

**APPENDIX C**  
**SAMPLE CONTRACT**



**CONTRACT BY AND BETWEEN**  
**COUNTY OF LOS ANGELES**  
**AND**  
**(CONTRACTOR)**  
**FOR**  
**COMPUTER AIDED DISPATCH (CAD) SERVICES**  
**REVISED UNDER BULLETIN #3**

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### **STANDARD EXHIBITS**

- A Statement of Work - General (See Appendix A to RFP)
  - Attachment A.1 SOW Outline (See Attachment A.1 to RFP)
  - Attachment A.2 Deliverable Acceptance Process
  - Attachment A.3 Project Control Document
  - Attachment A.4 CAD System Interfaces
- B Solution Requirements (Not Attached to Sample; see Appendix B to RFP)
- C Service Level Agreement (See Exhibit C to RFP)
  - Attachment C.1 County Information Security and Privacy Requirements
  - Attachment C.2 Departmental Information Security and Privacy Requirements
  - Attachment C.3 Compliance with Departmental Encryption Requirements
  - Attachment C.4 Departmental Application Security Requirements
- D Pricing Schedule (Not Attached to Sample)
  - Schedule D.1 Optional Work Schedule
- E Contractor's EEO Certification
- F1 County's Administration
- F2 Contractor's Administration

### **Form(s) Required at the Time of Contract Execution**

- G1 Contractor Acknowledgement, Confidentiality, and Copyright Assignment Agreement
- G2 Contractor Employee Acknowledgement, Confidentiality, and Copyright Assignment Agreement
- G3 Contractor Non-Employee Acknowledgement, Confidentiality, and Copyright Assignment Agreement
- H Jury Service Ordinance
- I Safely Surrendered Baby Law
- J Contract Discrepancy Report

Sample Contract

**CONTRACT BETWEEN  
COUNTY OF LOS ANGELES  
AND**

**FOR  
COMPUTER AIDED DISPATCH (CAD) SERVICES**

This Contract (Contract) made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ by and between the County of Los Angeles, hereinafter referred to as County and \_\_\_\_\_, hereinafter referred to as "Contractor". \_\_\_\_\_ is located at \_\_\_\_\_.

**RECITALS**

WHEREAS, Contractor is qualified by reason of experience, preparation, equipment, organization, qualifications and staffing to provide to the County the Work contemplated by this Contract; and

WHEREAS, the County is authorized by, inter alia, California Government Code sections 26227 and 31000 to contract for goods and services, including the Work contemplated herein; and

WHEREAS, the County issued a Request for Proposals (hereinafter RFP) for the provision, implementation, maintenance and support of a Computer Aided Dispatch (CAD) (hereinafter CAD or System) solution (hereinafter Solution or CAD Solution) for the Los Angeles County Sheriff's Department (hereinafter Department); and

WHEREAS, Contractor has submitted a proposal to the County for the provision, implementation, maintenance and support of the CAD Solution, based on which Contractor has been selected for recommendation for award of this Contract.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:

**1.0 APPLICABLE DOCUMENTS**

Exhibits A, B, C, D, E, F1, F2, G1, G2, G3, H, I, and J are attached to and form a part of this Contract. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any Task, Deliverable, goods, Service, or other Work, or otherwise

between the base Contract and the Exhibits, or between Exhibits and Attachments, such conflict or inconsistency will be resolved by giving precedence first to the terms and conditions of this Contract and then to the Exhibits and Attachments according to the following priority.

**Standard Exhibits:**

Exhibit A - Statement of Work

Exhibit B – Solution Requirements

Exhibit C – Service Level Agreement

Exhibit D – Pricing Schedule

Exhibit E - Contractor’s EEO Certification

Exhibit F1 - County’s Administration

Exhibit F 2- Contractor’s Administration

Exhibit G - Forms Required at the Time of Contract Execution

Exhibit H - Jury Service Ordinance

Exhibit I - Safely Surrendered Baby Law

Exhibit J – Contract Discrepancy Report

This Contract constitutes the complete and exclusive statement of understanding between the parties, and supersedes all previous contracts, written and oral, and all communications between the parties relating to the subject matter of this Contract. No change to this Contract will be valid unless prepared pursuant to Paragraph 10.3 (Amendments), below, and signed by authorized representatives of both parties.

**2.0 DEFINITIONS**

**2.1 Standard Definitions:**

The terms and phrases in this Paragraph 2.1 (Standard Definitions), whether singular or plural, are listed for convenience and reference only; they are not intended to define the scope of any provision thereof. The following words as used herein and throughout will be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

2.1.1 Acceptance: The County’s written approval of any Tasks, subtasks, Deliverables, goods, Services or other Work, including Acceptance Tests and any work orders, provided by Contractor to the County pursuant to this Contract.

2.1.2 Acceptance Criteria: Criteria for the County’s Acceptance of Contractor’s Work under this Contract, including any work orders executed hereunder.

2.1.3 Acceptance Test: Has the meaning set forth in Paragraph 12.1 (Acceptance Tests) of this Contract.

2.1.4 Additional Products: Additional components of System Software, System Hardware, and related Documentation that Contractor may provide upon the

County's request therefor in accordance with Paragraph 3.3.4 (Optional Work) of this Contract, for the System to meet existing or future Solution Requirements specified by the County, which will update Schedule D.1 (Optional Work Schedule) to Exhibit D (Pricing Schedule). Once accepted and approved by the County, Additional Products will become part of, and be deemed, the Solution (as defined herein below) for the purpose of this Contract.

- 2.1.5 Amendment: A written instrument prepared and executed by the authorized representatives of the parties, which revises and/or adds terms and conditions to this Contract affecting the scope of Work, Term, payments or any term or condition. All Amendments must be approved and executed by the parties in accordance with Paragraph 10.0 (Change Notices and Amendments) of this Contract.
- 2.1.6 Application Modifications: Programming, Programming Modifications, Replacement Products, Software Updates, and any Additional Products that may be provided by Contractor to the County under this Contract. Once accepted and approved by the County, Application Modifications will become part of, and be deemed, Application Software for the purpose of this Contract.
- 2.1.7 Application Software (Computer Aided Dispatch or CAD): The Baseline Software, Application Modifications, Replacement Products and as applicable, any Third-Party Software provided therefor, and/or all Documentation thereto, having achieved Final Acceptance, and any other software that Contractor licenses, develops, provides, implements, maintains, and/or supports in accordance with the requirements under this Contract.
- 2.1.8 Baseline Software: The commercially available version(s) of Contractor's proprietary software, related Documentation, and any updates, enhancements, or new versions commercially released during Solution Implementation, which Contractor must modify and implement as part of Solution Implementation to meet some or all Solution Requirements.
- 2.1.9 Business Day: Any day of eight working hours from 8:00 a.m. to 5:00 p.m. Pacific Time (PT), Monday through Friday, excluding County-observed holidays.
- 2.1.10 Change Notice: A written instrument prepared and executed by County Project Manager identifying any change requested by the County and or Contractor, including for acquisition of Optional Work using Pool Dollars, which does not affect the scope of work, Term, payments or any term or condition of this Contract. Any Change Notice must be executed and delivered in accordance with Paragraph 10.0 (Change Notices and Amendments) of this Contract.
- 2.1.11 Client Environment: The computers, including all workstations, equipment, devices and peripherals together with all associated Operating Software and

Application Software connected to the Production Environment for accessing and using the Solution, including all associated System Hardware and System Software.

- 2.1.12 Computer Aided Dispatch: (“CAD” or “Application Software”).
- 2.1.13 Configurations: The modifications to, or functional arrangement of, data within the Application Software and related Documentation that may be provided by Contractor to the County during Solution Implementation or as part of Optional Work for the Solution to meet existing or future Solution Requirements specified by the County.
- 2.1.14 Contract Sum: The total monetary amount authorized to be payable by the County to Contractor under this Contract, as set forth in Paragraph 6.0 (Contract Sum) of this Contract. This Contract Sum cannot be adjusted for any costs or expenses whatsoever by Contractor.
- 2.1.15 Contract: This agreement executed between the County and Contractor. Included are all supplemental agreements amending or extending the Service to be performed. This Contract sets forth the terms and conditions for the issuance and performance of all Tasks, Deliverables, Services and other Work.
- 2.1.16 Contractor: The legal entity that has entered into an agreement with the County to perform or execute the Work covered by this Contract.
- 2.1.17 Contractor Project Manager: The person designated by Contractor to administer Contract operations under this Contract.
- 2.1.18 County Materials: Has the meaning set forth in Paragraph 90.1 (County Materials) of this Contract.
- 2.1.19 County Project Director: The person designated by the County with authority for the County on contractual or administrative matters relating to this Contract that cannot be resolved by County Project Manager. All references to County Project Director will mean, “County Project Director or his/her authorized designee.”
- 2.1.20 County Project Manager: The person designated by County Project Director to manage the operations under this Contract. All references here forward to County Project Manager will mean, “County Project Manager or his/her authorized designee.”
- 2.1.21 Customizations: Same as Programming or Programming Modifications made to the Baseline Software, including related Documentation, and which are provided by Contractor upon the County’s request as part of Solution Implementation or Optional Work for the Solution to meet existing or future Solution Requirements specified by the County. Once accepted and approved by the County, Customizations will become part of, and be deemed, Application Software for the purpose of this Contract.
- 2.1.22 Data Conversion: Tasks and Deliverables associated with the conversion of the County’s existing data as part of Solution Implementation Services, as

further specified in Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General).

- 2.1.23 Day(s): Calendar day(s) unless otherwise specified.
- 2.1.24 Deficiency; Deficiencies; Defect(s): Any malfunction, error or defect in the design, development, implementation, materials, and/or workmanship; any failure to meet or comply with or deviation from Solution Requirements, Specifications, County approved Deliverables, any published and/or mutually agreed upon standards or any other representations or warranties by Contractor under this Contract regarding the Solution; and/or any other problem which results in the Solution, or any component thereof, not performing in compliance with the provisions of this Contract, including, but not limited to, the Specifications and Solution Requirements.
- 2.1.25 Deficiency Credits: Credits or any other form of discount to be applied to the applicable Service Fees for Contractor's failure to correct a Solution Deficiency within a prescribed period, including, but not limited to, Downtime or any Solution Performance Deficiency, as further specified in Exhibit C (Service Level Agreement) to this Contract.
- 2.1.26 Deliverable: Items and/or Services provided or to be provided by Contractor under this Contract, including any of the numbered Deliverables set forth in Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General).
- 2.1.27 Disaster: A catastrophic event that results in significant or potentially significant Downtime or disruption of the Production Environment and requires Contractor to provide Disaster Recovery as specified in Exhibit C (Service Level Agreement) and/or Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General).
- 2.1.28 Disabling Device: Any device, method or means including, without limitation, the use of any "virus", "lockup", "time bomb", "key lock", "worm", "back door" or "Trojan Horse" device or program, or any disabling code, which has the potential or capability of compromising the security of the County's confidential or proprietary information; or of causing any unplanned interruption of; or accessibility of the Solution or any component to the County or any User, or which could alter, destroy or inhibit the use of the Solution or any component, or the data as further specified in Paragraph 13.1 (General Warranties) of this Contract.
- 2.1.29 Documentation: Any and all written and electronic materials provided or made available by Contractor under this Contract, including, but not limited to, documentation relating to software and hardware specifications and functions, training course materials, specifications including Solution Requirements, technical manuals, handbooks, flow charts, technical information, reference materials, user manuals, operating manuals, quick reference guides, FAQs, and all other instructions and reference materials relating to the capabilities, operation, installation and use of the Solution

and/or applicable components. Documentation in electronic form must be in Software formats acceptable to the County.

- 2.1.30 Downtime: The period during which a Solution component cannot be accessed due to a Deficiency, as further specified in Exhibit A (Statement of Work - General) and/or Exhibit C (Service Level Agreement) to this Contract.
- 2.1.31 Final Acceptance: The County's Acceptance of full Solution Implementation consistent with the Solution Requirements hereunder as evidenced by the County's written approval in accordance with the terms of this Contract of the designated Deliverable under Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General).
- 2.1.32 Fiscal Year: The 12-month period beginning July 1<sup>st</sup> and ending the following June 30<sup>th</sup>.
- 2.1.33 Go-Live or "Production Cutover": The cutover of the Solution to the Production Environment pursuant to Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General).
- 2.1.34 Hardware Upgrade: Any addition to, or replacement of, any component of the Solution Hardware available or made available after the initial Go-Live of the Solution, in order to comply with Exhibit A (Statement of Work - General), Attachment A.1 (SOW Outline), Exhibit B (Solution Requirements), Exhibit C (Service Level Agreement) and/or any of the specifications set forth in this Contract.
- 2.1.35 Holdback: Has the meaning set forth in Paragraph 7.1.7 (Holdbacks) of this Contract.
- 2.1.36 Implementation Period: The period from the Effective Date of this Contract through the Solution's Final Acceptance by the County.
- 2.1.37 Interface: The set of software mechanisms used for the transfer of electronic data and/or software commands among and between computer systems including the Solution and any interfaced system, networks, applications, modules and Users, and related Documentation, previously provided or to be provided by Contractor to the County during the entire Term of this Contract as part of Solution Implementation or Optional Work.
- 2.1.38 License: The terms and conditions granting the County and its Users rights to use the Application Software licensed by Contractor under this Contract as specified in Paragraph 11.2 (License) of this Contract.
- 2.1.39 Licensed Software: The Application Software licensed by Contractor to the County under this Contract, and related Documentation, including any pre-developed or newly developed software and other tools, Replacements Products, and any additional software.
- 2.1.40 Maintenance Period: The period from Final Acceptance through the end of the Term of this Contract.

- 2.1.41 Maximum Fixed Price: The maximum amount to be paid by the County to Contractor for any Optional Work approved by the County to be provided by Contractor in accordance Paragraph 3.3.4 (Optional Work) of this Contract.
- 2.1.42 Operating Software: Includes the operating and database software and other products which are necessary and must be provided by Contractor or the County as part of the Solution Environment.
- 2.1.43 Maintenance & Support (M&S): Maintenance Services and Support Services provided by Contractor in accordance with this Contract, as further specified in Exhibit A (Statement of Work - General), Attachment A.1 (SOW Outline) and Exhibit C (Service Level Agreement).
- 2.1.44 Optional Work: Programming Modifications, Professional Services and/or Additional Products that may be provided by Contractor to the County throughout the entire Term of this Contract upon the County's request and approval in accordance with Paragraph 3.3.4 (Optional Work) and identified appropriately in Schedule D.1 (Optional Work Schedule) to Exhibit D (Pricing Schedule).
- 2.1.45 Pool Dollars: The amount allocated under this Contract for the provision by Contractor of Optional Work throughout the entire Term of this Contract.
- 2.1.46 Production Cutover or "Go-Live": The cutover of the Solution to the Production Environment pursuant to Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General).
- 2.1.47 Production Environment: The Solution Environment set up by Contractor as part of Solution Implementation pursuant to Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General), for Production Use of the Solution.
- 2.1.48 Production; Production Use: The actual use of the Solution by the County and its Users for the performance of their operations commencing upon Production Cutover.
- 2.1.49 Professional Services: Includes training, consulting Services, programming and/or other Services requiring professional expertise that Contractor provide, upon the County's request in the form of Optional Work in accordance with Paragraph 3.3.4 (Optional Work) of this Contract.
- 2.1.50 Programming Modifications: Modifications to Application Software, including Configurations, Customizations and Interfaces, and related Documentation that Contractor will provide throughout the entire Term of this Contract, upon the County's election, for the Solution to meet existing or future Requirements specified by the County or other governing bodies. Once accepted and approved by the County, all Programming Modifications will become part of, and be deemed, Application Software for the purpose of this Contract.
- 2.1.51 Project: The implementation, maintenance and support for the Solution, and any other related Work provided by Contractor in accordance with the terms of this Contract.



- 2.1.52 Replacement Product: Any software or maintained hardware product for which Contractor may replace any or all components of the Licensed Software or hardware during the Term of this Contract, as further specified in Paragraph 13.4 (Continuous Product Support) of this Contract.
- 2.1.53 Service Fees: Includes the fees to be paid by the County to Contractor for the provision of M&S Services under this Contract in accordance with the terms of this Contract, including Exhibit C (Service Level Agreement) to this Contract.
- 2.1.54 Service Levels: Contractor's Service obligations to the County during Production Use of the Solution as specified in Exhibit C (Service Level Agreement) to this Contract.
- 2.1.55 Services: Services related to Solution Implementation, M&S, any Services that are part of Optional Work, and any other Services that may be provided by Contractor under this Contract.
- 2.1.56 Software Updates: Includes any additions to and/or replacements to the Solution Software, available or made available subsequent to the first Go-Live of the Solution, and will include all Application Software and firmware performance and functionality enhancement releases, new Version Releases, Solution Software upgrades, improvements, interim updates, including fixes and patches, Deficiency corrections, and any other modifications to the Application Software, including, but not limited to, those required for the Solution to remain in compliance with applicable federal and state laws and regulations and the terms of this Contract, provided by Contractor in accordance with Exhibit A (Statement of Work - General) and Exhibit C (Service Level Agreement) to this Contract, with all respective Attachments and Schedules thereto.
- 2.1.57 Solution: The combination of the software, hardware, and tools which comprise the Solution Environment, provided by Contractor to the County to meet the Solution Requirements.
- 2.1.58 Solution Availability: During any calendar month wherein, the Solution is not experiencing Downtime, as described in Exhibit C (Service Level Agreement) to this Contract.
- 2.1.59 Solution Environment: The architectural and operational environment(s) (whether cloud-based and/or Contractor-installed County-owned hardware) for the Solution provided by Contractor to the County as part of the Solution, and related Documentation, which includes, but is not limited to, the Production Environment, Test Environment, and Client Environment.
- 2.1.60 Solution Hardware: All hardware that is part of the Solution and provided by Contractor to the County pursuant to this Contract, and related Documentation, all of which is provided, maintained, supported, and upgraded (as applicable) by Contractor under this Contract.
- 2.1.61 Solution Implementation: All goods and Services for implementing the Solution, including, but not limited to, Solution Environment setup, installation

of the System Hardware, Licenses for Solution Software, installation of Solution Software, Solution Migration and Data Conversion, Acceptance Tests, training and any other Work to be provided by Contractor as part of the Solution Implementation pursuant to Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General), in order to meet the requirements of this Contract up to and including Final Acceptance.

- 2.1.62 Solution Migration: Tasks and Deliverables associated with the migration from the County's existing systems to the Solution, as further specified in Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General).
- 2.1.63 Solution Requirements: The "Requirements" as listed in Exhibit B (Solution Requirements) to this Contract.
- 2.1.64 Solution Software: All System Software and firmware that is part of the Solution provided by Contractor pursuant to this Contract, and related Documentation, including Application Software and Operating Software.
- 2.1.65 Statement of Work: The directions, provisions, and requirements provided herein as Exhibit A (Statement of Work - General), and special provisions herein and therein pertaining to the method, frequency, manner, and place of performing the Services described in this Contract.
- 2.1.66 Subcontract: An agreement between a contractor and a 3<sup>rd</sup> party to provide goods and/or Services to fulfill this Contract.
- 2.1.67 Subcontractor: Any individual, person or persons, sole proprietor, firm, partnership, joint venture, corporation, or other legal entity furnishing supplies, services of any nature, and/or materials to Contractor in furtherance of Contractor's performance of this Contract, at any tier, under oral or written agreement.
- 2.1.68 System: The hardware, software and data comprising the Solution (whether cloud-based and/or Contractor-installed County-owned hardware), including, but not limited to, the System Hardware, System Software and System data, provided by Contractor or the County in accordance with the terms of this Contract.
- 2.1.69 System Hardware: All computer servers, networking equipment, connectivity hardware, and storage racks as applicable, and any related Documentation, provided by Contractor or the County for the Solution.
- 2.1.70 System Software: All Application Software and Operating Software, and related Documentation, provided by Contractor to the County as part of the Solution and residing in the Solution Environment, and does not include the firmware.
- 2.1.71 Task; Subtask: One of the areas of work to be performed under this Contract, including those enumerated as Tasks and Subtasks in Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General).
- 2.1.72 Technology Refresh: Has the meaning set forth in Paragraph 3.5 (Technology Refresh) of this Contract.

- 2.1.73 Term: Has the meaning set forth in Paragraph 5.0 (Term of Contract) of this Contract.
- 2.1.74 Test Environment: The component of the Solution Environment set up by Contractor as part of Solution Implementation Services pursuant to Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General), for non-Production Use of the Solution, including software development, installation, testing of software and Interfaces, and training.
- 2.1.75 Third-Party Software: Any software of third parties that may be provided, maintained and/or supported by Contractor under this Contract as part of the Solution, including Application Software and Operating Software provided by third parties.
- 2.1.76 User: Any person authorized by the County to access or use the Solution in accordance with this Contract.
- 2.1.77 Version Release: Contractor's Application Software major version upgrade which may contain new software functionalities and features and/or System compatibilities.
- 2.1.78 Warranty Period: Has the meaning set forth in Paragraph 7.17 (Solution Warranty Period) of Appendix A (Statement of Work).
- 2.1.79 Work: All Tasks, Subtasks, Deliverables, goods, Services, and other Services provided, or to be provided, by or on behalf of Contractor pursuant to this Contract, including Solution components, Solution Implementation Services, M&S Services, and Optional Work.
- 2.1.80 Work Product: Any intellectual property, including concepts, ideas, methods, methodologies, procedures, processes, know-hows, techniques, inventions, analysis frameworks, software, models, Documentation, templates, User Interfaces and screen designs, utilities, routines, and tools, that was developed by Contractor prior to performance or independent of this Contract, as further specified in Paragraph 11.1.4 (Work Product) of this Contract.

