

SOFTWARE AND SERVICES AGREEMENT

This Software and Services Agreement (this "Agreement"), is dated the date set forth in Section 3 below, and is between the agency and the contractor identified below. The parties agree to each of the terms set forth below (the "Basic Terms") and to each of the terms set forth in the Attachments defined in Section 6 below.

1. Parties.

(a) Agency: (*check one*)

- Contra Costa County for its Department named below
- Contra Costa County Flood Control and Water Conservation District
- Contra Costa County Fire Protection District
- Housing Authority of the County of Contra Costa

(i) Department (if applicable): Public Works - Airport Division

(ii) Authorized Representative: Keith Freitas

(ii) Agency Mailing Address: 550 Sally Ride Drive, Concord, CA 94520

Attn: Beth Lee

(b) Contractor's Name and Address: ECS Imaging, Inc.
5905 Brockton Avenue, Suite C
Riverside, CA 92506

Attn: Pete Herschelman

(i) Type of Business Entity: California Corporation
(e.g., individual, corporation, sole proprietorship, partnership (general or limited), limited liability company)

If corporation, limited liability company, limited partnership or limited liability partnership, add State of incorporation or organization: California

(ii) Federal Taxpayer I.D. or SSN: 33-092885

(iii) Authorized Representative: James Pappas

2. Project Name, Number, & Location: ECS Imaging, Martinez, CA

3. Term. The effective date of this Agreement is May 1, 2019. It terminates on April 30, 2024 unless sooner terminated as provided herein.

4. Payment Limit. Payments under this Agreement may not exceed: \$60,635.00.

5. Legal Authority. This Agreement is entered into under and subject to Government Code Section 31000, or:

- Health and Safety Code Section 13861 (*Fire Protection District*)
- Health and Safety Code Section 34314 (*Housing Authority*)
- Other: (*Specify*)

6. Attachments.

The following documents are attached to this Agreement (the “Attachments”) and are incorporated herein by reference and form part of this Agreement. This Agreement includes the Basic Terms, the signature pages and all of the Attachments.

- General Conditions
- Special conditions
- Appendix A: Service Plan
- Appendix B: Payment Provisions
- Appendix C: Software License
- Appendix D: Maintenance and Support
- Appendix E: Specifications
- Appendix F: Deliverables
- Appendix G: Performance and Acceptance

7. Signatures. These signatures attest the parties’ agreement hereto:

CONTRACTOR

SIGNATURE A

Contractor’s Name:
ECS Imaging, Inc.,
a California Corporation

SIGNATURE B

By: _____
(Signature of individual or officer)

By: _____
(Signature of individual or officer)

(Print name and title, if applicable)

(Print name and title, if applicable)

Note to Contractor: If Contractor is a corporation or limited liability company, two officers must sign this Agreement. The first signature (Signature A) must be that of the chairperson of the board, president or vice-president; the second signature (Signature B) must be that of the secretary, assistant secretary, chief financial officer, or assistant treasurer. (Civil Code Section 1190 and Corporations Code Sections 313 and 17703.01.) The acknowledgment below must be signed by a Notary Public.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me, _____, Notary Public, personally appeared _____ (insert name(s) and title(s) of the officer(s) signing on behalf of the Consultant), who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

Signature

(Notary's Seal)

AGENCY

(a) If Agreement is approved by Agency governing body (required if Payment Limit exceeds \$100,000):

AGENCY,

ATTEST: Clerk of the Board of Supervisors

By _____
Board Chair/Designee

By _____
Deputy

(b) If Agreement is approved by County Purchasing Agent:

AGENCY,

By _____
County Purchasing Agent

COUNTY APPROVALS

RECOMMENDED BY DEPARTMENT

By: _____
Designee

FORM APPROVED BY COUNTY COUNSEL

By: _____
Name: _____
Deputy County Counsel

APPROVED: COUNTY ADMINISTRATOR

By: _____
Designee

Appendix A
SOFTWARE AND SERVICES AGREEMENT SERVICE PLAN

A. General.

1. Services. In consideration of Services provided by Contractor under this Agreement, County will pay Contractor as set forth in Appendix B (Payment Provisions). Contractor will provide labor to install and configure the Software in accordance with County's requirements, develop and assist development and testing of interfaces, conduct testing, and perform training.
2. Services Location. Contractor's work activities performed pursuant to this Agreement will be performed at County buildings and remotely. As a result, Contractor facility access will normally be restricted to normal County working hours.
3. Defined Terms. Capitalized terms not defined in this Appendix A have the definitions given in the General Conditions.

B. Project Management and Planning. Contractor and County will use practices generally recognized as good project management methodology and will each designate a project manager for the Project who will be responsible for interfacing with their counterpart for the purposes of this Service Plan.

C. Background Information.

1. The Public Works - Airport Division's ("Airports") public records, Federal Aviation Administration (FAA) records, airport property plans, emergency contact information, emergency supply locations and inventories, etc. are essential functions of the department. The current paper system is outdated and inefficient. It also requires the Airports Division to store paper files in inconvenient office areas or warehouse space throughout our Concord facility, which has taken up work areas for Airport staff and leads to an inefficient use of staff time in locating records.
2. The Airports has a responsibility to be financially self-sufficient, as is a requirement by the FAA. Expediting access to critical files, would greatly assist the Airports in fulfilling that requirement. Digitizing Airports' files are necessary to improve emergency response and to best protect the County's assets. Buchanan Field and Byron Airport are designated as reliever sites in the event of a catastrophic incident in the larger region. The Airports are also a vital component of the County's emergency response system.
3. The County Department of Conservation and Development, Human Resources, Auditor-Controller, Public Works, and the Clerk of the Board currently utilize the Laserfiche software. The Airports are interested in using the Laserfiche software application owned and licensed by Compulink Management Center, Inc., for electronic content management of all records. Adding the Airports to the already utilized Laserfiche system is an efficient and functional way to move forward and get the Airports operational to best serve the public.

D. Scope of Work. The scope of work set forth in this service plan represents the services required to reach the proposed solution and a successful Project. Contractor will perform all work in accordance with the descriptions, scopes, and specifications herein described. Contractor will implement the software on County's servers and perform the related tasks set forth in this Service Plan.

1. Scope Definition. Contractor will perform the following services under this Agreement:
 - a. Project Initiation – ½ Day**
 - i. Perform initial needs assessment
 1. Interview key stakeholders to determine priorities for implementation
 - ii. Initial Project Planning
 1. Creation of Project Plan based on high-level needs analysis, establishment of performance metrics, stakeholder dialogues, timeline development, detailed tasks creation, and communication plan development
 - b. Software Installation – 1 Day**
 - i. Installation of all Laserfiche Software and Licensing on new server
 1. Laserfiche Server 10.4
 2. Laserfiche Forms and Forms Portal
 3. Laserfiche Workflow
 4. Laserfiche Connector
 5. Weblink distribution Portal
 6. Import Agent
 - c. Basic System Configuration – 1 Day**
 - i. Folder Structure
 - ii. Naming Convention
 - iii. Template and Field Design
 - iv. User license allocation and security
 - v. Storage Volumes
 - d. Business Process Configuration – 2 ½ Days**
 - i. Repository Consultation
 1. Folder, Document Naming, Template and Fields Configuration
 - ii. 1 simple Laserfiche Form
 1. Forms consultation and development
 - iii. 1 simple Laserfiche Workflow
 1. Workflow consultation and development
 - e. Laserfiche Training (User Training and Administration Training) – 2 Days**
 - i. General Training to be included for Airport staff to train as needed. Training to include:
 1. Import and Capture Training
 - Review of Laserfiche Scanning, and Quick Fields
 2. Search and Retrieval Training
 - Laserfiche Client, Web Client, WebLink, Mobile
 3. Workflow Automation Training
 - Review of Laserfiche Workflow
 4. Forms Training
 - Review of Laserfiche Forms

5. Laserfiche Administrator Training
 - Security, user configuration, volume configuration, IT
 - f. Solution Testing and Validation**
 - i. These services are described and included in section 1(d) - Business Process Configuration – above
 - g. Production Rollout and Go Live Support**
 - i. These services are described and included in section 1(d) - Business Process Configuration – above
 - h. On-going Project Management – 1 Day**
 - i. Professional project management services from ECS
 1. Plan Project Development
 2. Kick-Off Meeting
 3. Project Status Meetings
 4. Project Status Updates
 5. Scope Verification
 6. Risk Management (Contingency Plan)
 7. Change Control
 8. Schedule Control
 - ii. Documentation
 1. Solution Documentation
 2. Training Documentation
 3. Lessons Learned
2. Items Out of Scope.
- a. The following services are not within the scope of services set forth in this Service Plan:
 - i. Contractor acquisition of server or workstation hardware;
 - ii. Costs associated with troubleshooting operating system or hardware issues related to the workstations or servers; and
 - iii. Resolving any system or software issues not related to the Laserfiche Software, including but not limited to Windows permissions, network permissions, network hardware, server or client hardware, or other third-party infrastructure hardware or software
 - b. Any items out of scope will be considered as separate labor from the services agreed upon for this project and may require additional approval and review before proceeding. The project's primary requirements take precedence over any additional items requested that are out of scope to maintain the project timeline and ensure deliverable expectations are met. Contractor will notify County if it anticipates the necessity to perform out of scope services. Any out of scope services will be performed according to an agreed upon scope and estimate, at the hourly rates set forth in Appendix B.
3. Project Timeline. The Project Schedule Summary and Deadlines are as follows:
- a. 07/2019 - Project start date
 - b. 07/2019 - Preliminary requirements gathering and project requirements definition complete
 - c. 08/2019 - Preliminary kick off meeting and general planning complete

- d. 08/2019 - Hardware provisioning complete
 - e. 08/2019 - Laserfiche software installation and setup complete
 - f. 09/2019 - Repository design consultation and configuration complete
 - g. 09/2019 - Data conversion complete
 - h. 10/2019 - Business process configuration complete
 - i. 10/2019 - General training complete
 - j. 11/2019 - Laserfiche live in production, project closure (ongoing support available)
4. **Project Duration.** The Project will start in July 2019 and be completed by November 2019. This assumes the following:
- a. County resources are available for implementation throughout the Project;
 - b. No delays due to changes to existing Project primary requirements;
 - c. No delays due to County requests for additional out of scope requirements;
 - d. Availability of remote access; and
 - e. Availability of appropriate security access to Laserfiche related servers and third-party database or applications relevant to the business requirements.
5. **Project Plan.**
- a. Contractor will develop a Project plan with input from County. The Project plan will include at minimum: (a) contact information of Contractor staff assigned to the Project; (b) list of Project phases/iterations, start/end dates, milestones, and deliverables; and (c) detailed explanations of the work items for which Contractor and County are responsible.
 - b. The services performed by Contractor includes the installation of the Laserfiche Software server and client software, consultation and configuration of document management best practices for multiple business automation needs and providing training for users and administrators with the intention of empowering the organization to become self-sufficient in the development of future workflow and electronic forms automation in the long term.
- E. Software License.** Contractor is an authorized third-party reseller of the Software that is owned and licensed by Compulink Management Center, Inc. ("Licensor"). The Software is being licensed to County pursuant to Licensor's Laserfiche End User Software License Agreement (EULA) attached to this Agreement as Appendix C (Software License), and the Software and licenses are specified in Attachment 1 to the EULA.
- F. Contract Expiration / Termination and Data.** Upon the expiration or earlier termination of this Agreement, Contractor will assist County in extracting data used with the Software application.

