular 8:00am CT to 5:30pm CT hours (after hours), additional fees may apply. For Purchaser who have not contracted with Vendor for 24/7 Customer Support, Vendor does not guarantee that after hours critical Technical Support is available 365 days a year. However, Vendor will make all reasonable efforts to assist a Purchaser with a critical issue as promptly as possible.

Requests for new reports, additional test set-up, new business lines and other more advanced enhancements will be reviewed to determine if it is within the scope of routine maintenance. If the request is outside the scope of routine maintenance a quotation will be issued.

The Vendor will provide Software Maintenance which entitles the Purchaser to any regularly scheduled release of updates and enhancements to the portions of the product that the Purchaser has licensed. Updates and enhancements will be made available to the Purchaser and the decision to utilize new functionality will be made by the Purchaser. In the event that a software defect is identified and reported, the Vendor will either issue a remediation release or incorporate the remediation into the next scheduled release depending on the nature and severity of the defect reported.

The Purchaser is responsible for all server hardware, workstation hardware and the TCP/IP network. In addition the Purchaser is responsible for maintaining the Operating System on both server and workstations. The Purchaser is also responsible for implementing and maintaining a means to allow the Vendor to gain remote access to the Purchaser's network to provide support.

The Purchaser is expected designate a LIMS Administrator to handle tasks such as User Security and routine File Definition. All local issues should be directed to the LIMS Administrator who will attempt to reproduce and document the issue. If a local solution cannot be affected by the LIMS Administrator, that individual will contact the Vendor's support desk and log an Incident Ticket.

Additionally, it is best if the Purchaser identifies a local resource to be responsible for creating Reports and Data Extracts to satisfy special requests. The Vendor will work with this local Data Manager and provide whatever training and assistance is needed to affect a seamless process for handling special requests for data analysis.

9. SERVICE CHARGES

Payment for services rendered below will be invoiced monthly 60 days after software goes into production. For the purposes of this agreement "production" is defined as when the Software is used to produce a specimen report from a patient sample.

a) Software Maintenance / Upgrades

The Purchaser will be billed monthly for Software Maintenance of *ApolloLIMS*. At the time of this Agreement, the Purchaser is utilizing an 8 User *ApolloLIMS* license with additional options. The Purchaser will be billed $839.02 per month for routine updates to the Software. It is understood that any additions to the License or any additions of Optional modules will be added to the Maintenance cost in the next billing cycle. See current *ApolloLIMS* Product Guide .

b) Customer Support / Technical Support

The Purchaser will have unlimited access to telephonic support between the hours of 8:00am and 5:30pm CT Monday-Friday. Support includes basic help desk response, troubleshooting and remedial software remedies. The Purchaser will be billed $413.25 per month for Support. Support cost is based on the software License and any additional Optional modules. It is understood that any additions to the License or any additions of Optional modules will be added to the Support cost in the next billing cycle. See Vendor's current *ApolloLIMS* Product Guide, which is attached hereto as Attachment C.
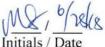
c) After Hours Support

In the event that the Purchaser has a need for critical (after hours) support, the Purchaser will be assessed an additional fee of $125 per hour with a minimum of one (1) hour for each occurrence.

d) Cache Support / Maintenance

Purchaser agrees to a one-time fee of $1,350.00 for the acquisition of an Intersystems Cache license. The Purchaser will be billed monthly for Support and Maintenance of the Intersystems Cache database. The Purchaser will be billed $75.00 per month for continuing support and maintenance of Cache. As new versions of Cache are released, Vendor will contact Purchaser's IT department to initiate the upgrade.

e) Hourly Customizations

The Purchaser will be billed at a rate of $ 90.00 per hour for "fee for service" type of work. A quotation for work to be performed will be provided prior to commencement of billable work. If a Purchase Order is required by the Purchaser to accompany Invoices then a Purchase Order must be supplied prior to the commencement of any billable work.

f) Interfaces

Interfaces are billed on a flat fee basis per occurrence. A quotation for any interface will be given to the Purchaser prior to commencement of programming activities.

g) Terms

Vendor will invoice the Purchaser monthly. The Purchaser will be expected to pay each invoice within thirty (30) days from receipt. Any outstanding balance may cause work to halt and will result in a late charge of 18% (APR) for outstanding balances. All amounts in this agreement are in U.S. Dollars.