### **3.0 WORK**

- 3.1 Pursuant to the provisions of this Contract, Contractor must fully perform, complete, and deliver on time, all Tasks, Deliverables, Services and other Work as set forth in herein.
- 3.2 If Contractor provides any Tasks, Deliverables, goods, Services, or other Work, other than as specified in this Contract, the same will be deemed to be a gratuitous effort on the part of Contractor, and Contractor will make no claim whatsoever against the County.

### **3.3 Scope of Work**

#### **3.3.1 Solution Components**

Contractor must provide to the County: (i) Licenses to all Solution Software provided hereunder, Third-Party Software, Application Software, and

Operating Software, and (ii) ownership of, and other proprietary rights to, all Solution Hardware, including, but not limited to, System Hardware and Hardware Upgrades, all as necessary for the Solution to meet all Solution Requirements and the Specifications under this Contract as such may be revised during the Term of this Contract, and in accordance with the provisions of Paragraph 11.0 (Ownership and License) of this Contract.

### 3.3.2 Implementation

Contractor must provide Solution Implementation Services, including, but not limited to, System Environment setup, software installation, Programming Modifications, Data Conversion, testing, training, Cloud-based hosting services (if applicable), direct network connectivity to the County's data center, and any other Services through Final Acceptance of the Solution, as required for the successful implementation of the Solution and specified in Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General), and elsewhere in this Contract.

### 3.3.3 Maintenance and Support (M&S)

Contractor must provide to the County M&S in accordance with this Contract, Exhibit C (Service Level Agreement), Exhibit A (Statement of Work - General), and all Attachments thereto. M&S Support obligations will commence upon the Go Live, will continue through the Warranty Period, Final Acceptance of the Solution, and until the termination or expiration of this Contract.

### 3.3.4 Optional Work

Upon the County's written request and execution of a Change Notice pursuant to the terms of this Contract, Contractor must provide Optional Work, including Programming Modifications, Additional Products, Training, and/or hardware installation and configurations Services, in accordance with this Paragraph 3.3.4 (Optional Work) and Exhibit A (Statement of Work - General) to this Contract. Programming Modifications and Additional Products, and training will only include those products and services relating to the requirements which were not reflected in the Specifications and/or Solution Requirements on the Effective Date, as determined by County Project Director or authorized designee. Future hardware purchases, installation, and configuration services for the six-year anniversary Technology Refresh (see Paragraph 3.5 below) must be delivered by Contractor as Optional Work pursuant to an executed Change Notice.

Notwithstanding the above, any programming gaps that are discovered during implementation that were not identified by Contractor as part of their proposal submission. Must be remedied by Contractor and will not be considered Optional Work.

Upon the County's request and Contractor's concurrence to provide the Optional Work, Contractor must provide to the County within ten Business Days of such request, or such longer period as agreed to by the parties, a

proposed work order including, if necessary, any supporting documentation, and a quote for a Maximum Fixed Price calculated in accordance with the applicable fixed hourly rate set forth in Exhibit D (Pricing Schedule) to this Contract. Contractor's quotation will be valid for a minimum 90 Days from submission. Contractor must commence the Optional Work following agreement by the parties with respect to such scope of Optional Work and the Maximum Fixed Price, utilizing a Change Notice pursuant to Paragraph 10.0 (Change Notices and Amendments) of this Contract. Upon completion of Optional Work by Contractor, and approval by the County in accordance with the terms of this Contract, Schedule D.1 (Optional Work Schedule) to Exhibit D (Pricing Schedule) will be updated accordingly to add the items of such completed and approved Optional Work.

Upon completion by Contractor and approval by the County of Optional Work: (i) any Programming Modifications and/or Additional Products provided by Contractor in the form of Optional Work will become part of and be incorporated into the Solution, (ii) additional/new Solution Hardware will become part of and be incorporated into the Solution Environment, and (iii) the Solution Requirements and specifications will be updated to include the new and/or updated requirements, specifications, and/or Additional Products, as applicable, as a result of such Optional Work.

Optional Work may be performed by Contractor: 1) at no additional cost to the County as part of Solution Implementation or M&S, or 2) at the applicable pricing terms set forth in Exhibit D (Pricing Schedule) to this Contract, payable by the County utilizing Pool Dollars. Absent an Amendment in accordance with Paragraph 10.0 (Change Notices and Amendments), the Pool Dollars are the aggregate amount available during the Term of this Contract for Optional Work.

Delivered products resulting from Optional Work provided by Contractor will not increase M&S fees under this Contract.

Any Change Notice and resultant work order executed pursuant to this Paragraph 3.3.4 (Optional Work) prior to the expiration of this Contract, will survive this Contract as though this Contract remained in full force and effect. The expiration of this Contract will not relieve Contractor of its obligation to perform Optional Work resulting from such work order.

### **3.4 Addition And Deletion of Hardware**

- 3.4.1 Contractor agrees that any addition or deletion of hardware before completion of Solution Implementation), as solely determined by County Project Manager, requires a Change Notice. Any added hardware must be invoiced at the equipment unit prices stated in Exhibit D (Pricing Schedule) to this Contract.
- 3.4.2 Contractor agrees that any addition or deletion of hardware after CAD Solution Acceptance, requires a Change Notice. Any added hardware after

Final Acceptance must be invoiced at the lowest available market price plus a not-to-exceed handling fee of 15%.

### **3.5 Technology Refresh**

- 3.5.1 The parties will agree to a written Technology Refresh Implementation Strategy (TRIS) pursuant to Task 1 (Project Plan and Management) of Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General). The TRIS will, among other things, be devised to minimize disruption to County operations. The Technology Refresh is intended to update key solution components (hardware/software) with the most contemporaneous and advanced technologies currently available.
- 3.5.2 At the conclusion of the fifth year of this Contract (the end of the initial Term) following Final Acceptance, the County and Contractor agree to conduct a hardware/software replacement (Technology Refresh) for all or any subset of the Solution components as determined solely by County Project Director. Presuming this Contract has been extended beyond the current Term by the County, a Technology Refresh will be implemented every five years thereafter. Notwithstanding, the County makes no guarantee that the Technology Refresh(es) will occur, nor does the County guarantee that the Technology Refresh will be conducted in one single deployment during the Term of this Contract.
- 3.5.3 The cost for the Technology Refresh will be borne by the County by means of an approved and executed Change Notice utilizing Pool Dollars. Contractor must secure the lowest possible pricing for the Technology Refresh, minus any bulk purchase discounts as applicable, plus a not-to-exceed 15% markup for handling (e.g., purchasing and administration, setup/configuration, and removal of old replacement hardware). The not-to-exceed 15% markup is calculated based on actual equipment/software costs prior to the inclusion of sales/use tax.
- 3.5.4 Contractor must ensure that all key Solution components (hardware/software) for both the primary and secondary data centers remain under manufacturer and/or extended warranty throughout the entire Term of this Contract following Final Acceptance. Any Work performed as a result of Contractor's failure to procure and maintain warranties for all key Solution components, will not be billable to the County.
- 3.5.5 The County and Contractor agree that Contractor will not be subject to remedies for any Downtime resulting from any Technology Refresh), provided Contractor is fully compliant with the agreed-upon processes described in the TRIS.

### **3.6 Testing of Work**

Contractor must conduct all appropriate testing of the Solution before providing any Work hereunder, including Optional Work, to ensure the Solution's continued compliance with all Solution Requirements set forth in this Contract. The Solution must be free of any material Deficiencies and Optional Work meets the requirements

of the applicable work order. Solution tests must test, among others, the Solution's functionality, integration and interfacing, volume endurance, System performance, and User Acceptance, as applicable.

### **3.7 Integration/Interfacing**

From time to time, Contractor may be responsible for developing and incorporating into the Solution, Application Modifications in the form of Optional Work. If such Application Modifications are to be integrated and/or interfaced with other software and/or systems by Contractor or at the direction of Contractor, the Application Modifications will not be deemed accepted by the County until the Application Modifications and such other systems have been successfully integrated and interfaced, as applicable, in accordance with the terms of this Contract. Contractor will neither assert or obtain any ownership interest in any other systems merely because they were interfaced, integrated or used with the Solution.

### **3.8 Approval of Work**

All Tasks, Subtasks, Deliverables, and other Work provided by Contractor under this Contract must have the County's prior written approval from County Project Director. In no event will the County be liable or responsible for any payment prior to such written approval. Furthermore, the County reserves the right to reject any Work not approved by the County.

If Contractor provides any Tasks, Subtasks, Deliverables, goods, Services, or other Work to the County other than those specified in this Contract, or if Contractor provides such items requiring the County's prior written approval without first having obtained such written approval, the same will be deemed to be a gratuitous effort on the part of Contractor, and Contractor will not assert any claim whatsoever against the County.

### **3.9 No Offshore Work**

Contractor warrants: (i) that all Services will be performed and rendered within and from within the United States, and (ii) that Contractor must not transmit or make available any of the County's Confidential Information, the County's intellectual property or any County property, including County Materials, to any entity or individual outside the United States.

Specifically, no Programming Modifications for the County, including Customizations, Configurations, and Interfaces, may be developed, or provided by personnel on behalf of Contractor outside or from outside the United States. Contractor may perform Services relating to standard product development or revisions, if such Services are provided without, or do not require access to, County's Confidential Information, County's intellectual property, or any County property including County Materials, outside or from outside the United States.

## **4.0 PROJECT PLANNING**

4.1 Contractor must implement the Solution in accordance with the Detailed Work Plan set forth in the Project Control Document (PCD), developed and delivered pursuant to Task 1 (Project Plan and Management) of Attachment A.1 (SOW Outline) to

Exhibit A (Statement of Work - General). The Detailed Work Plan must, at a minimum, include the following items:

- a. Tasks,
- b. SubTasks,
- c. Deliverable Number,
- d. Description,
- e. Due date,
- f. Milestones achieved,
- g. Pay points,
- h. Task relationships including where applicable finish to start (FS), start to start (SS), finish to finish (FF), and start to finish (SF), Critical path,
- i. Associated or dependent Deliverable,
- j. Timeline, and
- k. Any other items reasonably required for the Solution, by the County, under this Contract.

#### **4.2 Deliverable Milestones, Deliverables**

The PCD must identify certain critical Deliverables as “milestones”, as determined by the County. Approval of Deliverables will not be unreasonably withheld or delayed by the County. The County will use reasonable efforts to provide the necessary assistance to Contractor for Contractor to meet the due dates specified in the Project Schedule.

All Deliverables, including all Deliverable milestones, will be deemed completed for purposes of this Paragraph 4.2 (Deliverable Milestones, Deliverables), on the earliest date that all of the Tasks, Subtasks, Deliverables, goods, Services and other Work required for the completion of such Deliverable are completed and delivered to the County, provided that all of such Tasks, Subtasks, Deliverables, goods, Services and other Work required for the completion of such Deliverable are thereafter approved in writing by the County pursuant to Paragraph 3.6 (Testing of Work) above, without prior rejection by the County or significant delay in the County’s approval thereof, which delay is the result of Contractor’s failure to deliver such Tasks, Subtasks, Deliverables, goods, Services and other Work in accordance with the terms hereof.

For purposes of this Paragraph 4.2 (Deliverable Milestones, Deliverables), the determination of whether a Deliverable has been completed and is approved, and of the date upon which such Deliverable was completed, will be made by County Project Director as soon as practicable after the County is informed by Contractor that such Deliverable has been completed and is given all the necessary information, data and documentation to verify such completion.



## **5.0 TERM OF CONTRACT**

5.1 The Term of this Contract will commence upon the Effective Date and will expire six years following Final Acceptance unless sooner terminated or extended, in whole or in part, as provided in this Contract (Initial Term).

5.2 At the end of the Initial Term, the County may, at its sole option, extend the Term of this Contract for four one-year periods (Option Terms), subject to, among others, the County's right to terminate earlier for convenience, non-appropriation of funds, default of Contractor, substandard performance of Contractor, non-responsibility of Contractor and any other term or condition of this Contract providing for early termination of this Contract by the County. The County will be deemed to have exercised each option automatically, without further act, unless no later than 30 Days prior to the expiration of each Option Term, the County notifies Contractor in writing that it elects not to extend this Contract pursuant to this Paragraph 5.0 (Term of Contract). If the County elects not to exercise its option to extend at the end of the Initial Term, this Contract will expire.

The County maintains databases that track/monitor Contractor performance history. Information entered into such databases may be used for a variety of purposes, including determining whether the County will exercise any Contract term extension options.

## **5.3 Notice of Expiration**

Contractor must notify the County when this Contract is within six months from the expiration of the Term. Upon occurrence of this event, Contractor must send written notification to County Project Director at the address set forth in Exhibit F1 (County's Administration) to this Contract.

## **6.0 CONTRACT SUM**

### **6.1 Maximum Contract Sum**

The Maximum Contract Sum under this Contract will be the total monetary amount payable by the County to Contractor for supplying all the Tasks, Subtasks, Deliverables, goods, Services, and other Work required or requested by the County under this Contract.

The Maximum Contract Sum, including all applicable taxes, authorized by County hereunder will not exceed XXXXXX (\$\_\_\_\_\_), as further detailed in Exhibit D (Pricing Schedule) to this Contract, unless this Contract Sum is modified pursuant to a duly approved Amendment to this Contract by the County's and Contractor's authorized representatives pursuant to Paragraph 10.0 (Change Notices and Amendments) of this Contract.

The Maximum Contract Sum under this Contract will provide for all authorized payments the County may make to Contractor for all Work provided by Contractor under this Contract, including all Solution Implementation Services\*, Solution components, M&S, and any Optional Work.

\*Any additional programming gaps that are discovered during implementation that were not identified by Contractor as part of their proposal submission, must be remedied by Contractor at Contractor's sole expense.

#### 6.1.1 Written Approval for Reimbursement

Contractor is not entitled to payment or reimbursement for any Tasks or Services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as explicitly specified herein. Assumption or takeover of any of Contractor's duties, responsibilities, or obligations, or performance of same by any person or entity other than Contractor, whether through assignment, Subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, must not occur without the County's express prior written approval.

#### 6.1.2 Notification of 75% of Total Contract Sum

Contractor must maintain a system of record keeping that will allow Contractor to determine when it has incurred 75% of the total Contract Sum, including Pool Dollar expenditures, authorized under this Contract. Upon occurrence of this event, Contractor must send written notification to the Department at the address herein provided in Exhibit F1 (County's Administration) to this Contract.

#### 6.1.3 No Payment for Services Provided Following Expiration/Termination of Contract

Contractor may not assert any claims against the County for payment of any money or reimbursement, of any kind whatsoever, for any Service provided by Contractor after the expiration or other termination of this Contract. Should Contractor receive any such payment it must immediately notify County and must immediately repay all such funds to the County. Payment by the County for Services rendered after expiration-termination of this Contract will not constitute a waiver of the County's right to recover such payment from Contractor. This provision will survive the expiration or other termination of this Contract.

### **6.2 Solution Implementation**

#### 6.2.1 Cost of Solution Implementation

The County will reimburse Contractor for the cost of Solution Implementation, which will include, but not be limited to, all goods and Services for implementing the Solution (e.g., Solution Environment setup, installation of the System Hardware, License(s) for the Solution Software, installation of Solution Software, Solution Migration and Data Conversion, Acceptance Tests, training, and any other Work provided by Contractor hereunder). All payments by the County to Contractor for Solution Implementation will be paid on a per-Deliverable basis, as applicable, in accordance with the

payable Deliverables identified in the PCD as “milestones”, and pricing set forth in Exhibit D (Pricing Schedule) to this Contract.

#### 6.2.2 Deliverable Milestones

A milestone will be deemed completed for purposes of this Paragraph 6.2.2 (Deliverable Milestones) on the earliest date that all the Tasks, Subtasks, Deliverables, goods, Services, and other Work required for completion of such milestone are completed and delivered to the County, and thereafter approved in writing by the County pursuant to Paragraph 3.6 (Testing of Work) above. The determination of whether a Deliverable milestone has been completed, and the date upon which such Deliverable was approved, will be made by the County Project Director as soon as practicable in accordance with Paragraph 3.6 (Testing of Work) above, after the County is informed by Contractor that such Deliverable has been completed, and is given all the necessary information, data, and documentation to verify such completion.

#### 6.2.3 Credits to County

Contractor agrees that delayed performance by Contractor will cause damages to the County, which are uncertain and would be impracticable or extremely difficult to ascertain in advance. Contractor further agrees that, in conformity with California Civil Code Section 1671, Contractor will be liable to the County for liquidated damages in the form of credits as specified in this Paragraph 6.2.3 (Credits to County). Parties agree these credits are fair and reasonable estimate(s) of such damages. Any amount of such damages is not and will not be construed as penalties and, when assessed, will be deducted from the County’s payment that is due.

The County will be entitled to receive credit against any or all amounts due to Contractor under this Contract or otherwise, in the total amount of \$500 for each day after the due date for each occasion upon which a payable Deliverable identified in the PCD as a “milestone” has not been completed by Contractor within 15 Days after the due date. Notwithstanding the foregoing, the County will not demand any credit for Contractor’s delays which are a result of delays caused by acts or omissions of the County, nor for any delays regardless of cause that may otherwise be approved in writing at the sole discretion of County Project Director. All the foregoing credits will apply separately, and cumulatively, to each milestone in the Project Schedule. Pursuant to this Paragraph 6.2.3 (Credits to County), County Project Director, in his/her sole discretion, will assess whether credits are due to the County.

#### 6.2.4 Termination

In addition to any other remedies available to the County under this Contract, if any Deliverable identified as a milestone is not completed within 30 Days after the applicable due date set forth in the Project Schedule and thereafter is not approved in writing by the County pursuant to Paragraph 3.6 (Testing of Work) above, other than as a result of delays caused solely

by acts or omissions of the County, and unless County Project Director and Contractor's Project Director have otherwise agreed in writing prior to such date scheduled for completion to extend such due date, then the County may, upon notice to Contractor, terminate this Contract for default in accordance with Paragraph 22.0 (Termination for Default) or for convenience in accordance with Paragraph 21.0 (Termination for Convenience) of this Contract, as determined in the sole discretion of the County.

#### 6.2.5 Maintenance & Support (M&S)

County will pay Contractor Service fees for provision by Contractor to the County of M&S Services, commencing upon Final Acceptance, as provided in Exhibit D (Pricing Schedule) to this Contract. Service Fees, including all components thereof, will not exceed the amounts specified in Exhibit D (Pricing Schedule) to this Contract.

#### 6.2.6 Non-Appropriation of Funds

The County's obligation may be limited if it is payable only and solely from funds appropriated for the purpose of this Contract. Notwithstanding any other provision of this Contract, the County will not be obligated for Contractor's performance hereunder or by any provision of this Contract during any of County's future Fiscal Years unless and until the County's Board of Supervisors appropriates funds for this Contract in the County's budget for each such future Fiscal Year. In the event that funds are not appropriated for this Contract, then the County will, at its sole discretion, either: (i) terminate this Contract as of June 30 of the last Fiscal Year for which funds were appropriated or (ii) reduce the Work provided hereunder in accordance with the funds appropriated, as mutually agreed to by the parties. The County will notify Contractor in writing of any such non-appropriation of funds at its election at the earliest possible date.

#### 6.2.7 County's Obligation for Future Fiscal Years

In the event that the County's Board of Supervisors adopts, in any Fiscal Year, a County Budget which provides for the reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, the County reserves the right to reduce its payment obligation under this Contract correspondingly for that Fiscal Year and any subsequent Fiscal Year throughout the entire Term of this Contract (including any extensions), and the Services to be provided by Contractor under this Contract will also be reduced correspondingly. The County's notice to Contractor regarding such reduction in payment obligations will be provided within 30 Days of the Board of Supervisors' approval of such actions. Except as set forth in the preceding sentence, Contractor must continue to provide all the Work set forth in this Contract.

## **7.0 INVOICES AND PAYMENTS**

### **7.1 Invoices**

Contractor must invoice the County in accordance with Exhibit D (Pricing Schedule) to this Contract: (i) for Solution Implementation, broken down by Deliverables, payable following completion by Contractor and approval by the County of each such Deliverable, (ii) for M&S, the annual fee to be paid in advance for Service fees commencing upon Final Acceptance, and (iii) for Optional Work, the actual price expended by Contractor for such Optional Work using Pool Dollars, which must not exceed the Maximum Fixed Price quoted for such Optional Work, following Contractor's completion and the County's written approval of the Optional Work.

#### **7.1.1 Submission of Invoices**

Contractor's invoice must include the charges owed to Contractor by the County under the terms of this Contract as provided in Exhibit D (Pricing Schedule) to this Contract. All invoices and supporting documents under this Contract must be submitted to the person designated in Exhibit F1 (County's Administration) as County Project Manager at the address specified in Exhibit F1 (County's Administration) to this Contract.