**Appendix B
 PAYMENT PROVISIONS**

I. Project Invoices. Contractor will invoice County as set forth below, and County will make payment therefor as set forth in Section D below:

A. Contract Amount. County will pay Contractor the following amounts pursuant to the Payment Schedule set forth in Section B below:

- 1. Software, Licensing, Laserfiche Software Assurance Plan (LSAP)* .. \$27,555.00
- 2. Initial Planning, Software Installation..... \$2,700.00
- 3. Basic System and Business Process Configuration..... \$6,300.00
- 5. Training, Project Management, and Project Closing \$5,400.00
- Total..... \$41,955.00**

* Beginning July 1, 2020 and each year, Contractor will invoice County for the annual cost of \$4,670.00 for Software Maintenance and Licensing

B. Payment Schedule. Contractor will invoice County and County will pay Contractor the following amounts based on invoices in accordance with the following payment schedule:

MS #	Milestone Description	Est. Cost	Est. Date of Completion
1	Software, Licensing, LSAP (Agreement effective date)	\$27,555.00	07/19
2	Initial Planning, Software Installation upon County's written acceptance of completed services	\$2,700.00	08/19
3	Basic System and Business Process Configuration upon County's written acceptance of completed services	\$6,300.00	09/19
4	Training, Project Management, and Project Closing upon County's written acceptance of completed services	\$5,400.00	11/19
	Totals	\$41,955.00	

C. Out of Scope Services Rates: Contractor will be paid at the hourly rate of \$255.00 per one hour for services performed that are out of scope.

D. Invoice Payment Terms:

- 1. Contractor agrees to the payment terms set forth in this Appendix B and the Agreement.

2. Contractor will submit an invoice, accompanied by documentation of expenditures and services hours, to County's Authorized Representative for authorization of payment. Contractor will submit demands for payment no later than 30 days from the end of the month in which the contract services upon which such demand is based were actually rendered. Upon approval of payment demands by County's Authorized Representative, County will make payments within 30 days of the invoice.
3. Adjustments between line item expenses may be made if the line item budget adjustment is ten percent or less of the budgeted line item. The County's Authorized Representative may approve any line item adjustment which exceeds the line item budget by more than ten percent.

Appendix C
LASERFICHE END USER SOFTWARE LICENSE AGREEMENT
2017.12 v. 10.3

This Laserfiche End User Software License Agreement ("**License Agreement**") is made between Compulink Management Center, Inc., a California corporation doing business as Laserfiche, whose principal place of business is in Long Beach, California ("**Laserfiche**" or "**Licensor**"), and the party (referred to as the "**Licensee**") on whose server or systems the Laserfiche Software will be made available for use.

PLEASE READ THIS LICENSE AGREEMENT CAREFULLY. BY INSTALLING, COPYING OR USING THE SOFTWARE OR THE DOCUMENTATION THAT ACCOMPANIES THIS LICENSE AGREEMENT (THE "DOCUMENTATION"), LICENSEE AGREES TO THE TERMS OF THIS LICENSE AGREEMENT ON BEHALF OF THE PARTY ON WHOSE SERVER OR SYSTEMS THE SOFTWARE WILL BE AVAILABLE FOR USE.

IF YOU DO NOT HAVE AUTHORITY TO BIND SUCH PARTY OR IF LICENSEE DOES NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, CLICK ON AN "ACCEPT" BUTTON, OR USE THE SOFTWARE; AND PROMPTLY RETURN THE UNUSED SOFTWARE AND DOCUMENTATION TO THE PARTY FROM WHOM IT WAS OBTAINED FOR A REFUND OF THE AMOUNT PAID. IF THE SOFTWARE WAS DOWNLOADED, DESTROY ALL COPIES OF THE SOFTWARE.

- A. Licensor has developed and markets document imaging, enterprise content management, and related software programs, solutions and products under the brand name Laserfiche®.
- B. Laserfiche Software includes confidential proprietary information and trade secrets of Licensor, which embody substantial creative efforts and confidential information, ideas, and expressions. Licensor has invested large amounts of capital and time to develop and promote the Software. Licensor claims copyrights in the Software.
- C. Licensee understands that the Software is compatible only with certain types of computers and operating systems and that Licensee is responsible for assuring the compatibility between its computer systems, its software solutions, if any, and the Software.

THEREFORE, in consideration of the premises and covenants contained in this License Agreement, Licensor and Licensee agree as follows:

1. Grant of License. Licensor grants Licensee a limited, non-exclusive, non-transferable license to install and use the Software subject to the terms and conditions of this License Agreement, the Acquisition Agreement, and the Documentation (the "**License**").

- A. Description of the Software. The Software may include, without limitation,: (a) "**Server Software**" that provides document management services to other programs; (b) "**Client Software**" that allows a computer or workstation to access or utilize the services functionality provided by the Server Software; (c) "**Stand-alone Software**" that operates on a single computer; (d) "**Demonstration Software**" that is provided only for demonstration, testing and feedback purposes; (e) "**Distributed Computing Cluster Software**" that allows distribution of processing work for certain Laserfiche application tasks onto other machines; and/or (f) "**Plug-in Software Modules**" that can be added to the previously mentioned types

of software. Specific additional terms that accompany a software development kit or Laserfiche software designated for "application service provider" purposes will also apply to Licensee.

B. Definitions.

- i. **"Acquisition Agreement"** means the applicable Licensor invoice, Licensee Order, or other written agreement by which Licensee acquires the License to the Software and which lists the specific Software products and components that Licensee acquires. The Acquisition Agreement may also grant additional rights to Licensee or limit the scope of the License being granted to Licensee. If a conflict or inconsistency arises between the terms of multiple acquisition documents, the following order of precedence will control: (1) an agreement for software, services and support that is negotiated and signed by both Licensor or a subsidiary of Licensor and Licensee; (2) applicable invoice(s); (3) Licensee's Order; and (4) any other writings that satisfy the definition of "Acquisition Agreement."
- ii. **"Documentation"** means getting started guides, user guides, quick reference guides, and other technical and operations manuals and specifications.
- iii. **"Licensor Confidential Information"** means all nonpublic information regarding the Software, whether disclosed by Licensor or others, that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Licensor Confidential Information also includes: (a) nonpublic information relating to Licensor or its affiliates, technology, Software, source code, trade secrets, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that Licensor is obligated to keep confidential by agreement or by law; and (c) the nature, content and existence of any agreements, discussions or negotiations between Licensee and Laserfiche, software resellers or affiliates. Licensor Confidential Information does not include any information that: (i) is or becomes publicly available without either a breach of this Agreement or a breach of an obligation of confidentiality by someone else; (ii) can be shown by documentation to have been known by Licensee when it received it from Licensor; (iii) is received from a third party that lawfully acquired and disclosed it; or (iv) can be shown by documentation to have been independently developed by Licensee without reference to the Licensor Confidential Information.
- iv. **"Licensee Order"** means an order, purchase order, or similar document that is submitted to Licensor by Licensee or a Laserfiche authorized reseller or distributor on Licensee's behalf, which specifies the particular Software products and components that Licensee intends to acquire, and which must be accepted by Licensor.
- v. **"Product Sheet"** means the Licensor documentation that specifies the limitations and restrictions of each release of the Software.

C. Limitations and Requirements.

- i. If the Software is furnished to Licensee with materials indicating that it is "Demonstration," "Evaluation," "Beta" or "Test" software, Licensee acknowledges that: (A) Licensor is furnishing the Software to Licensee solely for demonstration,

evaluation, testing and/or feedback purposes; (B) Licensee is strictly prohibited from using the Software for any purposes other than (i) demonstration of its capabilities to prospective licensees of the Software, (ii) evaluation and testing of the Software for suitability for the period allowed with the License, or (iii) providing feedback to Licensor; (C) demonstration, evaluation, beta and/or test Software may not be used in a production environment; (D) Licensor disclaims all warranties, representations or any other claims, express or implied, with regard to the Software's usability, reliability, performance, or overall quality; (E) Licensee's receipt of the Software does not constitute a license to use, sell, distribute, or commercialize the Software or copies of it. No compensation will be paid to Licensee for any use of the Software or for performing any service or giving any advice, analysis or feedback to, or for the benefit of, Licensor. Licensee assigns and agrees to assign to Licensor without charge any suggestions, ideas, improvements and resulting intellectual property relating to any feedback it provides, for any purpose. Licensor's rights to the feedback survive the termination of this License Agreement.