10. BILLING POLICY

All invoices are considered past due 30 days from the time they are issued, which for most routine Software Maintenance and Support is at the beginning of each month. For those invoices that are not paid on time, Vendor will be enforcing the following billing procedures:

1) Invoices that are past 30 days – a notice will be sent out listing the past due invoices.
2) Invoices that are past 60 days – a notice will be sent out listing past due invoices and all work except for critical support will be suspended. That means no new quotes will be issued, no reports will be created, all project work will be suspended. Vendor will continue to communicate with Purchaser's LIMS administrator and support any critical needs.
3) Invoices that are past 90 days – a final notice will be sent out listing past due invoices and informing you that Vendor's services are suspended. No support will be given including critical downtime support. To re-instate Purchaser's services ALL past due invoices (30 days or greater) must be paid in full along with a reinstatement fee of 18% on all past due balances over 90 days.

11. NON-SOLICITATION COVENANT

For the duration of this Agreement (Section 1) and for a period of 36 months after, Purchaser will not directly or indirectly solicit, induce or attempt to induce any employee of Vendor to terminate his or her employment with Vendor. In the event that the Vendor ceases to remain in business, this covenant is void.

12. JURISDICTION AND VENUE

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

13. SEVERABILITY

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

14. ASSIGNMENT

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment by Vendor in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

15. WAIVER OF DEFAULT

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement. In no event shall any payment by Purchaser constitute a waiver of any breach of this Agreement or any default which may then exist on the part of Vendor. Nor shall such payment impair or prejudice any remedy available to Purchaser with respect to any breach or default. Purchaser shall have the right to demand repayment of, and Vendor shall promptly refund, any funds disbursed to Vendor which in the judgment of Purchaser were not expended in accordance with the terms of this Agreement.

16. ATTORNEYS' FEES

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees, including the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

17. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

18. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE

Vendor certifies by its signature below that Vendor is NOT a nuclear weapons contractor, in that Vendor is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the *Nuclear Free Humboldt County Ordinance.* Vendor agrees to notify Purchaser immediately if it becomes a nuclear weapons contractor as defined above. Purchaser may immediately terminate this Agreement if it determines that the foregoing certification is false or if Vendor becomes a nuclear weapons contractor.

19. HIPAA BUSINESS ASSOCIATE AGREEMENT

Each party hereby agrees to adhere to the terms and conditions set forth in the "County of Humboldt HIPAA Business Associate Agreement," which is attached hereto as Attachment B and incorporated herein by reference. A breach of the attached Business Associate Agreement shall constitute a material breach of this Agreement.

20. ENTIRE AGREEMENT

This Agreement between the Vendor and Purchaser replaces any previous version. Any additions, changes or alterations to this agreement must be made in writing and signed by both parties. It is understood that health Care laws continue to evolve, especially in respect to areas of protected health information and confidentiality. In the event that revisions become necessary to conform to changes in the federal, state or local laws, Vendor and Purchaser agree that a revised amendment will be constructed and approved by both parties.

[Signatures on Following Page]

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:
(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR
TREASURER.

Common Cents Systems, Inc.
PO Box 110514
Nashville, TN 37222

By: _____

Title: _____CEO_____

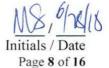Date: _____5/3/18_____

By: _____ DYLAN MORSE

Title: ____VP of FINANCE_____

Date: ____05/03/18_____

Humboldt County Public Health Laboratory
529 I Street
Eureka, CA 95501

By: _____

Title: ____Public Health Director____

Date: _____6/25/18_____

Attachment A

Humboldt County PHL   Updated   3/23/2018

Product	License Value	Annual Maint
Apollo 8 User (Adhoc only) *	$ 73,494.75	$ 13,229.06
- No Additional Options	n/a	
Apollo eXchange		
- Outgoing Results NCHIN (CalREDIE/EPIC)	$ 4,995.00	$ 899.10
- Incoming Orders From NCHIN (EPIC)	$ 4,995.00	$ 899.10
Total Software License Cost	**$ 83,484.75**	**$ 15,027.26**

Monthly Maintenance:	**$1,252.27**
Cache Maintenance:	**$75.00**
Invoice Total:	**$1,327.27**

One Time Cost (Intersystems Cache License)	**$1,350.00**

*** License Value/Total Software License Cost is used only to determine the Annual Maintenance Fee. Purchaser is not purchasing additional ApolloLIMS licenses.

