

# APPENDIX E

## **Addendum Number Two** **February 2, 2010**



## **SAMPLE AGREEMENT**

**IMPORTANT NOTE**

THIS DOCUMENT IS A COUNTY AGREEMENT WHICH INCLUDES MANY OF COUNTY'S REQUIREMENTS FOR CONTRACTING FOR THIS CONTRACT PROGRAM AS OF THE ISSUANCE OF THIS REQUEST FOR PROPOSALS (RFP). COUNTY MAKES NO REPRESENTATION OR WARRANTY THAT ALL OF THE PROVISIONS IN THIS AGREEMENT WILL BE INCLUDED IN ANY RESULTANT CONTRACT, THAT SUCH PROVISIONS WILL NOT BE MODIFIED IN ANY RESULTANT CONTRACT, OR THAT OTHER PROVISIONS WILL NOT BE INCLUDED IN ANY RESULTANT CONTRACT.

**AGREEMENT  
BY AND BETWEEN**

**COUNTY OF LOS ANGELES  
AND**

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**FOR AN**

**INTEGRATED BEHAVIORAL HEALTH  
INFORMATION SYSTEM (IBHIS)**

\_\_\_\_\_, 2010



	Attachment B.3	System Hardware
	Attachment B.4	System Software
3.	Exhibit C	Price and Schedule of Payments
4.	Exhibit D	Maintenance and Support Services
	Schedule D.1	Response Time Requirements
5.	Exhibit E	Project Schedule
6.	Exhibit F	Glossary
7.	Exhibit G	Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement
8.	Exhibit H	Contractor's EEO Certification
9.	Exhibit I	Required Subcontractor Provisions
10.	Exhibit J	Form of Change Notice
11.	Exhibit K	Task/Deliverable Acceptance Certificate
12.	Exhibit L	Safely Surrendered Baby Law
13.	Exhibit M	Business Associate Agreement
14.	Exhibit N	County of Los Angeles Policy on Doing Business with Small Business
15.	Exhibit O	Listing of Contractors Debarred in Los Angeles County
16.	Exhibit P	IRS Notice 1015
17.	Exhibit Q	Title 2 Administration Determinations of Contractor Non-Responsibility and Contractor Debarment Ordinance
18.	Exhibit R	Background and Resources: California Charities Regulation
19.	Exhibit S	Jury Service Ordinance Title 2 Administration Chapter 2.203.010 through 2.203.090
20.	Exhibit T	County's Request for Proposal (Incorporated by Reference)
21.	Exhibit U	Contractor's Proposal (dated _____) (Incorporated by Reference)

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36

## 1.2 Entire Agreement

37 The body of this Agreement, together with the Recitals and Exhibits, as defined in  
38 Paragraph 1.1 (Interpretation) above, constitutes the complete and exclusive statement of  
39 understanding between the parties and supersedes all previous and contemporaneous  
40 agreements, whether written or oral, and any and all communications and negotiations between  
41 the parties relating to the subject matter of this Agreement.

42

## 1.3 Construction

43 The words "herein", "hereof", and "hereunder" and words of similar import used in this  
44 Agreement, including all annexes, Exhibits, and Attachments, refer to this Agreement, including  
45 all annexes, Exhibits, and Attachments. Wherever from the context it appears appropriate, each  
46 term stated in either the singular or plural shall include the singular and the plural. Whenever  
47 examples are used in this Agreement with the words "including", "for example", "e.g.", "such as",  
48 "etc.", or any derivation of such words, such examples are intended to be illustrative and not  
49 limiting. References in this Agreement to Application Software, Baseline Application Software,  
50 System Hardware, System Software, Third Party Software, Custom Programming Modifications,  
51 Interfaces, Conversions, or the System may include one or more Components or modules  
52 thereof, or the entirety of such Application Software, Baseline Application Software, System  
53 Hardware, System Software, Third Party Software, Custom Programming Modifications,  
54 Interfaces, Conversions, or System, as the case may be, in or comprising the System.

55           1.4    Definitions

56                   1.4.1    The terms and phrases in this Paragraph 1.4 shall have the meanings set  
57 forth below, when used in this Agreement, throughout and hereafter.

58                   1.4.2    “Acceptance” shall mean County’s written approval of any and all Work  
59 provided by Contractor to County in accordance with Paragraph 4.2 (Approval of Work).

60                   1.4.3    “Acceptance Test” shall mean any one of the tests described in Task 8.0  
61 (System Tests) or in Task 10.2 (Pilot Tests) of the Statement of Work.

62                   1.4.4    “ADA” shall mean the Americans with Disabilities Act of 1990 as codified  
63 at 42 U.S.C. Section 12101 et seq., along with all implementing regulations made pursuant  
64 thereto.

65                   1.4.5    “Agreement” shall have the meaning set forth in the Recitals.

66                   1.4.6    “Ancillary Software” shall have the meaning set forth in Paragraph 6  
67 (Change Notices and Amendments).

68                   1.4.7    “Ancillary Software Warranty Period” shall have the meaning set forth in  
69 Paragraph 9.2.3.

70                   1.4.8    “Application Software” shall mean Baseline Application Software, Third  
71 Party Software, Interfaces and Custom Programming Modifications and any modifications,  
72 Updates, Enhancements, corrections, patches, fixes, new releases, or revisions thereto,  
73 including Enhancements as defined under Maintenance and Support Services in Exhibit D  
74 (Maintenance and Support Services). Application Software further includes Ancillary Software,  
75 upon the licensing of such software to County in accordance with the terms of this Agreement.

76                   1.4.9    “Baseline Application Software” shall mean Contractor’s commercial  
77 product provided to the County as specified in Attachment B.4 (System Software) to Exhibit B  
78 (Technical Solution Requirements), including all Source Code, Object Code and related  
79 Documentation, supplied by Contractor pursuant to this Agreement and identified in Section I.A  
80 (System Software: Baseline Application Software) of Exhibit C (Price and Schedule of  
81 Payments).

82                   1.4.10 “Board of Supervisors” or “Board” shall mean the Los Angeles County  
83 Board of Supervisors.

84                   1.4.11 “Change Notice” shall have the meaning set forth in Paragraph 6 (Change  
85 Notices and Amendments).

86                   1.4.12 “CSSD” shall mean County’s Child Support Services Department.

87                   1.4.13 “Components” shall mean, individually and collectively, each and every  
88 component of the System, including System Software.

89                   1.4.14 “Confidential County Data” shall have the meaning set forth in Paragraph  
90 20 (Confidentiality).

91                   1.4.15 “Contract Provider” shall mean a person, group or organization that  
92 contract with DMH to provide any type of mental health services (i.e., direct services, indirect  
93 services, consultation).

94                   1.4.16 “Contract Sum” shall mean the total monetary amount that may be  
95 payable by County to Contractor hereunder, as set forth in Paragraph 7.1 (Contract Sum -  
96 General).

97                   1.4.17 “Contractor” shall have the meaning set forth in the Recitals.

98                   1.4.18 “Contractor’s Project Director” shall have the meaning set forth in  
99 Paragraph 3.1 (Contractor’s Project Director).

100                  1.4.19 “Contractor’s Project Manager” shall have the meaning set forth in  
101 Paragraph 3.2 (Contractor’s Project Manager).

102                  1.4.20 “Conversion” means the Tasks, Deliverables, data, and System Software,  
103 including Source Code, Object Code and related Documentation, which allow the conversion and  
104 migration of electronic data from County’s existing systems into the System, as required (i)  
105 pursuant to Task 9.0 (Data Conversion) of the Statement of Work, and/or (ii) which County may  
106 request in accordance with Paragraph 6 (Change Notices and Amendments).

107                  1.4.21 “Corrective Maintenance” shall have the meaning set forth in Exhibit D  
108 (Maintenance and Support Services).

109                  1.4.22 “County” shall have the meaning set forth in the Recitals.

110                  1.4.23 “County Facilities” shall mean any facilities owned or operated by  
111 County.

112                  1.4.24 “County Indemnitees” shall have the meaning set forth in Paragraph 15.1  
113 (General Indemnification).

114                  1.4.25 “County Materials” shall have the meaning set forth in Paragraph 21.2  
115 (Proprietary Considerations).

116                  1.4.26 “County’s Project Director” shall have the meaning set forth in  
117 Paragraph 2.1 (County’s Project Director).

118                  1.4.27 “County’s Project Manager” shall have the meaning set forth in Paragraph  
119 2.2 (County’s Project Manager).

120                  1.4.28 “County’s Remedial Acts” shall have the meaning set forth in Paragraph  
121 15.2.2 (Intellectual Property Indemnification).

122                  1.4.29 “County Staff” means all employees of County, contractors to County  
123 including both individuals and employees thereof, and subcontractors to contractors to County  
124 including both individuals and employees thereof, but excluding any employee, owner, partner,  
125 affiliate or agent of Contractor or of any Subcontractor to Contractor hereunder.

126 1.4.30 "Custom Programming Modifications" shall mean those custom software  
127 modifications, Source Code, Object Code and related Documentation, which Contractor shall  
128 provide in accordance with the Statement of Work and Sections III.A (Professional Services:  
129 Custom Programming Modifications) and III.B (Professional Services: Interfaces) of Exhibit C  
130 (Price and Schedule of Payments), or which County may request, and which Contractor shall  
131 provide, in accordance with Paragraph 4.5 (Other Professional Services), including but not  
132 limited to Interfaces and Conversions.

133 1.4.31 "Deficiency" shall mean and include (a) defects in design, development,  
134 implementation, materials, or workmanship; (b) errors, omissions, or deviations from published or  
135 mutually agreed upon standards, any of the Specifications or any County-approved Deliverables;  
136 (c) any other error or malfunction, including the provision of negligent or substandard  
137 workmanship; or (d) other problems which result in the System or any part thereof not  
138 performing in accordance with the provisions of this Agreement, including the Specifications.

139 1.4.32 "Deliverable" shall mean items and services provided or to be provided by  
140 Contractor under this Agreement, including numbered Deliverables in the Statement of Work,  
141 products and services under the Detailed Work Plan and the Detailed Work Plan itself, and  
142 products and services provided pursuant to Exhibit D (Maintenance and Support Services) or  
143 Paragraph 6 (Change Notices and Amendments).

144 1.4.33 "Detailed Work Plan" shall have the meaning set forth in Paragraph 4.6.1  
145 (Delivery of Detailed Work Plan).

146 1.4.34 "Department" shall have the meaning set forth in the Recitals.

147 1.4.35 "Director" shall mean the Director of DMH.

148 1.4.36 "DMH" shall have the meaning set forth in the Recitals.

149 1.4.37 "Documentation" shall mean any and all written materials (including the  
150 electronic versions thereof), training course materials, Specifications, customer technical  
151 manuals, customer handbooks, customer flow charts, customer technical information, customer  
152 reference materials, customer user manuals, customer operating manuals, quick reference  
153 guides, FAQs and all other instructions and reference materials relating to the capabilities,  
154 operation, installation and use of the System and/or applicable System Components.

155 1.4.38 "Due Date" shall have the meaning set forth in Paragraph 7.3 (Credits to  
156 County).

157 1.4.39 "Effective Date" shall mean the date of approval and execution of this  
158 Agreement by County's Board of Supervisors, following initial execution by Contractor.

159 1.4.40 "Enhancements" shall have the meaning set forth in Exhibit D  
160 (Maintenance and Support Services).

161 1.4.41 "Final System Acceptance" shall mean County's written approval of the  
162 Work associated with Task 10.3 (Final System Acceptance) of the Statement of Work and  
163 County's Project Director's countersignature to the applicable Task/Deliverable Acceptance  
164 Certificate.

165 1.4.42 "Fixed Price Professional Services" shall mean those services identified in  
166 Section III.C (Professional Services: Fixed Price Professional Services) of Exhibit C (Price and  
167 Schedule of Payments), including without limitation services identified in the Statement of Work,  
168 Interfaces and Conversions, or required pursuant to Attachments B.2 (Technical Requirements)  
169 and B.1 (Functional Requirements) to Exhibit B (Technical Solution Requirements) that are  
170 provided by Contractor to County hereunder.