- ii. Licensee may use the Software only for the number and types of users, until the expiration date(s), if any, described in the Acquisition Agreement, and subject to the other limitations of the License.
- iii. Licensee waives all liability, claims, damages and suits against Licensor and its affiliates, and all of their respective employees, officers, directors, shareholders and contractors, in any way related to the unauthorized disclosure of, or access to, information, data or documentation in the databases, account, or in any repository, whether or not due to a defect in or malfunction of the Software. Licensee must indemnify and defend Licensor against any claim, suit, damages or other losses, including attorney's fees and expenses, resulting from or related to the use of the Software by Licensee. Licensee acknowledges that this License Agreement contains other limitations and waivers of damages and claims, and that Licensee's waiver of liability in this section is in addition to, and not in lieu of, Licensee's other waivers set forth elsewhere in this License Agreement.
- iv. Add-ons and additional features that the Software can support may be used only when listed in the Acquisition Agreement.
- v. Activation associates the use of particular software with a specific device. This procedure is to prevent unlicensed use. During activation, the Software will send information about the Software and the device to Licensor. This information may include the product key of the Software, the internet protocol address of the device and information derived from the hardware configuration of the device. By downloading and using the Software, Licensee consents to the transmission of this information.
- vi. If the Software requires a product key or keys to install or access it, Licensee is responsible for the use of the keys assigned to Licensee. Licensee is not authorized to share the keys with third parties.
- vii. If Licensee receives a License Manager or Laserfiche Directory Services (LFDS) program (the "**License Manager**") that enables installation of the Software for access by multiple users, Licensee may use the License Manager program only to configure the Software for access by the numbers and types of users, and subject to the other limitations, allowed under the License.
- viii. License specifies Server Software, Licensee may install one copy of the Server Software on a single physical or a single virtual operating system environment (the

running Server Software will be referred to as the "**Server**"). However, if a Laserfiche Rio product is licensed, Licensee may install the maximum number copies of the Server Software allowed under the License (referred to as "**instances**") to multiple physical or virtual operating system environments so long as those installations have continuous network access to a running instance of the included License Manager program. Licensee may have only one active instance at a time of any License Manager program in their production environment.

- ix. If License is for a Laserfiche Rio or a Laserfiche Avante software product, the License may include Distributed Computing Cluster Software. Licensee may operate one cluster, unless a greater number of clusters is allowed under the License, and then may operate up to the specified maximum number of clusters. If the License allows a maximum number of instances of the Distributed Computing Cluster Software, Licensee may include no more than the allowed number of machines running the Distributed Computer Cluster Software (referred to as "nodes") across their clusters. A scheduler node will count as one instance. Licensee may only run those Plug-in Software Modules to the Laserfiche Distributed Computer Cluster Software allowed under the License.
- x. The Server Software may only be operated with the database system(s) (Microsoft SQL Server or Oracle) listed in the Acquisition Agreement. If no database system is listed in the Acquisition Agreement, then such Server Software may only be operated with Microsoft SQL Server Express.
- xi. If the Acquisition Agreement includes an item labeled as "**databases**" or "repositories," the Server Software may only host such number of databases or repositories included with the License. However, if Laserfiche Rio is being licensed, each running copy of the Server Software may host up to the number of databases included with the License.
- xii. If the License is for Software with "**named user connections**," Licensee may allocate the named user connections to specific individuals or devices in its discretion. When a named user connection is allocated to a specific individual person's Laserfiche or external directory account, that individual may not share the use of that named user connection by sharing the use of the account with others. When a named user connection is allocated to a device, the connection may only be used from that device, and various individuals may share the use of that device so long as only one individual is accessing the Server Software from that device at a time. There are two principal types of named user connections: first, a named user connection capable of modifying a database governed by the Server (referred to as a "**Named Full User**") and, second, a named user connection capable of only read-only access (referred to as a "**Named Retrieval User**"). A third type of named user connection is available on a limited basis, which has all of the capabilities of a Named Retrieval User connection, plus a limited set of additional read-write capabilities. (referred to as "**Restricted Named User**"). Only the maximum number of each type of named user connection allowed under the License may be allocated to individuals or devices. Named user connections may not be routinely reallocated for the purpose of reducing the number of named user connections required.
- xiii. If the License specifies Software with "**concurrent user connections**," the concurrent user connections may be shared among individuals. There are two types of concurrent user connections: concurrent user connections capable of modifying a database governed by the Server (referred to as "**Concurrent Full User**" connections)

and concurrent user connections capable of only read-only access (referred to as "**Concurrent Retrieval**" connections). Once the maximum number of read-write or read-only concurrent user connections allowed under the License is reached, no additional user connections of that type may be made, until some user connections of that type are closed.

- xiv. "**Multiplexing**" occurs when Licensee utilizes hardware, software, an automated process, or other technical means (1) to pool connections, reroute information, or reduce the number of devices or users that directly access or use a Laserfiche software product; or (2) to permit access to more user connections than are authorized by the License; or (3) to automatically, routinely, or systematically reallocate named user connections for the purpose of either reducing the number of named user connections required by Licensee, or avoiding the purchase of additional named user connections. Hardware or software may not be used to multiplex.
- xv. If the License specifies a maximum number of "**Public Portal**" connections, which are intended to allow members of the public (referred to as "**Public Users**") read-only access to the Server Software only using a Laserfiche application known as WebLink, once the maximum number of Public Portal connections is reached, no additional Public Portal connections may be made until some Public Portal connections are closed. If the License allows a maximum number of CPU sockets that may be utilized to support Public Portal access, then Public Portal connections may be made only if the physical or virtual machine on which the Software is running has the allowed number of CPUs or fewer. If the License allows a maximum number of servers that may be utilized to support Public Portal access, then Public Portal connections may be made only on the allowed number of servers or fewer. If no maximum number of Public Portal connections, maximum number of CPUs for Public Portal access, or maximum number of servers for Public Portal access is allowed under the License, then no Public Portal connections may be made. If the Software is licensed with the Web Distribution Portal, all connections through WebLink will have the same security profile.
- xvi. Licensee may not install a version of the Server Software later than the version permitted by the License.
- xvii. If the License is subject to an expiration date, the Software that is subject to the expiration date may not be run after that date.
- xviii. If the License specifies one or more languages, then the Laserfiche user interface may only be run in those specified languages.
- xix. If Licensee desires to upgrade or enhance the capabilities of the Software or the numbers of users, connections or other features, Licensee must acquire the required additional rights from Licensor or an authorized Laserfiche reseller or distributor, in which case Licensee will also receive a new or updated Acquisition Agreement.
- xx. The Software may only be used as intended, according to the capabilities made available through its various user interfaces and according to the Documentation.
- xxi. As between Licensor and Licensee, Licensee will be solely responsible for configuring the Software and the databases to restrict access only to particular individuals who are permitted users of the Software and the databases. Licensee may delegate responsibilities relating to configuration to a third-party such as an authorized Laserfiche reseller; however, Licensee remains ultimately liable for complying with this License Agreement and the Acquisition Agreement.
- xxii. The basic forms features of Laserfiche may be used by Named Full Users. If the

License includes the Forms Portal feature, then Public Users may submit forms that initiate a forms business process, but Public Users may not participate in subsequent steps in the forms business processes, or create or configure forms or forms business processes, or otherwise use the basic forms features of Laserfiche. Named Retrieval Users and Restricted Named Users are defined as Public Users for this purpose. If the License includes the Forms Portal and Authenticated Participants, then users designated as Authenticated Participants may submit forms after authentication and may participate in forms business processes at steps after the initial submission. However, Authenticated Participants may not create or configure forms or forms business processes or otherwise use the basic forms features of Laserfiche. If the license includes Advanced Forms features, then Full Named Users may view the Performance Dashboard and configure reporting data visualizations, reporting aggregations, payment integration, and data lookups, while all user types may view and utilize preconfigured reporting data visualizations, reporting aggregations, payment gateway integration, and data lookups.

xxiii. If Licensee is acquiring a license to a Laserfiche Rio or a Laserfiche Avante Software product, the License may include Laserfiche Discussions Software if it is listed in the Acquisition Agreement. Licensee may operate the number of instances of the Laserfiche Discussions web application allowed under the License on the same number of physical or virtual operating system environments. If the software product is Laserfiche Rio, those Laserfiche Discussions installations must have continuous network access to a running instance of the included License Manager program. All users added to License Manager may log in and contribute content to the Laserfiche Discussions web site. Other site visitors, including Public Users, may read content on the Laserfiche Discussions web site, but they may not log in and contribute new content unless authorized under the License. If the License permits, the employees and contractors of Licensee, who are contractually obligated to use the Software solely in the course of Licensee's business and strictly in accordance with this License Agreement, may log in and contribute content, but only if they are listed in the section of the LDAP directory configured within Laserfiche Discussions or listed in the LFDS directory configured within Laserfiche Discussions.

xxiv. The Business Process Library includes templates for using Laserfiche Software to run business processes within an organization. The Business Process Library feature utilizes an internet connection. During retrieval of components of the Business Process Library, certain information is sent to Licensor, which may include a customer ID, anonymous user ID, and the internet protocol address of the workstation making the request. By using the Business Process Library feature, Licensee consents to the transmission of this information to Licensor. Business Process Library templates for Forms Professional may not be used with Forms Essentials.

D. Subscription License.

i. A Subscription License allows Licensee to use Laserfiche Software on a subscription basis (the "**Subscription**"). If the License is a Subscription License, Licensee may use the Software covered by the Subscription (the "**Subscription Software**") during the term of the Subscription until the Subscription expires or is otherwise terminated. After the Subscription expires or is terminated, the Subscription Software will stop

functioning entirely, and Licensee's rights to use the Subscription Software will terminate.

- ii. *Automatic Renewal.* Unless otherwise terminated according to the terms of this License Agreement, the Subscription will automatically renew for an additional 12-month term unless Licensee gives Licensor written notice of its intention not to renew the Subscription at least 45 days before the end of the then-current Subscription term. The renewal Subscription fee is due before the start of the renewal term.
- iii. *Modification of Fees Upon Renewal.* Licensor may modify the Subscription fee by notifying Licensee at least 90 days before the end of the then-current Subscription term. The Subscription fee change will take effect upon the start of the next Subscription term.
- iv. *Consequences of Non-Payment.* If Licensee fails to make full payment of the Subscription fee and any outstanding balance remains unpaid thirty (30) days after the due date, the Subscription Software will automatically stop functioning entirely. Licensee must make full payment of the Subscription fee before the Subscription Software will resume functioning.
- v. *Updates and Support.* The Subscription includes Software updates, access to online support resources, and Basic support as described in the Laserfiche Software Assurance Plan during the term of the Subscription. No portion of the Subscription will be credited toward the purchase of new Laserfiche Software products.
- vi. If the License specifies Community Users, Education Community Users, or Employee Participants, then each of these types may utilize all features permitted to Authenticated Participants and Named Retrieval Users. Community Users may not be used by employees or contractors of Licensee. Education community users may only be purchased by qualified educational institutions as defined in the Laserfiche Subscription guidelines.