Recitals:

A. COUNTY, as a "Covered Entity" (defined below) wishes to disclose certain information to CONTRACTOR, hereafter known as the "BUSINESS ASSOCIATE" (defined below) pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI") (defined below).

B. COUNTY and BUSINESS ASSOCIATE intend to protect the privacy and provide for the security of PHI disclosed to BUSINESS ASSOCIATE pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information and Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

C. As part of the HIPAA Regulations, the Privacy Rule and Security Rule (defined below) requires COUNTY to enter into an Agreement containing specific requirements with BUSINESS ASSOCIATE prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e), and 164.504(e) of the Code of Federal Regulations ("C.F.R") and contained in this Agreement.

The parties agree as follows:

1. **Definitions**

   a. **Breach** shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].

   b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.

   c. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.

   d. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.

g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

j. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].

k. **Protected Information** shall mean PHI provided by COUNTY to BUSINESS ASSOCIATE or created, maintained, received, or transmitted by BUSINESS ASSOCIATE on COUNTY's behalf.

l. **Security Incident** shall have the same meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.

m. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

n. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

2. **Obligations of Business Associate**

a. **Permitted Uses.** BUSINESS ASSOCIATE shall use Protected Information only for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement and as permitted or required under the Agreement, or as required by law. Further, BUSINESS ASSOCIATE shall not use Protected Information in any manner that would constitute a

violation of the Privacy Rule or the HITECH Act if so used by COUNTY. However, BUSINESS ASSOCIATE may use Protected Information as necessary (i) for the proper management and administration of BUSINESS ASSOCIATE; (ii) to carry out the legal responsibilities of BUSINESS ASSOCIATE; or (iii) as required by law. [45 C.F.R. Sections 164.504(e)(2), 164.504(e)(4)(i)].

b. **Permitted Disclosures.** BUSINESS ASSOCIATE shall disclose Protected Information only for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement and as permitted or required under the Agreement, or as required by law. BUSINESS ASSOCIATE shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by COUNTY. However, BUSINESS ASSOCIATE may disclose Protected Information as necessary (i) for the proper management and administration of BUSINESS ASSOCIATE; (ii) to carry out the legal responsibilities of BUSINESS ASSOCIATE; or (iii) as required by law. If BUSINESS ASSOCIATE discloses Protected Information to a third party, BUSINESS ASSOCIATE must obtain, prior to making any such disclosure, (i) reasonable *written* assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BUSINESS ASSOCIATE of any breaches, suspected breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2.1. of the Agreement, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

c. **Prohibited Uses and Disclosures.** BUSINESS ASSOCIATE shall not use or disclose PHI other than as permitted or required by the Agreement, or as required by law. BUSINESS ASSOCIATE shall not use or disclose Protected Information for fundraising or marketing purposes. BUSINESS ASSOCIATE shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. BUSINESS ASSOCIATE shall not directly or indirectly receive remuneration in exchange for Protected Information, except with prior written consent of COUNTY and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however this prohibition shall not affect payment by COUNTY to BUSINESS ASSOCIATE for services provided pursuant to the Agreement.

d. **Appropriate Safeguards.** BUSINESS ASSOCIATE shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BUSINESS

ASSOCIATE shall comply with the policies, procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].

e. **Business Associate's Subcontractors and Agents**. BUSINESS ASSOCIATE shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of COUNTY, agree in writing to the same restrictions and conditions that apply to COUNTY with respect to such Protected Information and implement the safeguards required by paragraph 2.d. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).

f. **Access to Protected Information**. If BUSINESS ASSOCIATE maintains a designated record set on behalf of COUNTY, BUSINESS ASSOCIATE shall make Protected Information maintained by BUSINESS ASSOCIATE or its agents or subcontractors in Designated Record Sets available to COUNTY for inspection and copying within five (5) days of a request by COUNTY to enable COUNTY to fulfill its obligations under state law [California Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(e)]. If BUSINESS ASSOCIATE maintains Protected Information in electronic format, BUSINESS ASSOCIATE shall provide such information in electronic format as necessary to enable COUNTY to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. Section 164.524.