171 1.4.43 "HIPAA" shall mean the Health Insurance Portability and Accountability  
172 Act of 1996, Pub. L. No. 104-191 (1996), together with the rules and regulations from time to  
173 time promulgated thereunder, including the Privacy and Security Regulations.

174 1.4.44 "HITECH Act" shall mean the Health Information Technology for  
175 Economic and Clinical Health Act, Title XIII and Title IV of Division B of the American Recovery  
176 and Reinvestment Act of 2009 (Pub. L. 111-005).

177 1.4.45 "Holdback Amount" shall have the meaning set forth in Paragraph 8.4  
178 (Holdbacks).

179 1.4.46 "IBHIS" or "Integrated Behavioral Health Information System" means the  
180 System as defined in Paragraph 1.4.81.

181 1.4.47 "Implementation Services" shall mean Application Software deployment,  
182 customizations, system training and other services related to the implementation of System  
183 Software, as set forth in the Statement of Work.

184 1.4.48 "Indemnify" shall have the meaning set forth in Paragraph 15.1 (General  
185 Indemnification).

186 1.4.49 "Infringement Claims" shall have the meaning set forth in Paragraph  
187 15.2.1 (Intellectual Property Indemnification).

188 1.4.50 "Initial Interfaces" shall mean the Interfaces as identified in Attachments  
189 B.1 (Functional Requirements) and B.2 (Technical Requirements) to Exhibit B (Technical  
190 Solution Requirements).

191 1.4.51 "Initial Term" shall have the meaning set forth in Paragraph 5 (Term).

192 1.4.52 "Interfaces" shall mean the software mechanisms, including Source Code,  
193 Object Code and related Documentation, which allow the transfer of electronic data and/or  
194 software commands between computer systems, applications or modules, (i) required to  
195 complete the interfaces identified in Attachment A.1 (Auditor-Controller eCAPS Interfaces) to the  
196 Statement of Work and Attachments B.1 (Functional Requirements) and B.2 (Technical  
197 Requirements) to Exhibit B (Technical Solution Requirements) or (ii) which County may request  
198 in accordance with Paragraph 6 (Change Notices and Amendments), to be provided by  
199 Contractor.

200 1.4.53 "Key Deliverable" shall mean the Deliverables identified with the word  
201 "Key" in the Statement of Work, the Project Schedule or the Detailed Work Plan, and also  
202 includes all Milestones.

203 1.4.54 "Liabilities" shall have the meaning set forth in Paragraph 15.1 (General  
204 Indemnification).

205 1.4.55 "License" shall have the meaning set forth in Paragraph 10.2 (License).

206 1.4.56 "Maintenance and Support Fee" shall mean the amount charged by  
207 Contractor for Maintenance and Support Services as set forth in Section IV (Maintenance and  
208 Support Services) of Exhibit C (Price and Schedule of Payments).

209 1.4.57 "Maintenance and Support Services" shall have the meaning set forth in  
210 Paragraph 4.4 (Maintenance and Support Services).

211 1.4.58 "Milestone" shall have the meaning set forth in Paragraph 4.7  
212 (Milestones).

213 1.4.59 "Natural Degeneration" shall have the meaning set forth in Paragraph  
214 10.3 (Source Code).

215 1.4.60 "Object Code" shall mean executable programs or libraries consisting of  
216 computer programming code which may be executed on a computer and are produced from  
217 Source Code using compilers.

218 1.4.61 "Option Term" shall have the meaning set forth in Paragraph 5 (Term).

219 1.4.62 "Other Professional Services" shall mean services not identified as to be  
220 performed hereunder, in the Statement of Work or the initial Detailed Work Plan, or specifically  
221 identified as optional at County's election therein, including but not limited to, Custom  
222 Programming Modifications, training, consulting or System close-out / shut-down services that  
223 are provided by Contractor to County hereunder in accordance with Paragraph 4.5 (Other  
224 Professional Services).

225 1.4.63 "Other Professional Services and Software Warranty Period" shall have  
226 the meaning set forth in Paragraph 9.2 (Warranty Periods for Warranty Services).

227 1.4.64 "Out-of-Pocket Expenses" shall mean Contractor's reasonable and  
228 necessary expenditures for Contractor's staff transportation, meals, and lodging not to exceed  
229 the limits set forth in the then current Chapter 5.40 (Travel and Other Expenses) of the Los  
230 Angeles County Code, and not to include airfare other than in coach class.

231 1.4.65 "Physical Materials" shall have the meaning set forth in Paragraph 21.1  
232 (Proprietary Considerations).

233 1.4.66 "Pool Dollars" shall mean the aggregate funds reserved under this  
234 Agreement for Other Professional Services, Ancillary Software, and Maintenance and Support  
235 Services in respect of Ancillary Software, and other software acquired in accordance with  
236 Paragraph 4.5 (Other Professional Services) and Paragraph 6 (Change Notices and  
237 Amendments).

238 1.4.67 "Privacy and Security Regulations" shall have the meaning set forth in  
239 Paragraph 72 (Contractor's Obligations as a Business Associate Under HIPAA and HITECH  
240 Act).

241 1.4.68 "Production Use" shall mean the actual use of the System to perform  
242 County's applicable normal business operations.

243 1.4.69 "Project Schedule" shall mean the schedule attached hereto as Exhibit E  
244 (Project Schedule).

245 1.4.70 "Project Status Report" shall mean the written status reports delivered  
246 pursuant to Paragraph 4.6.3 (Deviation from Detailed Work Plan) and Task 2.0 (Project Status  
247 Reports) of the Statement of Work and shall be in the form and substance as set forth in  
248 Attachment A.2 (Project Status Report) of the Statement of Work.

249 1.4.71 "Release Conditions" shall have the meaning set forth in Paragraph 10.3  
250 (Source Code).

251 1.4.72 "Replacement Product" shall have the meaning set forth in Paragraph  
252 11.3 (Continuous Product Support).

253 1.4.73 "Response Time" shall have the meaning set forth in Schedule D.1  
254 (Response Time Requirements) to Exhibit D (Maintenance and Support Services) of this  
255 Agreement.

256 1.4.74 "Response Time Warranty" shall have the meaning set forth in Paragraph  
257 9.8 (Response Time Warranty).

258 1.4.75 "Service Credits" shall have the meaning set forth in Paragraph 4.4.2  
259 (Maintenance and Support Services).

260 1.4.76 "Source Code" shall mean computer programming code in human  
261 readable form that is not suitable for machine execution without the intervening steps of  
262 interpretation or compilation, and includes code for all System Software, including all  
263 modifications, Updates, enhancements, corrections, patches, fixes, improvements, new releases,  
264 Custom Programming Modifications, and Interfaces thereto, and also includes the tools,  
265 compilers, and developers' kits that enable understanding, use and compilation of the Source  
266 Code and creation of additional Source Code or Object Code.

267 1.4.77 "Specifications" shall mean any or all of the following, as applicable, at  
268 County's discretion:

269 (a) All specifications, requirements and standards set forth in Exhibit  
270 B (Technical Solution Requirements), including its Attachments;

271 (b) All System Performance Requirements and standards set forth in  
272 this Agreement, including Response Time;

273 (c) All Documentation, to the extent not inconsistent with any of the  
274 foregoing in this Paragraph 1.4.77;

275 (d) All functional and operational requirements/features included in  
276 Exhibit U (Contractor's Proposal), to the extent not inconsistent with any of the foregoing in this  
277 Paragraph 1.4.77;

278 (e) All manufacturer specifications and Updates thereto denominated  
279 as such by respective manufacturer(s), to the extent not inconsistent with any of the foregoing in  
280 this Paragraph 1.4.77;

281 (f) All specifications identified as such by Contractor, only to the  
282 extent (i) not inconsistent with any of the foregoing in this Paragraph 1.4.77 and (ii) acceptable  
283 to County in its sole discretion; and

284 (g) All written or electronic materials furnished by or through  
285 Contractor regarding Contractor's pre-developed and generally available software products, or  
286 otherwise agreed to by Contractor and County, which pertain to any element of the System, and  
287 which outline, describe or specify functionality, features, capacity, availability, Response Times,  
288 accuracy or any other performance or other criteria for the System or any element of the  
289 System, but only to the extent (i) not inconsistent with any of the foregoing in this Paragraph  
290 1.4.77 and (ii) acceptable to County in its sole discretion.

291 1.4.78 "Statement of Work" or "SOW" shall mean the Statement of Work  
292 attached to this Agreement as Exhibit A (Statement of Work) and all Attachments thereto.

293 1.4.79 "Subcontractor" shall mean any person, entity or organization to which  
294 Contractor has delegated any of its obligations hereunder in accordance with Paragraph 14  
295 (Subcontracting).

296 1.4.80 "Successor Event" shall have the meaning set forth in Paragraph 11.3  
297 (Continuous Product Support).

298 1.4.81 "System" shall mean all System Software, and services described in this  
299 Agreement and as otherwise agreed to by County and Contractor, collectively comprising the  
300 System. Reference to the System may include one or more Components or modules thereof or  
301 the entire System.

302 1.4.82 "System Component" shall mean, individually and collectively, each and  
303 every Component of the System Software.

304 1.4.83 "System Hardware" shall mean all hardware provided by County in  
305 accordance with Contractor's specifications set forth in Attachment B.3 (System Hardware) to  
306 Exhibit B (Technical Solution Requirements) for meeting the System Performance Requirements.  
307 Reference to the System Hardware may include one or more components thereof or all System  
308 Hardware in the System.

309 1.4.84 "System Performance Requirements" shall mean the Response Time and  
310 other requirements for the System performance of the IBHIS identified in Schedule D.1  
311 (Response Time Requirements) to Exhibit D (Maintenance and Support Services).

312 1.4.85 "System Software" shall mean all Application Software and related  
313 Documentation, including without limitation, software as set forth in Attachment B.4 (System  
314 Software) of Exhibit B (Technical Solution Requirements). Reference to the System Software  
315 may include one or more Components or modules thereof or all System Software in the System.

316 1.4.86 "System Test" shall mean any one of the tests described in Task 8.0  
317 (System Tests) of the Statement of Work.

318 1.4.87 "System Warranty Period" shall have the meaning set forth in Paragraph  
319 9.2 (Warranty Periods For Warranty Services).

320 1.4.88 "Task/Deliverable Acceptance Certificate" shall mean the certificate, a  
321 form of which is attached hereto as Exhibit K (Task/Deliverable Acceptance Certificate), issued  
322 by County upon Contractor's satisfactory completion of applicable Tasks, Subtasks,  
323 Deliverables, goods, services or other Work in accordance herewith, pursuant to Paragraph 4.2  
324 (Approval of Work).

325 1.4.89 "Task" and "Subtask" shall mean one of the areas of Work to be  
326 performed under this Agreement, including those identified as numbered Tasks and Subtasks in  
327 the Statement of Work, Project Schedule, or Detailed Work Plan.

328 1.4.90 "Term" shall have the meaning set forth in Paragraph 5 (Term).

329 1.4.91 "Third Party Software" shall mean all the software, including all Source  
330 Code, if available, Object Code and related Documentation, which are developed and owned by  
331 third parties and are supplied by Contractor pursuant to this Agreement. Without limiting the  
332 foregoing, each such Component shall be set forth in Section I.B (System Software: Third Party  
333 Software) of Exhibit C (Price and Schedule of Payments).

334 1.4.92 "Updates" shall mean any additions to and/or replacements to  
335 Application Software, or any Components thereof, available or made subsequent to the System  
336 Software implementation in accordance with the Statement of Work, and shall include  
337 Enhancements, new version releases, upgrades, updates, revisions, improvements, bug fixes,  
338 patches, Deficiency corrections, modifications resulting from legal changes, statutory changes  
339 regulatory changes, and other modifications relating to the System Software, whether required  
340 for the System Software to remain in compliance with applicable Federal or State and local laws  
341 and regulations or otherwise needed. Reference to Updates may include one or more  
342 components or modules thereof or all Updates in the System.