2. Ownership of Software. The Software is licensed and is not sold. Licensor retains all rights to ownership of, and title to, the Software and Documentation (including all adaptations, copies and derivative works). Licensee is acquiring the license under the terms described in this License Agreement, and Licensee acquires no other rights.

3. Protection of Software. During the term of this License Agreement and for seven years following termination of this License Agreement, and for such additional period that the Software contains, embodies or consists of Licensor Confidential Information or trade secrets, Licensee agrees that it will not directly or indirectly, alone or in conjunction with any other person or company, (a) attempt to write or develop software in an effort to discover, copy or recreate the source code or any trade secrets contained or embodied in the source code; or (b) utilize the Software, Documentation, or Licensor Confidential Information, trade secrets, know how, ideas, plans, designs, specifications, coding, programming, processes, production techniques, technology, and methodology incorporated in the Software or Documentation, either directly or indirectly, to sell, market, develop or distribute any software product that competes with the Software; or (c) utilize the Software, Documentation, or Licensor Confidential Information, directly or indirectly, to assist, advise or consult with any other person or company in selling, marketing, developing or distributing any software product that competes with the Software; or (d) publish the Software for others to copy or use; or (e) utilize the Software, Documentation, or Licensor Confidential Information, directly or indirectly, to convert, or to assist, advise or consult with any other person or company to convert, any end user of the Software to a

software product that competes with the Software; or (f) seek to discover or use Licensor's trade secrets or Licensor Confidential Information by reverse engineering, decompiling, disassembling, copying or any other technique. Licensee must not remove any product identification, copyright legend or other notices from the Software or Documentation, or directly or indirectly attempt to challenge the validity of the copyrights, trademarks, and trade secrets in the Software claimed by Licensor or third parties identified in the Software or Documentation. The Software source code and the trade secrets therein are not licensed to Licensee, and all modifications of, additions to, or deletions from the source code are strictly prohibited. Licensee must obtain Licensor's prior written approval to disclose to a third party the results of any benchmark test of the Software.

4. Other Restrictions on Use. Unless a separate license expressly authorizes a particular application or use of the Software, such as for "application service provider" or for "Forms Portal users and Forms Authenticated Participants," all users of the Software must be employees, officers, directors, shareholders, owners or independent contractors of Licensee, who are only permitted to use the Software exclusively in the course of Licensee's business and strictly in accordance with this License Agreement. All other uses of the Software are strictly prohibited, including, without limitation, (a) use in the business of an application service provider, commercial software hosting business or a scanning bureau, and (b) transferring, copying or other dissemination of the Software outside of the legal person that constitutes Licensee. Licensee must not rent, lease, lend, sublicense, distribute, transfer, copy, reproduce, display, or timeshare with any other person the Software or Documentation or any right granted by this License. The restrictions in this paragraph do not apply to read-only access by public users who utilize an authorized read-only Public Portal connection.

5. Term and Termination. This License Agreement will commence and terminate as follows:

- A. The term of this License Agreement will commence upon Licensee's acceptance of this License Agreement and continue until terminated as provided in this License Agreement, provided that test, beta, evaluation, demonstration, Subscription or similar temporary Software will have their own expiration dates. In addition, if an Acquisition Agreement contains an express expiration date applicable to particular Software, Licensee will have no further right or license to use such Software after the expiration date. Licensor may terminate this License Agreement for cause immediately following a breach of this License Agreement. Licensor may also terminate this License Agreement if Licensee violates, infringes or compromises any trademark, copyright, patent or trade secret of Licensor or any third party identified in the Software or Documentation, or interferes with any relationship between Licensor and any of its other licensees, End Users, or authorized resellers of the Software, or materially breaches its obligation to pay for licenses to use the Software.
- B. Upon termination of this License Agreement, Licensee must immediately cease all use of the Software and the Documentation and return to Licensor or destroy all versions and copies of the Software and the Documentation. Licensee must remove and uninstall all such programs and materials from all hard drives and other devices on which the Software or the Documentation may be found.
- C. The termination of this License Agreement will not terminate Licensee's obligations under this License Agreement, nor will it release Licensee from the obligation to pay any monies that it may owe Licensor or operate to discharge any liability that Licensee incurs before termination or waive any obligation which is intended to survive termination.

6. LIMITED WARRANTY; DISCLAIMER. THE SOFTWARE IS WARRANTED TO THE ORIGINAL LICENSEE AGAINST MATERIAL DEFECTS FOR A PERIOD OF THREE MONTHS FROM THE DATE OF ORIGINAL ACQUISITION. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LASERFICHE LICENSES THE SOFTWARE TO LICENSEE "AS IS" AND WITH ALL FAULTS. LASERFICHE EXPRESSLY DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LASERFICHE DOES NOT WARRANT THAT (A) THE SOFTWARE OR ANY LASERFICHE PROFESSIONAL SERVICES ("SERVICES") OR LASERFICHE SUPPORT WILL SATISFY LICENSEE'S REQUIREMENTS; OR (B) THAT THE SOFTWARE, PERFORMANCE OF SERVICES AND DELIVERY OF SUPPORT WILL BE WITHOUT DEFECT OR ERROR; OR (C) THAT THE SOFTWARE WILL OPERATE WITHOUT INTERRUPTION. NO RESELLER, DISTRIBUTOR OR OTHER THIRD PARTY MAY MODIFY, SUPPLEMENT OR CHANGE THIS WARRANTY, AND ANY SUCH MODIFICATIONS, SUPPLEMENTS OR CHANGES WILL BE WITHOUT ANY LEGAL FORCE OR EFFECT.

7. NO CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES WILL LASERFICHE OR ITS SUBSIDIARIES, AFFILIATES, RESELLERS, DISTRIBUTORS, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, CONSULTANTS, OR SUPPLIERS (COLLECTIVELY, "REPRESENTATIVES") BE LIABLE TO LICENSEE OR ANYONE ELSE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS; LOSSES FROM BUSINESS INTERRUPTION; LOSS OF BUSINESS REVENUES, INFORMATION OR DATA; COSTS OF RECREATING LOST INFORMATION OR DATA; OR COSTS OF SUBSTITUTE SOFTWARE, SERVICES, OR SUPPORT; OR ANY OTHER PECUNIARY LOSS WHATSOEVER), REGARDLESS OF WHETHER LASERFICHE OR ITS REPRESENTATIVES HAVE BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

8. ADDITIONAL LIMITATIONS ON DAMAGES. ANY AND ALL DAMAGES SUFFERED BY LICENSEE OR ANYONE ELSE FOR WHICH LASERFICHE OR ITS REPRESENTATIVES ARE LIABLE, WHETHER RELATING TO THE SOFTWARE, SERVICES, OR SUPPORT, WHETHER BASED ON A BREACH OF CONTRACT OR WARRANTY, OR NEGLIGENCE, MISREPRESENTATION OR OTHER TORT, OR ON ANY OTHER LEGAL OR EQUITABLE THEORY, WILL BE STRICTLY LIMITED TO THE ACTUAL DOLLAR AMOUNT THAT LICENSEE ACTUALLY PAID FOR THE DEFECTIVE SOFTWARE COMPONENT, SERVICES OR SUPPORT WITHIN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THAT LASERFICHE RECEIVES NOTICE OF AN EXISTING OR POTENTIAL CLAIM OR SUIT AGAINST IT. NO CLAIM OR SUIT MAY BE BROUGHT AGAINST LASERFICHE OR ITS REPRESENTATIVES BASED ON A BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, MISREPRESENTATION OR OTHER TORT, OR ON ANY OTHER LEGAL OR EQUITABLE THEORY, MORE THAN ONE YEAR AFTER LICENSEE FIRST DISCOVERED OR SHOULD HAVE DISCOVERED ANY OF THE FACTS THAT GAVE RISE TO THE CLAIM OR SUIT. THIS LIMITATION APPLIES EVEN IF THE DAMAGES AVAILABLE TO LICENSEE OR ANY OTHER CLAIMANT DO NOT FULLY COMPENSATE THEM FOR ANY OR ALL OF THEIR LOSSES OR LASERFICHE WAS ADVISED, KNEW OR SHOULD HAVE KNOWN, ABOUT THE POSSIBILITY OF DAMAGES OR A CLAIM.

9. Copyright. The Software and the Documentation are owned by Licensor and are protected by United States and other international copyright laws, conventions and treaties. Licensee must treat the Software and Documentation like any other copyrighted material except Licensee may install the Software and the Documentation as expressly authorized by this License Agreement. Licensee may copy the Documentation solely for internal, reference purposes, as long as this License Agreement is in effect and the copy includes all trademark and copyright notices set forth on the Documentation, and the use

of such copy does not violate or breach any other term or provision of this License Agreement.

10. No Waiver. No failure by Licensor to exercise or delay in exercising any right, power, or privilege under this License Agreement will operate as a waiver of any right, power, or privilege under this License Agreement. No single or partial exercise by Licensor of any right, power, or privilege under this License Agreement will preclude further exercise of any such right, power or privilege.

11. Severability. If any provision of this License Agreement is adjudicated or held to be invalid or unenforceable by a court or arbitration panel, it will be interpreted to effect the intent of the original portion. If such construction is not possible, the invalid or unenforceable provision will be severed from this License Agreement and will be deemed to have never been a part of this License Agreement. Severance of any invalid or unenforceable provision will not affect the validity or enforceability of the remainder of this License Agreement.

12. Governing Law. This License Agreement is deemed to have been made in, and will be construed pursuant to the laws of the State of California as if all parties were residents of California and this License Agreement was to be wholly performed within the State of California without regard to choice or conflicts of law rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

13. Jurisdiction; Venue; Arbitration. Each party consents to the personal jurisdiction of the California Superior Court and the United States District Court for the Central District of California. Each party agrees to arbitrate any and all disputes in any way related to this License Agreement by final and binding arbitration in accordance with JAMS Arbitration Rules in effect at the time of the arbitration. The arbitrator's authority will be no greater than that which is available under the statutory or common law theory asserted. The arbitration will be heard by one arbitrator at JAMS offices in Los Angeles, California. Licensee further waives the right to bring a class action against Licensor, or to serve as a representative of a class in a class action against Licensor, whether in arbitration or in court. This paragraph does not apply to any agency or official body of the United States of America or any foreign government, or to their respective state, regional and local government bodies and subdivisions if, and to the extent that, it is unenforceable under applicable law.