g. **Amendment of PHI**. If BUSINESS ASSOCIATE maintains a designated record set on behalf of COUNTY, within ten (10) days of a request by COUNTY for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BUSINESS ASSOCIATE and its agents and subcontractors shall make such Protected Information available to COUNTY for amendment and incorporate any such amendment or other documentation to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE must notify COUNTY in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

h. **Accounting of Disclosures**. Within ten (10) days of a request by COUNTY for an accounting of disclosures of Protected Information, BUSINESS ASSOCIATE and its agents and subcontractors shall make available to COUNTY the information required to provide an accounting of disclosures to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by

COUNTY. BUSINESS ASSOCIATE agrees to implement a process that allows for an accounting to be collected and maintained by BUSINESS ASSOCIATE and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BUSINESS ASSOCIATE maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a request for an accounting directly to BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE shall within five (5) days of the request forward it to COUNTY in writing.

i. **Governmental Access to Records.** BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to COUNTY and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BUSINESS ASSOCIATE's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BUSINESS ASSOCIATE shall provide COUNTY a copy of any Protected Information and other documents and records that BUSINESS ASSOCIATE provides to the Secretary concurrently with providing such Protected Information to the Secretary.

j. **Minimum Necessary.** BUSINESS ASSOCIATES, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)]. BUSINESS ASOCIATE understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."

k. **Data Ownership.** BUSINESS ASSOCIATE understands that BUSINESS ASSOCIATE has no ownership rights with respect to the Protected Information.

l. **Notification of Possible Breach.** BUSINESS ASSOCIATE shall notify COUNTY within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Agreement; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BUSINESS ASSOCIATE or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BUSINESS ASSOCIATE to have been accessed,

acquired, used, or disclosed, as well as any other available information that COUNTY is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BUSINESS ASSOCIATE shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].

m. **Breach Pattern or Practice by Business Associate's Subcontractors and Agents**. Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if BUSINESS ASSOCIATE knows of a pattern or activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or other arrangement, BUSINESS ASSOCIATE must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, BUSINESS ASSOCIATE must terminate the Agreement or other arrangement if feasible. BUSINESS ASSOCIATE shall provide written notice to COUNTY of any pattern of activity or practice of a subcontractor or agent that BUSINESS ASSOCIATE believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or other arrangement within five (5) days of discovery and shall meet with COUNTY to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

n. **Audits, Inspection and Enforcement**. Within ten (10) days of a request by COUNTY, BUSINESS ASSOCIATE and its agents and subcontractors shall allow COUNTY or its agents or subcontractors to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Agreement for the purpose of determining whether BUSINESS ASSOCIATE has complied with this Agreement or maintains adequate security safeguards. BUSINESS ASSOCIATE shall notify COUNTY within five (5) days of learning that BUSINESS ASSOCIATE has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights or other state or federal government entity.

3. **Termination**

a. **Material Breach.** A breach by BUSINESS ASSOCIATE of any provision of this Agreement, as determined by COUNTY, shall constitute a material breach of the Agreement and shall provide grounds for *immediate* termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

b. **Effect of Termination.** Upon termination of the Agreement for any reason, BUSINESS ASSOCIATE shall, at the option of COUNTY, return or destroy all Protected Information

that BUSINESS ASSOCIATE or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by COUNTY, BUSINESS ASSOCIATE shall continue to extend the protections of Section 2 of this Agreement to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If COUNTY elects destruction of the PHI, BUSINESS ASSOCIATE shall certify in writing to COUNTY that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, and the HIPAA regulation

APOLLOLIMS
LABORATORY INFORMATION MANAGEMENT SOFTWARE

Common Cents Systems, Inc.
(800)805-9278

2018 Apollo Product Guide

ApolloLIMS is a robust Laboratory Information Management System and includes functionality for security, specimen processing, results processing, reporting, inquiry and customer service. Additionally, ApolloLIMS includes: Host-based Quality Control, Instrument Management, and the ability to create Adhoc reports.