343 1.4.93 "User" shall mean any person to whom County grants the privilege to  
344 access the System through the assignment of a unique identifier and password. Users shall be  
345 County Staff or employees or agents of any organization that may from time to time be  
346 authorized by County.

347 1.4.94 "Warranty Period" shall have the meaning set forth in Paragraph 9.2.4.

348 1.4.95 "Work" shall mean any and all Tasks, Subtasks, Deliverables, Other  
349 Professional Services, Custom Programming Modifications, Interfaces, goods, and other  
350 services performed by or on behalf of Contractor pursuant to this Agreement, the Statement of  
351 Work, the Detailed Work Plan, and all the Exhibits, annexes, attachments, Change Notices, and  
352 amendments hereto.

353 1.4.96 "Working Day(s)" shall mean 8:00 a.m. to 5:00 p.m., Pacific Time,  
354 Monday through Friday, excluding County observed holidays, except that for Maintenance and  
355 Support Services, the term "Working Days" shall mean twenty-four (24) hours per day, seven (7)  
356 days per week, as provided in Exhibit D (Maintenance and Support Services).

357 **2. ADMINISTRATION OF AGREEMENT - COUNTY**

358 2.1 County's Project Director

359 2.1.1 County's Project Director for this Agreement shall be the following person:

360 [Name]  
361 [Title]  
362 [Address]  
363 [Phone]  
364 [Fax]  
365 [Email]  
366

367 2.1.2 From time to time and at any time and subject to the remainder of this  
368 Paragraph 2.1.2, County's Project Director may delegate specific authority and responsibilities  
369 (but not all) under this Agreement to a designee, and upon and to the extent of such designation,  
370 "County's Project Director" as used herein, shall refer to such designee.

371 2.1.3 County will notify Contractor in writing of any change in the name or  
372 address of County's Project Director.

373 2.1.4 County's Project Director will be responsible for ensuring that the  
374 objectives of this Agreement are met.

375 2.1.5 Except as set forth in Paragraph 6 (Change Notices and Amendments),  
376 County's Project Director is not authorized to make any changes in any of the terms and  
377 conditions of this Agreement and is not authorized to further obligate County in any respect  
378 whatsoever.

379 2.1.6 County's Project Director or such person's authorized designee will have  
380 the right at all times to inspect any and all System Hardware, System Software, and other Work  
381 provided by or on behalf of Contractor pursuant to this Agreement.

382 2.2 County's Project Manager

383 2.2.1 County's Project Manager for this Agreement shall be the following  
384 person:

385 [Name]  
386 [Title]  
387 [Address]  
388 [Phone]  
389 [Fax]  
390 [Email]  
391

392 2.2.2 County will notify Contractor in writing of any change in the name or  
393 address of County's Project Manager.

394 2.2.3 County's Project Manager will be responsible for ensuring that the  
395 functional and technical standards and requirements of this Agreement are met.

396                   2.2.4   County's Project Manager will interface with Contractor's Project Manager  
397 on a regular basis.

398                   2.2.5   Except as set forth in Paragraph 6 (Change Notices and Amendments),  
399 County's Project Manager is not authorized to make any changes in any of the terms and  
400 conditions of this Agreement and is not authorized to further obligate County in any respect  
401 whatsoever.

402                   2.2.6   County's Project Manager will advise County's Project Director as to  
403 Contractor's performance in areas relating to technical requirements and standards.

404                   2.3    County Personnel

405                   All County personnel assigned to this Agreement shall be under the exclusive  
406 supervision of County. Contractor understands and agrees that all such County personnel are  
407 assigned only for the convenience of County. Contractor hereby represents that its price,  
408 Project Schedule, and performance hereunder are premised solely on the work of Contractor's  
409 personnel, except as and only to the extent otherwise expressly provided in this Agreement.

410   **3.    ADMINISTRATION OF AGREEMENT**

411                   3.1    Contractor's Project Director

412                   3.1.1   Contractor's Project Director shall be the following person:

- 413                                   [Name]
- 414                                   [Title]
- 415                                   [Address]
- 416                                   [Phone]
- 417                                   [Fax]
- 418                                   [Email]

419  
420                   3.1.2   Contractor's Project Director shall be a full-time employee of Contractor at  
421 all times during such designation.

422                   3.1.3   Contractor's Project Director shall be responsible for Contractor's  
423 performance of all Work, including delivery of all Deliverables, and assuring Contractor's  
424 compliance with this Agreement.

425                   3.1.4   Contractor's Project Director shall be available to meet with County's  
426 Project Director at least monthly to review project progress and discuss project coordination.  
427 Such meetings shall be conducted at a time and place, or by telephone, convenient to County's  
428 Project Director.

429                   3.2    Contractor's Project Manager

430                   3.2.1   Contractor's Project Manager shall be the following person:

- 431                                   [Name]
- 432                                   [Title]
- 433                                   [Address]

434 [Phone]  
435 [Fax]  
436 [Email]  
437

438 3.2.2 Contractor's Project Manager shall be a full-time employee of Contractor  
439 at all times during such designation.

440 3.2.3 Contractor's Project Manager shall be responsible for Contractor's day-to-  
441 day activities as related to this Agreement and for reporting to County in the manner set forth in  
442 Task 1.0 (Project Planning) of the Statement of Work.

443 3.2.4 Contractor's Project Manager shall meet and confer with County's Project  
444 Manager on a regular basis during the Term as specified in Task 2.0 (Project Status Reports) of  
445 the Statement of Work.

446 3.3 Approval of Contractor's Staff

447 3.3.1 County has the absolute right to approve or disapprove (a) each member  
448 or proposed member of Contractor's staff, including Contractor's Project Director or Contractor's  
449 Project Manager, prior to, and during, their performance of any Work hereunder and (b) any  
450 proposed removals from or other changes in Contractor's staff. County's Project Director may  
451 require replacement of any member of Contractor's staff performing, or offering to perform, Work  
452 hereunder, including Contractor's Project Director or Contractor's Project Manager. County  
453 hereby approves of the persons set forth in Paragraphs 3.1.1 and 3.2.1 as Contractor's Project  
454 Director and Contractor's Project Manager, respectively. Prior to the performance of any Work  
455 hereunder by any member of Contractor's staff, including the Contractor's Project Director and  
456 Contractor's Project Manager, Contractor shall provide County's Project Director with a resume  
457 of such persons for County's review, interview (if requested), and approval. Contractor shall  
458 comply with the requirements of this Paragraph 3.3.1 for each proposed replacement member of  
459 Contractor's staff performing Work hereunder.

460 3.3.2 In addition, Contractor shall, to the maximum extent possible, take all  
461 necessary steps to ensure continuity over time of the membership of the group constituting  
462 Contractor's staff, including Contractor's Project Director or Contractor's Project Manager.  
463 Contractor shall promptly fill any staff vacancy with personnel having qualifications at least  
464 equivalent to those of the staff member being replaced.

465 3.3.3 In fulfillment of its responsibilities under this Agreement, Contractor shall  
466 utilize, and permit utilization of, only staff fully trained and experienced, and as appropriate,  
467 licensed or certified in the technology, trades, Tasks and Subtasks required by this Agreement.

468 3.3.4 Contractor shall supply sufficient staff to discharge its responsibilities  
469 hereunder in a timely and efficient manner as required to comply with the Detailed Work Plan  
470 approved by County pursuant to Task 1.3 (Develop and Present Detailed Work Plan) of the  
471 Statement of Work and Paragraph 4.6 (Delivery and Acceptance of Detailed Work Plan).

472 3.3.5 In the event Contractor should ever need to remove any staff from  
473 performing Work under this Agreement, Contractor shall provide County with notice at least  
474 fifteen (15) days in advance, except in circumstances in which such notice is not possible, and  
475 shall work with County on a mutually agreeable transition plan so as to provide an acceptable  
476 replacement and ensure project continuity. Such plan shall include at least (i) immediate

477 commencement and substantiation of diligent efforts to provide any such replacement from  
478 Contractor's existing qualified staff; (ii) prompt commencement and substantiation of diligent and  
479 appropriately scoped advertising for any required hiring of replacement(s), within at most seven  
480 (7) days of the earlier of such removal or Contractor's prior notice of the need therefor, in each  
481 case if an internal proposed replacement has not already been identified to County within such  
482 period; and (iii) a timely opportunity for applicable County Staff to interview each proposed  
483 replacement, review such person's resume, and conduct any desired reference or background  
484 investigation.

485                   3.3.6 Each staff member employed by or on behalf of Contractor who performs  
486 Work under this Agreement requiring direct contact with County, shall be an adult who is fully  
487 fluent in both spoken and written English and legally permitted to work and reside in the United  
488 States.

489                   3.4     Contractor's Staff Identification

490                   3.4.1 County shall provide all staff assigned to this Agreement, who work on-  
491 site at or have access to any County Facilities, with a photo identification badge. Contractor  
492 staff, while on duty or when entering a County facility or its grounds, shall prominently display the  
493 photo identification badge on such staff member's person. The photo identification badge is the  
494 property of County and must be returned to County upon termination of such person's  
495 engagement in Work under this Agreement, at the end of the Term, or immediately upon the  
496 request of County's Project Manager or County's Project Director. If the County supplied  
497 identification badge is lost or stolen, Contractor shall notify County as soon as possible after the  
498 discovery of such loss or theft, and in any event by the later of eight (8) hours thereafter or 9:30  
499 a.m. on the next Working Day, and shall pay a replacement fee for issuance of a replacement  
500 badge.

501                   3.4.2 Contractor shall notify County within one (1) Working Day when a staff  
502 member assigned to perform work hereunder is terminated from performing Work under this  
503 Agreement. Contractor is responsible to retrieve and immediately return to County's Project  
504 Manager the staff's County specified photo identification badge at the time such person ceases  
505 performing Work under this Agreement.

506                   3.4.3 If County requests the removal of any member of Contractor's staff,  
507 Contractor shall ensure that the County specified photo identification badge of the removed staff  
508 member is retrieved and immediately returned to County's Project Manager upon such staff's  
509 removal from performing Work under this Agreement.

510                   3.5     Background and Security Investigations

511                   3.5.1 At any time during the Term, County may require that any or all members  
512 of Contractor's staff performing Work hereunder undergo and pass, to the satisfaction of County,  
513 a background investigation, as a condition to beginning and/or continuing to Work under this  
514 Agreement. County shall use its discretion in determining the method of background security  
515 clearance to be used, up to and including without limitation a County performed security  
516 clearance requiring fingerprint checks. Any third party fees associated with obtaining the  
517 background information shall be at the expense of Contractor, not to exceed one thousand  
518 dollars (\$1,000.00) per Contractor staff member investigated.

519 3.5.2 Without limiting the foregoing, County may request that any or all  
520 members of Contractor's staff be immediately removed from working on this Agreement at any  
521 time due to information obtained through the background investigation(s). For avoidance of  
522 doubt, County is not obligated to provide to Contractor or to Contractor's staff any information  
523 obtained through the background investigation(s) except to the extent so required by law.  
524 County may immediately terminate access to County Facilities, access to County Materials  
525 and/or the System, and/or continued Work under this Agreement to any or all members of  
526 Contractor's staff as to whom any background investigation(s) reveal, in the sole discretion of  
527 County, information negatively reflecting on such person(s).

528 3.5.3 Disqualification, if any, of any of Contractor's staff, pursuant to this  
529 Paragraph 3.5 shall not relieve Contractor of its obligation to complete all Work in accordance  
530 with the terms and conditions of this Agreement.