14. Entire Agreement. This License Agreement is the complete and exclusive statement of the mutual understanding of the parties concerning its subject matter, and it supersedes all previous written and oral agreements, representations, warranties, statements, advertising and marketing materials, and other communications relating to the subject matter of this License Agreement. No course of performance, course of dealing, or usage of trade will override the written terms of this License Agreement.

15. Modifications to the License Agreement. If Licensee installs a new version of the Software, or any update, modification, or upgrade of the Software, the Licensor License Agreement applicable to the new updated, modified or upgraded version of the Software will modify this License Agreement upon such installation, if or to the extent that the new Licensor License Agreement is different than this License Agreement. A revised version of the License Agreement will be available at www.laserfiche.com/eula/home. By continuing to use the Software after the effective date of any modifications to this License Agreement, Licensee agrees to be bound by the modified terms.

16. Limitation on Actions. Any suit, claim, action or proceeding based on or related to this License

Agreement, its terms, provisions or warranties, or arising out of its performance or breach, whether in contract or tort, must be instituted by Licensee against Licensor or its Representatives within one year after the occurrence of any one or more of the acts, omissions, facts, conduct, events, claims or allegations upon which the action, proceeding or claim is based. Licensee waives the benefit of any statute of limitations which specifies a period longer than one year for filing an action or proceeding.

17. U.S. Government Restricted Rights Notice. This Software is provided with restricted rights. Use, duplication or disclosure for or by the government of the United States, including without limitation any of its agencies or instrumentalities, is subject to the restrictions set forth, as applicable: (i) in subparagraphs (a) through (d) of the *Commercial Computer Software Restricted Rights* clause at FAR 52.227-19; (ii) in subparagraph (c)(1)(ii) of the *Rights in Technical Data and Computer Software* clause at DFARS 252.227-7013; or (iii) in similar clauses in other federal regulations, including the NASA FAR supplement. Licensee and any end user must not remove or deface any restricted rights notice or other legal notice appearing in the Software or on any packaging or other media associated with the Software. The contractor/ manufacturer is Compulink Management Center, Inc. dba Laserfiche, a California corporation with its principal offices located at 3545 Long Beach Blvd., Long Beach, California 90807.

18. Export Restrictions. Licensee acknowledges that the Software and all related technical information, documents, and materials are subject to United States export jurisdiction and controls under the U.S. Export Administration Regulation. Licensee must comply with all applicable federal, state, county, and local laws, ordinances, regulations, and codes including, but not limited to, the procurement of required permits, certificates, approvals, and inspections in Licensee's performance of this Agreement. In addition, Licensee must comply with applicable international export laws and regulations. Licensee represents, warrants and certifies that Licensee will (i) comply strictly with all legal requirements, (ii) cooperate fully with Licensor in any official or unofficial audit or inspection that relates to these controls, and (iii) not export, re-export, divert, transfer, or disclose, directly or indirectly, any Software or related technical information, document, or material or direct products to any country restricted by applicable export laws or regulations, as modified from time to time, or to any national or resident of such country, unless Licensee has obtained the prior written authorization of Licensor, the U.S. Commerce Department and any other required governmental authority.

19. Captions. The captions used on this License Agreement are for convenience only and are not a part of this License Agreement.

Should Licensee have any questions concerning this Agreement, or if you desire to contact Laserfiche for any reason, please write to: **Laserfiche, 3545 Long Beach Blvd., Long Beach, CA 90807, U.S.A.**

Attachment 1 to Laserfiche EULA
(Licensed Software)

The following Software in the quantity indicated is being licensed to County pursuant to the Laserfiche End User Software License Agreement:

1. Laserfiche Avante Server for SQL Express with Workflow (1);
2. Laserfiche Named Full User with Web Access, Snapshot, and Email (6);
3. Laserfiche Forms Professional (6);
4. Laserfiche Forms Portal Add-on (1);
5. Laserfiche Import Agent (1);
6. Laserfiche Weblink Dist. Portal (5 retrieval users – 1 user profile) (1)

Appendix D

SOFTWARE MAINTENANCE AND SUPPORT

This Software Maintenance and Support Appendix is part of the Agreement. Capitalized terms used in this Software Maintenance and Support Appendix and not otherwise defined have the meanings set forth in the General Conditions of the Agreement.

- A. Basic Support. Contractor will provide the following basic Laserfiche software support to County:
1. Telephone support within 24 hours;
 2. Product updates;
 3. 24-7 access to the Knowledge Base, discussion forums and other educational resources on the Laserfiche Support Site.
- B. Priority Support Terms for Onsite and Remote Support for Laserfiche.
1. Contractor will provide two-hour response time to County calls, and a dedicated account manager familiar with your organization and specific solution to provide consultative check-ups and additional care.
 2. Contractor's ECS Priority Support includes:
 - a. Unlimited Telephone Support: Contractor will respond within two hours by telephone, when the customer contacts Contractor utilizing the single point of contact support line. A toll-free number is also available and a dedicated email address for requests: helpdesk@ecsimaging.com.
 - b. Hardware Support: Contractor will provide warranty administration and installation of warranty repaired items purchased through Contractor.
 - c. Software Support: Installation of Laserfiche Software updates and modifications. Additional training on new features as required. Software by other manufacturers will be the Clients' responsibility.
 - d. On-site/Remote Support hours available at \$255 per hour. Also when extraordinary situations occur such as a system corruption for unknown reasons or system tampering at client site. Network support is always a chargeable item.
 - e. Consulting Support: When Contractor is on site, it will audit the system and determine system/application modifications for consistency.
 - f. Travel time and lodging are included.
 - g. Support hours are Monday through Friday, excluding major holidays, 8:00 a.m. to 5:00 p.m. PST.
 - h. Emergency after hours support is available at \$450 per hour with a one hour minimum per call.
 - i. Two free admissions to the ECS Annual Customer Conference along with free admission to quarterly user groups.
 - j. Monthly E-Newsletter to be informed of the latest Laserfiche and industry news, customer case studies.

Contra Costa County
Contractor:

Project Name:
Project No.:

- k. Contractor will provide two Laserfiche Empower Training Conference scholarships to County. One scholarship will be issued in 2020 and the second scholarship will be issued in 2021.

Contra Costa County
Inc.
Standard Form Software and Services Agreement
Revised 2014

Project Name: ECS Imaging,

Project No.:

**Special Conditions
(Software and Services Agreement)**

County and Contractor hereby agree that these Special Conditions modify the General Conditions of the Agreement and are part of the Agreement.

Section 21.4 (Intellectual Property Rights) of the Agreement is hereby deleted in its entirety and replaced with the following:

"21.4. Intellectual Property Rights. Contractor is a third-party authorized reseller for Compulink Management Center, Inc., the licensor of the Software ("Licensor") pursuant to this Agreement. Licensor is licensing Software to County pursuant to the Licensor's Laserfiche End User Software License Agreement (EULA) attached to this Agreement as Appendix C (Software License)."

**SOFTWARE AND SERVICES AGREEMENT
GENERAL CONDITIONS**

Section 8. Definitions. The following terms have the following definitions. The definitions of terms herein apply equally to the singular and plural forms of the terms defined.

- 8.1. "Agreement" has the meaning set forth in the first paragraph of the Basic Terms.
- 8.2. "Authorized Representative" means, for each party, the individual designated by that party as its authorized representative in Section 1 of the Basic Terms.
- 8.3. "Basic Terms" has the meaning set forth in the first paragraph of the Software and Services Agreement, dated the Effective Date, between Contractor and the County.
- 8.4. "Business Day" means Monday through Friday, excluding holidays observed by the County.
- 8.5. "Confidential Information" means any nonpublic information pertaining to County employees or County operations, and Contractor's proprietary information and trade secrets regarding the Software and Documentation. County Confidential Information includes, but is not limited to, data, medical records, records concerning any individual relating to services provided, employment records, personnel data, payroll data, passwords to County computer systems, methods of accessing County computers and data, proprietary software, and any information or documents identified as confidential in a writing signed by County's Authorized Representative, or designee, and delivered to Contractor. Contractor Confidential Information expressly includes, without limitation, the Software and Documentation. Confidential Information does not include information which the party receiving the information can document: (i) was in the possession of or known by it without an obligation of confidentiality prior to receipt of the information; (ii) is or becomes general public knowledge through no act or fault of the receiving party; (iii) is or becomes lawfully available to the receiving party from a third party without an obligation of confidentiality; and (iv) is independently developed by the receiving party without the use of any Confidential Information.
- 8.6. "Contractor" means the contractor identified in Section 1(b) of the Basic Terms.
- 8.7. "Contractor Project Manager" means Contractor's representative designated in writing to County to act as County's primary contact with Contractor for this Agreement.
- 8.8. "County" means the agency identified in Section 1(a) of the Basic Terms.

- 8.9. "County Project Manager" means County's representative designated in writing to Contractor to act as County's primary contact with Contractor for this Agreement.
- 8.10. "Documentation" means the Product documentation delivered by Contractor to County, or made available to County, that describes the use, operation, design, specifications, or requirements of the Product or a Product release. Documentation may be either in hard copy or electronic format. User manuals, administration manuals, data models, reference guides, installation manuals, system administrator manuals, technical guides, and requirements documents are some examples of Documentation. Documentation includes all documentation developed for County pursuant to this Agreement.
- 8.11. "Effective Date" means the effective date set forth in Section 3 of the Basic Terms.
- 8.12. "General Conditions" mean the General Conditions attached to the Basic Terms.
- 8.13. "Hardware" means any hardware as well as any replacement or other hardware provided by Contractor pursuant to this Agreement.
- 8.14. "Maintenance and Support Services" means the provision of technical information, assistance, error correction, repair services, and repair parts for the Product as set forth in Appendix D (Maintenance and Support).
- 8.15. "Major Change" has the meaning set forth in Section 14.3 below.
- 8.16. "Minor Change" has the meaning set forth in Section 14.2 below.
- 8.17. "Public Records Act" has the meaning set forth in Section 15.2 below.
- 8.18. "Product" means the goods, materials, supplies, parts, assemblies, equipment, Hardware, Software, and Documentation being provided by Contractor under this Agreement.
- 8.19. "Project" means all work performed by Contractor pursuant to this Agreement.
- 8.20. "Services" means all services and labor to be provided by Contractor and its subcontractors pursuant to this Agreement.
- 8.21. "Software" means the object code version of Contractor's software that is licensed to County pursuant to the Software License Appendix. Software includes the specific modules and functionality listed in Appendix F (Deliverables) of this Agreement, any fixes, updates, modifications, enhancements, customizations, and new versions (if any) as may, from time to time, be provided to County pursuant to Appendix D (Maintenance and Support) of this Agreement.