Concurrent Users	License Cost	Cost per additional User
4	$ 71,480	Call for information
8	$ 97,460	$ 4,995
12	$ 117,440	$ 4,995
16	$ 137,420	$ 3,995
24	$ 169,380	$ 3,995
36	$ 217,320	$ 3,750
48	$ 262,320	$ 3,495
64	$ 318,240	$ 2,995
96	$ 414,080	$ 2,495
128	$ 493,920	$ 1,995

Licensing for ApolloLIMS is based upon concurrent users. Licenses may be added as needed according the pricing chart.

Additional Options / Modules

Instrument Interface

Instrument interfaces are utilized to communicate orders and results to laboratory equipment.

Pricing is structured so that as a lab adds instruments that are identical in respect to manufacturer and method the price per interface will be reduced.

Instrument #1	$4,995
Instrument #2 (identical manufacturer and method)	$4,495
Instrument #3 (identical manufacturer and method)	$3,995
Instrument #4 (identical manufacturer and method)	$3,495
Instrument #5 (identical manufacturer and method)	$2,995
Instrument #6 (identical manufacturer and method)	$2,495
Instrument #7 (identical manufacturer and method)	$1,995

Specimen Storage — $4,995

The Specimen Storage module enables laboratory personnel to store and retrieve specimens by pre-defining storage locations. Specimen containers are scanned into storage racks and placed into either temporary or long-term storage.

A complete specimen audit trail can be generated to show each time a specimen was added, moved, or discarded.

Specimen Report — Quoted

Development and implementation of additional PDF specimen report

Quality Assurance — $14,995

The Quality Assurance module allows the user to track incident and statistical data in every part of ApolloLIMS. With this information, the lab manager can design a QA program that will improve patient care, decrease laboratory errors, and help pass regulatory inspections. Key features include site specific incident class and type definition, automatic generation of incidents and pre-formatted reports. The QA system utilizes on-screen messaging to alert users of pending issues.

Additional Options / Modules (cont.)

Apollo Imaging

Apollo Imaging provides the ability to import scanned images into the database, attach images and print reports directly from an instrument into the database.

Examples of images that can be captured and stored with specimen and account records are:

- Paper requisitions
- Instrument result graphs
- Insurance Cards

- GC/MS Chromatograms
- Account Standing Orders

Apollo Image Library $19,995
The Apollo Image Library adds the necessary software components to enable scanned images to be associated with specimens. These images can be viewed on any ApolloLIMS workstation on the labs network.

Apollo Image Batch Scanning Station $3,750
The Apollo Image Batch Scanning Station provides the functionality for documents to be batch scanned and imported into the database. The Apollo Image Library is required.

Apollo Image Automation Server $9,995
The Image Automation Server provides the ability to automatically capture printed output straight to the database (paperless). The Image Automation Server includes a software license for one Image Workflow Processor.

Apollo Image Workflow Processor   Quoted
Image Workflow Processors allow the LIMS to analyze a document for barcodes or other data elements and automatically process the document into the database. Examples would be identifying which instrument a document came from as well as the specimen number. Then identifying result values and automatically entering the data into the LIMS. *(ApolloLIMS Imaging does not include scanner hardware)*

Apollo eXchange

The Apollo eXchange module allows the laboratory to build a communication bridge to or from an external system. Apollo has adopted HL7 as the principal format when communicating with another system. With Apollo eXchange internal system codes can be translated to several standard coding systems such as LOINC, SNOMED and CPT.

An Apollo eXchange interface can be either incoming or outgoing. Examples of incoming interfaces would be Patient Demographics or Specimen Orders. Examples of an outbound interface would be Results exported to a submitting account to be processed into their database or EMR.

The cost of an Apollo eXchange interface is based on the direction and type of information.

Incoming –or- Outgoing Orders (per occurrence)	$ 4,995
Outgoing Results (per occurrence)	$ 4,995
Outgoing PDF Specimen Reports (per occurrence)	$ 4,995
Outgoing Results and PDF Specimen Reports (per occurrence)	$ 7,495
Incoming Results (per occurrence)	$ 9,995
Outbound Billing Interface (per occurrence)	$ 4,995
Automated Fax Interface (per occurrence)	$ 4,995

Fax reporting utilizes the Apollo Fax Interface along with an approved fax package. Currently approved fax server packages are: ZetaFax, Right Fax, SFax and FaxBack. Common Cents Systems is a VAR for ZetaFax (license required)

Additional Options / Modules (cont.)