531 **4. WORK**

532 4.1 Scope of Work

533 Contractor shall on a timely basis, complete, deliver and implement all Tasks, Subtasks,  
534 Deliverables, goods, services and other Work set forth in this Agreement and the Statement of  
535 Work, including, but not limited to, System Software (including Updates), Implementation  
536 Services, Maintenance and Support Services, and Other Professional Services. Contractor  
537 shall perform such Tasks, Subtasks, Deliverables, goods, services and other Work in  
538 accordance with this Agreement, including but not limited to as set forth in the Statement of  
539 Work, in each case at the rates and prices specified in Exhibit C (Price and Schedule of  
540 Payments), on the Schedule set forth in the Project Schedule, in the Detailed Work Plan if not in  
541 the Project Schedule, or in the applicable Change Notice if neither in the Detailed Work Plan nor  
542 the Project Schedule.

543 4.2 Approval of Work

544 Upon completion of particular Work to be provided by Contractor pursuant to this  
545 Agreement, including the Statement of Work or the Detailed Work Plan, Contractor shall submit  
546 a Task/Deliverable Acceptance Certificate in the form attached as Exhibit K (Task/Deliverable  
547 Acceptance Certificate) to the Statement of Work to County's Project Manager, together with  
548 any supporting documentation reasonably requested by County, for written approval by both  
549 County's Project Director and County's Project Manager. All Work must be approved by  
550 County, as evidenced by County's Project Director and County's Project Manager's  
551 countersignature to the applicable Task/Deliverable Acceptance Certificate. In no event shall  
552 County be liable or responsible for any payment for any Work prior to its approval of such Work.  
553 Contractor shall fully provide, complete and deliver all Work in accordance with the  
554 requirements, Specifications and timetables set forth in this Agreement and shall complete and  
555 deliver the System to County in accordance with the terms and conditions set forth in this  
556 Agreement.

557 4.3 Unapproved Work

558 If Contractor provides any goods or services to County other than the Work required  
559 under this Agreement, or if Contractor submits an invoice for payment in respect of any Work,  
560 other than Maintenance and Support Services, without first having obtained an approved  
561 Task/Deliverable Acceptance Certificate by County's Project Manager in respect of such Work,

562 the same shall be deemed to be a gratuitous effort on the part of Contractor and Contractor  
563 shall have no claim whatsoever against County therefor. County shall furthermore have no  
564 obligation to approve Work hereunder before the Due Date in respect of such Work as set forth  
565 in the Statement of Work, Detailed Work Plan, or applicable Change Notice.

566 4.4 Maintenance and Support Services

567 4.4.1 Subject to County's termination rights hereunder, County elects to acquire  
568 maintenance and support from Contractor. In exchange for County's payment of the  
569 Maintenance and Support Fees, Contractor shall provide County with maintenance and support  
570 services as described in Exhibit D (Maintenance and Support Services) and in the Statement of  
571 Work (collectively, "Maintenance and Support Services"). Maintenance and Support Services  
572 shall commence with respect to each Component of the System on County's Acceptance  
573 thereof. Maintenance and Support Services in respect of the System and of each Component  
574 shall be provided by Contractor at no cost to County until Final System Acceptance, and  
575 thereafter at the rates set forth in such Section IV (Maintenance and Support Services) of Exhibit  
576 C (Price and Schedule of Payments). Updates provided to County and implemented by  
577 Contractor as part of Maintenance and Support Services shall be deemed part of the Application  
578 Software for all purposes hereunder. Provision of Updates under this Agreement shall not  
579 increase County's Maintenance and Support Fees.

580 4.4.2 During all periods when County pays Maintenance and Support Fees,  
581 County may assess against Maintenance and Support Fees owed to Contractor credits  
582 (hereinafter "Service Credits", as more fully defined in Exhibit D (Maintenance and Support  
583 Services)) in the event Contractor fails to timely resolve any Deficiency.

584 4.5 Other Professional Services

585 Upon the written request of County's Project Director made at any time and from time to  
586 time during the Term, Contractor shall provide to County Other Professional Services set forth in  
587 a Change Notice in accordance with Paragraph 6 (Change Notices and Amendments). Other  
588 Professional Services shall be payable out of, and shall not exceed, the Pool Dollars available as  
589 set forth in Paragraph 7.2 (Pool Dollars), excepting any optional Fixed Price Professional  
590 Services included in the Contract Sum, and shall be payable at the rates or applicable fixed  
591 prices set forth in Exhibit C (Price and Schedule of Payments). Approval of any and all Other  
592 Professional Services and payment therefor shall be in accordance with Paragraph 4.2 (Approval  
593 of Work) and Paragraph 8 (Invoices and Payments), respectively.

594 4.6 Delivery and Acceptance of Detailed Work Plan

595 4.6.1 Delivery of Detailed Work Plan. No later than fifteen (15) Working Days  
596 after the Effective Date, Contractor shall provide to County's Project Manager a detailed work  
597 plan incorporating the Deliverables set forth in the Statement of Work and the dates utilized in the  
598 Project Schedule. The initial detailed work plan, or as subsequently revised pursuant to this  
599 Paragraph 4.6, is referred to herein as the "Detailed Work Plan". Contractor and County promptly  
600 shall review and revise the draft Detailed Work Plan as necessary, and Contractor shall submit  
601 the final Detailed Work Plan within thirty-five (35) Working Days following the Effective Date, but  
602 in any event, no payments will be due by County to Contractor under this Agreement until the  
603 Detailed Work Plan is approved by County's Project Director pursuant to Paragraph 4.2  
604 (Approval of Work) and this Paragraph 4.6. The Detailed Work Plan is a Deliverable under the  
605 Statement of Work and shall be comprehensive in scope and breadth, setting forth in detail the

606 Work plan proposed by Contractor and County to install, configure and make operational, directly  
607 or through subcontractors, the System, provide the training, and otherwise deliver the System  
608 required by this Agreement. The Detailed Work Plan shall include, without limitation, all subject  
609 matter described in Task 1.3 (Develop and Present Detailed Work Plan) of the Statement of  
610 Work.

611 4.6.2 Approval of the Detailed Work Plan.

612 (a) Approval of Implementation Strategy. County's Project Manager,  
613 in the exercise of reasonable discretion, has the right to require modification of the  
614 Detailed Work Plan, including if such Detailed Work Plan (a) fails to meet the description  
615 and satisfy the requirements in this Agreement or fails to follow the form of the initial  
616 Detailed Work Plan, (b) fails to describe a process which will result in the delivery of the  
617 System or any Deliverable at a time or pursuant to a process satisfactory to County, (c)  
618 provides for an unreasonably short period of time to permit County to adequately review  
619 and approve any Deliverables, or (d) assumes County staffing, locations, manner of  
620 performance or other County provided items not consistent with or specifically identified  
621 in this Agreement, or the Statement of Work or other Specifications.

622 (b) Modification of the Revised Implementation Strategy. Upon  
623 Acceptance of a modified Detailed Work Plan, County's Project Manager shall provide  
624 Contractor with a written notice of Acceptance. In the event the modified Detailed Work  
625 Plan is rejected, County's Project Manager may alternatively provide a statement  
626 specifying the manner in which the Detailed Work Plan fails to meet the reasonable  
627 requirements of County. Failure by County's Project Manager to respond to a proposed  
628 modification shall be deemed non-approval under all categories (a) through (d) of  
629 Paragraph 4.6.2(a). If County's Project Manager provides Contractor with a description  
630 of such failures, Contractor will correct any such deficiencies and redeliver the Detailed  
631 Work Plan within ten (10) Working Days of receipt of the notice. If the redelivered  
632 Detailed Work Plan still fails to meet the requirements of County, the County's Project  
633 Manager and Contractor's Project Manager shall meet and implement the resolution  
634 process described in Paragraph 59 (Dispute Resolution Procedure).

635 4.6.3 Deviation from Detailed Work Plan. Contractor may make only "non-  
636 critical path deviations" (as defined herein) from the Detailed Work Plan without obtaining  
637 County's prior written consent; provided, however, that Contractor shall give County's Project  
638 Manager prior written notification of any such planned deviation through the delivery of an  
639 updated Project Status Report, and including, if applicable, a Gantt chart or schedule which  
640 shows the impact, if any, of such deviations on the remainder of the Project. As used in this  
641 Paragraph, "non-critical path deviations" mean those adjustments to the tasks or resources  
642 required of Contractor or to the date on which such Deliverable is required to be delivered or  
643 approved that do not (i) result in Contractor deviating from the scheduled delivery date of any  
644 Deliverable identified in the Detailed Work Plan, or (ii) require any greater resources from  
645 County than those identified in the Detailed Work Plan. Contractor may also deviate from the  
646 Detailed Work Plan, to change (earlier or later) the scheduled date of any Deliverable, on the  
647 condition that the County's Project Manager first expressly agrees in writing with such proposed  
648 deviation, and provided further such deviation does not change the scheduled date of delivery of  
649 Final System Acceptance, or any other Key Deliverable identified in the Project Schedule or  
650 Detailed Work Plan. Notwithstanding any provision of this Paragraph or this Agreement to the  
651 contrary, to the extent any proposed deviation from the Detailed Work Plan will alter any  
652 process for Contractor's achievement of Final System Acceptance, or any Key Deliverable, such

653 deviation may not be approved solely by County's Project Manager but must first be expressly  
654 approved by County in accordance with the Change process more particularly described in  
655 Paragraph 6 (Change Notices and Amendments).

656           4.6.4 Revised Detailed Work Plans. Contractor shall evidence any deviation  
657 from the Detailed Work Plan which, under the provisions of Paragraph 4.6.3 (Deviation from  
658 Detailed Work Plan), may be approved solely by County's Project Manager by preparation and  
659 delivery of a revised Detailed Work Plan including all proposed changes therein. From and after  
660 Acceptance of such revised Detailed Work Plan pursuant to the process set forth in Paragraph 6  
661 (Change Notices and Amendments), the revised Detailed Work Plan shall be the Detailed Work  
662 Plan hereunder and shall supersede the prior approved Detailed Work Plan in all respects.

663           4.7 Milestones

664           The Work to be carried out hereunder includes milestones to be achieved by Contractor,  
665 as set forth in the Detailed Work Plan (each a "Milestone", including without limitation each top  
666 level Task set forth in the Statement of Work), subject to the dates for completion set forth in the  
667 Project Schedule and the Detailed Work Plan. A Milestone shall be deemed completed on the  
668 earliest date that all of the Work required for completion of such Milestone is completed and  
669 delivered to County, provided that all such Work required for completion of such Milestone is  
670 thereafter approved in writing by County pursuant to Paragraph 4.2 (Approval of Work) without  
671 Contractor having to perform or deliver any Work in addition to such Work already completed  
672 and delivered in order to achieve approval of such Milestone. The determination of whether  
673 each Milestone has been completed and so approved, and of the date upon which such  
674 Milestone was completed (if all Work required for achievement of such Milestone was not  
675 completed and delivered to County on or before the date set forth in the Project Schedule or in  
676 the Detailed Work Plan), shall be made by County's Project Manager as soon as practicable  
677 after Contractor submits to County's Project Manager the applicable Task/Deliverable  
678 Acceptance Certificate, together with other necessary information, data and Documentation to  
679 verify such completion. Without limiting any other rights and remedies hereunder, a failure by  
680 Contractor to complete any Milestone by the applicable date set forth in the Project Schedule or  
681 in the Detailed Work Plan (as such date may be modified pursuant to Paragraph 36 (Notice of  
682 Delays) or Paragraph 6 (Change Notices and Amendments)) shall be subject to the provisions  
683 of Paragraph 7.3 (Credits to County), and Paragraph 32 (Termination for Default).