- 8.22. “Software License Appendix” means Appendix C (Software License) to this Agreement, under which Contractor licenses the Product to County.
- 8.23. “System” means the Product, Hardware, and any Documentation provided pursuant to this Agreement.
- 8.24. “Third-party Software” means software that has been developed and maintained by a party or parties other than Contractor.
- 8.25. “User” means a person who is authorized by County to use the Product in a specific manner that may include, without limitation, viewing, searching, modifying, and or deleting data, and which occupies one of the Software licenses licensed under the Software License Appendix.

Section 9. Continued Maintenance and Support Services. Contractor shall make available, for County’s purchase, Contractor’s annual Maintenance and Support Services for the System and/or Products as set forth in Appendix D (Maintenance and Support) for so long as Contractor makes Maintenance and Support Services generally available to other licensees of the Software and System. Contractor shall make its annual Maintenance and Support Services available to County at the rates set forth in Appendix B (Payment Provisions).

Section 10. Delivery Terms. If Products are to be installed by Contractor or Contractor’s subcontractor, then upon Contractor’s delivery of Products to a common carrier for shipment to County, title and risk of loss with respect to such Products will automatically pass to County, and any loss or damage thereafter will not relieve County of any obligation hereunder. Contractor shall insure all shipments to County. Unless otherwise agreed in writing by County, Contractor shall package all items in accordance with Contractor’s normal practices. If Products are to be installed by Contractor or Contractor’s subcontractor, then title and risk of loss with respect to such Products will not pass to County until County has accepted installation in accordance with the procedures specified in Section 11 (Final Acceptance) below.

Section 11. Final Acceptance. County’s acceptance of the System, Products, and Services will occur according to Appendix G (Performance and Acceptance).

Section 12. Personnel and Subcontractors.

- 12.1. Contractor Personnel. Contractor shall employ only competent personnel to work on the Project.
- 12.2. Subcontracts. Contractor may not enter into subcontracts for any work contemplated under this Agreement, nor may Contractor assign this Agreement, monies due or to become due, by operation of law or otherwise, without the prior written consent of County’s Authorized Representative.
- 12.3. Subcontractor Requirements. Contractor is responsible for the performance or non-performance by its subcontractors of the tasks set forth in this Agreement.

Contractor shall contractually require all subcontractors performing work on the Project to abide by the provisions of this Agreement.

- 12.4. Contractor and Subcontractor Employee Performance. Immediately upon receipt of written notice from County's Authorized Representative that any Contractor employee, or employee of a subcontractor to Contractor, is not performing work on the Project in a satisfactory manner, Contractor shall remove such employee and, within a reasonable period of time, replace such employee with a qualified employee.
- 12.5. County and Contractor Relationship. The parties intend that Contractor, in performing the services specified herein, is acting as an independent contractor and that Contractor shall control the work and the manner in which it is performed. This Agreement is not to be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture, or association. Nothing contained in this Agreement authorizes either party to act as the agent or legal representative of the other for any purpose. No provision of this Agreement grants either party any express or implied right of authority to assume or to create any obligation or responsibility on behalf of or in the name of the other party, or to bind the other party in any manner or thing whatsoever. Contractor and its employees, subcontractors, and subcontractors' employees are not, and will not be deemed to be, employees of County. This Agreement does not give Contractor any right to participate in any pension plan, workers' compensation plan, insurance, bonus, or similar benefits County provides to its employees. If County exercises its right to terminate this Agreement, Contractor expressly agrees that it shall have no recourse or right of appeal under any rules, regulations, ordinances, or laws applicable to employees. Contractor and its subcontractors are solely responsible for the payment of their respective employees' compensation, including employee taxes, workers' compensation, and any similar taxes associated with their employment.

Section 13. Assistance from County; Rules of Access; Change Management.

- 13.1. County Assistance. The County's Authorized Representative and other assigned staff will assist Contractor with the implementation of the Product as necessary.
- 13.2. Access Rules. While on County's premises in connection with the performance of this Agreement, Contractor shall cause its personnel to comply with County's applicable rules with respect to security, conduct and other matters concerning access to County's premises. Such rules may require in some cases background checks and escorts for Contractor and subcontractor personnel. Upon receipt of notice from County's Authorized Representative, Contractor shall immediately remove any of its personnel assigned to perform work under this Agreement who do not comply with such rules.
- 13.3. Project Hours. Unless otherwise requested in writing by County's Authorized Representative, that portion of the Project work to be done on County premises

by Contractor and its subcontractors will be performed between the hours of 8:00 a.m. and 5:00 p.m. on Business Days or as requested by County.

- 13.4. Technical Change Management. In performing its duties for the Project, Contractor shall comply with County's requirements with respect to technical and operational change management. It is understood by Contractor that changing County's computers, in particular its mainframes, requires advance notice and compliance with established County procedures.

Section 14. Changes.

- 14.1. Change Management. Additions, deletions, and modifications to the Products and Services specified under this Agreement may occur only in accordance with the procedures set forth in this Section 14.
- 14.2. Minor Changes. A "Minor Change" means a change that (i) costs no more than \$5,000, and (ii) does not affect a material term of this Agreement, such as the term or payment limit of this Agreement or the nature of the scope of services to be provided. Minor Changes may be made by the mutual written agreement of the Authorized Representatives of Contractor and County without the necessity of a formal proposal and estimates so long as they do not cause the payment limit of this Agreement to be exceeded.
- 14.3. Major Changes. A "Major Change" means a change that affects a material term of this Agreement, such as the payment limit of this Agreement, Agreement term, or nature and general scope of services. A party seeking a Major Change will inform the other party in writing of the details of the proposed Major Change and any requested terms concerning the change. For a Major Change requested by Contractor that involves additional or deleted Products or Services, Contractor shall include a written proposal containing the cost of the additional or deleted Product or Service involved in the Major Change, and any impacts upon price, delivery schedule, or other terms. For a Major Change requested by County, Contractor shall respond with a written proposal containing the cost of the additional or deleted Services involved in the Major Change within ten (10) Business Days after receipt of a written request for the Major Change. All Major Changes require a written amendment to this Agreement, which may require approval by the County Administrator or by County's Board of Supervisors.
- 14.4. Change Requirements. No change, whether major or minor, is binding upon County, and Contractor may not proceed with any change, unless the change is stated in writing and properly approved by each party's Authorized Representative.

Section 15. Confidential Information.

- 15.1. Contractor Handling of Confidential Information. In the course of performing Work on the Project, Contractor and its subcontractors may be exposed to Confidential Information. Contractor may use Confidential Information only

as needed for the Project and may not disclose Confidential Information to others without the advance written consent of County's Authorized Representative. Contractor shall protect, and shall cause its subcontractors to protect, Confidential Information with the same degree of care that they regularly employ to safeguard their own confidential information of a like nature from unauthorized disclosure, but no less than a reasonable degree of care. If Contractor or its subcontractor is required by a governmental agency, court or other quasi-judicial or other regulatory body, or by State or Federal law, to disclose Confidential Information received under this Agreement, Contractor and its subcontractors will not be liable for such disclosure if, prior to such disclosure, Contractor and its subcontractors give notice as promptly as reasonably possible to County's Authorized Representative of such required disclosure so that County may contest such required disclosure. Except as provided herein, Contractor may not disclose Confidential Information.

- 15.2. County Handling of Confidential Information. County acknowledges that, during the course of the Project, it and its Authorized Representative and personnel may gain access to information that Contractor has marked "Confidential" and/or "Proprietary." Except as required by law, County and its Authorized Representative and personnel shall not disclose any of Contractor's information marked "Confidential" and/or "Proprietary" to any person without Contractor's specific written authorization, except that County may disclose such information on a need-to-know basis to Authorized Representatives of County without Contractor's specific written authorization. Notwithstanding anything contained herein to the contrary, County is a political subdivision of the State of California and is subject to the California Public Records Act (California Government Code Section 6250 et seq., the "Public Records Act"). Any of Contractor's information marked "Confidential" and/or "Proprietary" that County may be obligated to disclose under California law may be released and disclosed by County pursuant to the Public Records Act, and any such release or disclosure shall not in any way constitute a breach of this Agreement, nor will County be liable to Contractor for such release or disclosure.
- 15.3. Public Records Act. If County receives a request under the Public Records Act for disclosure of information that Contractor has specifically marked "Confidential" or "Proprietary," County will provide Contractor with written notice of such request (the "Notice of Request for Disclosure"). If Contractor has a reasonable basis for contending that the disclosure of such information is not required by the Public Records Act, Contractor shall, within eight (8) days following the date of mailing of the Notice of Request for Disclosure, notify County in writing of its objection to disclosure of the information and the basis therefor. If County determines that the information requested is not exempt from disclosure and intends to release the requested information in compliance with the Public Records Act, then it will provide written notice of such intent to Contractor ("Notice of Disclosure"), and the Contractor shall then have ten (10) days from the date of the Notice of Disclosure to seek relief from disclosure required under the Public Records Act in court. If County receives no written objection from Contractor within ten (10) days of the date of the

Notice of Disclosure, County may disclose the information referenced in the Notice of Disclosure. Contractor is responsible for any attorneys' fees or costs County incurs as a result of Contractor's objection to disclosure.