##### **7.1.1.1 Invoice Details**

Each invoice submitted by Contractor must indicate, at a minimum:

- a. Contract Name and Number,
- b. The Tasks, SubTasks, Deliverables, goods, Services or other Work for which payment is claimed, including Solution Implementation Deliverables, M&S Services and any Optional Work,
- c. The price of such Tasks, SubTasks, Deliverables, goods, Services or other Work calculated based on the pricing terms set forth in Exhibit D (Pricing Schedule) to this Contract, or the work order including the Maximum Fixed Price, as applicable,
- d. If applicable, the date of written approval of the Tasks, SubTasks, Deliverables, goods, Services or other Work by County Project Director,
- e. Indication of any applicable withhold or Holdback (refer to Paragraph 7.1.7 below) amounts for payments claimed or reversals thereof,
- f. Indication of any applicable credits due to the County under the terms of this Contract or reversals thereof,
- g. If applicable, a copy of any required Acceptance Certificates signed by County Project Director, and
- h. Any other information required by County Project Director.

#### 7.1.1.2 Approval of Invoices

All invoices submitted by Contractor to the County for payment must have the County's written approval as provided in this Paragraph 7.1.1.2 (Approval of Invoices), which approval will not be unreasonably withheld. In no event will the County be liable or responsible for any payment prior to such written approval.

#### 7.1.1.3 Invoice Discrepancies

County Project Director will review each invoice for any discrepancies and will, within 30 Days of receipt thereof, notify Contractor in writing of any discrepancies found upon such review and submit a list of disputed charges. Contractor must review the disputed charges and send a written explanation detailing the basis for the charges within 30 Days of receipt of the County's notice of discrepancies and disputed charges. If County Project Director does not receive a written explanation for the charges within such 30-Day period, Contractor will have waived its right to justify the original invoice amount, and the County, in its sole discretion, will determine the amount due, if any, to Contractor and pay such amount in satisfaction of the disputed invoice, subject to the Dispute Resolution Procedure set forth in this Contract.

All County correspondence relating to invoice discrepancies will be sent by email, followed by hard copy, directly to County Project Manager with a copy to County Project Director at the addresses specified in Exhibit F1 (County's Administration) to this Contract.

#### 7.1.2 Delivery of System Software

It is the intent of the parties that if any System Software or Documentation provided by Contractor under this Contract, including any product of M&S Services and any Optional Work, is delivered to the County, such System Software and Documentation will be delivered: (i) in an electronic format (i.e., via electronic mail or internet download) or (ii) personally by Contractor staff who must load such System Software and Documentation onto the County's hardware, but who will retain possession of all originals and copies of such tangible media (e.g., USB, printed manuals, external hard drive) used to deliver the System Software and Documentation to the County.

Any System Software and Documentation that is provided or delivered by Contractor to the County in a tangible format will be F.O.B. Destination. This Contract Sum shown in Paragraph 6.1 (Maximum Contract Sum) above, includes all amounts necessary for the County to reimburse Contractor for all transportation and related insurance charges, if any, on System Software Components and Documentation procured by the County from Contractor pursuant to this Contract. All transportation and related insurance charges, if any, will be paid directly by Contractor to the applicable carrier. Contractor

is solely liable and responsible for, and must indemnify, defend, and hold harmless the County from, any and all such transportation and related insurance charges.

#### 7.1.3 Delivery of System Hardware

It is the intent of the parties that all System Hardware or Documentation provided by Contractor under this Contract is provided or delivered by Contractor to the County F.O.B. Destination. Hardware delivery, set-up, installation, configuration, and optimization services are provided by Contractor to the County as specified in the Implementation Assessment Document, and pursuant to Task 9 (Hardware Ordering and Installation (as applicable)) of Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General).

The Contract Sum shown in Paragraph 6.1 (Maximum Contract Sum) above includes all amounts necessary for the County to reimburse Contractor for all transportation and related insurance charges, if any, for all System Hardware Components and Documentation procured by the County from Contractor pursuant to this Contract. All transportation and related insurance charges, if any, must be paid directly by Contractor to the applicable carrier. Contractor is solely liable and responsible for, and must indemnify, defend, and hold harmless the County from, any and all such transportation and related insurance charges.

#### 7.1.4 Sales/Use Tax

The Contract Sum shown in Paragraph 6.0 (Contract Sum) above, will be deemed to include all amounts necessary for the County to reimburse Contractor for all applicable California and any other applicable state and local sales/use taxes on all Solution components and other Work provided by Contractor to the County pursuant to or otherwise due as a result of this Contract, including, but not limited to, any product of Solution Implementation, M&S Services and any Optional Work, to the extent applicable. All California sales/use taxes must be paid directly by Contractor to the State or other taxing authority.

Contractor is solely liable and responsible for, and must indemnify, defend, and hold harmless the County from, any and all such California and other state and local sales/use taxes. Further, Contractor is solely liable and responsible for, and must indemnify, defend, and hold harmless the County from, all applicable California and other state and local sales/use tax on all other items provided by Contractor pursuant to this Contract and must pay such tax directly to the State or other taxing authority. In addition, Contractor is solely responsible for all taxes based on Contractor's income or gross revenue, or personal property taxes levied or assessed on Contractor's personal property to which the County does not hold title.

### 7.1.5 Payments

Provided that Contractor is not in default under any provision of this Contract, the County will pay all invoice amounts to Contractor within 30 Days of receipt of invoices that have not been disputed in accordance with Paragraph 7.1.1.3 (Invoice Discrepancies) above. The County's failure to pay within the 30-Day period, however, will not be deemed as automatic invoice approval or Acceptance by the County of any deliverable for which payment is sought, nor will it entitle Contractor to impose an interest or other penalty on any late payment.

### 7.1.6 County's Right to Withhold Payment

Notwithstanding any other provision of this Contract, and in addition to any rights of the County given by law or provided in this Contract, the County may upon written notice to Contractor withhold payment for any deliverable while Contractor, with no fault of the County, is in default hereunder or default related to Work.

### 7.1.7 Holdbacks

7.1.7.1 The County will withhold an amount equal to 20 percent of each Deliverable invoice submitted by Contractor under this Contract (Holdbacks) and approved by the County pursuant to Paragraph 3.6 (Testing of Work) above, for all Work outlines in Exhibit A (Statement of Work - General) to this Contract, during Solution Implementation through Final Acceptance, as further specified in Exhibit D (Pricing Schedule) to this Contract, as may be amended from time to time. Holdback amounts will not apply to invoices for Optional Work, nor for ongoing Maintenance and Support.

7.1.7.2 The cumulative amount of such Holdbacks will be due and payable to Contractor upon Final Acceptance, subject to adjustment for any amounts arising under this Contract owed to the County by Contractor, including, but not limited to, any amounts arising from Paragraphs 7.1.1.3 (Invoice Discrepancies) and 7.1.6 (County's Right to Withhold Payment) above, and any partial termination of any Task, SubTask or Deliverable set forth in Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General), as provided herein.

7.1.8 Contractor must invoice the County only for the Tasks, Deliverables, goods, Services, and other Work specified in Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General), and elsewhere hereunder. Contractor will prepare invoices, which must include the charges owed to Contractor by the County under the terms of this Contract. Contractor's payments will be as provided in Exhibit D (Pricing Schedule) to this Contract, and Contractor must be paid only for the Tasks, Deliverables, goods, Services, and other Work approved in writing by the County. If the County



does not approve Work in writing no payment will be due to Contractor for that Work.

7.1.9 Contractor's invoices must be priced in accordance with Exhibit D (Pricing Schedule) to this Contract.

7.1.10 Contractor's invoices must contain the information set forth in Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General), describing the Tasks, Deliverables, goods, Services, Work hours, and facility and/or other Work for which payment is claimed.

7.1.11 Local Small Business Enterprises – Prompt Payment Program (if applicable)

Certified Local Small Business Enterprises (LSBEs) will receive prompt payment for Services they provide to County departments. Prompt payment is defined as 15 Days after receipt of an undisputed invoice.

## **7.2 Default Method of Payment: Direct Deposit or Electronic Funds Transfer**

7.2.1 The County has determined that the most efficient and secure default form of payment for goods and/or services provided under an agreement/contract with the County will be Electronic Funds Transfer (EFT) or direct deposit, unless an alternative method of payment is deemed appropriate by the County Auditor-Controller (A-C).

7.2.2 Contractor must submit a direct deposit authorization request via the website <https://directdeposit.lacounty.gov> with banking and vendor information, and any other information that the A-C determines is reasonably necessary to process the payment and comply with all accounting, record keeping, and tax reporting requirements.

7.2.3 Any provision of law, grant, or funding agreement requiring a specific form or method of payment other than EFT or direct deposit will supersede this requirement with respect to those payments.

7.2.4 At any time during the duration of this Contract, Contractor may submit a written request for an exemption to this requirement. Such request must be based on specific legal, business, or operational needs and explain why the payment method designated by the A-C is not feasible and an alternative is necessary. The A-C, in consultation with the contracting department(s), will decide whether to approve any exemption requests.

## **8.0 ADMINISTRATION OF CONTRACT – COUNTY**

### **8.1 County's Administration**

All persons administering this Contract on behalf of the County and described in this Paragraph 8.0 (hereinafter "County Personnel") are identified in Exhibit F1 (County's Administration) to this Contract. Unless otherwise specified, reference to each of the persons listed in such Exhibit F1 (County's Administration) to this Contract, will also include any authorized designee. County will notify Contractor in writing of any change in the names and/or addresses of the persons listed in Exhibit F1 (County's Administration) to this Contract.

No member of the County is authorized to make any changes in any of the terms and conditions of this Contract other than those specifically authorized under Paragraph 10.0 (Change Notices and Amendments) below.

## **8.2 County's Personnel**

### **8.2.1 County Project Director**

County Project Director will be responsible for ensuring that the objectives of this Contract are met and for overseeing this Contract in general. County Project Director will have the right at all times to inspect any and all Work provided by or on behalf of Contractor.

### **8.2.2 County Project Manager**

County Project Manager will be responsible for ensuring that the technical, business, and operational standards and requirements of this Contract are met. County Project Manager will interface with Contractor's Project Manager on a regular basis. County Project Manager will report to County Project Director regarding Contractor's performance with respect to business and operational standards and requirements of this Contract. Unless specified otherwise, County Project Manager will be the presumptive designee of County Project Director.

## **8.3 County Personnel, Other**

All County personnel assigned to this Contract will be under the exclusive supervision of the County. Contractor understands and agrees that all such County personnel are assigned only for the convenience of the County. Contractor hereby represents that its price and performance hereunder are based solely on the Work of Contractor's personnel, except as otherwise expressly provided in this Contract.

## **9.0 ADMINISTRATION OF CONTRACT – CONTRACTOR**

### **9.1 Contractor's Administration**

All persons administering this Contract on behalf of Contractor and described in this Paragraph 9.0 (Administration of Contract – Contractor) are identified in Exhibit F2 (Contractor's Administration) to this Contract. All staff employed by and/or on behalf of Contractor, including the persons listed in such Exhibit F2 (Contractor's Administration) of this Contract, must be adults who are 18 years of age or older, authorized to work in the United States, and fully fluent in both spoken and written English. Contractor must notify the County in writing of any change in the names and/or addresses of Contractor Personnel.

### **9.2 Contractor's Personnel**

#### **9.2.1 Contractor's Project Director**

Contractor's Project Director is responsible for Contractor's performance of all Work and ensuring Contractor's compliance with this Contract. Contractor's Project Director must meet and confer with County Project Director on a regular basis as required by the County and specified in

Exhibit A (Statement of Work - General) to this Contract, regarding the overall maintenance of the System. Such meetings will be conducted via teleconference or in person at a time and place agreed to by County Project Director and Contractor's Project Director.

#### 9.2.2 Contractor's Project Manager

Contractor's Project Manager must be responsible for Contractor's day-to-day activities as related to this Contract and for reporting to the County in the manner set forth in Paragraph 9.6 (Reports by Contractor) below. Contractor's Project Manager must communicate with County Project Manager on a regular basis and must be available during Business Days, or as otherwise required by the County and this Contract, to teleconference and/or to meet with County personnel regarding the operation of this Contract, as required by County Project Director. Contractor's Project Director must meet and confer with County Project Director on a regular basis, at least weekly or as otherwise required by the County. Such meetings will be conducted via teleconference or in person at a time and place agreed to by the parties.

### 9.3 Approval of Contractor's Staff

9.3.1 In fulfillment of its responsibilities under this Contract, Contractor must only utilize, or permit the utilization of, staff who are fully trained and experienced, and as appropriate, licensed or certified in the Tasks required by this Contract. Contractor must supply sufficient staff to discharge its responsibilities hereunder in a timely and efficient manner.

9.3.2 The County will have the right to approve or disapprove each member or proposed member of Contractor's key staff providing Services or on-site Work to the County under this Contract or with access to any County data or information, including County's Confidential Information, System Data and other County Materials, prior to and during their performance of any Work hereunder, as well as to approving or disapproving any proposed deletions from or other changes in such Contractor key staff. County Project Manager, exercising reasonable discretion may require replacement of any member of Contractor key staff performing or offering to perform Work hereunder. Contractor must provide the County with a resume of each proposed initial key staff member as well as a proposed substitute, and an opportunity to vet any such person prior to performance of any Work hereunder. Contractor has 30 Days from the date of the County's written request to replace such key staff.

9.3.3 In addition, Contractor must provide to County Project Director an executed Confidentiality and Assignment Agreement (Exhibit G2 (Contractor Employee Acknowledgement, Confidentiality, and Copyright Assignment Agreement) of this Contract), for each member of Contractor's key staff performing Work under this Contract on or immediately after the effective date, but in no event later than the date such member of Contractor key staff first performs Work under this Contract.

- 9.3.4 Contractor must, to the maximum extent possible, take all necessary steps to ensure continuity over time of the membership of the group constituting Contractor key staff. Contractor must promptly fill any Contractor key staff vacancy with personnel having qualifications (i.e., relevant experience) at least equivalent to those of Contractor key staff member(s) being replaced.
- 9.3.5 In the event Contractor should ever need to remove any member of Contractor key staff from performing Work under this Contract, Contractor must provide the County with notice at least 15 days in advance, except in circumstances when such notice is not possible, and must work with County on a mutually agreeable transition plan to provide an acceptable replacement and ensure project continuity. Should the County be dissatisfied with any member of Contractor staff during the Term of this Contract, Contractor must replace such person with another whose qualifications satisfy the County.

#### **9.4 Contractor's Staff Identification**

- 9.4.1 All Contractor staff, including Subcontractors and agents, who successfully complete a background investigation, as set forth in Paragraph 9.5 (Background and Security Investigations) below, will be issued a photo identification badge by the Department. Contractor staff will prominently display this identification badge on the upper part of the body when entering any County facility or grounds.
- 9.4.2 Contractor must notify the County within one Business Day when staff is terminated from Work under this Contract. Contractor is responsible for retrieving and immediately destroying the staff's County-specified photo identification badge at the time of removal from Work under this Contract, if applicable.
- 9.4.3 If the County requests the removal of Contractor's staff, Contractor must retrieve and immediately destroy Contractor staff's County photo identification badge at the time of removal from Work under this Contract.
- 9.4.4 Contractor will be responsible for costs associated with any lost or stolen identification badge(s).

#### **9.5 Background and Security Investigations**

- 9.5.1 Key staff, and any Contractor staff, with access to the County network or data under this Contract must undergo and pass, to the satisfaction of the County, a background investigation as a condition of beginning and continuing Work under this Contract.

Such background investigation will be administered by the Department. The background investigation will be obtained through fingerprints submitted to the California Department of Justice to include state, local and federal-level review, which may include but not be limited to, criminal conviction information.

- 9.5.2 County Project Director will schedule background investigations with the Department's Civilian Backgrounds Unit. All fees associated with obtaining the background information are borne by Contractor regardless of whether Contractor's staff passes or fails the background clearance investigation.
- 9.5.3 The County may immediately, in its sole discretion, deny or terminate all access to both physical facilities and County systems and/or data, to any Contractor's staff, including subcontractor staff, who do not pass such background investigation(s) to the satisfaction of the County and/or whose background or conduct is incompatible with County's facility access.
- 9.5.4 Disqualification, if any, of Contractor's staff, including Subcontractors' staff, pursuant to this Paragraph 9.5 (Background and Security Investigations) will not relieve Contractor of its obligation to complete all Work in accordance with the terms and conditions of this Contract.

## **9.6 Reports by Contractor**

In addition to any reports required elsewhere under this Contract, including Exhibit A (Statement of Work - General) and Attachment A.1 (SOW Outline) to this Contract, in order to control expenditures and to ensure the reporting of all Work provided by Contractor, Contractor must provide to County Project Manager, as frequently as may be requested by County Project Manager, but in no event more frequently than weekly, written reports which must include, at a minimum, the following information:

- a. Period covered by the report,
- b. Summary of Project status as of reporting date,
- c. Overview of the Work provided during the reporting period,
- d. Progress status of each Work component scheduled for the reporting period,
- e. Issues/problems encountered, proposed resolutions and projected completion dates for problem resolution,
- f. Status of contractually defined Deliverables, milestones and walk-throughs scheduled in the Project Schedule,
- g. Action items and decisions from the previous meeting,
- h. Planned activities for the next two reporting periods, and
- i. Any other information which the County may from time-to-time require.

## **9.7 Rules and Regulations**

During the time when Contractor's employees, Subcontractors or agents are at County facilities, such persons will be subject to the applicable rules and regulations of County facilities. It is the responsibility of Contractor to acquaint such persons, who are to provide Work, with such rules and regulations. In the event that the County determines that an employee, Subcontractor or agent of Contractor has violated any applicable rule or regulation, the County will notify Contractor, and Contractor must undertake such remedial or disciplinary measures as Contractor determines appropriate. If the problem is not thereby corrected, then

Contractor must permanently withdraw its employee, Subcontractor or agent from the provision of Work upon receipt of written notice from the County that: (i) such employee, Subcontractor or agent has violated such rules or regulations, or (ii) such employee's, Subcontractor's or agent's actions, while on County premises, indicate that the employee, Subcontractor or agent may adversely affect the provision of Work. Upon removal of any employee, Subcontractor or agent, Contractor must immediately replace the employee, Subcontractor or agent and must continue uninterrupted Work hereunder.

## **10.0 CHANGE NOTICES AND AMENDMENTS**

### **10.1 General**

No representative of either the County or Contractor, including those named in this Contract, is authorized to make any changes to any of the terms, obligations, or conditions of this Contract, except through the procedures set forth in this Paragraph 10.0 (Change Notices and Amendments). Any changes to this Contract, including any portion of the Work provided under this Contract, will be accomplished only as provided in this Paragraph 10.0 (Change Notices and Amendments).

### **10.2 Change Notices**

For any change requested by the County which does not materially affect the scope of Work, Term, payments or any material term or condition of this Contract, or for any change requiring expenditure of Pool Dollars, a written notice of such change (hereinafter "Change Notice") will be prepared by the Department and provided by County Project Director to Contractor for acknowledgement or execution, as applicable.

Change Notices requiring the expenditure of Pool Dollars will require Contractor to prepare a written scope of Work statement and quotation as the basis of the Change Notice and seek written approval of County Project Director with concurrence of County Counsel prior to commencement of any Work relating to such Change Notice, including any Optional Work. County Project Director will be authorized on behalf of the County to approve all Change Notices.

### **10.3 Amendments**

Except as otherwise provided in this Contract, for any change requested by the County which materially affects the scope of Work, Term, payments or any other material term or condition included in this Contract, an Amendment to this Contract must be executed by the County Board of Supervisors and Contractor's authorized representative(s).

Notwithstanding the foregoing, the Sheriff or his authorized designee, is specifically authorized to issue Contract non-renewal notices for the option terms. Furthermore, the Sheriff is specifically authorized to prepare and execute Amendments on behalf of the County to: (i) add and/or update terms and conditions as required by County's Board of Supervisors or the Chief Executive Office, (ii) execute any of the Option Terms if it is in the best interest of the County, (iii) delete or add equipment, provided such change does not increase the Maximum Contract Sum, (iv) effectuate Contract

modifications that do not materially affect the Term of this Contract, and (v) effect assignment of rights and or delegation of duties as required under Paragraph 20.0 (Assignment and Delegation/Mergers or Acquisitions) below.

#### **10.4 Project Control Document**

Pursuant to Task 1 (Project Plan and Management) of Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General), Contractor must deliver to the County a Project Control Document (PCD) which includes a Detailed Work Plan (DWP). The DWP will be derived for all Work relating to Solution Implementation Services and to the extent necessary, for System Maintenance, as described in Exhibit A (Statement Work) to this Contract.

Changes to the PCD must be made upon mutual agreement, in writing, by both the County and Contractor Project Director by Change Notice or otherwise, provided that both the County and Contractor respective Project Directors agree to alter the Project schedule such that it does not prejudice either party's right to claim that such alterations constitute an Amendment to this Contract that will be governed by the terms of Paragraph 10.3 (Amendments) above.

#### **10.5 Extensions of Time**

Notwithstanding any other provision of this Paragraph 10.0 (Change Notices and Amendments), and to the extent that extensions of time for Contractor's performance do not impact either the scope of Work or cost of this Contract, County Project Director, in his/her sole discretion, may grant Contractor extensions of time in writing for the Work listed in the PCD, provided such extensions, in the aggregate, do not exceed a total of 90 Days beyond the agreed to Final Acceptance date for the Solution.

In such event, and prior to granting any such extension(s) of time, the County will initiate a formal Project Review pursuant to Paragraph 6.0 (Project Review) of Exhibit A (Statement of Work - General). In like manner, the County will initiate a formal Project Review for each subsequent 90-Day extension thereafter. Each Project Review may result in: i) an assessment of the Project's progress to-date, ii) an assessment of the future success of the Project, iii) remedial recommendations for continued Work, or iv) a recommendation for termination of this Contract.