684 **5. TERM**

685           5.1 Term - General

686           The Term of this Agreement shall commence on the Effective Date and shall expire on  
687 the date that is seven (7) years following Contractor's achievement of Final System Acceptance,  
688 unless sooner terminated, in whole or in part, as provided in this Agreement (the "Initial Term").  
689 At the end of the Initial Term, County may, at its sole option, through authority delegated by the  
690 Board to the Director, extend this Agreement for up to three (3) additional consecutive one (1)  
691 year terms (each an "Option Term"); provided that if County elects not to exercise its option to  
692 extend at the end of the Initial Term, or any Option Term, the remaining Option Terms(s) shall  
693 automatically lapse. County shall be deemed to have exercised an Option Term automatically,  
694 without further act, unless, no later than thirty (30) days prior to the expiration of the Initial Term  
695 or any Option Term, County notifies Contractor in writing that it elects not to extend the  
696 Agreement pursuant to this Paragraph 5.1 or it extends the Agreement on a month-to-month  
697 basis pursuant to Paragraph 5.3 (Month-To-Month Extensions) below. The Initial Term as

698 extended, if at all, by any Option Term and any month-to-month extensions shall be referred to  
699 as the "Term."

700           5.2     Notice to DMH

701           Contractor shall notify DMH when this Agreement is within six (6) months from the  
702 expiration of the Initial Term as provided for in Paragraph 5.1 (Term - General).

703           5.3     Month-To-Month Extensions

704           Alternatively, or in addition to any Option Term, the Director, in the Director's sole  
705 discretion, may extend the Agreement on a month-to-month basis for a maximum period of  
706 twelve (12) months following the Initial Term or any Option Term, by giving notice to Contractor  
707 thirty (30) days prior to the commencement of such month-to-month period. The month-to-  
708 month extension period shall continue until the earlier of (i) twelve (12) months after  
709 commencement thereof, or (ii) the later of thirty (30) days after County provides written notice to  
710 Contractor of its intent to terminate the Agreement and the termination date specified in such  
711 notice. County's election to extend the Agreement on a month-to-month basis shall terminate  
712 its available option to extend the Agreement for Option Terms that have not been previously  
713 exercised.

714     **6.     CHANGE NOTICES AND AMENDMENTS**

715           6.1     No representative of either County or Contractor, including those named in this  
716 Agreement, is authorized to make any changes in any of the terms, obligations or conditions of  
717 this Agreement, except through the procedures set forth below in this Paragraph 6.

718           6.2     County reserves the right to change any portion of the Work required under this  
719 Agreement and any other provisions of this Agreement. All such changes shall be  
720 accomplished only as provided in this Paragraph 6.

721           6.3     For any change requested by County which does not materially affect the scope  
722 of Work, Term, payments, or any term or condition included in this Agreement, a "Change  
723 Notice" shall be mutually agreed to and executed by County's Project Director and Contractor's  
724 Project Director.

725           6.4     Without limiting Paragraph 6.5, for (a) any Other Professional Services, including  
726 but not limited to Interfaces, Custom Programming Modifications and Conversions, or (b) any  
727 other change related solely to the scope of Work, period of performance, or schedule or amount  
728 of payments (but not the amount of the Contract Sum), and provided such Other Professional  
729 Services or change is to be effected through the use of, or will not exceed, the Pool Dollars  
730 available as set forth in Paragraph 7.2 (Pool Dollars), then in either instance, a Change Notice  
731 shall be mutually agreed to and executed by County's Project Director and Contractor's Project  
732 Director.

733           6.5     For any change requested by County, which (a) exceeds the Pool Dollars  
734 available as set forth in Paragraph 7.2 (Pool Dollars), or (b) otherwise materially affects the  
735 scope of Work, Term, payments, or any term or condition included in this Agreement, a  
736 negotiated amendment to this Agreement (at County's Project Director's sole discretion) shall  
737 be prepared and executed by County's Board of Supervisors and Contractor.

738           6.6     Notwithstanding any other provision of this Paragraph 6, to the extent that, in the  
739 sole judgment and discretion of County's Project Director, extensions of time for Contractor  
740 performance do not impact either the scope of Work or cost of this Agreement, the County's  
741 Project Director, in County's Project Director's sole discretion, subject to the provisions of  
742 Paragraph 59 (Dispute Resolution Procedure), may grant Contractor extensions of time in the  
743 form of a Change Notice, for the Work listed in the Project Schedule or in the Detailed Work  
744 Plan, provided that such extensions shall not exceed an extension of the Term as defined  
745 herein.

746           6.7     Notwithstanding any other provisions of this Paragraph 6, County's Project  
747 Director may execute an amendment in the form of a Change Notice, for the purchase of any  
748 additional Application Software or additional seat licenses, that otherwise do not add substantial  
749 new functionality to the System (collectively, "Ancillary Software") that County determines is  
750 necessary under the Agreement, provided the aggregate amount of Ancillary Software  
751 purchased in any County fiscal year pursuant to this Paragraph 6.7 shall not exceed three  
752 percent (3%) of the Contract Sum, and that the aggregate amount of Ancillary Software  
753 purchased throughout the Term shall not exceed ten percent (10%) of the Contract Sum. Such  
754 form of a Change Notice shall not be used for new Application Software designed to support  
755 new functionality, the purchase of which requires an amendment and approval of the Board  
756 (e.g. an additional small server to increase database size or optimize the speed of certain  
757 functions would be permissible, as would a software license for an additional CPU to run that  
758 database or a support utility to optimize or back up the database, but a server to support new  
759 functionality not previously acquired by County would not be a permissible use of funds). If the  
760 County's Project Director, in the County's Project Director's sole discretion, determines that  
761 Contractor shall provide Maintenance and Support Services for the items purchased pursuant to  
762 this Paragraph 6.7, then such Ancillary Software shall be covered under Maintenance and  
763 Support Services at Maintenance and Support Fees set forth in the applicable Change Notice.  
764 Upon purchase and Acceptance by County pursuant to this Agreement, all such Ancillary  
765 Software will become Components of System Software to be added to the items of System  
766 Software, as specified in Section IV (Maintenance and Support Services) of Exhibit C (Price and  
767 Schedule of Payments). Under no circumstances will the total cost of items (including projected  
768 Maintenance and Support Fees in respect of such items for the Term) purchased under this  
769 Paragraph 6.7 be greater than \$[\_\_\_\_\_] for the Term.

770           6.8     Notwithstanding any other provision of this Paragraph 6, County's Project  
771 Director and Contractor's Project Director may execute an amendment to this Agreement in the  
772 form of a Change Notice, which changes the items or prices of System Software as specified in  
773 Section I.A (System Software: Baseline Application Software) and Section 1.B (System  
774 Software: Third Party Software) of Exhibit C (Price and Schedule of Payments), provided that:  
775 (1) all such changes shall occur prior to installation of the particular items, (2) the total cost of all  
776 System Software as shown in such Section I.A (System Software: Baseline Application  
777 Software) and Section 1.B (System Software: Third Party Software) of Exhibit C (Price and  
778 Schedule of Payments) as of the Effective Date shall not be exceeded, (3) the total cost of  
779 Maintenance and Support Services of all System Software as shown in Section IV (Maintenance  
780 and Support Services) of Exhibit C (Price and Schedule of Payments) as of the Effective Date  
781 shall not be exceeded, and (4) Director obtains the prior written approval of County's Chief  
782 Information Officer for any such Change Notice.

783           6.9     Notwithstanding any other provision of this Paragraph 6 or Paragraph 34  
784 (Termination for Convenience), Director shall take all appropriate action to carry out any orders  
785 of County's Board of Supervisors relating to this Agreement, and, for this purpose, Director is

786 authorized to: (1) issue written notice(s) of partial or total termination of this Agreement pursuant  
787 to Paragraph 34 (Termination for Convenience) without further action by County's Board of  
788 Supervisors or County's Purchasing Agent and (2) prepare and sign amendments to this  
789 Agreement which reduce the scope of Work or the Contract Sum, or terminate Maintenance and  
790 Support Services with respect to System Software or any Component thereof, without further  
791 action by County's Board of Supervisors or County's Purchasing Agent.

792 6.9.1 Notices of partial or total termination issued pursuant to this Paragraph  
793 6.9 shall be authorized under the following conditions:

794 (i) Such notices shall be in compliance with all applicable Federal,  
795 State, and County laws, rules, regulations, ordinances, guidelines, and directives;

796 (ii) Director shall obtain the written approval of County Counsel for  
797 any such notice; and

798 (iii) Director shall file a copy of all such notices with the Executive  
799 Office of County's Board of Supervisors, County's Purchasing Agent, and County's Chief  
800 Executive Office within fifteen (15) days after execution of each notice.

801 6.10 Notwithstanding any other provision of this Paragraph 6, County's Project  
802 Director and Contractor's Project Director may execute an amendment to this Agreement in the  
803 form of a Change Notice, which changes the terms of Paragraph 72 (Contractor's Obligations as  
804 a Business Associate Under HIPAA and HITECH Act) from time to time as is necessary for  
805 County to comply with the requirements of the Privacy and Security Regulations.

806 6.11 Any "Change Notice" proposed or executed by mutual agreement of the parties  
807 shall be substantially in the form attached hereto as Exhibit J (Form of Change Notice) and shall  
808 include:

809 6.11.1 a functional description of the Work to be performed under such Change  
810 Notice and acceptance criteria and tests to be successfully completed prior to County's  
811 Acceptance thereof;

812 6.11.2 a statement, signed by Contractor's Project Director, which statement  
813 explains and certifies that such Work described pursuant to Paragraph 6.11.1 is outside the  
814 scope of Work required of Contractor under this Agreement in order for Contractor to deliver the  
815 System;

816 6.11.3 a quotation of a "not to exceed" price for completion and delivery of the  
817 requested Work, including a proposed Task and Deliverable completion and payment schedule,  
818 as well as an estimate of the personnel hours of Contractor staff and County Staff necessary for  
819 completion of such Work;

820 6.11.4 if the Change Notice is under Paragraphs 6.4 or 6.7, or otherwise  
821 authorizes an expenditure of Pool Dollars, the amount of Pool Dollars to be utilized by such  
822 Change Notice and the amount of Pool Dollars available under the Agreement, both before and  
823 after giving effect to such Change Notice;

824 6.11.5 a recitation of the Task, Subtasks, and Deliverables to which such  
825 Change Notice relates;

826 6.11.6 a description of and Contractor's cost of any hardware, software, or other  
827 materials required to complete the requested Work;

828 6.11.7 an accounting of the cost savings to be realized by County from the  
829 nonperformance of any Work that is to be supplanted by the Work to be performed under the  
830 Change Notice;

831 6.11.8 final delivery date for completed Work; and

832 6.11.9 if applicable, a revised Detailed Work Plan incorporating any proposed  
833 changes to the Tasks, Subtasks and Deliverables or their completion schedules as listed in the  
834 Detailed Work Plan or in the Statement of Work, for the remaining Work (i.e., other than the  
835 Work requested under the proposed Change Notice).

836 6.12 Contractor's quotations under the proposed Change Notice shall be valid for  
837 ninety (90) days from the date of submission to County. Contractor shall not charge County for,  
838 and County is not obligated to make payments in respect of, Contractor's time or expenses  
839 related to the preparation of Change Notices, regardless whether County elects to proceed  
840 under such Change Notice.

841 **7. CONTRACT SUM**

842 7.1 Contract Sum - General

843 The "Contract Sum" under this Agreement shall be the total monetary amount that may  
844 be payable by County to Contractor for supplying all the Work requested, specified and  
845 Accepted by County under this Agreement. The Contract Sum (excepting the Pool Dollars set  
846 forth in Paragraph 7.2) and schedule of payments in respect of the Work provided hereunder  
847 shall be as set forth in Exhibit C (Price and Schedule of Payments), which payments shall be  
848 paid in accordance with and upon satisfaction of, the terms and conditions of this Agreement,  
849 including the Exhibits and Attachments hereto. The Contract Sum, including all applicable  
850 taxes, authorized by County hereunder shall not exceed \_\_\_\_\_  
851 dollars (\$\_\_\_\_\_), unless the Contract Sum is modified pursuant to a duly  
852 approved amendment to this Agreement executed by County's Board of Supervisors and  
853 Contractor pursuant to Paragraph 6 (Change Notices and Amendments). Notwithstanding any  
854 provision of this Paragraph 7.1, Contractor shall fully perform and complete all Work required of  
855 Contractor by this Agreement in exchange for the amounts to be paid to Contractor as set forth  
856 in this Agreement.