- 15.4. Confidentiality Laws. Contractor agrees to comply, and to require its officers, partners, associates, agents and employees to comply, with all applicable state and federal statutes and regulations respecting confidentiality, including but not limited to, the identity of persons served under this Agreement, their records, or services provided them, and assures that no person shall publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such service. Contractor agrees to inform all employees, agents and partners of the above provisions, and that any person knowingly and intentionally disclosing such information other than as authorized by law may be guilty of a misdemeanor.
- 15.5. Return of Confidential Information. Except for Confidential Information contained in Documentation prepared for County by Contractor or its subcontractors hereunder, upon request by County's Authorized Representative, Contractor and its subcontractors shall return Confidential Information to the County, along with all copies and notes made from it.
- 15.6. Survival. This Section 15 shall survive the termination of this Agreement. Nothing in this Agreement is intended to prevent the County from complying with the Public Records Act and Contractor does not have nor shall it claim any right to damages resulting from the County's production of records in response to a Public Records Act request.

Section 16. Default.

- 16.1. Default. Contractor's failure to perform any provision of this Agreement, or to render its performance under this Agreement in a timely manner, is a default.
- 16.2. Notice to Cure. If Contractor's default is curable, County may, but is not required to, deliver written notice to cure a default to Contractor ("Notice to Cure"). Within thirty (30) days following the mailing of the Notice to Cure, Contractor shall cure the default. If Contractor fails to cure such default within thirty (30) days of the date the Notice to Cure is mailed, then, in addition to any other rights available to under law or equity, County may terminate this Agreement without further notice.
- 16.3. Remedy. If a default is not curable or if County elects not to give Contractor a Notice to Cure, then, in addition to any other rights available to it under law or equity, County may immediately terminate this Agreement without notice. Upon termination by County for Contractor's default, Contractor shall provide County with a pro-rata refund of all Maintenance and Support Services fees and Software license Fees paid in advance.

Section 17. Termination.

17.1. County Termination. In addition to the termination rights granted under Section 16 (Default), County may terminate this Agreement in whole or in part, with or without cause, at any time by providing thirty (30) days advance written notice of termination to Contractor. County's notice of termination may direct Contractor to stop work immediately on some or all of the Project and may direct Contractor to continue work until the termination date on other portions of the Project.

17.2. Contractor Termination. Contractor may terminate this Agreement at any time by providing County ninety (90) days advance written notice of termination.

17.2.1. Actions After Termination. After Contractor sends County a notice of termination or receives County's notice of termination, Contractor shall: (a) comply with the instructions of County with respect to stopping or continuing work until the termination date; (b) place no further orders or subcontracts for Products or third-party services, except as otherwise directed by County; (c) terminate all orders for Products and subcontracts to the extent they relate to the performance of work terminated by the notice of termination; (d) return Products to their suppliers, if requested by County and permitted by such suppliers; (e) deliver Documentation and any custom Software to County in the form it is then in; and (f) return to County all Confidential Information, along with all copies and notes made from it and a certificate signed by Contractor's Authorized Representative evidencing compliance with this provision.

17.2.2. Refund of Fees. If this Agreement is terminated, County is entitled to a pro-rata refund of all Maintenance and Support Services fees and Software license Fees paid in advance.

Section 18. Infringement Protection.

18.1. Infringement Indemnification. If a third party claims that the Product or System infringes any United States patent, copyright, trade secret or similar intellectual property right, Contractor shall defend County against such claim at Contractor's expense and pay all damages that a court finally awards against County. If such a claim is made or appears possible, Contractor shall, within sixty (60) days of such claim, and at its option: (a) secure for County the right to continue to use the infringing portion of the Product or System; or (b) modify or replace the Product and System so that it is non-infringing but retains equivalent functionality. If neither of the foregoing options is reasonably available, Contractor shall require County to return the infringing module(s) of the Product or System, and Contractor shall refund County an amount equal to the Software license fee paid for such module(s) under this Agreement, multiplied by the quotient of (60 *minus* the number of months elapsed after the Go-Live date) *divided* by 60 months. The foregoing notwithstanding, Contractor shall have no obligation to indemnify County for

any infringement claim based on County's modification or misuse of the Product, if the claim would have been avoided had the Product not been modified or misused.

18.2. Royalty Costs. The cost of all royalties or other charges for any patent, copyright, trademark, trade secret, or other proprietary right used in the Project is included in the price for the Project.

18.3. Survival. This Section 18 shall survive termination of this Agreement.

Section 19. Indemnification.

19.1. Indemnification. Contractor shall defend, indemnify, save, and hold harmless County and its officers and employees from any and all claims, demands, losses, costs, expenses, and liabilities for any damages, fines, sickness, death, or injury to person(s) or property, including any and all administrative fines, penalties or costs imposed as a result of an administrative or quasi-judicial proceeding, arising directly or indirectly from or connected with the services provided under this Agreement that are caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, subcontractors, or any persons under its direction or control. If requested by County, Contractor shall defend any such suits at its sole cost and expense. If County elects to provide its own defense, Contractor shall reimburse County for any expenditures, including reasonable attorney's fees and costs. Contractor's obligations under this Section 19 exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Contractor is not required to indemnify County for the proportion of liability a court determines is attributable to the sole negligence or willful misconduct of the County, its officers and employees. This provision will survive the expiration or termination of this Agreement.

19.2. County Responsibilities. County will promptly inform Contractor of any claims or suits being made or brought against County that arise under the terms of this Agreement. County will allow Contractor or its suppliers to control the defense against such claims and suits, and will cooperate, at Contractor's expense, in the defense against any such claim or suit, provided however, that in no event may Contractor make any admission of guilt or liability on behalf of County without County's prior written consent.

Section 20. Insurance.

20.1. Maintenance of Insurance. During the entire term of this Agreement and any extension or modification hereof, Contractor shall keep in effect insurance policies meeting the following insurance requirements:

20.1.1. Commercial General Liability Insurance. Contractor shall provide commercial general liability insurance, including coverage for business losses and for owned and non-owned automobiles, with a minimum

combined single limit coverage of \$1,000,000 for all damages, including consequential damages, due to bodily injury, sickness or disease, or death to any person or damage to or destruction of property, including the loss of use thereof, arising from each occurrence. Contractor shall cause such insurance to be endorsed to include County and its officers and employees as additional insureds as to all services performed by Contractor under this Agreement. Such policies must constitute primary insurance as to County and its officers, agents, and employees, so that other insurance policies held by them or their self-insurance programs will not be required to contribute to any loss covered under Contractor's insurance policy or policies. Contractor shall provide County with a copy of the endorsement making the County an additional insured on all commercial general liability policies as required herein no later than the effective date of this Agreement.

20.1.2. Workers Compensation. Contractor shall provide workers' compensation insurance for its employees with statutory limits as required by the Labor Code of the State of California.

20.1.3. Cyberinsurance. If Contractor will be hosting County data or the Software on Contractor's servers, Contractor shall provide commercial cyberinsurance, in form and substance satisfactory to County, including without limitation, coverage for loss of data, breaches of personally identifiable information, call center services, credit monitoring remedies, and identity restoration services. Contractor shall cause such insurance to be endorsed to include County and its officers and employees as additional insureds. Such policies must constitute primary insurance as to County and its officers, agents, and employees, so that other insurance policies held by them or their self-insurance programs will not be required to contribute to any loss covered under Contractor's insurance policy or policies. Contractor shall provide County with a copy of the endorsement making the County an additional insured on its commercial cyberinsurance policies as required herein no later than the effective date of this Agreement.

20.2 Documentation of Coverage. Contractor shall submit to County properly executed certificates of insurance clearly evidencing all coverages and limits required above and copies of additional insured endorsements required above prior to the Effective Date of this Agreement. Contractor agrees to maintain current certificates of insurance evidencing the above-required coverages, limits, and endorsements evidencing the above-specified requirements on file with the County for the duration of this Agreement. If Contractor renews an insurance policy or acquires either a new insurance policy or amends the coverage afforded through an endorsement to a policy at any time during the term of this Agreement, Contractor shall provide a current certificate of insurance.

- 20.3. Notice of Cancellation and Material Changes. No later than five days after Contractor's receipt of: (i) a notice of cancellation, a notice of an intention to cancel, or a notice of a lapse in any of Contractor's insurance coverage required by this Contract; or (ii) a notice of a material change to Contractor's insurance coverage required by this Contract, Contractor shall provide Department a copy of such notice of cancellation, notice of intention to cancel, notice of lapse of coverage, or notice of material change. Contractor's failure to provide Department the notice as required by the preceding sentence is a default under this Contract
- 20.4. Policy obligations. Contractor's indemnity and other obligations are not limited by the foregoing insurance requirements.
- 20.5. Survival. This Section 20 shall survive termination of this Agreement.

Section 21. Warranties. In addition to any other warranties made in this Agreement, Contractor makes the following representations and warranties to County:

21.1. Product Warranties.

21.1.1. Software. For a period of ninety (90) days following the date that County accepts the Product pursuant to Appendix G (Performance and Acceptance), Contractor warrants that the Product will perform in accordance with Appendix B (Deliverables), Appendix C (Service Plan), Appendix F (Performance and Acceptance Criteria), and the Documentation.

21.1.2. Hardware. For a period of one (1) year from the date of Contractor's installation of the Contractor-developed Hardware, Contractor warrants that such Hardware will be free from defects in material and workmanship.

21.2. Service Warranty. Contractor warrants to County that the Services to be performed by it and its subcontractors hereunder will be performed in a competent manner by qualified personnel in conformance with industry standards. This warranty will remain in effect during the entire term of this Agreement. To qualify for remedial action under this warranty, County must report a warranty failure to Contractor in writing. Contractor is not responsible for remedial action under this warranty to the extent the failure to meet the warranty is caused by modification to the Products by County or anyone other than Contractor or its subcontractors, unless such modification is performed under Contractor's or its subcontractor's direction, or is approved in writing by Contractor's Authorized Representative in advance of the modification. If Contractor fails to meet this warranty, Contractor shall use commercially reasonable efforts to correct the failure, provided County makes available to Contractor information concerning the failure. If Contractor is unable, by using reasonable efforts, to correct the failure within a reasonable period of time, Contractor shall refund to County that portion of the amounts paid by County

that is equivalent to the proportion of the Project affected by the failure and the severity of the failure with respect to the objectives of the Project.