Apollo Web Reporting	ApolloLIMS Web Reporting allows a user at a client account to login to a secure website to view and print specimen reports. Web Reporting features full integration to all ApolloLIMS rules and utilizes a secure HTTPS web server. Features include restricted account/password sign on and full auditing (HIPAA compliant). Reports for each login are limited by submitting account. Includes 5 concurrent web user licenses.	$14,995
	The customer is responsible for supplying the Web Server environment as well as the SSL Security Certificate.	
Apollo Web Order Entry	ApolloLIMS Web Order Entry is accomplished through a secure connection (HTTPS). Client accounts are limited to only view their patients. New orders can be created including submission paperwork and specimen labels.	$9,995
	Rapid data entry is accomplished through use of look up fields and client specific defaults. Data entry fields are validated and can be required. Account specific required fields can be configured.	
	The batch shipment option allows the user to create a packing list for all specimens in the shipping container. Once complete, specimen orders are electronically transmitted to the laboratory where they are placed into an 'awaiting receipt' status.	
	As with all Apollo functionality, every action within the system has a complete audit trail.	
	Apollo Web Reporting must be already installed or purchased to add Apollo Web Data Entry. **At least one web rquisition screen is required to be purchased for Apollo Web Order Entry.**	
Web User Licenses	Software user licenses for Apollo Web Reporting and Web Order Entry are based upon concurrent use.	$695
Web Requisition Screen	Development and implementation of additional web requisition screen	$ 4,995
Supply Orders	The Supply Orders module enables laboratories to manage client requests for supplies and outgoing shipments of supplies including shipment date and tracking number. The system is able to monitor inventory levels, item usage history and minimum order quantities.	$ 4,995
	Laboratory forms such as requisitions, order slips, and chain of custody can be customized for each ordering client to pre-print required information. Examples of information that can be pre-printed include: client account number, address, barcodes, and test orders.	

Typical Implementations:

4 - 16 Users:
40-80 hours of On-Site Implementation and Training
5 Custom Worklist Print formats (combined limit of 20 hrs development)
1 Custom Specimen/Patient Report format (limited to 24 hrs development)
5 Custom Adhoc Reports (TAT, Statistics, etc...)

17-64 Users:
80-120 hours On-Site Implementation and Training
10 Custom Worklist Print formats (combined limit of 30 hrs development)
2 Custom Specimen/Patient Report formats (combined limited to 36 hrs development)
10 Custom Adhoc Reports (TAT, Statistics, etc...)

65+ Users:
120-160 hours onsite Implementation and Training
15 Custom Worklist Print formats (combined limit of 40 hrs development)
3 Custom Specimen/Patient Report formats (combined limited to 40 hrs development)
15 Custom Adhoc Reports (TAT, Statistics, etc...)

Software Support and Maintenance:

Software Maintenance
Software Maintenance Fees are calculated on 12% of the software license value of all installed software. The software license value is based upon the currently published price list. The purchase of additional concurrent processes or software components will immediately add to the license value from which the Software Maintenance Fee is derived.

Software Maintenance contract includes:
- Software Maintenance Releases
- Remedial software repair

Customer Support
Customer Support Fees are calculated on 6% of the software license value of all installed software. The software license value is based upon the currently published price list. The purchase of additional concurrent processes or software components will immediately add to the license value from which the Customer Support Fee is derived. The support team is available to assist customers with Apollo licensed products and currently defined tests . A Customer Support contract requires an active Software Maintenance contract.

Software Support contract includes unlimited customer support Monday-Friday, 8:00am – 6:00pm CT with the exception of major holidays.

Expanded Support
If deemed necessary or if desired by the customer – Standard Maintenance can be augmented with several options:
- Quarterly Site Visits – Can be utilized as a time to work with an ApolloLIMS project manager or developer on workflow and special projects
- 24 x 7 Emergency Pager Support – For laboratories with production schedules that extend past regular customer support hours.

Custom Programming
Custom programming services are available for adhoc reports and data extracts for a fee.

File Definition
File definition services are available to assist customers in adding new tests and business lines to the laboratory's test menu for a fee.

If you have any questions about these products or any other services from Common Cents Systems, please call us at: 1-800-805-9278