857 7.2 Pool Dollars

858 The aggregate amount of Pool Dollars available under this Agreement shall not exceed  
859 \_\_\_\_\_ dollars (\$\_\_\_\_\_), plus any net reduction in the total price of all  
860 System Software and Maintenance and Support Fees under the Agreement resulting from  
861 Change Notices executed in accordance with Paragraph 6 (Change Notices and Amendments),  
862 plus any net surplus remaining after the completion of budgeted professional services for less  
863 total expenditure than what was budgeted. Contractor acknowledges that, as of the Effective  
864 Date, County has not initiated, and the parties have not executed, any Change Notice pursuant  
865 to Paragraph 6 (Change Notices and Amendments).

866

867

868           7.3     Credits to County

869                   7.3.1   Key Deliverables

870                   (a)     DMH currently manages its inpatient and outpatient behavioral  
871 health information with a system that is not integrated within or among each County Facility. In  
872 an increasingly mobile society, however, patients seek care at more than one County Facility.  
873 Without an integrated System, County Staff, and in particular healthcare staff, including doctors,  
874 nurses, and pharmacists, have a limited ability to access critical patient histories outside of their  
875 County Facilities, and as a result, face a higher risk of error in treating patients in life and death  
876 situations, in billing, and in other functions. County's acquisition of a new fully integrated  
877 Behavioral Health Information System will allow County Staff and treatment professionals share  
878 patient histories, medical records, billing and insurance information among County Facilities and  
879 Contract Providers, enabling increased patient safety in County Facilities and enhancing  
880 County's ability to provide competent treatment and to obtain reimbursement therefor. County  
881 and Contractor have identified Key Deliverables described in this Paragraph 7.3.1 and set forth  
882 in the Project Schedule and shall subsequently do so in the Detailed Work Plan pursuant to  
883 Deliverable 1.3 (Detailed Work Plan) of the Statement of Work and Paragraph 4.6 (Delivery and  
884 Acceptance of Detailed Work Plan). Contractor's timely completion and delivery of these Key  
885 Deliverables will help ensure County receives, and is able to implement, the System in a timely  
886 fashion, which time is of the essence, and therefore increase patient safety. If Contractor fails  
887 to complete and deliver Key Deliverables on the date set forth in the Project Schedule or in the  
888 Detailed Work Plan for completion thereof in respect of each Key Deliverable (the "Due Date"), it  
889 is mutually agreed that such delay increases the likelihood that Contractor will not complete and  
890 deliver the System on a timely basis and therefore decreases County's ability to use the System  
891 to provide increased safety and services to its patients.

892                   (b)     In each instance where Contractor fails to complete and deliver a  
893 Key Deliverable by the Due Date for such Key Deliverable, County shall receive a credit against  
894 any or all amounts due to Contractor, under this Agreement or otherwise, in the total amount of  
895 (a) five thousand dollars (\$5,000.00) for each day of the first ninety (90) days following the Due  
896 Date for which Contractor continues in default, and (b) ten thousand dollars (\$10,000.00) for  
897 each day thereafter that Contractor continues in default, provided that the total aggregate  
898 credits pursuant to this Paragraph 7.3 shall not exceed two million dollars (\$2,000,000.00). All  
899 of the foregoing credits shall apply separately, and cumulatively, to each Key Deliverable  
900 described in this Paragraph 7.3.1 and set forth in the Project Schedule or Detailed Work Plan  
901 provided that the maximum liability of Contractor to County under this Paragraph 7.3.1 shall not  
902 exceed two million dollars (\$2,000,000.00). To the extent that Contractor's failure to complete  
903 and deliver a Key Deliverable by the Due Date for such Key Deliverable is due to an excusable  
904 delay timely noticed pursuant to Paragraph 36 (Notice of Delays), County shall not be entitled to  
905 credits under this Paragraph 7.3.1 in respect of such Key Deliverable.

906                   (c)     Any credits that accrue pursuant to this Paragraph 7.3.1 are in  
907 addition to, and do not limit, any other rights and remedies available to County, either pursuant  
908 to this Agreement, at law, or in equity, in respect of Contractor's failure to timely complete and  
909 deliver the applicable Key Deliverable. Further, any credits that accrue pursuant to this  
910 Paragraph 7.3 do not limit Contractor's obligation to promptly and diligently cure Contractor's  
911 failure to timely complete and deliver the applicable Key Deliverable. For purposes of this  
912 Paragraph 7.3.1, the applicable Key Deliverables are as follows:

**Key Deliverables**

Deliverable 1.3 – Detailed Work Plan

Deliverable 3.3 – Load Baseline Application Software

Deliverable 3.4 – Synchronize for Application and Database Replication

Deliverable 4.2 – Training

Deliverable 6.1 – Integration

Deliverable 8.5 – System Performance Test

Deliverable 9.2 – Data Conversion Programs

Deliverable 9.3 – Data Conversion Test

Deliverable 9.4 – Conversion

Deliverable 10.3 – Final System Acceptance

913 Such Key Deliverables are in addition to those agreed upon and set forth in the Detailed Work  
914 Plan.

915 7.3.2 Other Service Credits. Contractor acknowledges that Contractor's  
916 adherence to the service level standards described in Exhibit D (Maintenance and Support  
917 Services), Paragraph 9.8 (Response Time Warranty), and Exhibit B (Technical Solution  
918 Requirements), and otherwise in the Specifications, will each help ensure that County is able to  
919 utilize the System to fulfill its functions in a timely fashion, a goal as to which time is of the  
920 essence. If Contractor fails to adhere to such Specifications, it is mutually agreed that such  
921 failure renders County unable to rely on or utilize the System to perform mission-critical tasks on  
922 a timely basis, creates a higher risk of errors, and adds delays to the treatment process, leaving  
923 both the Department and County residents at risk of significant errors and omissions in medical  
924 treatment. In each instance where Contractor fails to adhere to the foregoing service level  
925 Specifications, County will accrue Service Credits in accordance therewith and with Paragraph  
926 4.4.2. Any Service Credits accrued pursuant to this Paragraph 7.3.2 are in addition to, and do  
927 not limit, any other rights and remedies available to County, either pursuant to this Agreement, at  
928 law, or in equity, in respect of Contractor's failure to meet such Specifications. Further, any  
929 Service Credits that accrue pursuant to this Paragraph 7.3.2 do not limit Contractor's obligation  
930 to promptly and diligently cure Contractor's failure to adhere to the Specifications, including all  
931 service level standards.

932 7.4 County's Obligation in Future Fiscal Years

933 Notwithstanding any other provision of this Agreement, County shall not be obligated for  
934 Contractor's performance hereunder or by any provision of this Agreement during any of  
935 County's future fiscal years unless and until County's Board of Supervisors appropriates funds  
936 for this Agreement in County's Budget for each such future fiscal year. In the event that funds  
937 are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of  
938 the last fiscal year for which funds were appropriated. County shall notify Contractor in writing  
939 of any such non-appropriation of funds at the earliest possible date.

940 **8. INVOICES AND PAYMENTS**

941 8.1 Invoices - General

942 Contractor shall invoice County for all Work set forth in this Agreement which has been  
943 provided by Contractor and, except as to invoices solely containing Maintenance and Support  
944 Services, Accepted by County pursuant to the terms of this Agreement. The amount invoiced,  
945 and amounts payable by County, shall in each case comply with Exhibit C (Price and Schedule  
946 of Payments) and any applicable Change Notice except to the extent expressly set forth in this  
947 Paragraph 8 (Invoices and Payments). With regard to Maintenance and Support Services,  
948 Contractor shall invoice County the Maintenance and Support Fees on a quarterly basis in  
949 arrears. All invoices submitted by Contractor must have the written approval of County's Project  
950 Director prior to any payment thereof. In no event shall County be liable or responsible for any  
951 payment prior to such written approval. Invoices, with all required information and  
952 documentation, may be submitted electronically. Contractor shall prepare invoices, which shall  
953 include the charges owed to Contractor by County under the terms of this Agreement, in strict  
954 compliance with the requirements of this Paragraph 8 (Invoices and Payments). County shall  
955 be entitled to a two percent (2%) discount for payments made by County to Contractor within  
956 thirty (30) days of receipt by County of Contractor's invoice, excluding Out-of-Pocket Expenses.  
957 All invoices under this Agreement shall be submitted in duplicate to County's Project Director  
958 and County's Project Manager at the address set forth in Paragraph 3 (Administration of  
959 Agreement).

960 8.2 Content of Invoices

961 Each invoice submitted by Contractor shall indicate:

962 8.2.1 The Work as described in the Statement of Work, Exhibit D (Maintenance  
963 and Support Services), the Detailed Work Plan, and any applicable Change Notice(s) for which  
964 payment is claimed.

965 8.2.2 Other than invoices solely containing Maintenance and Support Services,  
966 the date of written approval of the Work by County's Project Manager and a copy of the  
967 applicable fully executed Task/Deliverable Acceptance Certificate.

968 8.2.3 In the case of invoices submitted for Other Professional Services, (a) the  
969 total Pool Dollars available prior to the payment requested in such invoice, (b) the amount of  
970 payment requested for such Other Professional Services, including an itemized list of Out-of-  
971 Pocket Expenses for which Contractor is entitled to seek reimbursement pursuant to the terms of  
972 this Agreement, which amount shall not exceed Contractor's quote for such Other Professional  
973 Services, including Contractor's quote for permissible Out-of-Pocket Expenses, provided  
974 pursuant to Paragraph 6 (Change Notices and Amendments), and (c) the remaining Pool Dollars  
975 available assuming deduction for payment as requested in such invoice and deduction for all  
976 Maintenance and Support Fees, if any, for such items for the remainder of the Term.

977 8.2.4 In the case of invoices submitted for Ancillary Software, (a) the total Pool  
978 Dollars available prior to the payment requested in such invoice, (b) the amount of payment  
979 requested for such Ancillary Software and taxes for which Contractor may seek reimbursement  
980 pursuant to the terms of this Agreement, which amount shall not exceed Contractor's quote for  
981 such Ancillary Software under Paragraph 6.7, and (c) the remaining Pool Dollars available

982 assuming deduction for payment as requested in such invoice, and deduction for all Maintenance  
983 and Support Fees, if any, for such items for the remainder of the Term.

984 8.2.5 The Holdback Amount, if any, applicable to the Work under  
985 Paragraph 8.4 (Holdbacks), which Holdback Amount is marked clearly as not payable by County  
986 at the time of payment under the current invoice.

987 8.2.6 Any applicable amounts withheld for payments claimed or reversals  
988 thereof.

989 8.2.7 Any applicable credits, including Service Credits and other credits  
990 accruing under Paragraph 7.3 (Credits to County), due County under the terms of this  
991 Agreement or County approved reversals thereof.

992 8.3 Invoice Discrepancies

993 County's Project Manager will review each invoice for any discrepancies and will, within  
994 thirty (30) days of receipt thereof, notify Contractor in writing of any discrepancies found upon  
995 such review and submit a list of discrepancies and disputed charges. Contractor shall review  
996 such list and send a written explanation detailing the basis for the charges within fifteen (15)  
997 days of receipt of County's notice. If County's Project Manager does not receive a  
998 comprehensive and otherwise satisfactory written explanation for the charges within such fifteen  
999 (15) day period, Contractor shall be deemed to have waived its rights to justify the original  
1000 invoice amount, and County, in its sole discretion, shall determine the amount due, if any, to  
1001 Contractor and pay such amount in satisfaction of the charges at issue.