### **11.0 OWNERSHIP AND LICENSE**

#### **11.1 Solution Ownership**

##### **11.1.1 Solution Environment**

Contractor acknowledges that the County or the rightful owner owns all Solution Environment components, including Solution Hardware, and all software provided by the County; while Contractor or the rightful owner will retain ownership of all Solution Environment components provided by Contractor.

### 11.1.2 Application Software

All Application Software provided by Contractor to the County pursuant to this Contract, including Licensed Software and Application Modifications, and related Documentation, is and will remain the property of Contractor or any rightful third-party owner with which all proprietary rights will reside, and which will be subject to the terms of the License granted pursuant to Paragraph 11.2 (License) below.

### 11.1.3 Solution Data

All Solution data that is provided or made accessible by the County to Contractor or is generated by the Solution or is the product of the Solution provided by Contractor hereunder, is and will remain the property of the County.

### 11.1.4 Work Product

Contractor or the rightful owner will remain the sole owner of Contractor's Application Software and all derivative works therein (hereinafter collectively "Work Product"). Work Product does not include any County Materials whether previously owned by the County or designed or developed by Contractor for the County.

## 11.2 License

### 11.2.1 License Grant

Subject to the provisions of Paragraph 11.1 (Solution Ownership) above, Contractor hereby grants to the County a perpetual, irrevocable, non-exclusive License to use the Solution Software or any component thereof, as applicable, and Work Product, including any related Documentation (hereinafter "License"), by all Users in accordance with the scope set forth in Paragraph 11.2.3 (Scope of License) below and subject to the restrictions set forth in Paragraph 11.2.4 (License Restrictions) below for the period specified in Paragraph 11.2.2 (License Term) below. Notwithstanding the foregoing, upon mutual agreement of the parties, the County may obtain its own license for any third-party Software that may be provided by Contractor as part of the System Environment, the term and scope of which will be subject to the terms of the County's agreement with the provider of such Third-Party Software.

### 11.2.2 License Term

The License granted under this Contract will commence upon the earlier of County's access of any Solution Software component or the Effective Date and will continue in perpetuity and without regard to the end of the Term of this Contract.

### 11.2.3 Scope of License

The License granted by Contractor under this Contract provides the County with the following rights:



- a. To use, access, install, integrate with other software, operate and execute the Solution Software in the System Environment on an unlimited number of computers, servers, mobile devices, workstations, local-area networks and wide-area networks, including web connections, by an unlimited number of Users in the conduct of the business of the County as provided in this Contract,
- b. To use, modify, copy and display the Documentation, including, but not limited to the Solution and User manuals and any other specifications or Documentation provided or made accessible by Contractor to the County as necessary or appropriate for the County to fully enjoy and exercise the rights granted under this Contract and the License granted hereunder,
- c. To permit third-party access to any Solution components and Documentation, including Solution Software, or any part thereof, as necessary or appropriate for the County to fully enjoy and exercise the rights granted under this Contract and the License, including for the provision of M&S Services, Software Updates, Application Modifications, Professional Services, and other business use or support of the Solution Software as contemplated by this Contract; provided, however, without limiting the County's rights under this Paragraph 11.2.3(i) the County covenants and agrees that it will not exercise any of the rights contained in this Paragraph 11.2.3(c) unless and until any one of the following release conditions occurs:
  - i. The insolvency of Contractor, including as set forth in Paragraph 24 (Termination for Insolvency) of this Contract, or
  - ii. Contractor is unwilling or unable to provide all System Maintenance Services in accordance with the terms of this Contract, including the Statement of Work, or
  - iii. Contractor ceasing to maintain or support the current version or the last two prior Version Releases of the Application Software for reasons other than the County's failure to pay for, or election not to receive, Contractor's System Maintenance Services, and no other qualified entity will assume the obligation to provide such System Maintenance Services, which may result in County's termination of this Contract for default in accordance with Paragraph 22.0 (Termination for Default) below, or
  - iv. Successor ceasing to do business with the County with respect to this Contract,
- d. Pursuant to Paragraph 58.0 (Assignment by County) below, to reproduce and use a reasonable number of copies of the Solution Software provided by Contractor: (i) by the County and permitted assignees for archive and backup purposes, and (ii) by the County for use by permitted assignees so long as all copies of the Solution

Software contain the proprietary notices appearing on the copies initially furnished to the County by Contractor.

#### 11.2.4 License Restrictions

The County acknowledges and agrees: (i) that the System Software provided by Contractor to the County under this Contract, including related Documentation, is the confidential and copyrighted property of Contractor, or its licensors, and all rights therein not expressly granted to the County are reserved to Contractor, or its licensors, as applicable, and (ii) that Contractor, or its licensors, will retain all proprietary rights in and to the foregoing. Subsequently, the License to the System Software provided by Contractor hereunder is limited by the restrictions set forth in this Paragraph 11.2.4 (License Restrictions). Accordingly, the County will not:

- a. Reverse engineer, disassemble or decompile the Application Software provided by Contractor,
- b. Transfer, sublicense, rent, lease, convey or assign (unless resulting from an agreement assignment under Paragraph 58.0 (Assignment by County)) below, the System Software provided by Contractor,
- c. Copy or reproduce the System Software provided by Contractor in any way except as reasonably necessary for backup, archival or business continuity purposes, and as specified in Paragraph 11.2.3(c) (Scope of License) above,
- d. Use the System Software provided by Contractor on a timesharing, service bureau, subscription service or rental basis for any third party, or
- e. Remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on, or during the use of, the System Software provided by Contractor.

## 12.0 SYSTEM ACCEPTANCE

### 12.1 Acceptance Tests

Contractor, with the County's assistance where applicable, must conduct all Acceptance Tests specified in Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General), to ensure the Solution's compliance with the requirements set forth in this Contract, including, but not limited to Exhibit A (Statement of Work - General), Exhibit B (Solution Requirements) and Exhibit C (Service Level Agreement), as well as all Attachments thereto. Such Acceptance Tests must test, among other things, the System's functionality, integration and interfacing, volume endurance and User Acceptance. An Acceptance Test will be deemed completed and ready for payment when Contractor provides to the County results of a successful completion of such Acceptance Test and the County approves the Acceptance Test in writing.

### 12.1.1 Production Use

The Solution will achieve the Go-Live Project Phase and will be ready for Production Use when County Project Director, approves in writing all Acceptance Tests under Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General), leading to such Go-Live. Contractor's obligations to provide M&S, as specified in this Contract, will commence upon Go-Live for each Project Phase, as applicable.

### 12.1.2 Final Acceptance

The Solution will achieve Final Acceptance when County Project Director approves in writing the Solution Implementation under Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General), for all phases of the Project, as applicable. In the event the Solution fails to successfully achieve Final Acceptance in accordance with the Project Schedule, Contractor must provide to the County a diagnosis of the Deficiencies and proposed remedy(ies) for the County's approval and submit the Solution to County for re-testing as required under Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General). The County and Contractor must agree upon all such proposed remedies prior to their implementation.

### 12.1.3 Failed Testing

12.1.3.1 If County Project Director makes a good faith determination at any time an Acceptance Test that the Solution as a whole, or any component thereof, has not successfully completed an Acceptance Test or has not achieved Final Acceptance (collectively referred to for purposes of this Paragraph 12.1.3 as "Designated Test"), County Project Director will promptly notify Contractor in writing of such failure, specifying with as much detail as possible the manner in which the Solution component or the Solution failed to pass the applicable Designated Test. Contractor must immediately commence all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the Solution component or the Solution as will permit the Solution component or the Solution to be ready for retesting. Contractor must notify County Project Director in writing when such corrections, repairs and modifications have been completed, and when the applicable Designated Test will begin again. If, after the applicable Designated Test has been completed for a second time, County Project Director makes a good faith determination that the Solution component or the Solution again fails to pass the applicable Designated Test, County Project Director will promptly notify Contractor in writing, specifying with as much detail as possible the manner in which the Solution component or the Solution again failed to pass the applicable Designated Test.

Contractor must immediately commence all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the Solution component or the Solution as will permit the Solution component or the System to be ready for retesting.

12.1.3.2 Such procedure will continue, subject to the County's rights under Paragraph 6.2.4 (Termination) above, in the event Contractor fails to timely complete any Deliverable identified as a milestone, until such time as the County notifies Contractor in writing either: (i) of the successful completion of such Designated Test or (ii) that the County has concluded that satisfactory progress toward such successful completion of such Designated Test is not being made, in which latter event, the County will have the right to make a determination, which will be binding and conclusive on Contractor, that a non-curable default has occurred and to terminate this Contract in accordance with Paragraph 22.0 (Termination for Default) below on the basis of such non-curable default. In the event Contractor, using good faith effort, is unable to cure a Deficiency by re-performance after two attempts, the County and Contractor will work together to agree on a mutually acceptable resolution, provided that if the County and Contractor cannot agree on a resolution, the County may terminate this Contract for default pursuant to Paragraph 22.0 (Termination for Default) below.

12.1.3.3 Such a termination for default by the County will be either, as determined by the County in its sole judgment: (i) a termination with respect to one or more of the components of the Solution, or (ii) if the County believes the failure to pass the applicable Designated Test materially affects the functionality, performance or desirability to the County of the Solution as a whole, this entire Contract. In the event of a termination under this Paragraph 12.1.3 (Failed Testing), the County will have the right to receive from Contractor reimbursement of all payments made to Contractor by the County under this Contract for the Solution component(s) and related Deliverables as to which the termination applies or if the entire Contract is terminated, all amounts paid by the County to Contractor under this Contract. If the termination applies only to one or more Solution component(s), at the County's sole option, any reimbursement due to it may be credited against other sums due and payable by the County to Contractor. The foregoing is without prejudice to any other rights that may accrue to the County or Contractor under the terms of this Contract or by law.

#### 12.1.4 System Use

Subject to the County's obligations of Acceptance set forth in Attachment A.1 (SOW Outline) to Exhibit A (Statement of Work - General), and this Contract, following Solution Implementation by Contractor and prior to Final Acceptance by the County, the County will have the right to use, in a Production Use mode, any completed portion of the System, without any additional cost to the County where County determines that it is necessary for County's operations. Such Production Use will not restrict Contractor's performance under this Contract and will not be deemed Final Acceptance of the Solution.

### **13.0 REPRESENTATIONS AND WARRANTIES**

#### **13.1 General Warranties**

Contractor represents, warrants, covenants, and agrees that throughout the entire Term of this Contract:

- a. Contractor must comply with the description and representations (including, but not limited to, Deliverable documentation, performance capabilities, accuracy, completeness, characteristics, specifications, Configurations, standards, functions and requirements applicable to professional software design meeting industry standards) set forth in this Contract, Exhibit A (Statement of Work - General) to this Contract, and all Attachments thereto and Solution Requirements.
- b. Unless specified otherwise herein, the Solution must be free from material Deficiencies.
- c. The M&S Service Levels must not degrade during the entire Term of this Contract.
- d. Contractor must not intentionally cause any unplanned interruption of or accessibility to the Solution or any component through any device, method or means including, without limitation, the use of any "virus", "lockup", "time bomb", or "key lock", "worm", "back door" or "Trojan Horse" device or program, or any disabling code, which has the potential or capability of compromising the security of County's confidential or proprietary information or of causing any unplanned interruption of the operations of, or accessibility of the Solution or any component to the County or User or which could alter, destroy, or inhibit the use of the System or any component, or the data contained therein (collectively referred to as "Disabling Device(s)"), which could block access to or prevent the use of the Solution or any component by the County or Users. Contractor represents, warrants, and agrees that it has not purposely placed, nor is it aware of, any Disabling Device in any Solution component provided to the County under this Contract, nor must Contractor knowingly permit any subsequently delivered or provided Solution component to contain any Disabling Device.

In addition, Contractor must prevent viruses from being incorporated or introduced into the Solution or updates or enhancements thereto prior to the

installation onto the Solution and must prevent any viruses from being incorporated or introduced in the process of Contractor's performance of on-line support.

### **13.2 Standard of Services**

Contractor's Services and other Work required by this Contract must, during the Term of this Contract, conform to reasonable commercial standards as they exist in Contractor's profession or field of practice. If Contractor's Services or other Work provided under this Contract fail to conform to such standards, upon notice from the County specifying the failure of performance, Contractor must also, at Contractor's sole expense, provide the applicable remedy as specified in this Contract, including Exhibit A (Statement of Work - General) and Exhibit C (Service Level Agreement) to this Contract. Contractor must, at its own expense, correct any data in which (and to the extent that) errors have been caused by Contractor or malfunctions of the Solution or by any other tools introduced by Contractor into the Solution for the purpose of performing Services or other Work under this Contract or otherwise.

### **13.3 System Warranties and Problem Resolution**

Contractor hereby warrants to the County that the Solution must be free from any and all Deficiencies commencing from Production Use of the System through the Term of this Contract. All Deficiencies reported or discovered must be corrected in accordance with the Exhibit A (Statement of Work - General) and Exhibit C (Service Level Agreement) to this Contract and will be at no cost to the County beyond the payment of the applicable Maintenance Fees under this Contract.

Contractor also represents, warrants, covenants and agrees that throughout the entire Term of this Contract:

- a. All Solution components must be compatible with each other and, to the extent applicable or required, must interface with each other; and the Solution components, when taken together, must be capable of delivering all the functionality as set forth in this Contract.
- b. Any Solution enhancements or upgrades must be backward compatible with the County's standard browser(s) and operating system version(s) operated on County workstations.
- c. The Solution, including the System, must be capable of delivering all the functionality and meeting all requirements as set forth in this Contract, including the Solution Requirements, security requirements and the specifications.

### **13.4 Continuous Product Support**

13.4.1 In the event that Contractor replaces any or all components of the Application Software with other software modules or components (hereinafter "Replacement Product") during the entire Term of this Contract in order to fulfill its obligations under this Contract and to meet the Solution Requirements, then the License will be deemed to automatically include such Replacement Product without cost or penalty

to the County even if such Replacement Product contains greater functionality than the Application Software it replaced. If required by the County, Contractor must provide the necessary training to County personnel to utilize the Replacement Product at no cost to the County.

13.4.2 In the event any or all components of the Application Software are migrated to the Replacement Product as a result of an acquisition, sale, assignment, transfer or other change in control of Contractor, then any assignee or successor, by taking benefit (including, without limitation, Acceptance of any payment under this Contract), will be deemed to have ratified this Contract, subject to the requirements of Paragraph 20.0 (Assignment and Delegation/Mergers or Acquisitions) below. All terms and conditions of this Contract will continue in full force and effect for the Replacement Product.

13.4.3 The following terms and conditions will apply if the County elects to transfer the License to a Replacement Product:

- a. Contractor, or its assignee or successor, must at no cost to the County, implement the Replacement Product in the Solution Environment, convert and migrate all of the Solution data from the Application Software format to the Replacement Product format to ensure Production Use of such Replacement Product,
- b. Any prepaid Service Fees for the Solution must transfer in full force and effect for the balance of the Replacement Product's maintenance and support term (or equivalent service) at no additional cost. If the prepaid amount is greater than the Replacement Product's maintenance and support fees for the same Term, the credit balance must be applied to future Maintenance Fees or returned to the County, at the County's option,
- c. All modules offered separately must match the original Application Software's level of functionality, must be supplied by Contractor, or its assignee or successor, without additional cost or penalty to the County, and must not affect the calculation of any annual fees,
- d. Contractor must provide to the County the necessary training for purposes of learning the Replacement Product. Such training must be provided at no cost to the County,
- e. All License terms and conditions, at a minimum, must remain as granted herein with no additional fees imposed on the County, and
- f. The definition of Application Software must include the Replacement Product.

13.4.4 Warranty Pass-Through

Contractor must assign to the County to the fullest extent permitted by law or by this Contract and must otherwise ensure that the benefits of any applicable warranty or indemnity offered by any manufacturer of any

Solution component or any other Solution product or service provided hereunder must fully extend to and be enjoyed by the County. Remedies

The County's remedies under this Contract for the breach of the warranties set forth in this Contract, including Exhibit A (Statement of Work - General), Attachment A.1 (SOW Outline) and Exhibit C (Service Level Agreement) to this Contract, will include the repair or replacement by Contractor, at its own expense, of the non-conforming Solution components, any other remedies set forth in Exhibit A (Statement of Work - General), Attachment A.1 (SOW Outline) and/or Exhibit C (Service Level Agreement) to this Contract, including assessment of Service Credits and any other corrective measures specified in such Exhibit A (Statement of Work - General), Attachment A.1 (SOW Outline), Exhibit C (Service Level Agreement) to this Contract.

#### 13.4.5 Breach of Warranty Obligations

Failure by Contractor to timely perform its obligations set forth in this Paragraph 13.4 (Continuous Product Support) will constitute a material breach, upon which, in addition to the County's other rights and remedies set forth herein, the County may, after written notice to Contractor and provision of a reasonable cure period, terminate this Contract in accordance with Paragraph 22.0 (Termination for Default) below.

### **14.0 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE**

#### **14.1 General Insurance Requirements**

Without limiting Contractor's indemnification of the County, and in the performance of this Contract and until all its obligations pursuant to this Contract have been met, Contractor must provide and maintain at its own expense insurance coverage satisfying the requirements specified in this Paragraph 14.0 (General Provisions for all Insurance Requirements). These minimum insurance coverage terms, types, and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Contract. The County in no way warrants that the Required Insurance is sufficient to protect Contractor for liabilities which may arise from or relate to this Contract.

#### **14.2 Evidence of Coverage and Notice to County**

14.2.1 Certificate(s) of insurance coverage (Certificate) satisfactory to the County, and a copy of an Additional Insured endorsement confirming the County and its Agents (defined below) has been given Insured status under Contractor's General Liability policy, will be delivered to County and provided prior to commencing Services under this Contract.

14.2.2 Renewal Certificates must be provided to the County not less than ten Days prior to Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Subcontractor insurance policies at any time.



- 14.2.3 Certificates must identify all required insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized representative of the insurer(s). The insured party named on the Certificate must match the name of Contractor identified as the contracting party in this Contract. Certificates must provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding \$50,000, and list any County required endorsement forms.
- 14.2.4 Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by Contractor, its insurance broker(s) and/or insurer(s), will be construed as a waiver of any of the required insurance provisions.
- 14.2.5 Certificates and copies of any required endorsements must be sent to County Project Director at the address specified in Exhibit F1 (County's Administration) to this Contract.
- 14.2.6 Contractor also must promptly report to the County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to contractor. Contractor also must promptly notify the County of any third-party claim or suit filed against Contractor or any of its Subcontractors which arises from or relates to this Contract and could result in the filing of a claim or lawsuit against Contractor and/or the County.

#### **14.3 Additional Insured Status and Scope of Coverage**

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, employees, and volunteers (collectively County and its Agents) must be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. The County and its Agents additional insured status must apply with respect to liability and defense of suits arising out of Contractor's acts or omissions, whether such liability is attributable to Contractor or to County. The full policy limits and scope of protection also must apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

#### **14.4 Cancellation of or Changes in Insurance**

Contractor must provide the County with, or Contractor's insurance policies must contain a provision that the County will receive, written notice of cancellation or

any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice must be provided to the County at least ten Days in advance of cancellation for non-payment of premium and 30 Days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of this Contract, in the sole discretion of the County, upon which the County may suspend or terminate this Contract.

#### **14.5 Failure to Maintain Insurance**

Contractor's failure to maintain or to provide acceptable evidence that it maintains the required insurance will constitute a material breach of this Contract, upon which the County immediately may withhold payments due to contractor, and/or suspend or terminate this Contract. The County, at its sole discretion, may obtain damages from contractor resulting from said breach. Alternatively, the County may purchase the Required Insurance, and without further notice to Contractor, deduct the premium cost from sums due to contractor or pursue contractor reimbursement.

#### **14.6 Insurer Financial Ratings**

Coverage will be placed with insurers acceptable to the County with A.M. Best ratings of not less than A: VII unless otherwise approved by the County.

#### **14.7 Contractor's Insurance Must Be Primary**

Contractor's insurance policies, with respect to any claims related to this Contract, will be primary with respect to all other sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage will be in excess of and not contribute to any Contractor coverage.

#### **14.8 Waivers of Subrogation**

To the fullest extent permitted by law, Contractor hereby waives its rights and its insurer(s)' rights of recovery against the County under all the Required Insurance for any loss arising from or relating to this Contract. Contractor must require its insurers to execute any waiver of subrogation endorsements which may be necessary to affect such waiver.

#### **14.9 Subcontractor Insurance Coverage Requirements**

Contractor must include all Subcontractors as insureds under Contractor's own policies or must provide the County with each Subcontractor's separate evidence of insurance coverage. Contractor will be responsible for verifying each Subcontractor complies with the Required Insurance provisions herein and must require that each Subcontractor name the County and Contractor as additional insureds on the Subcontractor's General Liability policy. Contractor must obtain the County's prior review and approval of any Subcontractor request for modification of the Required Insurance.

#### **14.10 Deductibles and Self-Insured Retentions (SIRs)**

Contractor's policies must not obligate the County to pay any portion of any Contractor deductible or SIR. The County retains the right to require Contractor to

reduce or eliminate policy deductibles and SIRs, or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration, and defense expenses. Such bond must be executed by a corporate surety licensed to transact business in the State of California.

**14.11 Claims Made Coverage**

If any part of the required insurance is written on a claims made basis, any policy retroactive date will precede the effective date of this Contract. Contractor understands and agrees it must maintain such coverage for a period of not less than three years following Contract expiration, termination, or cancellation.