- 21.3. Third-Party Warranties. The warranties, if any, issued by third-party manufacturers or suppliers of Products are included in such Products and Contractor shall cause such warranties to be transferred to County. Contractor represents and warrants that any Hardware manufactured by a third party and all Third-party Software qualifies for service under the manufacturer's or publisher's standard warranty and post-warranty maintenance. Contractor shall cause all necessary documentation to be executed to activate such warranty and post-warranty maintenance.
- 21.4. Intellectual Property Rights. Contractor represents and warrants that it has title to the Software and the authority to grant license to use the Software.
- 21.5. Title. Contractor represents and warrants to County that County will have good title to each of the Products, free and clear of all liens, encumbrances, and claims.
- 21.6. New Materials. Contractor warrants that unless otherwise agreed to in writing by County's Authorized Representative, only new materials will be used in each of the Products.
- 21.7. Destructive Programming. Contractor represents and warrants to County that at the time of installation, the Software is free of programming intentionally and specifically constructed for the purpose of destroying, interrupting, or otherwise adversely affecting the Software's code or other code or data in a computer, such as by replicating itself or another program many times without any useful purpose.
- 21.8. Organizational Authority. Contractor represents and warrants that it has the corporate power and authority and the legal right to enter into this Agreement and to grant the licenses contemplated by this Agreement and that it has not and shall not enter into agreements and shall not take or fail to take action that may cause Contractor's legal right or ability to grant such licenses to be restricted.
- 21.9. Ability to Perform. Contractor represents and warrants that it is aware of no circumstances that would impair its ability to fully perform its obligations under this Agreement.
- Section 22. Endorsement. Contractor may not, in its capacity as a contractor with County: (a) publicly endorse or oppose the use of any particular brand name or commercial product without the prior approval of County's Board of Supervisors; (b) publicly attribute qualities or success, or a lack thereof, to any particular brand name or commercial product without the prior approval of County's Board of Supervisors; or (c) take any action or make any appearance that could reasonably be interpreted as the endorsement of a product by County. Notwithstanding the foregoing, Contractor may express its view on products to other contractors, the Board of Supervisors,

County officers, or others who may be authorized by the Board of Supervisors or by law to receive such views.

Section 23. Assignment and Subcontracting.

23.1. Contractor may not assign, subcontract, or delegate any of its duties or obligations under this Agreement without prior written consent of County. Any attempted assignment, subcontract, or delegation by Contractor is void and of no effect. Contractor may, upon written notice to County, assign this Agreement or any right or obligation hereunder to any person or entity acquiring all or substantially all of the assets of Contractor and continuing the business of Contractor. This Agreement binds the heirs, successors, permitted assigns and representatives of Contractor.

23.2. All software and services from third parties to be provided by Contractor hereunder will be licensed to the County pursuant to the terms and conditions of the license agreements provided by the publishers or providers of such software or services.

Section 24. Choice of Law and Personal Jurisdiction. This Agreement is made in Contra Costa County and is governed by, and will be construed in accordance with, the laws of the State of California. The parties, to the fullest extent permitted by law, knowingly, intentionally, and voluntarily, with and upon the advice of competent counsel, submit to personal jurisdiction in the State of California over any suit, action or proceeding arising from or relating to the terms of this Agreement. Any action relating to this Agreement must be instituted and prosecuted in the courts of Contra Costa County, State of California.

Section 25. Compliance with Law. Contractor is subject to and must comply with all applicable federal, state, and local laws and regulations with respect to its performance under this Agreement, including but not limited to, licensing, employment, and purchasing practices; and wages, hours, and conditions of employment, including nondiscrimination. Should federal or state regulations or laws touching upon the subject of this Agreement be adopted or revised during the term hereof, this Agreement will be deemed amended to assure conformance with such federal or state requirements. Contractor agrees that all goods and services under this Agreement will be available to all qualified persons regardless of age, gender, race, religion, color, national origin, ethnic background, disability, or sexual orientation, and that none will be used, in whole or in part, for religious worship.

Section 26. Notices. All notices to be provided under this Agreement will be in writing and may be delivered by deposit in the United States mail, postage prepaid. Notices to County must be addressed to the department head of the County department for which this Agreement is made at the address set forth in the Basic Terms. Notices to Contractor must be addressed to the Contractor's address set forth in the Basic Terms. Notices sent by United States mail are effective three (3) days after the date of deposit in the mail.

Section 27. Records. Contractor must keep and make available for inspection and copying by authorized representatives of the County, the State of California, and the United States Government, the Contractor's regular business records and such additional records pertaining to this Agreement as may be required by the County.

27.1. Retention of Records. Contractor must retain all documents pertaining to this Agreement for five years from the date of submission of Contractor's final payment demand or final cost report; for any further period that is required by law; and until all federal/state audits are complete and exceptions resolved for this Agreement's funding period. Upon request, Contractor must make these records available to authorized representatives of the County, the State of California, and the United States Government.

27.2. Access to Books and Records of Contractor, Subcontractor. Pursuant to Section 1861(v)(1) of the Social Security Act, and any regulations promulgated thereunder, Contractor must, upon written request and until the expiration of five years after the furnishing of services pursuant to this Agreement, make available to the County, the Secretary of Health and Human Services, or the Comptroller General, or any of their duly authorized representatives, this Agreement and books, documents, and records of Contractor necessary to certify the nature and extent of all costs and charges hereunder.

Further, if Contractor carries out any of the duties of this Agreement through a subcontract with a value or cost of \$10,000 or more over a twelve-month period, such subcontract must contain a clause to the effect that upon written request and until the expiration of five years after the furnishing of services pursuant to such subcontract, the subcontractor must make available to the County, the Secretary, the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents, and records of the subcontractor necessary to verify the nature and extent of all costs and charges thereunder.

This provision is in addition to any and all other terms regarding the maintenance or retention of records under this Agreement and is binding on the heirs, successors, assigns and representatives of Contractor.

Section 28. Waiver.

28.1. No Implied Waiver. The waiver by County of any breach of any term or provision of this Agreement will not be deemed to be a waiver of such term or provision or of any subsequent breach of the same or any other term or provision contained herein.

28.2. No Waiver by County. Except as expressly set forth in this Agreement, inspections, approvals, or statements by any officer, agent or employee of County indicating that Contractor's performance or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of such performance, or payments therefor, or any combination of these acts, do not relieve Contractor's obligation to fulfill this Agreement as prescribed; nor is the County thereby prevented from bringing any action for

damages or enforcement arising from any failure to comply with any of the terms and conditions of this Agreement.

Section 29. Reporting Requirements. Pursuant to Government Code Section 7550, Contractor must include in all documents and written reports completed and submitted to County in accordance with this Agreement, a separate section listing the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of each such document or written report. This Section 29 applies only if the payment limit of this Agreement exceeds \$5,000.

Section 30. Nonrenewal. Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Agreement will be purchased by County under a new contract following expiration or termination of this Agreement, and Contractor waives all rights or claims to notice or hearing respecting any failure to continue purchasing all or any such services from Contractor.

Section 31. No Third-Party Beneficiaries. Nothing in this Agreement may be construed to create, and the parties do not intend to create, any rights in third parties.

Section 32. Copyrights, Rights in Data, and Works Made for Hire. Contractor shall not publish or transfer any materials produced or resulting from activities supported by this Agreement without the express written consent of the County Administrator. All reports, original drawings, graphics, plans, studies and other data and documents, in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, consultants, and other agents in connection with this Agreement are "works made for hire" (as defined in the Copyright Act, 17 U.S.C. Section 101 et seq., as amended) for County, and Contractor unconditionally and irrevocably transfers and assigns to County all right, title, and interest, including all copyrights and other intellectual property rights, in or to the works made for hire. Unless required by law, Contractor shall not publish, transfer, discuss, or disclose any of the above-described works made for hire or any information gathered, discovered, or generated in any way through this Agreement, without County's prior express written consent. If any of the works made for hire is subject to copyright protection, County reserves the right to copyright such works and Contractor agrees not to copyright such works. If any works made for hire are copyrighted, County reserves a royalty-free, irrevocable license to reproduce, publish, and use the works made for hire, in whole or in part, without restriction or limitation, and to authorize others to do so.

Section 33. Conflicts of Interest. Contractor represents and warrants that it presently has no interest and covenants that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interests will be employed by Contractor. If requested to do so by County, Contractor shall complete a "Statement of Economic Interest" form and file it with County and will require any other person doing work under this Agreement to complete a "Statement of Economic Interest" form and file it with County. Contractor covenants that Contractor, its employees and officials, are not

now employed by County and have not been so employed by County within twelve months immediately preceding this Agreement; or, if so employed, did not then and do not now occupy a position that would create a conflict of interest under Government Code section 1090. In addition to any indemnity provided by Contractor in this Agreement, Contractor shall indemnify, defend, and hold the County harmless from any and all claims, investigations, liabilities, or damages resulting from or related to any and all alleged conflicts of interest. Contractor represents and warrants that it has not provided, attempted to provide, or offered to provide any money, gift, gratuity, thing of value, or compensation of any kind to obtain this Agreement.

Section 34. Required Audit.

34.1. Federal Grant Funds Audit. If Contractor is funded by \$500,000 or more in federal grant funds in any fiscal year from any source, Contractor shall provide to County, at Contractor's expense, an audit conforming to the requirements set forth in the most current version of Office of Management and Budget Circular A-133. If Contractor is funded by less than \$500,000 in federal grant funds in any fiscal year from any source, but such grant imposes specific audit requirements, Contractor must provide County with an audit conforming to those requirements.

34.2. Records Availability. If Contractor is funded by less than \$500,000 in federal grant funds in any fiscal year from any source, Contractor is exempt from federal audit requirements for that year; however, Contractor's records must be available for, and an audit may be required by, appropriate officials of the federal awarding agency, the General Accounting Office (GAO), the pass-through entity and/or the County.

34.4. Conduct of Audit; Withholding. If any audit is required, Contractor shall provide County with such audit. Contractor is solely responsible for arranging for the conduct of the audit, and for its cost. County may withhold the estimated cost of the audit or 10 percent of the amount of this Agreement, whichever is greater, or the final payment, from Contractor until County receives the audit from Contractor.

Section 35. Attorneys' Fees. In any legal action or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and costs.

Section 36. Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, and supersedes all prior and contemporaneous communications, promises, representations or agreements. This Agreement may only be modified and amended upon the express written agreement of the parties.

Section 36. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.