1002 8.4 Holdbacks

1003 Holdbacks are applicable to Work performed under this Agreement. Except for invoices  
1004 for Maintenance and Support Fees, County will retain twenty percent (20%) of the amount of  
1005 each invoice (hereinafter "Holdback Amount") approved by County pursuant to Paragraph 4.2  
1006 (Approval of Work), which Holdback Amount is payable at later dates in accordance with this  
1007 Paragraph 8.4. Other than for any Work provided pursuant to a Change Notice, or certain Other  
1008 Professional Services (e.g., post-Acceptance supplemental training), that in each instance the  
1009 parties agree will be completed after Final System Acceptance, the cumulative amount of such  
1010 Holdback Amounts shall be due and payable to Contractor upon Final System Acceptance.  
1011 Holdback Amounts due and payable shall be subject in each instance to adjustment for any  
1012 amounts arising under this Agreement owed to County by Contractor, including, but not limited  
1013 to, any amounts arising from Paragraph 8.7 (County's Right to Withhold Payment), and any  
1014 partial termination of any Task set forth in the Statement of Work as provided hereunder. As to  
1015 Change Notices or amendments that are to be completed after Final System Acceptance, the  
1016 aggregate Holdback Amount for such Change Notice will be due and payable to County upon  
1017 final acceptance by County of the Work provided under each such Change Notice.

1018 8.5 Sales/Use Tax

1019 8.5.1 The Contract Sum listed in Paragraph 7 (Contract Sum) shall be deemed  
1020 to include all amounts necessary for County to reimburse Contractor for all applicable California  
1021 and other state and local sales/use taxes on all System Software and other goods and services  
1022 procured by County pursuant to or otherwise due as a result of this Agreement. All sales/use  
1023 taxes shall be paid directly by Contractor to the State or other taxing authority. Contractor shall

1024 be solely responsible for, and shall pay directly to the state or other taxing authority sales/use  
1025 taxes for all other items including Application Software, Custom Programming Modifications,  
1026 Interfaces, Conversions, Implementation Services, Other Professional Services, and  
1027 Maintenance and Support Services. Contractor shall indemnify, defend, and hold County  
1028 harmless from any and all such California and other state and local sales/use taxes.

1029                   8.5.2 Notwithstanding anything in Paragraph 8.5.1 to the contrary, if Contractor  
1030 does not possess a California reseller's permit, County may, at County's sole discretion,  
1031 withhold, or deduct from Contractor's invoice an amount equal to the appropriate California use  
1032 tax. County will transmit such use tax amount directly to the State of California.

1033                   8.6     Overpayments

1034                   Any overpayment received by Contractor shall be returned to County by Contractor  
1035 within thirty (30) days of receiving notification of such overpayment, or may be set off at  
1036 County's election against future payments due Contractor. Notwithstanding any other provision  
1037 of this Agreement, Contractor shall return to County any and all payments in excess of the  
1038 Contract Sum within thirty (30) days of receiving notice of overpayment from County or  
1039 immediately upon discovering such overpayment, whichever occurs earlier.

1040                   8.7     County's Right to Withhold Payments

1041                   Notwithstanding any other provision of this Agreement, and in addition to any rights of  
1042 County given by law or provided in this Agreement, County may upon written notice to  
1043 Contractor withhold payment for any Deliverable while Contractor is in default hereunder, or at  
1044 any time that Contractor has not provided a County-approved Deliverable that under the Project  
1045 Schedule or approved Detailed Work Plan is identified as dependent on and is scheduled to be  
1046 delivered prior to or concurrently with the Deliverable for which payment would otherwise be due  
1047 and is withheld.

1048                   8.8     Source of Funding

1049                   In addition to the other requirements relating to invoices under this Paragraph 8, each  
1050 invoice submitted by Contractor under this Agreement shall set forth as a separate line item the  
1051 cost for goods, services and other Work directly associated with the replacement of existing  
1052 claims processing functionality for County, as such functionality is determined during  
1053 Contractor's initial review of County's existing systems and processes.

1054  
1055     **9.     WARRANTY**

1056                   9.1     Warranty Services

1057                   9.1.1 Contractor's warranty services are set forth in Paragraphs 9.3 (Warranty  
1058 Services Response), and 9.5 (Notification of Deficiencies for Warranty Services) for the System  
1059 Software (and each System Component thereof) installed and shall commence upon, and shall  
1060 continue until the expiration of, the periods set forth in Paragraph 9.2 (Warranty Periods for  
1061 Warranty Services). Contractor shall provide Maintenance and Support Services from the date  
1062 set forth in Paragraph 4.4 (Maintenance and Support Services), but Contractor shall not charge,  
1063 and County shall not pay, Maintenance and Support Fees for Contractor's provision of  
1064 Maintenance and Support Services until the Contractor's achievement of Final System  
1065 Acceptance.

1066 9.1.2 Contractor's warranty services with respect to Software provided through  
1067 Other Professional Services are set forth in Paragraphs 9.2 (Warranty Periods For Warranty  
1068 Services), 9.3 (Warranty Services Response) and 9.5 (Notification of Deficiencies for Warranty  
1069 Services). Contractor shall provide Maintenance and Support Services for Accepted Custom  
1070 Program Modifications acquired as Other Professional Services commencing upon County's  
1071 Acceptance thereof, but Contractor shall not charge, and County shall not pay, Maintenance and  
1072 Support Fees for Contractor's provision of Maintenance and Support Services in respect of such  
1073 Custom Program Modification until the expiration of the applicable Other Professional Services  
1074 and Software Warranty Period.

1075 9.1.3 Contractor's warranty services with respect to Ancillary Software acquired  
1076 pursuant to Paragraph 6.7 are set forth in Paragraphs 9.2 (Warranty Periods For Warranty  
1077 Services), 9.3 (Warranty Services Response) and 9.5 (Notification of Deficiencies for Warranty  
1078 Services). Contractor shall provide Maintenance and Support Services for Accepted Ancillary  
1079 Software commencing upon County's Acceptance thereof, but Contractor shall not charge, and  
1080 County shall not pay, Maintenance and Support Fees for Contractor's provision of Maintenance  
1081 and Support Services in respect of such Ancillary Software until the expiration of the applicable  
1082 Ancillary Software Warranty Period.

1083 9.2 Warranty Periods For Warranty Services

1084 9.2.1 As used in this Agreement, "System Warranty Period" means, the period  
1085 commencing on the delivery of each applicable Component and continuing until two (2) years  
1086 following the date Contractor achieves Final System Acceptance of all Work as described in  
1087 Task 9.3 (Conduct Data Conversion Test) of the Statement of Work. All Deficiencies reported  
1088 during the System Warranty Period shall be corrected in accordance with Exhibit D (Maintenance  
1089 and Support Services) at no cost to County. Should any Deficiencies persist at the end of the  
1090 two (2) year period, the System Warranty Period shall be extended until all of such Deficiencies  
1091 are corrected.

1092 9.2.2 As used in this Agreement, "Other Professional Services and Software  
1093 Warranty Period" means, with respect to Custom Program Modifications and/or other services  
1094 provided as Other Professional Services, the period commencing on delivery of such Work, and  
1095 continuing until and ending upon the later of two (2) years following County's Acceptance  
1096 thereof, or the expiration of the System Warranty Period.

1097 9.2.3 As used in this Agreement, "Ancillary Software Warranty Period" means,  
1098 with respect to Ancillary Software acquired pursuant to Paragraph 6.7, or other items of System  
1099 Software acquired using Pool Dollars, the period commencing on delivery of such System  
1100 Software, and continuing until and ending upon the later of (i) two (2) years following County's  
1101 Acceptance thereof, (ii) the original equipment manufacturer's warranty period if any for such  
1102 Ancillary Software, or (iii) the expiration of the System Warranty Period.

1103 9.2.4 As used in this Agreement, "Warranty Period" means, as context requires,  
1104 the System Warranty Period, the Other Professional Services and Software Warranty Period or  
1105 the Ancillary Software Warranty Period.

1106 9.3 Warranty Services Response

1107 9.3.1 If a Deficiency is discovered in the System, as determined by County's  
1108 Project Director, in County's Project Director's sole judgment, Contractor promptly shall

1109 commence corrective measures as specified in Exhibit D (Maintenance and Support Services)  
1110 during the System Warranty Period.

1111                   9.3.2 If a Deficiency is discovered in a Custom Program Modification or other  
1112 item of System Software covered under the Other Professional Services and Software Warranty  
1113 Period, Contractor promptly shall commence corrective measures as specified in Exhibit D  
1114 (Maintenance and Support Services) during the Other Professional Services and Software  
1115 Warranty Period.

1116                   9.3.3 If a Deficiency is discovered in the case of System Hardware supplied by  
1117 County for the purpose of this Agreement in accordance with Contractor recommended  
1118 specifications, Contractor shall identify to County the particular System Components causing the  
1119 Deficiency.

1120                   9.3.4 If a Deficiency is discovered in an item of Ancillary Software, or other item  
1121 of System Software covered under the Ancillary Software Warranty Period, Contractor promptly  
1122 shall commence corrective measures as specified in Exhibit D (Maintenance and Support  
1123 Services) during the Ancillary Software Warranty Period.

1124                   9.4    Further Warranties

1125                   Contractor further represents, warrants, covenants and agrees that throughout the Term:

1126                   9.4.1 The System shall strictly perform in accordance with, and Contractor shall  
1127 comply strictly with, the descriptions and representations (including Documentation, performance  
1128 capabilities, accuracy, completeness, characteristics, configurations, standards, functions and  
1129 requirements applicable to professional software design meeting industry standards) set forth in  
1130 the Statement of Work and other Specifications.

1131                   9.4.2 All Work shall be performed in a timely and professional manner by  
1132 qualified personnel.

1133                   9.4.3 All Documentation developed under this Agreement shall be uniform in  
1134 appearance, whenever appropriate, as determined in the sole judgment of County's Project  
1135 Director.

1136                   9.4.4 The System Components shall be capable of interconnecting and  
1137 interfacing with each other, and the System Components, when taken together, shall be capable  
1138 of delivering all of the functionality as set forth in this Agreement (including Attachments B.1  
1139 (Functional Requirements) and B.2 (Technical Requirements) to Exhibit B (Technical Solution  
1140 Requirements) and other Specifications) for the System, when taken as a whole.

1141                   9.4.5 Contractor shall not cause any unplanned interruption of the operations  
1142 of, or accessibility to the System or any System Component through any device, method or  
1143 means including, the use of any "virus," "lockup," "time bomb," or "key lock," "worm," device or  
1144 program, or disabling code, which has the potential or capability of compromising the security of  
1145 County's or any third party's confidential or proprietary information or of purposefully causing any  
1146 interruption of the operations of, or accessibility of the System or any System Component to  
1147 County or any User, or which could alter, destroy, or inhibit the use of the System, any System  
1148 Component, or the data contained therein (collectively referred to for purposes of this Paragraph  
1149 9.4. as "Disabling Device(s)"). Contractor further represents, warrants and agrees that it has not

1150 purposely placed, nor is it aware of, any Disabling Device on or in any System Component  
1151 provided to County under this Agreement, nor shall Contractor permit any subsequently  
1152 delivered System Component to contain any Disabling Device.

1153                   9.4.6 Contractor shall support all System Software Components installed at any  
1154 County Facility in full accordance with Exhibit D (Maintenance and Support Services) and  
1155 generally accepted standards of support for mission critical software.

1156                   9.4.7 Prior to the expiration of the Warranty Period, and at all times otherwise  
1157 provided that County is paying any applicable Maintenance and Support Fees for Maintenance  
1158 and Support Services provided under Exhibit D (Maintenance and Support Services), all  
1159 Enhancements of the System Software, or any Component or module of such System Software,  
1160 and all Documentation related thereto shall be provided to County, at no additional cost over and  
1161 above the sums otherwise payable by County under this Agreement, promptly after the creation  
1162 thereof, and in no event later than thirty (30) days after County's request therefor.