**14.12 Application of Excess Liability Coverage**

Contractors may use a combination of primary and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies to satisfy the Required Insurance provisions.

**14.13 Separation of Insureds**

All liability policies must provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

**14.14 Alternative Risk Financing Programs**

The County reserves the right to review and then approve Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents must be designated as an Additional Covered Party under any approved program.

**14.15 County Review and Approval of Insurance Requirements**

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon the County's determination of changes in risk exposures.

**15.0 INSURANCE COVERAGE**

**15.1 Commercial General Liability Insurance**

Commercial General Liability insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming the County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

**15.2 Automobile Liability insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and**

property damage, in combined or equivalent split limits, for each single accident. Insurance must cover liability arising out of Contractor's use of autos pursuant to this Contract, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

**15.3 Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also must include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer. The written notice must be provided to the County at least ten Days in advance of cancellation for non-payment of premium and 30 Days in advance for any other cancellation or policy change. If applicable to Contractor's operations, coverage also must be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

#### **15.4 Property Coverage**

If Contractor's given exclusive use of the County owned or leased property Contractor must carry property coverage at least be as broad as that provided by the ISO special causes of loss (ISO policy form CP 10 30) form. The County and its Agents must be named as an Additional Insured and Loss Payee on Contractor's insurance as its interests may appear. Automobiles and mobile equipment must be insured for their actual cash value. Real property and all other personal property must be insured for their full replacement value.

#### **15.5 Technology Errors & Omissions Insurance**

Technology Errors & Omissions Insurance includes coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products. Coverage for violation of software copyright should be included. Technology services should at a minimum include: (i) systems analysis, (ii) systems programming, (iii) data processing, (iv) systems integration, (v) outsourcing including outsourcing development and design, (vi) systems design, consulting, development and modification, (vii) training services relating to computer software or hardware, (viii) management, repair and maintenance of computer products, networks and systems, (ix) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software, (x) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, and (xi) any other Services provided by Contractor, with limits of not less than ten million dollars.

#### **15.6 Privacy/Network Security (Cyber) Insurance**

Privacy/Network Security ("Cyber") liability coverage providing protection against liability for: (i) privacy breaches (liability arising from the loss or disclosure of confidential information no matter how it occurs), (ii) System breach, (iii) denial or loss of service, (iv) introduction, implantation or spread of malicious software code,

and (v) unauthorized access to or use of computer systems, with limits of not less than ten million dollars. No exclusions/restrictions for unencrypted portable devices/media may be on the policy. The County of Los Angeles, its Special Districts, and their Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) must be provided additional insured status.

## **15.7 Intellectual Property Warranty and Indemnification**

### **15.7.1 Indemnification – General**

Notwithstanding any provision to the contrary, whether expressly or by implication, Contractor must indemnify, defend, and hold harmless the County, its Special Districts, and their elected and appointed officers, employees, Agents and volunteers (collectively referred to for purposes of this Paragraph 15.7.1 as County and its Agents) from and against any and all liability, including, but not limited to, demands, claims, actions, fees, damages, costs, and expenses (including attorneys and expert witness fees) arising from any alleged or actual infringement of any third party's patent or copyright, or any alleged or actual unauthorized trade secret disclosure, arising from or related to this Contract and/or the operation and use of the System (collectively referred to for purposes of this Paragraph 15.7.1 as "Infringement Claim(s)").

Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 15.7.1 (Indemnification – General) must be conducted by Contractor and performed by counsel selected by Contractor. The County will provide Contractor with information, reasonable assistance, and authority to defend or settle the claim. Notwithstanding the foregoing, the County will retain the right to participate in any such defense at its sole cost and expense.

### **15.7.2 Indemnification – Intellectual Property**

15.7.2.1 Notwithstanding any provision to the contrary, whether expressly or by implication, from and against any and all third-party liability, including, but not limited to, demands, claims, actions, fees, damages, costs, and expenses (including attorneys and expert witness fees) arising from any alleged or actual infringement of any third party's patent or copyright, or any alleged or actual unauthorized trade secret disclosure, arising from or related to this Contract and/or the operation and use of the System (collectively referred to for purposes of this Paragraph 15.7.2 (Indemnification – Intellectual Property) as "Infringement Claim(s)").

15.7.2.2 Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 15.7.2 (Indemnification – Intellectual Property) must be conducted by Contractor and performed by counsel selected by Contractor. The County will provide Contractor with information, reasonable assistance and

authority to defend or settle the claim. Notwithstanding the foregoing, the County will retain the right to participate in any such defense at its sole cost and expense.

- 15.7.2.3 Contractor must pay and is solely responsible for the amount of any resulting adverse final judgement issued by a court of competent jurisdiction, or of any settlement made by Contractor in writing.
- 15.7.2.4 Contractor will have no liability hereunder if the claim of infringement or an adverse final judgment rendered by a court of competent jurisdiction results from: (i) the County's use of a previous version of the Solution, and the claim would have been avoided had the County used the current version of the software, (ii) the County's combining the Solution with devices or products not intended or approved by Contractor, (iii) use of the Solution in applications, business environments or processes for which the Solution was not designed or contemplated, and where use of the Solution outside of such application, environment or business process would not have given rise to the claim, (iv) corrections, modifications, alterations or enhancements that the County made to the Solution and such correction, modifications, alterations or enhancements is determined by a court of competent jurisdiction to be a contributing (e.g., material and/or substantive) cause of the infringement, (v) use of the Solution by any person or entity other than Users, or (vi) subject to Contractor's remedial measures, the County's willful infringement, including continued use of Contractor's infringing Solution after being notified by Contractor that such infringing Solution is, or is likely to become, the subject of a third-party claim.
- 15.7.2.5 Contractor must, at its option and at no cost to the County, engage in remedial measures by, either: (i) disabling without delay, the affected Software component, as applicable, and either (ii) procuring the right, by license or otherwise, for the County to continue to use the Solution or affected component(s) thereof, or part(s) thereof, to the same extent of County's License, or (iii) replacing or modifying the Solution or any component(s) thereof with another software or component(s) thereof of at least equivalent quality and performance capabilities, as mutually determined and agreed to by the County and Contractor, until the Solution and all components thereof become non-infringing, non-misappropriating and non-disclosing (hereinafter collectively for the purpose of this Paragraph 15.7 "Remedial Act(s)"). The foregoing states Contractor's entire liability and County's sole and exclusive remedy with respect to this Paragraph 15.7 (Intellectual Property Warranty and Indemnification).

15.7.2.6 Failure by Contractor to provide and complete the Remedial Acts described in Paragraph 15.7.2.3 above will constitute a material breach of this Contract, upon which the County will be entitled to terminate this Contract for default pursuant to Paragraph 22.0 (Termination for Default) below.

**16.0 INTENTIONALLY OMITTED**

**17.0 INTENTIONALLY OMITTED**

**18.0 CONFIDENTIALITY**

**18.1 Confidential Information**

Each party will protect, secure and keep confidential all records, materials, documents, data and/or other information, including, but not limited to, billing and sensitive financial information, County records, data and information, County materials, Solution data, Work Product, Application Software, personally identifiable and health information, and any other data, records and information, received, obtained and/or produced under the provisions of this Contract (hereinafter "Confidential Information"), in accordance with the terms of this Contract and all applicable federal, state or local laws, regulations, ordinances and publicly available guidelines and directives relating to confidentiality. As used in this Contract, the term "Confidential Information" will also include records, materials, data and information deemed confidential by the County or the applicable law under Paragraph 9.7 (Rules and Regulations) of this Contract. Each party will use whatever appropriate security measures are necessary to protect such Confidential Information from loss, damage and/or unauthorized dissemination by any cause, including, but not limited to, fire and theft.

Contractor must inform all its officers, employees, agents and Subcontractors providing Work hereunder of the confidentiality provisions of this Contract. Contractor must ensure that all its officers, employees, agents and Subcontractors performing Work hereunder have entered into confidentiality agreements no less protective of the County than the terms of this Contract, including this Paragraph 18.1 (Confidential Information) and Exhibit G2 (Contractor Employee Acknowledgement, Confidentiality, and Copyright Assignment Agreement) to this Contract. Notwithstanding anything herein to the contrary, Contractor acknowledges and agrees that it is solely responsible for any breach of the obligations of confidentiality set forth herein by any person or entity to which Contractor discloses any of County's Confidential Information.

Contractor's violation of this Paragraph 18.1 (Confidential Information) may constitute a material breach of this Contract. In the event of such material breach, the County may, in its sole discretion, terminate this Contract and/or pursue debarment of Contractor from participation in future County solicitations or from being awarded a contract pursuant to a County solicitation.

**18.2 Disclosure of Information**

With respect to any of County's Confidential Information or any other records, materials, data or information that is obtained by Contractor (hereinafter

collectively for the purpose of this Paragraph 18.2 “information”), Contractor must: (i) not use any such information for any purpose whatsoever other than carrying out the express terms of this Contract, (ii) promptly transmit to the County all requests for disclosure of any such information, (iii) not disclose, except as otherwise specifically permitted by this Contract, any such information to any person or organization other than the County without prior written approval of County’s contract administrator in consultation with County’s Chief Information Security Officer and/or Chief Privacy Officer, and (iv) at the expiration or termination of this Contract, return all such information to the County or maintain such information according to the written procedures provided or made available to Contractor by the County for this purpose. If required by a court of competent jurisdiction or an administrative body to disclose County Information, Contractor must notify the County Project Director immediately and prior to any such disclosure, to provide the County an opportunity to oppose or otherwise respond to such disclosure, unless prohibited by law from doing so.

### **18.3 Disclosure Restrictions of Non-Public Information**

While performing Work under this Contract, Contractor may encounter County Non-public Information (“NPI”) in the course of performing this Contract, including, but not limited to, licensed technology, drawings, schematics, manuals, sealed court records, and other materials described and/or identified as “Internal Use”, “Confidential” or “Restricted” as defined in Board of Supervisors Policy 6.104 – Information Classification Policy as NPI. Contractor must not disclose or publish any County NPI and material received or used in performance of this Contract. This disclosure obligation is perpetual for Contractor, its officers, employees, agents and Subcontractors.

### **18.4 Intentionally Omitted**

### **18.5 Individual Requests**

Contractor must acknowledge any request or instructions from the County regarding the exercise of any individual’s privacy rights provided under applicable federal or state laws. Contractor must have in place appropriate policies and procedures to promptly respond to such requests and comply with any request or instructions from County within seven Days. If an individual makes a request directly to Contractor involving County Information, Contractor must notify County within five Days and County will coordinate an appropriate response, which may include instructing Contractor to assist in fulfilling the request. Similarly, if Contractor receives a privacy or security complaint from an individual regarding County Information, Contractor must notify County as described in Paragraph 19.0 (Security) below, and County will coordinate an appropriate response.

### **18.6 Retention of County Information**

Contractor must not retain any County Information for any period longer than necessary for Contractor to fulfill its obligations under this Contract and applicable law.



## **19.0 SECURITY**

### **19.1 System Security**

Notwithstanding anything to the contrary herein, Contractor must provide all Work utilizing security technologies and techniques in accordance with the industry standards, Contractor's best practices and applicable County security policies, procedures and requirements provided by the County to Contractor in writing as part of the RFP (and incorporated by this reference), this Contract or otherwise as required by law, including those relating to the prevention and detection of fraud or other inappropriate use or access of Systems and networks. Without limiting the generality of the foregoing, Contractor must implement and use network management and maintenance applications and tools and fraud prevention and detection and encryption technologies and prevent the introduction of any Disabling Device into the Solution, as further specified in this Contract and Attachment C.1 (County – Information Security Requirements) to Exhibit C (Service Level Agreement). In no event must Contractor's actions or inaction result in any situation that is less secure than the security that Contractor then provides for its own Systems and data.

### **19.2 Solution Data Security**

Contractor hereby acknowledges the right of privacy of all persons whose information is stored in the Solution data or any other County data. Contractor must protect, secure and keep confidential all Solution data in compliance with all federal, state and local laws, rules, regulations, ordinances, guidelines and directives relating to confidentiality and information security, and Attachment C.1 (County – Information Security Requirements), including any breach of the security of the Solution, such as any unauthorized acquisition of Solution data that compromises the security, confidentiality or integrity of personally identifiable information. Further, Contractor must take all reasonable actions necessary or advisable to protect all Solution data in its possession, custody or control from loss or damage by any cause, including fire, theft or other catastrophe. In addition, if requested by County Project Director, Contractor must provide notification to all persons whose unencrypted personal information was, or is reasonably believed to have been, acquired by any unauthorized person, and the content, method and timing of such notification will be subject to the prior approval of County Project Director. Contractor must not use Solution data for any purpose or reason other than to fulfill its obligations under this Contract.

### **19.3 Protection of Electronic County Information – Data Encryption**

Contractor that electronically transmits or stores Personal Information (hereinafter "PI"), Protected Health Information (hereinafter "PHI") and/or Medical Information (hereinafter "MI") must comply with the encryption standards set forth below and incorporated into this Contract and all Amendments thereto (collectively, the "Encryption Standards"), as required by the Board of Supervisors Policy Number 5.200 (hereinafter "Policy"). For purposes of this Paragraph 19.3 (Protection of Electronic County Information – Data Encryption), "PI" is defined in California Civil Code Section 17910.29(g); "PHI" is defined in Health Insurance Portability and

Accountability Act of 1996 (HIPAA) and implementing regulations; and “MI” is defined in California Civil Code Section 56.05(j).

#### 19.3.1 Encryption Standards – Stored Data

Contractor’s and Subcontractors’ workstations and portable devices that are used to access, store, receive and/or transmit County PI, PHI or MI (e.g., mobile, wearables, tablets, thumb drives, external hard drives) require encryption (i.e., software and/or hardware) in accordance with: (a) Federal Information Processing Standard Publication (FIPS) 140-2, (b) National Institute of Standards and Technology (NIST) Special Publication 800-57 Recommendation for Key Management – Part 1: General (Revision 3), (c) NIST Special Publication 800-57 Recommendation for Key Management – Part 2: Best Practices for Key Management Organization; and (d) NIST Special Publication 800-111 Guide to Storage Encryption Technologies for End User Devices. Advanced Encryption Standard (AES) with cipher strength of 256-bit is minimally required.

Contractor’s and Subcontractors’ use of remote servers (e.g., cloud storage, Software-as-a-Service or SaaS) for storage of County PI, PHI and/or MI will be subject to written pre-approval by the County’s Chief Executive Office.

#### 19.3.2 Encryption Standards – Transmitted Data

All transmitted (e.g., network) County PI, PHI and/or MI require encryption in accordance with: (a) NIST Special Publication 800-52 Guidelines for the Selection and Use of Transport Layer Security Implementations, and (b) NIST Special Publication 800-57 Recommendation for Key Management – Part 3: Application-Specific Key Management Guidance. Secure Sockets Layer (SSL) is minimally required with minimum cipher strength of 128-bit.

#### 19.3.3 Definition References

- a. As used in this Policy, the phrase “Personal Information” will have the same meaning as set forth in subdivision (g) of California Civil Code section 17910.29.
- b. As used in this Policy, the phrase “Protected Health Information” will have the same meaning as set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and implementing regulations.
- c. As used in this Policy, the phrase “Medical Information” will have the same meaning as set forth in subdivision (j) of California Civil Code section 56.05.

#### 19.3.4 Compliance

By executing this Contract, Contractor (on behalf of itself and any and all County-approved Subcontractors) certifies its compliance with the Policy and the data encryption requirements specified in this Paragraph 19.3.4 (Compliance) as of the Effective Date of this Contract, during the Term of

this Contract and for as long as Contractor (or any of its Subcontractors) is in possession of County PI, PHI and/or MI. Such certification will be evidenced by submission of a completed and signed form set forth in Attachment C.3 (Compliance with Departmental Encryption Requirements) to Exhibit C (Service Level Agreement) to this Contract, prior to being awarded this Contract by the Board of Supervisors. In addition to the foregoing, Contractor must maintain any validation or attestation reports that it or its County-approved Subcontractors' data encryption product(s) generate, and such reports will be subject to audit in accordance with this Contract. The County requires that, if non-compliant, Contractor develop and execute a corrective action plan. Failure on the part of Contractor to comply with any of the provisions of this Paragraph 19.3.4 Compliance will constitute a material breach of this Contract, upon which the County may terminate or suspend this Contract, deny Contractor access to the County IT resources and/or take such other actions as deemed necessary or appropriate by the County.

#### 19.3.5 No Policy Exceptions

There are no exceptions to this Policy, except as expressly approved by the Board of Supervisors in writing.

#### 19.3.6 Remedies

Contractor acknowledges that a breach by Contractor of this Paragraph 19.3.6 (Remedies) may result in irreparable injury to the County that may not be adequately compensated by monetary damages and that, in addition to the County's other rights under this Paragraph 19.3.6 (Remedies) and at law and in equity, the County will have the right to seek injunctive relief to enforce the provisions of this Paragraph 19.3.6 (Remedies). The provisions of this Paragraph 19.3.6 (Remedies) will survive the expiration and/or termination of this Contract.

Contractor must take all reasonable actions necessary or advisable to protect the Solution from loss or damage by any cause. Contractor will bear the full risk of loss or damage to the Solution and any Solution data by any cause other than resulting from force majeure or the County's sole fault.

## **20.0 ASSIGNMENT AND DELEGATION/MERGERS OR ACQUISITIONS**

20.1 Contractor must notify the County of any pending acquisitions/mergers of its company unless otherwise legally prohibited from doing so. If Contractor is restricted from legally notifying the County of pending acquisitions/mergers, then it should notify the County of the actual acquisitions/mergers as soon as the law practicably allows and provide to the County the legal framework that restricted it from notifying the County prior to the actual acquisitions/mergers.

20.2 Contractor cannot assign, exchange, transfer, or delegate its rights or duties under this Contract, whether in whole or in part, without the prior express written consent of the County in its sole discretion and any attempted assignment, delegation, or

otherwise transfer of its rights or duties, without such consent will be null and void. For purposes of this paragraph 20.0 (Assignment and Delegation/Mergers or Acquisitions), the County consent will require a written Amendment to this Contract, which must be formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under this Contract will be deductible by the County against the claims Contractor may have against the County.

- 20.3 Any assumption, assignment, delegation, or takeover of any of Contractor's duties, responsibilities, obligations, or performance of same by any person or entity other than Contractor, whether through assignment, Subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without the County's prior express written approval, will be a material breach of this Contract which may result in the termination of this Contract. In the event of such termination, the County will be entitled to pursue the same remedies against Contractor under this Contract as in the event of default by Contractor.

## **21.0 TERMINATION FOR CONVENIENCE**

- 21.1 This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of Work hereunder will be effectuated by notice of termination to Contractor specifying the extent to which performance of Work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective will be no less than 30 Days after the notice is sent.
- 21.2 After receipt of a notice of termination and except as otherwise directed by the County, Contractor must:
- a. Stop Work under this Contract on the date and to the extent specified in such notice, and
  - b. Complete performance of such part of the Work, as well as Work not effected by the notice, using the same quality of Work, as if Contractor had not been terminated by such notice.
- 21.3 All materials including books, records, documents, or other evidence bearing on the costs and expenses of Contractor under this Contract must be maintained by Contractor in accordance with Paragraph 33.0 (Record Retention and Inspection-Audit Settlement) below.

## **22.0 TERMINATION FOR DEFAULT**

- 22.1 The County may, by written notice to Contractor, terminate the whole or any part of this Contract if:
- a. Contractor fails to timely provide and/or satisfactorily perform any Task, SubTask, Deliverable, goods, Service, or other Work within the times specified in this Contract, including the finalized Project Plan or Project Schedule, or
  - b. Contractor fails to demonstrate a high probability of timely fulfillment of the performance requirements under this Contract, or

- c. Contractor fails to make progress as to endanger performance of this Contract in accordance with its terms, or
  - d. Contractor in performance of Work under this Contract fails to comply with the requirements of this Contract, including, but not limited to Exhibit A (Statement of Work - General), Attachment A.1 (SOW Outline) and Exhibit C (Service Level Agreement), or
  - e. Contractor fails to perform or comply with any other provisions of this Contract or materially breaches this Contract; and, unless a shorter cure period is expressly provided in this Contract, does not cure such failure or fails to correct such failure or breach within 30 Days (or such longer period as the County may authorize in writing) of receipt of written notice from the County specifying such failure or breach, except that Contractor must not be entitled to any cure period, and the County may terminate immediately, in the event that Contractor's failure to perform or comply is not reasonably capable of being cured.
- 22.2 If, after the County has given notice of termination under the provisions of this Paragraph 22.0 (Termination for Default), it is determined by the County that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to Paragraph 21.0 (Termination for Convenience) above.
- 22.3 The rights and remedies of the County provided in this Paragraph 22.0 (Termination for Default) are not exclusive and are in addition to any other rights and remedies provided by law and/or under this Contract.

**23.0 TERMINATION FOR IMPROPER CONSIDERATION**

- 23.1 The County may, by written notice to Contractor, immediately terminate the right of Contractor to proceed under this Contract if it is found that improper consideration, in any form, was offered or given by Contractor, either directly or through an intermediary, to any County elected official, officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, Amendment, or extension of this Contract or the making of any determinations with respect to Contractor's performance pursuant to this Contract. In the event of such termination, the County will be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.
- 23.2 Contractor must immediately report any attempt by a County elected official, officer, employee, or agent to solicit such improper consideration. The report should be made either to the County manager charged with the supervision of the employee or to County's Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.
- 23.3 Improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, tangible gifts or other such items and means.

## **24.0 TERMINATION FOR INSOLVENCY**

24.1 The County may terminate this Contract immediately and without delay if any of the following occur:

- a. Insolvency of Contractor - Contractor must be deemed to be insolvent if it has ceased to pay its debts for at least 60 Days in the ordinary course of business or cannot pay its debts as they become due, whether a petition has been filed under the Federal Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the Federal Bankruptcy Code,
- b. The filing of a voluntary or involuntary petition regarding Contractor under the Federal Bankruptcy Code,
- c. The appointment of a Receiver or Trustee for Contractor, or
- d. The execution by Contractor of a general assignment for the benefit of creditors.

24.2 The rights and remedies of the County provided in this Paragraph 24.0 (Termination for Insolvency) are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

24.3 Contractor agrees that if Contractor as a debtor-in-possession, or if a trustee in bankruptcy, rejects this Contract, the County may elect to retain its rights under this Contract, as provided under Section 365(n) of the United States Bankruptcy Code (11 United States Code, Section 365(n)). Upon written request of the County to Contractor or the trustee in bankruptcy, as applicable, Contractor or such trustee must allow the County to exercise all of its rights and benefits under this Contract including, without limitation, such Section 365(n) (including, without limitation, the right to continued use of all source and object code versions of the Application Software and related Documentation, and must not interfere with the rights and benefits of the County as provided therein). The foregoing will survive the termination or expiration of this Contract for any reason whatsoever.

## **25.0 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE**

Contractor, and each County Lobbyist or County Lobbying firm (as defined in County Code Section 2.160.010) retained by Contractor, must fully comply with this County Lobbyist Ordinance. Failure on the part of Contractor or any County Lobbyist or County Lobbying firm retained by Contractor to fully comply with the County's Lobbyist Ordinance will constitute a material breach of this Contract, upon which the County may in its sole discretion, immediately terminate or suspend this Contract.

## **26.0 TERMINATION FOR NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision of this Contract, the County will not be obligated for Contractor's performance hereunder or by any provision of this Contract during any of the County's future fiscal years unless and until the Board appropriates funds for this Contract in the County's Budget for each such future Fiscal Year. In the event that funds are not appropriated for this Contract, then this Contract will terminate as of June 30 of the last fiscal year for which funds were appropriated. The County will notify Contractor in writing of any such non-allocation of funds at the earliest possible date.

## **27.0 EFFECT OF TERMINATION**

### **27.1 Termination by County**

In the event that the County, upon written notice to Contractor, terminates this Contract in whole or in part as provided herein, then:

- a. Contractor and the County will continue the performance of this Contract to the extent not terminated,
- b. Contractor must stop Work under this Contract on the date and to the extent specified in such notice and provide to the County all completed Work and Work in progress, in a medium reasonably requested by the County,
- c. Contractor must: (i) promptly return to the County any and all County Confidential Information, County Materials and any other County data relating to that portion of this Contract and Work terminated by the County, and (ii) destroy all such Confidential Information, County Materials and other County data as required in and in accordance with the provisions of Attachment C.1 (County – Information Security and Privacy Requirements) to Exhibit C (Service Level Agreement),
- d. The County will pay Contractor all monies due, upon receiving Contractor's invoice(s), in accordance with the terms of this Contract for the Work completed up to the time of termination,
- e. Contractor must return to the County all monies paid by County, yet unearned by Contractor, including any prorated prepaid Service Fees calculated depending on the date of termination, if applicable,
- f. Upon termination by the County for default pursuant to Paragraph 22.0 (Termination for Default) above or for insolvency pursuant to Paragraph 24.0 (Termination for Insolvency) above, the County will have the right to procure, upon such terms and in such a manner as the County may deem appropriate, goods, Services and other Work, similar to those so terminated, and Contractor must be liable to the County for, and must promptly pay to the County by cash payment, any and all excess costs incurred by County, as determined by the County, to procure and furnish such similar goods, Services and other Work,
- g. Contractor understands and agrees that the County has obligations that it cannot satisfy without use of the Solution provided to the County hereunder or an equivalent solution, and that a failure to satisfy such obligations could result in irreparable damage to the County and the entities it serves. Therefore, Contractor agrees that in the event of any termination of this Contract, Contractor must fully cooperate with the County in the transition of the County to a new solution, toward the end that there be no interruption of the County's day-to-day operations due to the unavailability of the Solution during such transition. Upon written notice to Contractor, Contractor must allow the County or a County-selected Subcontractor a transition period until expiration of the term of this Contract, or in all other cases, at a date specified by the County, for the orderly turnover of Contractor's Contract activities and responsibilities without any additional cost to the County.

## **27.2 Termination Transition Services**

Contractor must assist the County in transitioning from the Solution by providing Transition Services, as provided below. Upon the expiration or termination of this Contract, the County may require Contractor to provide Services in the form of Optional Work to assist the County to transition System operations from Contractor to the County or the County's designated third party ("Transition Services"). Upon the County's request for Transition Services, the County and Contractor agree to negotiate in good faith the scope of work and the price for such Transition Services.

Contractor agrees that if the County terminates this Contract for any breach by Contractor or for insolvency of Contractor, Contractor must perform all Transition Services as required by the County at no cost to the County. Contractor must provide the County with all the Transition Services as provided in this Paragraph 27.2 (Termination Transition Services). The duty of Contractor to provide any Transition Services pursuant to this Paragraph 27.2 (Termination Transition Services) will be conditioned on the County continuing to comply with its obligations under this Contract, including payment of all applicable fees. Contractor has no right to withhold or limit its performance of the Transition Services based on any alleged breach of this Contract by the County, other than a failure by the County to timely pay Contractor the invoiced amounts due and payable hereunder. The County will have the right to seek specific performance of this Paragraph 27.2 (Termination Transition Services) in any court of competent jurisdiction and Contractor hereby waives any defense that damages are an adequate remedy. Compliance with this Paragraph 27.2 (Termination Transition Services) by either party will not constitute a waiver or estoppel regarding any rights or remedies available to the parties. In the event of termination for default based on a breach by Contractor, the value of Transition Services provided to the County, based on the most recent prices applicable under this Contract to similar Services, will be applied in mitigation of any damages that may be awarded.

## **28.0 WAIVER**

No breach of any provision hereof can be waived unless in writing. No waiver by the County of any breach of any provision of this Contract will constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Contract will not be construed as a waiver thereof. The rights and remedies set forth in this Paragraph 28.0 (Waiver) will not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

## **29.0 WARRANTY AGAINST CONTINGENT FEES**

29.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.



29.2 For breach of this warranty, the County has the right to terminate this Contract and at its sole discretion may deduct from this Contract price the consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

### **30.0 INDEPENDENT CONTRACTOR STATUS**

30.1 This Contract is by and between the County and Contractor and is not intended, and will not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and Contractor. The employees and agents of one party will not be, nor be construed to be employees or agents of the other party for any purpose whatsoever.

30.2 Contractor is solely liable and responsible for providing to, or on behalf of, all its agents, servants or employees performing Work pursuant to this Contract any and all compensation and benefits. The County will have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, state, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Contractor.

30.3 Contractor understands and agrees that all persons performing Work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of Contractor and not employees of the County. Contractor is solely liable and responsible for furnishing all Workers' Compensation benefits to all its agents, servants, or employees as a result of any injuries arising from or connected with any Work performed by or on behalf of Contractor pursuant to this Contract.

### **31.0 SUBCONTRACTING**

31.1 The County has relied, in entering into this Contract, on the reputation of and on obtaining the personal performance of Contractor, and more specifically Contractor's key staff. The requirements of this Contract cannot be subcontracted by Contractor without the advance written approval of the County. Any attempt by Contractor to Subcontract any performance of this Contract without prior written approval will be null and void and will be deemed a material breach of this Contract, upon which the County may immediately terminate this Contract.

31.2 In the event Contractor seeks to subcontract any portion of its performance of this Contract by Contractor's key staff, Contractor must first provide to the County, in writing, a notice regarding such proposed Subcontract, which must include:

- a. The reasons for the proposed Subcontract,
- b. Identification of the proposed Subcontractor and an explanation of why and how the proposed Subcontractor was selected,
- c. A detailed description of the Work to be provided by the proposed Subcontractor,
- d. Confidentiality provisions applicable to the proposed Subcontractor, and if applicable its officers, employees and agents, which would be incorporated into the Subcontract,

- e. Required County forms including: (i) Exhibit E (Contractor's EEO Certification), (ii) Exhibit G1 (Contractor Acknowledgement, Confidentiality, and Copyright Assignment Agreement), (iii) Exhibit I (Safely Surrendered Baby Law), and (iv) any other standard County required provisions,
  - f. A representation from Contractor that:
    - i. The proposed Subcontractor is qualified to provide the Work for which Subcontractor is being hired,
    - ii. Either the proposed Subcontractor maintains the insurance required by this Contract or Contractor has procured and maintains such insurance coverage for the proposed Subcontractor,
    - iii. Either Contractor and/or the proposed Subcontractor will be liable and responsible for all of Subcontractor's taxes, payments, and compensation, including compensation to its employees, related to the performance of Work under this Contract, and
    - iv. Either Contractor and/or the proposed Subcontractor must indemnify the County under all the same terms and conditions as the indemnification provisions of this Contract.
  - g. Other pertinent information and/or certifications reasonably requested by the County.
- 31.3 The County will review Contractor's request to Subcontract and determine on a case-by-case basis whether to consent to such request, which consent will not be unreasonably withheld.
- 31.4 Notwithstanding any provision of this Contract to the contrary, whether expressly or by implication, Contractor must indemnify, defend and hold harmless the County and its officers, employees and agents, from and against any and all claims, demands, liabilities, damages, costs and expenses, including, but not limited to, defense costs and legal, accounting or other expert consulting or professional fees in any way arising from or related to Contractor's use of any Subcontractor, including without limitation any officers, employees or agents of any Subcontractor, in the same manner as required for Contractor of its officers, employees and agents under this Contract.
- 31.5 Notwithstanding any other provision of this Paragraph 31.0 (Subcontracting), Contractor will remain fully responsible for all performance required under this Contract, including those which Contractor has determined to subcontract, including, but not limited to, the obligation to properly supervise, coordinate and provide all Work required under this Contract. All subcontracts must be made in the name of Contractor and will not bind nor purport to bind the County. Furthermore, subcontracting of any Work under this Contract will not be construed to limit in any way, Contractor's performance, obligations or responsibilities to the County or limit, in any way, any of the County's rights or remedies contained in this Contract.

- 31.6 Subcontracting of any Work performed by Contractor's key staff under this Contract will not waive the County's right to prior and continuing approval of any or all such Contractor's key staff pursuant to the provisions of Paragraph 9.3 (Approval of Contractor's Staff) of this Contract, including any subcontracted members of Contractor's key staff. Contractor must notify its Subcontractors of the County's right to approve or disapprove each member or proposed member of key staff providing Services or on-site Work to the County under this Contract or with access to any County data or information, including County's Confidential Information, System Data and other County Materials, prior to and during their performance of any Work hereunder, as well as to approving or disapproving any proposed deletions from or other changes in such Contractor key staff.
- 31.7 Notwithstanding subcontracting by Contractor of any Work under this Contract, Contractor will be solely liable and responsible for any and all payments and other compensation to all Subcontractors, and their respective officers, employees, agents, and successors in interest, for any Services performed by Subcontractors under this Contract.
- 31.8 In the event that the County consents to any subcontracting, such consent will apply to each particular Subcontract only and will not be, nor should be construed to be, a waiver of this Paragraph 31.0 (Subcontracting) or a blanket consent to any further subcontracting.

## **32.0 RISK OF LOSS**

Contractor bears the full risk of loss due to total or partial destruction of any software products loaded on CDs or other computer media, until such items are delivered to and accepted in writing by the County as evidenced by the County's signature on delivery documents.

## **33.0 RECORD RETENTION AND INSPECTION-AUDIT SETTLEMENT**

- 33.1 Contractor must maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. Contractor must also maintain accurate and complete employment records and other records relating to its performance of this Contract. Contractor agrees that the County or its authorized representatives, will have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, must be kept and maintained by Contractor and must be made available to the County during the Term of this Contract and for a period of five years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material must be maintained by Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, Contractor must pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

- 33.2 In the event that an audit of Contractor is conducted specifically regarding this Contract by any federal or state auditor, or by any auditor or accountant employed by Contractor or otherwise, then Contractor must file a copy of such audit report with the County's Auditor-Controller within 30 Days of Contractor's receipt thereof, unless otherwise provided by applicable federal or state law or under this Contract. Subject to applicable law, the County will make a reasonable effort to maintain the confidentiality of such audit report(s).
- 33.3 Failure on the part of Contractor to comply with any of the provisions of this Paragraph 33.0 (Record Retention and Inspection-Audit Settlement) will constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.
- 33.4 If, at any time during the entire Term of this Contract or within five years after the expiration or termination of this Contract, representatives of the County conduct an audit of Contractor regarding the Work performed under this Contract, and if such audit finds that the County's dollar liability for any such Work is less than payments made by the County to Contractor, then the difference will be either: a) repaid by Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to Contractor from the County, whether under this Contract or any other agreement. If such audit finds that the County's dollar liability for such Work is more than the payments made by the County to Contractor, then the difference will be paid to Contractor by the County by cash payment, provided that in no event will the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract.

### **33.5 Audit and Inspection, Information Security and Privacy Requirements**

#### **a. Self Audits**

Contractor must periodically conduct audits, assessments, testing of its System of controls, and testing of Information Security and privacy procedures, including penetration testing, intrusion detection, and firewall configuration reviews. These periodic audits must be conducted by staff certified to perform the specific audit in question at Contractor's sole cost and expense through either: (i) an internal independent audit function, (ii) a nationally recognized, external, independent auditor, or (iii) another independent auditor approved by the County.

Contractor must have a process for correcting control deficiencies that have been identified in the periodic audit, including follow up documentation providing evidence of such corrections. Contractor must provide the audit results and any corrective action documentation to the County promptly upon its completion at the County's request. With respect to any other report, certification, or audit or test results prepared or received by Contractor that contains any County Information, Contractor must promptly provide the County with copies of the same upon the County's reasonable request, including identification of any failure or exception in Contractor's information systems, products, and Services, and the corresponding steps taken by Contractor to

mitigate such failure or exception. Any reports and related materials provided to the County pursuant to this Paragraph 33.5 (Audit and Inspection, Information Security and Privacy Requirements) must be provided at no charge to the County.

b. County Requested Audits

At the County's expense, it or an independent third-party auditor it commissions, will have the right to audit Contractor's infrastructure, security and privacy practices, data center, Services and/or Systems storing or processing the County Information via an onsite inspection at least once a year. Upon the County's request Contractor must complete a questionnaire regarding Contractor's information security and/or privacy program. The County will pay for the County requested audit unless the auditor finds that Contractor has materially breached this Contract, in which case Contractor must bear all costs of the audit; and if the audit reveals material non-compliance with this Paragraph 33.5 (Audit and Inspection, Information Security and Privacy Requirements), the County may exercise its termination rights provided by this Contract.

A County requested audit will be conducted during Contractor's normal business hours with reasonable advance notice, in a manner that does not materially disrupt or otherwise unreasonably and adversely affect Contractor's normal business operations. The County's request for the audit will specify the scope and areas (e.g., administrative, physical, and technical) that are subject to the audit and may include, but are not limited to physical controls inspection, process reviews, policy reviews, evidence of external and internal vulnerability scans, penetration test results, evidence of code reviews, and evidence of System configuration and audit log reviews. It is understood that the results may be filtered to remove the specific Information of other Contractor customers such as IP address, server names, etc. Contractor must cooperate with the County in the development of the scope and methodology for the audit, and the timing and implementation of the audit. This right of access will extend to any regulators with oversight of the County. Contractor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.

When not prohibited by regulation, Contractor will provide to the County a summary of: (i) the results of any security audits, security reviews, or other relevant audits, conducted by Contractor or a third party, and (ii) corrective actions or modifications, if any, Contractor will implement in response to such audits. Notwithstanding the preceding sentences, the County will have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide the County with a full and adequate defense, as determined by the County in its sole judgment, the County will be entitled to retain its own counsel, including without limitation County Counsel, and to reimbursement from Contractor for all such costs and expenses incurred by the County in doing so. Contractor has no right or authority to enter into any

settlement, agree to any injunction, other equitable relief, or make any admission, in any case, on behalf of the County without the County's prior express written approval.

c. County Audit Settlements

If, at any time during or after the Term of this Contract, representatives of the County conduct an audit of Contractor regarding the Work performed under this Contract, and if such audit reasonably and accurately find that the County's dollar liability for such Work is less than payments made by County to Contractor, then the difference, together with the County's reasonable costs of audit, will be either repaid by Contractor to the County by cash payment upon demand or deducted from any amounts due to Contractor from the County, as determined by the County. If such audit finds County's dollar liability for such Work is more than payments made by the County to Contractor, then the difference will be repaid to Contractor by cash payment.

**34.0 COUNTY'S QUALITY ASSURANCE PLAN**

The County, or its agent(s), will monitor Contractor's performance under this Contract on not less than an annual basis. Such monitoring will include assessing Contractor's compliance with all Contract terms and conditions and performance standards. Contractor deficiencies which the County determines are significant or continuing and that may place performance of this Contract in jeopardy if not corrected will be reported to the County Board of Supervisors and listed in the appropriate Contractor performance database. The report to the Board will include improvement/corrective action measures taken by the County and Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Contract or impose other penalties as specified in this Contract.

**35.0 CONFLICT OF INTEREST**

35.1 No County employee whose position with the County enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, will be employed in any capacity by Contractor or have any other direct or indirect financial interest in this Contract. No officer or employee of Contractor who may financially benefit from the performance of Work hereunder will in any way participate in the County's approval, or ongoing evaluation, of such Work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such Work.

35.2 Contractor must comply with all conflict-of-interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the Term of this Contract. Contractor warrants that it is not now aware of any facts that create or appear to create a conflict of interest. If Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it must immediately make full written disclosure of such facts to County Project Director. Full written disclosure must include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to

comply with the provisions of this Paragraph 35.0 (Conflict of Interest) will constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.

- 35.3 The terms and procedures of this Paragraph 35.0 (Conflict of Interest) will also apply to Subcontractors, consultants and partners of Contractor performing Work under this Contract.

### **36.0 COMPLIANCE WITH APPLICABLE LAW**

- 36.1 In the performance of this Contract, Contractor must comply with all applicable federal, state and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Contract are hereby incorporated by reference.

- 36.2 Contractor must indemnify, defend, and hold harmless the County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or Subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by the County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 36.0 (Compliance with Applicable Law) must be conducted by Contractor and performed by counsel selected by Contractor and approved by the County. Notwithstanding the preceding sentence, the County will have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide the County with a full and adequate defense, as determined by the County in its sole judgment, the County will be entitled to retain its own counsel, including without limitation, County Counsel, and receive reimbursement from Contractor for all such costs and expenses incurred by the County in doing so. Contractor has no right or authority to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in any such case, on behalf of the County without the County's prior express written approval.

- 36.3 Contractor certifies and agrees that it fully complies with all applicable requirements of the County's regulations, as well as rules, ordinances, court rules, municipal laws, directives and policies issued pursuant to the enabling statute(s) and/or state or federal regulation or law applicable to the Work and Contractor's County-approved Subcontractors' provision thereof. This includes compliance with mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan (Title 24, California Administrative Code), the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871) and compliance with Section 306 of the Clean Air Act (42 USC 1857[h]), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15). Contractor is responsible for staying apprised of any and all relevant changes in the law, including, but not limited to, rules, ordinances, court rules, municipal laws, directives and policies issued pursuant to the enabling

statute(s) and/or state or federal regulation or law. Contractor must also comply with all applicable ordinances, rules, policies, directives, and procedures issued or adopted by the County applicable to the Work and Contractor's County-approved Subcontractors' provision thereof for which Contractor is provided actual or constructive notice. The County reserves the right to review Contractor's procedures to ensure compliance with the statutes, ordinances, regulations, rules, rulings, policies and procedures of the state and federal government, as applicable to this Contract.

- 36.4 Failure by Contractor to comply with such laws and regulations will be material breach of this Contract and may result in termination or suspension of this Contract.

### **37.0 FAIR LABOR STANDARDS**

Contractor must comply with all applicable provisions of the Federal Fair Labor Standards Act and must indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for Work performed by Contractor's employees or Subcontractor personnel for which the County may be found jointly or solely liable.

### **38.0 COMPLIANCE WITH CIVIL RIGHTS LAW**

- 38.1 Contractor herein certifies and agrees, and will re-certify upon County request no more frequently than once per year, that all persons employed by it, its affiliates, subsidiaries and holding companies will be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental handicap, marital status or political affiliation, in compliance with all applicable federal and state anti-discrimination laws and regulations.
- 38.2 Contractor must, pursuant to County Code Section 4.32, certify to and comply with the provisions of Exhibit E (Contractor's EEO Certification).
- 38.3 Contractor shall ensure that applicants and employees are treated equally during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 38.4 Contractor herein certifies, and will re-certify upon County request no more frequently than once per year, that it, its affiliates, subsidiaries and holding companies are in compliance with all Federal, State, and local laws including, but not limited to:
- a. Title VII, Civil Rights Act of 1964,
  - b. Section 504, Rehabilitation Act of 1973,



- c. Age Discrimination Act of 1975,
- d. Title IX, Education Amendments of 1973, as applicable, and
- e. Title 43, Part 17, Code of Federal Regulations, Subparts A & B,

and that no person shall, on the grounds of race, creed, color, national origin, political affiliation, marital status, sex, age, or disability, be subject to discrimination as to any privileges or uses gained under this Agreement or under any project, program or activity supported by this Agreement.

38.5 Contractor shall allow County representatives access to Contractor's employment records during regular business hours to verify compliance with the provisions of this Paragraph 38 (Compliance With Civil Rights Laws) when so requested by the County.

38.6 If the County finds that any of the provisions of this Paragraph 38 (Compliance With Civil Rights Laws) have been violated, such violation will, at the election of the County, constitute a material breach of this Contract upon which the County may terminate or suspend this Contract at the County's option, either for material breach under Paragraph 22.0 (Termination for Default) of this Contract or for convenience under Paragraph 21.0 (Termination for Convenience) of this Contract. While the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Contractor has violated state or federal anti-discrimination laws or regulations shall constitute a finding by the County that Contractor has violated the anti-discrimination provisions of this Contract.

The parties agree that in the event Contractor is found to have violated the anti-discrimination provisions of this Contract, and that such discrimination was directly associated with the performance of Services provided under this Contract, the County may require, pursuant to County Code Section 4.32.010 €, that Contractor pay the sum of \$500 for each such violation, in lieu of termination or suspension hereof, as liquidated damages are extremely difficult to ascertain or calculate precisely. In the alternative, the County may elect to terminate this Contract pursuant to Paragraph 22.0 (Termination for Default).

### **39.0 RESTRICTIONS ON LOBBYING - Federal Funds Projects**

If any federal funds are to be used to pay for any portion of Contractor's Work under this Contract, the County will notify Contractor in writing in advance of such payment and Contractor must fully comply with all certification and disclosure requirements prescribed by Section 319 of Public Law 101-121 (31 United States Code Section 1352) and any implementing regulations, and will ensure that each of its Subcontractors receiving funds provided under this Contract also fully complies with all applicable certification and disclosure requirements.

#### **40.0 EMPLOYMENT ELIGIBILITY VERIFICATION**

- 40.1 Contractor and its Subcontractors warrant that they fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirements set forth in federal and state statutes and regulations. Contractor must obtain from all its employees and Subcontractors performing Work hereunder, all verification and other documentation of employment eligibility status required by federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be amended. Contractor must retain all documentation for all covered employees for the period prescribed by law.
- 40.2 Contractor must indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or the County or both in connection with any alleged violation of any federal or state statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

#### **41.0 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFFS OR ARE ON A COUNTY RE-EMPLOYMENT LIST**

Should Contractor require additional or replacement personnel after the Effective Date of this Contract to perform the Services set forth herein, Contractor must give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the entire Term of this Contract.

#### **42.0 CONSIDERATION OF HIRING GAIN-GROW PARTICIPANTS**

- 42.1 Should Contractor require additional or replacement personnel after the effective date of this Contract, Contractor must give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet Contractor's minimum qualifications for the open position. For this purpose, consideration will mean that Contractor will interview qualified candidates. The County will refer GAIN-GROW participants by job category to Contractor. Contractors must report all job openings and job requirements to: [GAINGROW@DPSS.LACOUNTY.GOV](mailto:GAINGROW@DPSS.LACOUNTY.GOV) and [BSERVICES@WDACS.LACOUNTY.GOV](mailto:BSERVICES@WDACS.LACOUNTY.GOV) and DPSS will refer qualified GAIN-GROW job candidates.
- 42.2 In the event that both laid-off County employees and GAIN-GROW participants are available for hiring, County employees must be given first priority.

#### **43.0 PROHIBITION AGAINST INDUCEMENT OR PERSUASION**

Notwithstanding the above, Contractor and the County agree that, during the entire Term of this Contract and for a period of one year thereafter, neither party will in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

#### **44.0 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

Contractor must notify its employees, and must require each Subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice must be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

#### **45.0 CONTRACTOR RESPONSIBILITY AND DEBARMENT**

##### **45.1 Responsible Contractor**

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform this Contract. It is the County's policy to conduct business only with responsible Contractors.

##### **45.2 Chapter 2.202 of the County Code**

Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of Contractor on this or other contracts which indicates that Contractor is not responsible, the County may, in addition to other remedies provided in this Contract, debar Contractor from bidding or proposing on, or being awarded, and/or performing Work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanently barred if warranted by the circumstances, and terminate any or all existing contracts Contractor may have with the County.

##### **45.3 Non-responsible Contractor**

The County may debar a Contractor if the County's Board of Supervisors finds, in its discretion, that Contractor has done any of the following: i) violated a material term of a contract with the County or a nonprofit corporation created by the County, ii) committed an act or omission which negatively reflects on Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, iii) committed an act or offense which indicates a lack of business integrity or business honesty, or iv) made or submitted a false claim against the County or any other public entity.

##### **45.4 Contractor Hearing Board**

45.4.1 If there is evidence that Contractor may be subject to debarment, County Project Director will notify Contractor in writing of the evidence which is the basis for the proposed debarment and will advise Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.

45.4.2 The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. Contractor and/or Contractor's representative will be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board will prepare a

tentative proposed decision, which will contain a recommendation regarding whether Contractor should be debarred, and, if so, the appropriate length of time of the debarment. Contractor and County Project Director will be provided an opportunity to object to the tentative proposed decision prior to its presentation to the County Board of Supervisors.

45.4.3 After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board will be presented to the County Board of Supervisors. The Board of Supervisors will have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

45.4.4 If a Contractor has been debarred for a period longer than five years, that Contractor may after the debarment has been in effect for at least five years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that Contractor has adequately demonstrated one or more of the following: i) elimination of the grounds for which the debarment was imposed, ii) a bona fide change in ownership or management, iii) material evidence in favor of Contractor is discovered after debarment was imposed, or iv) any other reason that is in the best interests of the County.

45.4.5 The Contractor Hearing Board will consider a request for review of a debarment determination only where: i) Contractor has been debarred for a period longer than five years, ii) the debarment has been in effect for at least five years, and iii) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board will conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing will be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

45.4.6 The Contractor Hearing Board's proposed decision will contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board will present its proposed decision and recommendation to the Board. The Board will have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

#### **45.5 Subcontractors of Contractor**

The terms and procedures of this Paragraph 45.5 (Subcontractors of Contractor) will also apply to Subcontractors, consultants and partners of Contractor performing Work under this Contract.

#### **46.0 FEDERAL ACCESS TO RECORDS**

If, and to the extent that Section 1861(v)(1)(I) of the Social Security Act (42 United States Code Section 1395x(v)(1)(i) is applicable, Contractor agrees that for a period of four years following the furnishing of Services under this Contract, Contractor must maintain and make available, upon written request, to the Secretary of the United States Department of Health and Human Services or the Comptroller General of the United States or to any of their authorized representatives, the contracts, books, documents and records of Contractor which are necessary to verify the nature and extent of the costs of Services provided hereunder. Furthermore, if Contractor carries out any of the Services described in United States Code Section 1395 through any Subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization (as that term is defined under federal law), Contractor agrees that each such Subcontract must provide for such access to the Subcontract, books, documents and records of the Subcontractor.

#### **47.0 REQUIRED CERTIFICATIONS**

Contractor must obtain and maintain in effect during the entire Term of this Contract all Licenses, permits, registrations, accreditations and certificates required by all federal, state, and local laws, ordinances, rules, regulations, guidelines and directives, which are applicable to Contractor's provision of the Services under this Contract. Contractor must further ensure that all of its officers, employees, agents and Subcontractors who perform Services hereunder, must obtain and maintain in effect during the Term of this Contract all Licenses, permits, registrations, accreditations and certificates which are applicable to their performance hereunder. A copy of each such License, permit, registration, accreditation, and certificate required by all applicable federal, state, and local laws, ordinances, rules, regulations, guidelines, and directives will be provided, if required by law, in duplicate, to County Project Manager at the address set forth in Exhibit F1 (County's Administration) to this Contract.

#### **48.0 NO THIRD-PARTY BENEFICIARIES**

Notwithstanding any other provision of this Contract, Contractor and the County do not in any way intend that any person or entity will acquire any rights as a third-party beneficiary of this Contract, except that this provision will not be construed to diminish Contractor's indemnification obligations hereunder.

#### **49.0 CONTRACTOR PERFORMANCE DURING CIVIL UNREST AND DISASTER**

Contractor recognizes that the County provides Services essential to the residents of the communities it serves, and that these Services are of particular importance at the time of a riot, insurrection, civil unrest, natural disaster, or similar event. Notwithstanding any other provision of this Contract, full performance by Contractor during any riot, insurrection, civil unrest, natural disaster, or similar event is not excused if such performance remains physically possible without related danger to Contractor's or Subcontractors' employees and suppliers. During any such event in which the health or safety of any of Contractor's staff

members would be endangered by performing their Services on-site, such staff members may perform any or all of their Services remotely.

**50.0 CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO SAFELY SURRENDERED BABY LAW**

Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post County's "Safely Surrendered Baby Law" poster, in Exhibit I (Safely Surrendered Baby Law) to this Contract, in a prominent position at Contractor's place of business. Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. Information and posters for printing are available at:

<https://lacounty.gov/residents/family-services/child-safety/safe-surrender/>.

**51.0 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW**

Contractor must notify and provide to its employees and must require each Subcontractor to notify and provide to its employees, information regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The information is set forth in Exhibit I (Safely Surrendered Baby Law) to this Contract, Safely Surrendered Baby Law of this Contract.

**52.0 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

52.1 Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through contracts are in compliance with their court-ordered child, family, and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

52.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Contractor's duty under this Contract to comply with all applicable provisions of law, Contractor warrants that it is now in compliance and must during the Term of this Contract maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 10810.5, and must implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

**53.0 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 52.0 (Contractor's Warranty of Adherence to the County's Child Support

Compliance Program) above, will constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of Contractor to cure such default within 90 Days of written notice will be grounds upon which the County may terminate this Contract pursuant to Paragraph 22.0 (Termination for Default) above, and pursue debarment of Contractor, pursuant to County Code Chapter 2.202.

## **54.0 COMPLIANCE WITH COUNTY'S JURY SERVICE PROGRAM**

### **54.1 Jury Service Program**

This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as Exhibit H (Jury Service Ordinance) to this Contract.

### **54.2 Written Employee Jury Service Policy**

54.2.1 Unless Contractor has demonstrated to the County's satisfaction either that Contractor is not a "contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Contractor must have and adhere to a written policy that provides that its Employees must receive from Contractor, on an annual basis, no less than five Days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with Contractor or that Contractor deduct from the Employee's regular pay the fees received for jury service.

54.2.2 For purposes of this Paragraph 54.2 (Written Employee Jury Service Policy), "Contractor" means a person, partnership, corporation, or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: i) the lesser number is a recognized industry standard as determined by the County, or ii) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 Days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Contractor uses any Subcontractor to perform Services for the County under this Contract, the Subcontractor is also be subject to the provisions of this Paragraph 54.2 (Written Employee Jury Service Policy). The provisions of this Paragraph 54.2 (Written Employee Jury Service Policy) must be inserted into any such Subcontract agreement and a copy of the Jury Service Program must be attached to the agreement.

54.2.3 If Contractor is not required to comply with the Jury Service Program when this Contract commences, Contractor must have a continuing obligation to

review the applicability of its “exception status” from the Jury Service Program, and Contractor must immediately notify the County if Contractor at any time either comes within the Jury Service Program’s definition of “contractor” or if Contractor no longer qualifies for an exception to the Jury Service Program. In either event, Contractor must immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during this Contract and at its sole discretion, that Contractor demonstrate, to the County’s satisfaction, that Contractor either continues to remain outside of the Jury Service Program’s definition of “Contractor” and/or that Contractor continues to qualify for an exception to the Program.

54.2.4 Contractor’s violation of this Paragraph 54.2 (Written Employee Jury Service Policy) may constitute a material breach of this Contract. In the event of such material breach, the County may, in its sole discretion, terminate this Contract and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206.

#### **55.0 WARRANTY OF COMPLIANCE WITH COUNTY’S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

55.1 Contractor acknowledges that the County has established a goal of ensuring that all individuals and businesses that benefit financially from the County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

55.2 Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the entire Term of this Contract will maintain compliance, with Los Angeles County Code Chapter 2.206.

#### **56.0 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY’S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 55.0 (Warranty of Compliance with County’s Defaulted Property Tax Reduction Program) above, will constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of Contractor to cure such default within ten Days of notice will be grounds upon which the County may terminate this Contract and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206.

#### **57.0 DISPUTE RESOLUTION PROCEDURE**

57.1 Contractor and the County agree to act immediately to mutually resolve any disputes which may arise with respect to this Contract. All such disputes will be subject to the provisions of this Paragraph 57.0 (Dispute Resolution Procedure) and other provisions in this Contract (such provisions will be collectively referred to as the “Dispute Resolution Procedure”). Time is of the essence in the resolution of disputes.



- 57.2 Contractor and the County agree that the existence and details of a dispute notwithstanding, both parties will continue without delay their performance hereunder.
- 57.3 Neither party will delay or suspend its performance during the Dispute Resolution Procedure.
- 57.4 In the event of any dispute between the parties with respect to this Contract, Contractor and the County will submit the matter to their respective Project Managers for the purpose of endeavoring to resolve such dispute.
- 57.5 If the Project Managers are unable to resolve the dispute within a reasonable time not to exceed ten Days from the date of submission of the dispute to them, then the matter will be immediately submitted to the parties' respective Project Directors for further consideration and discussion to attempt to resolve the dispute.
- 57.6 If the Project Directors are unable to resolve the dispute within a reasonable time not to exceed ten Days from the date of submission of the dispute to them, then the matter will be immediately submitted to Contractor's chief operating officer or designee, and the Department's Chief Information Officer. These persons will have ten Days to attempt to resolve the dispute.
- 57.7 If at these levels, there is not a resolution of the dispute acceptable to both parties, then each party may assert its other rights and remedies provided under this Contract and/or its rights and remedies as provided by law.
- 57.8 All disputes utilizing this Dispute Resolution Procedure must be documented in writing by each party and will state the specifics of each alleged dispute and all actions taken. The parties will act in good faith to resolve all disputes. At all three levels described in this Paragraph 57.0 (Dispute Resolution Procedure), the efforts to resolve a dispute will be undertaken by conference between the parties' respective representatives, either orally, face-to-face meeting, by telephone, or in writing by exchange of correspondence.
- 57.9 Notwithstanding the foregoing, in the event of the County's infringement of Contractor's intellectual property rights under this Contract or violation by either party of the confidentiality obligations hereunder, the violated party will have the right to seek injunctive relief against the other without waiting for the outcome of the Dispute Resolution Procedure.
- 57.10 Notwithstanding any other provision of this Contract, the County's right to seek injunctive relief to enforce the provisions of Paragraph 18.0 (Confidentiality) above, will not be subject to this Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of the County's rights and will not be deemed to impair any claims that the County may have against Contractor or the County's rights to assert such claims after any such injunctive relief has been obtained.

## **58.0 ASSIGNMENT BY COUNTY**

This Contract may be assigned in whole or in part by the County, without the further consent of Contractor, to a party which is not a competitor of Contractor, and which agrees in writing to perform the County's obligations under this Contract.

## **59.0 NEW TECHNOLOGY**

Contractor and the County acknowledge the probability that the technology of the software and hardware which comprise the System will change and improve during the Term of this Contract. The County desires the flexibility to incorporate into the System any new technologies as they may become available. Accordingly, Contractor's Project Manager must, promptly upon discovery and on a continuing basis, apprise County's Project Director of all new technologies, methodologies, and techniques which Contractor considers to be applicable to the System. Specifically, upon County's request, Contractor must provide, in writing, a description of such new technologies, methodologies and techniques, indicating the advantages and disadvantages of incorporating same into the System, and provide an estimate of the impact such incorporation will have on the performance, scheduling and price of the System. County, at its sole discretion, may request that this Contract be amended to incorporate the new technologies, methodologies, and techniques into the System.

## **60.0 UNLAWFUL SOLICITATION**

Contractor must inform all its employees who provide Services hereunder of the provisions of Article 9 of Chapter 4 of Division 3 (commencing with Section 6150) of California Business and Professions Code (i.e., State Bar Act provisions regarding unlawful solicitation as a runner or capper for attorneys) and must take positive and affirmative steps in its performance hereunder to ensure that there is no violation of such provisions by its employees.

## **61.0 GOVERNING LAW, JURISDICTION, AND VENUE**

This Contract will be governed by, and construed in accordance with, the laws of the State of California. Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder will be exclusively in the County of Los Angeles. For claims that are subject to exclusive federal subject matter jurisdiction, Contractor agrees and consents to the exclusive jurisdiction of the Federal District Court of the Central District of California.

## **62.0 AUTHORIZATION WARRANTY**

Contractor represents and warrants that the person executing this Contract for Contractor is an authorized agent who has actual authority to bind Contractor to each and every term, condition, and obligation of this Contract and that all requirements of Contractor have been fulfilled to provide such actual authority.

## **63.0 VALIDITY**

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances will not be affected thereby.

## **64.0 SEVERABILITY**

If any provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same will be deemed severable from the remainder

of this Contract, if practicable, and will in no way affect, impair or invalidate any other provision contained herein. If any such provision will be deemed invalid in its scope or breadth, such provision will be deemed valid to the extent of the scope or breadth permitted by law. If any provision of this Contract is adjudged void or invalid for any reason whatsoever but would be valid if part of the wording thereof were deleted or changed, then such provision will apply with such modifications as may be necessary to make it valid and effective.

## **65.0 NOTICES**

- 65.1 All notices or demands required or permitted to be given or made under this Contract, unless otherwise specified, will be in writing and will be addressed to the parties at the following addresses and delivered: (i) by hand with signed receipt, (ii) by first class registered or certified mail, postage prepaid, or (iii) by facsimile or electronic mail transmission followed within 24 hours by a confirmation copy mailed by first-class registered or certified mail, postage prepaid. Notices will be deemed given at the time of signed receipt in the case of hand delivery, three Days after deposit in the United States mail as set forth above, or on the date of facsimile or electronic mail transmission if followed by timely confirmation mailing. Addresses may be changed by either party by giving ten Days prior written notice thereof to the other party.
- 65.2 To the County: Notices must be sent to the attention of County Project Manager and County Project Director at the respective addresses specified in Exhibit F1 (County's Administration) to this Contract.
- 65.3 To Contractor: Notices must be sent to the attention of Contractor's Project Manager at the address specified in Exhibit F2 (Contractor's Administration) to this Contract, with a copy to Contractor's Project Director.
- 65.4 Each party may change the names of the people designated to receive notices pursuant to this Paragraph 65.0 (Notices) by giving written notice of the change to the other party, subject to the County's right of approval in accordance with Paragraph 9.3 (Approval of Contractor's Staff) above.

## **66.0 ARM'S LENGTH NEGOTIATIONS**

This Contract is the product of arm's length negotiations between Contractor and the County, with each party having had the opportunity to receive advice from and representation by independent counsel of its own choosing. As such, the parties agree that this Contract is to be interpreted as fair between them and is not to be strictly construed against either as the drafter or otherwise.

## **67.0 RE-SOLICITATION OF BIDS AND PROPOSALS**

- 67.1 Contractor acknowledges that, prior to the expiration or earlier termination of this Contract, the County, in its sole discretion, may exercise its right to invite bids or request proposals for the continued provision of the goods and Services delivered or contemplated under this Contract. The County will make the determination to re-solicit bids or request proposals in accordance with applicable County policies.

67.2 Contractor acknowledges that the County, in its sole discretion, may enter into an agreement for the future provision of goods and Services, based upon the bids or proposals received, with a provider or providers other than Contractor. Further, Contractor acknowledges that it obtains no greater right to be selected through any future invitation for bids or request for proposals by virtue of its present status as Contractor.

#### **68.0 RECYCLED BOND PAPER**

Consistent with the County's Board of Supervisor's policy to reduce the amount of solid waste deposited at the County landfills, Contractor agrees to use recycled-content paper to the maximum extent possible on this Contract.

#### **69.0 FORCE MAJEURE**

69.1 Neither party will be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's Subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this Paragraph as "force majeure events").

69.2 Notwithstanding the foregoing, a default by a Subcontractor of Contractor will not constitute a force majeure event, unless such default arises out of causes beyond the control of both Contractor and such Subcontractor, and without any fault or negligence of either of them. In such case, Contractor is not liable for failure to perform, unless the goods or Services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule. As used in this Paragraph 69.0 (Force Majeure), the term "Subcontractor" and "Subcontractors" mean Subcontractors at any tier.

69.3 In the event Contractor's failure to perform arises out of a force majeure event, Contractor agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

#### **70.0 NON-EXCLUSIVITY**

Nothing herein is intended nor will be construed as creating any exclusive arrangement with Contractor. This Contract will not restrict the County from acquiring similar, equal or like goods and/or Services from other entities or sources.

#### **71.0 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS**

71.1 Contractor must repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by Contractor, its employees or its agents. Such repairs will be made immediately after Contractor has become aware of such damage, but in no event later than 30 Days after the occurrence.

71.2 If Contractor fails to make timely repairs, the County may make any necessary repairs. All costs incurred by the County, as determined by the County, for such repairs will be repaid by Contractor by cash payment upon demand or without limitation of all County's other rights and remedies provided by law or under this Contract, the County may deduct such costs from any amounts due Contractor from the County under this Contract.

## **72.0 NOTICE OF DELAYS**

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party will, within one Business Day, give notice thereof, including all relevant information with respect thereto, to the other party.

## **73.0 ACCESS TO COUNTY FACILITIES**

Contractor, its employees, and agents, may be granted access to County facilities, subject to Contractor's prior notification to County Project Manager, for the purpose of executing Contractor's obligations hereunder. Access to County facilities may be restricted to normal business hours, 8:00 a.m. until 5:00 p.m., Pacific Time, Monday through Friday, County-observed holidays excepted. Access to County facilities outside of normal business hours must be approved in writing in advance by County Project Manager, which approval will not be unreasonably withheld. Contractor must have no tenancy, or any other property or other rights, in County facilities. While present at County facilities, Contractor's personnel will be accompanied by County personnel at all times, unless this requirement is waived in writing prior to such event by County Project Manager.

## **74.0 COUNTY FACILITY OFFICE SPACE**

For Contractor to perform Services hereunder and only for the performance of such Services, the County may elect, subject to the County's standard administrative and security requirements, to provide Contractor with office space and equipment, as determined at the discretion of the applicable County Project Manager at County facilities, on a non-exclusive use basis. The County will also provide Contractor with reasonable telephone service in such office space for use only for purposes of this Contract. The County disclaims all responsibility for the loss, theft or damage of any property or material left at such County office space by Contractor.

## **75.0 PHYSICAL ALTERATIONS**

Contractor must not in any way physically alter or improve any County facility without the prior written approval of the County Project Director and the Director of County's Internal Services Department, in their discretion.

## **76.0 STAFF PERFORMANCE WHILE UNDER THE INFLUENCE**

Contractor must use reasonable efforts to ensure that no employee of Contractor or its Subcontractors performs Services under this Contract while under the influence of any alcoholic beverage, medication, narcotic, or other substance which might impair the employee's physical or mental performance.

## **77.0 TIME OFF FOR VOTING**

Contractor must notify its employees and must require each Subcontractor to notify and provide to its employees, information regarding the time off for voting law (Elections Code Section 14000). Not less than ten Days before every statewide election, every Contractor and Subcontractors must keep posted conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of California Elections Code Section 14000.

## **78.0 COMPLIANCE WITH COUNTY'S ZERO TOLERANCE POLICY ON HUMAN TRAFFICKING**

- 78.1 Contractor acknowledges that the County has established a Zero Tolerance Policy on Human Trafficking prohibiting contractors from engaging in human trafficking.
- 78.2 If a Contractor or member of Contractor's staff is convicted of a human trafficking offense, the County will require that Contractor or member of Contractor's staff be removed immediately from performing Services under this Contract. The County will not be under any obligation to disclose confidential information regarding the offenses other than those required by law.
- 78.3 Disqualification of any member of Contractor's staff pursuant to this Paragraph 78.0 (Compliance with County's Zero Tolerance Policy on Human Trafficking) will not relieve Contractor of its obligation to complete all Work in accordance with the terms and conditions of this Contract.

## **79.0 COMPLIANCE WITH FAIR CHANCE EMPLOYMENT PRACTICES**

Contractor, and its Subcontractors, must comply with fair chance employment hiring practices set forth in California Government Code Section 12952. Contractor's violation of this Paragraph 79.0 (Compliance with Fair Chance Employment Practices) of this Contract may constitute a material breach of this Contract. In the event of such material breach, the County may, in its sole discretion, terminate this Contract.

## **80.0 COMPLIANCE WITH THE COUNTY POLICY OF EQUITY**

Contractor acknowledges that the County takes its commitment to preserving the dignity and professionalism of the workplace very seriously, as set forth in the County Policy of Equity (CPOE) (<https://ceop.lacounty.gov/>). Contractor further acknowledges that the County strives to provide a workplace free from discrimination, harassment, retaliation, and inappropriate conduct based on a protected characteristic, and which may violate the CPOE. Contractor, its employees, and Subcontractors acknowledge and certify receipt and understanding of the CPOE. Failure of Contractor, its employees, or its Subcontractors to uphold the County's expectations of a workplace free from harassment and discrimination, including inappropriate conduct based on a protected characteristic, may subject Contractor to termination of this Contract and other contractual agreements, as well as civil liability.

## **81.0 PROHIBITION FROM PARTICIPATION IN FUTURE SOLICITATION(S)**

A Proposer, or a Contractor or its subsidiary or Subcontractor ("Proposer/Contractor"), is prohibited from submitting a bid or proposal in a County solicitation if the Proposer/Contractor has provided advice or consultation for the solicitation. A Proposer/Contractor is also prohibited from submitting a bid or proposal in a County solicitation if the Proposer/Contractor has assisted in developing or preparing any of the solicitation materials on behalf of the County. A violation of this provision will result in the disqualification of Contractor/Proposer from participation in the County solicitation or the termination or cancellation of any resultant County contract. This provision will survive the expiration or termination of this Contract.

## **82.0 INTENTIONALLY OMITTED**

## **83.0 BUDGET REDUCTIONS**

In the event that the County's Board of Supervisors adopts, in any Fiscal Year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, the County reserves the right to reduce its payment obligation under this Contract correspondingly for that Fiscal Year and any subsequent Fiscal Year during the entire Term of this Contract (including any extensions), and the Services to be provided by Contractor under this Contract may also be reduced correspondingly. The County's notice to Contractor regarding said reduction in payment obligation will be provided within 30 Days of the Board's approval of such actions. Except as set forth in the preceding sentence, Contractor must continue to provide all the Services set forth in this Contract.

## **84.0 COMPLAINTS**

84.1 Contractor must develop, maintain, and operate procedures for receiving, investigating, and responding to complaints.

### **84.2 Complaint Procedures**

- a. Within 30 Business Days after this Contract's effective date, Contractor must provide the County with Contractor's policy for receiving, investigating, and responding to complaints.
- b. The County will review Contractor's policy and provide Contractor with approval of said plan or with requested changes.
- c. If the County requests changes in Contractor's policy, Contractor must make such changes and resubmit the plan within five Business Days for County approval.
- d. If, at any time, Contractor wishes to change Contractor's policy, Contractor must again submit proposed changes to the County for approval before implementation.

- e. Contractor must preliminarily investigate all complaints and notify the County Project Manager of the status of the investigation within two Business Days of receiving the complaint.
- f. When complaints cannot be resolved informally, a system of follow-through will be instituted which adheres to formal plans for specific actions and strict time deadlines.
- g. Copies of all written responses must be sent to the County Project Manager within five Business Days of mailing to the complainant.

## **85.0 COUNTERPARTS AND ELECTRONIC SIGNATURES AND REPRESENTATIONS**

This Contract may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same Contract. The facsimile, email or electronic signature of the Parties will be deemed to constitute original signatures, and facsimile or electronic copies hereof will be deemed to constitute duplicate originals.

The County and Contractor hereby agree to regard electronic representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to Paragraph 10.0 (Change Notices and Amendments) above, and received via communications facilities (facsimile, email or electronic signature), as legally sufficient evidence that such legally binding signatures have been affixed to Amendments to this Contract.

## **86.0 MOST FAVORED PUBLIC ENTITY**

If Contractor's prices decline, or should Contractor, at any time during the Term of this Contract, provide similar software, Service Levels, software models, components, goods or Services under similar delivery conditions to the State of California or any county, municipality or district of the State or to any other state, county or municipality at prices below those set forth in this Contract, then such lower prices must be immediately extended to the County. The County will have the right, at the County's expense, to utilize a County auditor or an independent auditor to verify Contractor's compliance with this Paragraph 86.0 (Most Favored Public Entity) by review of Contractor's books and records.

## **87.0 NONDISCRIMINATION AND AFFIRMATIVE ACTION**

87.1 Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and must be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable federal and state anti-discrimination laws and regulations.

87.2 Contractor certifies to the County each of the following:

- a. That Contractor has a written policy statement prohibiting discrimination in all phases of employment,
- b. That Contractor periodically conducts a self-analysis or utilization analysis of its work force,



- c. That Contractor has a system for determining if its employment practices are discriminatory against protected groups, and
  - d. Where problem areas are identified in employment practices, that Contractor has a system for taking reasonable corrective action, to include establishment of goals or timetables.
- 87.3 Contractor must take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable federal and state anti-discrimination laws and regulations. Such action must include, but is not limited to, employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 87.4 Contractor certifies and agrees that it will deal with its Subcontractors, bidders, or vendors without regard to, or because of, race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.
- 87.5 Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies must comply with all applicable federal and state laws and regulations to the end that no person must, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any Project, program, or activity supported by this Contract.
- 87.6 Contractor must allow County representatives access to Contractor's employment records during regular business hours to verify compliance with the provisions of this Paragraph 87.0 (Nondiscrimination and Affirmative Action) when so requested by the County.
- 87.7 If the County finds that any provisions of this Paragraph 87.0 (Nondiscrimination and Affirmative Action) have been violated, such violation will constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. The County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated. In addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that Contractor has violated federal or state anti-discrimination laws or regulations will constitute a finding by the County that Contractor has violated the anti-discrimination provisions of this Contract.
- 87.8 The parties agree that in the event Contractor violates any of the anti-discrimination provisions of this Contract, the County will, at its sole option, be entitled to the sum of \$500 for each such violation as allowed under California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

87.9 The terms and procedures of this Paragraph 87.0 (Nondiscrimination of Affirmative Action) will also apply to Subcontractors, consultants and partners of Contractor performing Work under this Contract.

## **88.0 PUBLIC RECORDS ACT**

88.1 Any documents submitted by Contractor; all information obtained in connection with the County's right to audit and inspect Contractor's documents, books, and accounting records pursuant to Paragraph 33.0 (Record Retention and Inspection-Audit Settlement) of this Contract; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and will be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County will not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

88.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", Contractor agrees to defend and indemnify the County for all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

## **89.0 DISCLOSURE OF CONTRACT**

### **89.1 Disclosure**

Contractor must not disclose any terms or conditions of, or any circumstances or events that occur during the performance of, this Contract to any person or entity except as may be otherwise provided herein or required by law. In the event Contractor receives any court or administrative agency order, service of process, or request by any person or entity (other than Contractor's professionals) for disclosure of any such details, Contractor must, to the extent allowed by law or such order, promptly notify County Project Director. Thereafter, Contractor must comply with such order, process, or request only to the extent required by applicable law. Notwithstanding the preceding sentence, to the extent permitted by law, Contractor must delay such compliance and cooperate with the County to obtain relief from such obligations to disclose until the County has been given a reasonable opportunity to obtain such relief.

However, in recognizing Contractor's need to identify its services and related clients to sustain itself, the County will not inhibit Contractor from publicizing its role under this Contract under the following conditions:

- b. Contractor must develop all publicity material in a professional manner.
- c. During the Term of this Contract, Contractor must not, and must not authorize another to, publish or disseminate any commercial advertisements, press

releases, feature articles, or other materials using the name or seal of the County or any County department without the prior written consent of County Project Director for each such item.

89.2 Contractor may, without the prior written consent of the County, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this Paragraph 89.0 (Disclosure of Contract) will apply.

### **89.3 Required Disclosure**

Notwithstanding any other provision of this Contract, either party may disclose information about the other that: (i) is lawfully in the public domain at the time of disclosure, (ii) is disclosed with the prior written approval of the party to which such information pertains, or (iii) is required by law to be disclosed.

## **90.0 OWNERSHIP OF MATERIALS, SOFTWARE AND COPYRIGHT**

### **90.1 County Materials**

Contractor agrees that the County, as applicable, will own all rights, title and interest, including all copyrights, patent rights, trade secret rights and other proprietary rights therein, in and to all information, data, plans, schedules including Project Plan and Project Schedule, Departmental procedures and processes, algorithms, diagrams, reports, working papers, documents, training materials, records and any other information or Work Products originated or created solely for the County, as applicable, through Contractor's Work pursuant to this Contract and any County data whether provided by the County or otherwise accessible or generated by Contractor or the Solution, excluding the Work Product and Licensed Software provided by Contractor and related Documentation (collectively "County Materials"). Contractor, therefore, hereby assigns and transfers to County all of Contractor's right, title and interest in and to all such County Materials, provided that notwithstanding such County ownership, Contractor may retain possession of all working papers prepared by Contractor.

During and for a minimum of five years subsequent to the Term of this Contract, Contractor must retain all of Contractor's working papers prepared under this Contract, including to the extent necessary County Materials. The County will have the right to inspect all such working papers, make copies thereof and use the working papers and the information contained therein.

### **90.2 Transfer to County**

The County will have the right to register all copyrights and patents in the name of County of Los Angeles. All material expense of effecting such assignment and transfer of rights will be borne by the County. Further, the County will have the right to assign, license or otherwise transfer all County's right, title, and interest, including, but not limited to, copyrights and patents, in and to County Materials.

### **90.3 Proprietary and Confidential**

All materials, software and tools which are developed or were originally acquired by Contractor outside the scope of this Contract, which Contractor desires to use

hereunder, and which Contractor considers to be proprietary or confidential, must be specifically identified by Contractor to County Project Director as proprietary or confidential, and be plainly and prominently marked by Contractor as "PROPRIETARY" or "CONFIDENTIAL", if applicable.

Notwithstanding any other provision of this Contract, the County will not be obligated in any way under this Contract for:

- a. Any disclosure of any materials which the County is required to make under the California Public Records Act or otherwise by any state or federal law or order of court, or
- b. Any Contractor's proprietary and/or confidential materials not plainly and prominently marked with restrictive legends.

90.4 The County will use reasonable means to ensure that Contractor's proprietary and/or confidential items are safeguarded and held in confidence. The County agrees not to reproduce, distribute, or disclose to non-County entities any such proprietary and/or confidential items without the prior written consent of Contractor.

90.5 Notwithstanding any other provision of this Contract, the County will not be obligated to Contractor in any way under Paragraph 90.4 above.

90.6 All the rights and obligations of this Paragraph 90.0 (Ownership of Materials, Software and Copyright) will survive the expiration or termination of this Contract.

#### **91.0 PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION**

91.1 Contractor must indemnify, hold harmless and defend the County from and against all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual or alleged unauthorized trade secret disclosure, arising from or related to the operation and utilization of Contractor's Work under this Contract. The County will inform Contractor as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure and will support Contractor's defense and settlement thereof.

91.2 In the event any software product becomes the subject of any complaint, claim, or proceeding alleging infringement or unauthorized disclosure, such that County's continued use of such item is formally restrained, enjoined, or subjected to a risk of damages, Contractor, at its sole expense, and providing that County's continued use of the System is not materially impeded, must either:

- a. Procure for the County all rights to continued use of the questioned software product, or
- b. Replace the questioned software product with a non-questioned item, or
- c. Modify the questioned software so that it is free of claims.

91.3 Contractor will have no liability if the alleged infringement or unauthorized disclosure is based upon a use of the questioned product, either alone or in combination with other items not supplied by Contractor, in a manner for which the questioned product was not designed nor intended.

## **92.0 DATA DESTRUCTION**

If Contractor has maintained, processed, or stored County data and/or information, implied or expressed, Contractor has the sole responsibility to certify that the data and information has been appropriately destroyed consistent with the National Institute of Standards and Technology (NIST) Special Publication SP 800-88 titled *Guidelines for Media Sanitization*. Available at:

<https://csrc.nist.gov/publications/PubsDrafts.html#SP-800-88 Rev.%201>.

The data and/or information may be stored on purchased, leased, or rented electronic storage equipment (e.g., printers, hard drives) and electronic devices (e.g., servers, workstations) that are geographically located within the County, or external to County's boundaries. The County must receive within ten Business Days, a signed document from Contractor(s) that certifies and validates the data and information were placed in one or more of the following stored states: unusable, unreadable, and/or indecipherable.

Contractor must certify that any County data stored on purchased, leased, or rented electronic storage equipment and electronic devices, including, but not limited to printers, hard drives, servers, and/or workstations are destroyed consistent with the current National Institute of Standard and Technology (NIST) Special Publication SP-800-88, *Guidelines for Media Sanitization*. Contractor must provide the County with written certification, within ten Business Days of removal of any electronic storage equipment and devices that validates that all County data was destroyed and is unusable, unreadable, and/or undecipherable.

## **93.0 Eligible Entities**

The County and Contractor agree that Eligible Entities may purchase products or services defined herein under the same terms and conditions as the County, subject to any applicable local purchasing ordinances and laws of the State of California.

For purposes of this Contract, an Eligible Entity is any public law enforcement/public safety agency whose procurement rules, whether internal or enacted pursuant to statute, allow them to purchase goods or services through a procurement vehicle such as this RFP.

The terms and conditions of this Contract will be made available, upon request, to public law enforcement/public safety agencies, "Eligible Entities", upon request.

The County shall not be construed as a dealer, re-marketer, representative, partner, or agent of any type, of Contractor. Eligible Entities will be solely responsible for ordering services and products under this County Contract. Payments for services and products ordered by an Eligible Entity will be the exclusive obligation of such Eligible Entity.

The County will not be obligated, liable, or responsible for any order made by any Eligible Entity or any employee thereof, OR for any payment required to be made with respect to such order, and that any disputes between Eligible Entities and Contractor are not the responsibility of the County. The exercise of any rights

or remedies of the Eligible Entities or Proposer will be the exclusive obligation of such parties.

The County makes no representation or guaranty with respect to any minimum purchases by the County, or any Eligible Entity or any employee thereof, under this County contract or any Eligible Entity contract.

Notwithstanding any additional or contrary terms in the Eligible Entity's contract, the applicable provisions of this Contract (except for price, scope of work, product delivery, passage of title, risk of loss to equipment, and warranty conditions) will govern the purchase and sale of the services or products ordered by the Eligible Entities.

**94.0 LOCAL SMALL BUSINESS ENTERPRISE (LSBE) PREFERENCE PROGRAM (IF APPLICABLE)**

- 94.1 This Contract is subject to the provisions of the County's ordinance entitled LSBE Preference Program, as codified in Chapter 2.204 of the Los Angeles County Code.
- 94.2 Contractor must not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain, or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a LSBE.
- 94.3 Contractor must not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a LSBE.
- 94.4 If Contractor has obtained certification as a LSBE by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this Contract to which it would not otherwise have been entitled, must:
  - a. Pay to the County any difference between this Contract amount and what the County's costs would have been if this Contract had been properly awarded,
  - b. In addition to the amount described in subdivision (a) above, Contractor will be assessed a penalty in an amount of not more than ten percent of the amount of this Contract, and
  - c. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

The above penalties will also apply to any business that has previously obtained proper certification, however, because of a change in their status would no longer be eligible for certification and fails to notify the State and the Department of Consumer and Business Affairs of this information prior to responding to a solicitation or accepting a contract award.

**95.0 SOCIAL ENTERPRISE (SE) PREFERENCE PROGRAM (IF APPLICABLE)**

- 95.1 This Contract is subject to the provisions of the County's ordinance entitled SE Preference Program, as codified in Chapter 2.205 of the Los Angeles County Code.
- 95.2 Contractor must not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a SE.
- 95.3 Contractor must not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a SE.
- 95.4 If Contractor has obtained County certification as a SE by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this Contract to which it would not otherwise have been entitled, Contractor must:
- a. Pay to the County any difference between this Contract amount and what County's costs would have been if this Contract had been properly awarded,
  - b. In addition to the amount described in subdivision (a) above, Contractor will be assessed a penalty in an amount of not more than ten percent of the amount of this Contract, and
  - c. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

The above penalties will also apply to any entity that has previously obtained proper certification, however, because of a change in their status would no longer be eligible for certification and fails to notify the Department of Consumer and Business Affairs of this information prior to responding to a solicitation or accepting a contract award.

**96.0 DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PREFERENCE PROGRAM (IF APPLICABLE)**

- 96.1 This Contract is subject to the provisions of the County's ordinance entitled DVBE Preference Program, as codified in Chapter 2.211 of the Los Angeles County Code.
- 96.2 Contractor must not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a DVBE.
- 96.3 Contractor must not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a DVBE.

96.4 If Contractor has obtained certification as a DVBE by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this contract to which it would not otherwise have been entitled, Contractor must:

- a. Pay to the County any difference between this Contract amount and what the County's costs would have been if this Contract had been properly awarded,
- b. In addition to the amount described in subdivision (a) above, Contractor will be assessed a penalty in an amount of not more than ten percent of the amount of this Contract, and
- c. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

Notwithstanding any other remedies in this Contract, the above penalties will also apply to any business that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification and fails to notify the State and the County Department of Consumer and Business Affairs of this information prior to responding to a solicitation or accepting a contract award.



IN WITNESS WHEREOF, contractor has executed this Contract, or caused it to be duly executed and the County of Los Angeles, by order of its Board has caused this Contract to be executed on its behalf by the Chair of said Board and attested by the Executive Officer-Clerk of the Board thereof, the day and year first above written.

CONTRACTOR: ( \_\_\_\_\_ )  
Name

By \_\_\_\_\_  
Name  
\_\_\_\_\_  
Title

COUNTY OF LOS ANGELES

By \_\_\_\_\_  
Chair, Board of Supervisors

ATTEST:

CELIA ZAVALA, Executive Officer  
of the Board of Supervisors

By \_\_\_\_\_

APPROVED AS TO FORM:

DAWYN R. HARRISON  
County Counsel

By \_\_\_\_\_  
Cammy C. DuPont  
Principal Deputy County Counsel