1163                   9.4.8 County will be entitled to use the System and all System Components  
1164 without interruption of System use, subject only to County's obligation to make the required  
1165 payments under this Agreement. Contractor further represents and warrants that this Agreement  
1166 and the System is neither subject nor subordinate to any right or claim of any third party,  
1167 including Contractor's creditors. Further, Contractor represents and warrants that during the  
1168 Term, it shall not subordinate this Agreement or any of its rights hereunder, including the License  
1169 to any third party without the prior written consent of County, and without providing in such  
1170 subordination instrument for non-disturbance of County's use of the System and System  
1171 Components in accordance with this Agreement. Neither Contractor's performance of this  
1172 Agreement nor the License to, and use by, County and its Users of the System (or any  
1173 Component thereof) in accordance with this Agreement will in any way violate any nondisclosure  
1174 agreement, nor constitute any infringement, misappropriation or other violation of any copyright,  
1175 trade secret, trademark, service mark, patent, invention, proprietary information, moral rights, or  
1176 other rights of any third party.

1177                   9.4.9 Contractor shall supply County, subject to the provisions of Paragraph  
1178 10.3 (Source Code), with all Source Code for all System Software and all Documentation and  
1179 other proprietary information related to such Source Code for the entire term of the License  
1180 (other than Source Code for any System Components which are proprietary to a third party and  
1181 for which Contractor does not have the right to provide Source Code). Contractor shall ensure  
1182 that County has at all times been delivered the most current version of the Source Code, as well  
1183 as Object Code for all System Software.

1184                   9.4.10 Contractor has the full power and authority to grant to County all rights,  
1185 including, license and ownership rights, granted by this Agreement with respect to all System  
1186 Software.

1187                   9.4.11 Contractor shall not sell, assign, convey, sublicense, or otherwise  
1188 transfer its interest in the System or any Component thereof without the prior written consent of  
1189 County.

1190                   9.4.12 The System and the tasks performed by the System upon execution by  
1191 a user, provided such user is using the System in an authorized manner, shall comply with  
1192 federal, state, and local laws and regulations (including the Privacy and Security Regulations),  
1193 which are deemed necessary by or through federal, state, and local agencies (including those

1194 laws and regulations promulgated by Centers for Medicare and Medicaid Services (CMS) and  
1195 Food and Drug Administration), and shall further comply with all applicable rules, regulations,  
1196 and directives.

1197 9.4.13 Contractor shall assign to County to the fullest extent permitted by law  
1198 or by agreement and shall otherwise ensure that the benefits of any applicable warranty or  
1199 indemnity offered by any manufacturer of any of the System Software, or any other product or  
1200 service provided hereunder shall fully extend to and be enjoyed by County.

1201 9.5 Notification of Deficiencies for Warranty Services

1202 In the event of the discovery of any Deficiency by County during the applicable Warranty  
1203 Period, and in accordance with Exhibit D (Maintenance and Support Services), as determined  
1204 by County's Project Director, County's Project Director will make reasonable efforts to notify  
1205 Contractor of the problem(s) within three (3) Working Days, but failure by County to notify  
1206 Contractor within such time period shall not affect Contractor's warranty obligations under this  
1207 Agreement. Upon the earlier of County notifying Contractor of such Deficiency, or Contracting  
1208 becoming aware of same, Contractor shall undertake corrective action within the applicable time  
1209 specified in Paragraph 9.3 (Warranty Services Response). If such notice to Contractor is given  
1210 orally by County, County also shall provide written confirmation of the corrective action request  
1211 to Contractor within ten (10) days of such oral notification, but County's failure to do so shall not  
1212 relieve Contractor of any duty hereunder. Contractor's response (including any Service Credits  
1213 arising in respect thereof) shall not be stayed pending receipt of County's written confirmation.

1214 9.6 Breach of Warranty Obligations

1215 In the event Contractor fails to timely perform its obligations set forth in this Paragraph 9,  
1216 such failure shall constitute a material breach of this Agreement upon which County may  
1217 exercise, without limitation, any of the rights and remedies set forth in Paragraph 32  
1218 (Termination for Default), including the rights and remedies set forth in Paragraph 32.2.

1219 In the event Contractor breaches the Response Time Warranty set forth in Paragraph  
1220 9.8 (Response Time Warranty), Contractor shall promptly, at no cost to the County, replace or  
1221 supplement the System Hardware and/or System Software until its computing capacity is  
1222 sufficient to support the System at the Response Time levels set forth in Schedule D.1  
1223 (Response Time Requirements) to Exhibit D (Maintenance and Support Services), as confirmed  
1224 by the tests set forth in Task 8.0 (System Tests) of the Statement of Work. In the event County  
1225 must incur any expense to conform the System to the Specifications, County shall be entitled to  
1226 withhold such amount in accordance with Paragraph 8.7 (County's Right to Withhold  
1227 Payments). No exercise of any rights or remedies under this Paragraph 9.6 shall limit County's  
1228 other rights and remedies under this Agreement.

1229  
1230 9.7 Third Party Software

1231 9.7.1 Contractor hereby represents and warrants that it is the owner of all  
1232 System Software and all proprietary rights therein, and that none of the System Software other  
1233 than the Third Party Software is owned by or licensed from third parties. Contractor represents  
1234 and warrants that it has not modified and shall not modify, nor does Contractor have any need to  
1235 modify, Third Party Software in order for the System to fully perform in accordance with all  
1236 requirements of this Agreement. Contractor represents and warrants that it does not have any  
1237 license or other right to modify Third Party Software and that Third Party Software shall be

1238 provided to County in the same unmodified form as received by Contractor from the applicable  
1239 third party. Contractor represents and warrants that Third Party Software shall, together with the  
1240 remainder of the System Software, fully satisfy all requirements of the Agreement without the  
1241 need for any modification of Third Party Software by Contractor or otherwise.

1242 9.7.2 County acknowledges that it may have to execute certain third party  
1243 license agreements in respect of Third Party Software, which license agreements, upon  
1244 execution by County thereof, are incorporated herein by this reference. These third party license  
1245 agreements shall be at no additional cost to County, shall include reasonable terms and  
1246 conditions as determined by County, but shall not otherwise limit the terms of the License  
1247 hereunder, or restrict County's ability to exercise its rights in respect of the System, except solely  
1248 for limitation on the number of concurrent users of such Third party Software, as set forth in such  
1249 agreements. Without limiting the generality of the foregoing, to the extent that any such third  
1250 party license agreement conflicts with this Agreement as it applies to County's right to use the  
1251 System, Contractor shall take all necessary action and pay all sums required to provide County  
1252 with all the rights to use the System afforded by this Agreement. The licenses acquired and  
1253 delivered to County pursuant to this Paragraph 9.7 do not and shall not in any way limit County's  
1254 rights pursuant to Paragraph 10.2 (License).

1255 9.7.3 In the event it nonetheless becomes necessary to modify Third Party  
1256 Software to satisfy any of the requirements of this Agreement, Contractor shall promptly, at no  
1257 cost to County, either: (1) obtain a license from the appropriate third party which shall enable  
1258 Contractor to modify such Third Party Software, and Contractor shall provide all necessary  
1259 modifications or (2) to the extent that Contractor is unable to obtain such a license, provide an  
1260 upgrade or alternative solution, which is functionally equivalent, in County's Project Director's  
1261 reasonable determination, in lieu of modifying such Third Party Software.

1262 9.8 Response Time Warranty

1263 Contractor represents, warrants and covenants that during the term of this Agreement,  
1264 the System, when configured in accordance with the System Hardware requirements set forth in  
1265 Section 4.0 (Required Hardware) of Attachment B.3 (System Hardware) to Exhibit B (Technical  
1266 Solution Requirements), as updated from time to time in accordance with Section IV.G of Exhibit  
1267 D (Maintenance and Support Services), shall provide sufficient computing capacity to support  
1268 the System at the Response Time levels required for Contractor to satisfy Task 8.0 (System  
1269 Tests) of the Statement of Work and the Response Time requirements set forth in Schedule D.1  
1270 (Response Time Requirements) to Exhibit D (Maintenance and Support Services). Credits  
1271 accruing under Paragraph 7.3 (Credits to County) for failures to maintain the required Response  
1272 Time shall be in addition to all other remedies set forth herein or otherwise available in equity or  
1273 at law.

1274  
1275 **10. OWNERSHIP OF THE SYSTEM AND LICENSE**

1276 10.1 Ownership

1277 10.1.1 County owns all System Hardware previously owned and installed at  
1278 County Facilities or acquired pursuant to Contractor's specifications set forth in this Agreement.

1279 10.1.2 The System Software, any Interface and Custom Programming  
1280 Modifications provided to County pursuant to this Agreement, other than Third Party Software, is

1281 and shall remain the property of Contractor, and all such software, including the Third Party  
1282 Software, is subject to the License to County granted pursuant to Paragraph 10.2 (License).

1283 10.2 License

1284 10.2.1 License Grant

1285 Contractor hereby grants to County an enterprise-wide, perpetual, nonexclusive license,  
1286 for all Users, unrestricted except as expressly restricted in this Agreement, non-transferable  
1287 except as provided in this Agreement (the "License") to:

1288 (i) use the System Software, including the Third Party Software, on  
1289 an unlimited number of computers, servers, local area networks and wide area networks,  
1290 for an unlimited number of Users, including use by any and all other governmental  
1291 agencies and other organizations and entities that County may allow to access the  
1292 System, except that the use of certain Third Party Software shall be subject to limitations  
1293 on the number of concurrent Users as set forth in Paragraph 9.7 (Third Party Software);

1294 (ii) use any Interface, Conversion and other Custom Programming  
1295 Modification provided by or on behalf of Contractor for the benefit of any County Facility,  
1296 including making copies and installing such software;

1297 (iii) modify the Application Software, including Source Code and Third  
1298 Party Software, provided, however County agrees to refrain from the exercise of its  
1299 rights under this Paragraph 10.2.1(iii) until the occurrence of a Release Condition;

1300 (iv) permit third party access to the System Software, the  
1301 Documentation, and the Source Code, or any part thereof, as necessary or appropriate  
1302 for County fully to enjoy the rights granted under this Agreement, including the provision  
1303 of Maintenance and Support Services, customizations or other support of the System;  
1304 provided however, that without limiting the use rights set forth in Paragraph 10.2.1(i),  
1305 County agrees to refrain from exercising its rights under this Paragraph 10.2.1(iv) unless  
1306 and until the occurrence of a Release Condition.

1307 (v) use, modify, copy and publish the Documentation as may be  
1308 necessary or appropriate for County to enjoy fully its rights under this Agreement; and

1309 (vi) reproduce and use a reasonable number of copies of the System  
1310 Software: (1) by County and permitted assignees for archive and backup purposes; and  
1311 (2) by County for the use of permitted assignees, so long as all copies of the System  
1312 Software contain the proprietary notices appearing on the copies initially furnished to  
1313 County by Contractor.

1314 10.3 Source Code

1315 10.3.1 Self-Escrow of Source Code

1316 Contractor shall deposit with County in electronic media the Source Code for all  
1317 Application Software. In addition, Contractor also shall deposit with County the Source Code for  
1318 any Enhancements of all Application Software promptly after delivery to County, for any reason  
1319 whatsoever, of the corresponding Object Code. Contractor's duty to deposit the Source Code

1320 with County shall continue throughout the Term and Contractor shall keep all Source Code for  
1321 the System Software, other than Third Party Software, current and equivalent to the System  
1322 Software, other than Third Party Software, then being executed by County.

1323 Except as provided in Paragraph 10.3.3 (County's Right to Verify Source Code), County  
1324 shall hold the Source Code in strict confidence and not use it for any purpose unless one of the  
1325 conditions described in Paragraph 10.3.2 (Source Code Release Conditions) has occurred  
1326 which would permit County to use the Source Code as provided in Paragraphs 10.2.1(iii) and  
1327 10.2.1(iv). However, County is entitled to make copies of the Source Code for archival  
1328 purposes.

1329 10.3.2 Source Code Release Conditions

1330 Upon the occurrence of anyone of the following events (collectively referred to as  
1331 "Release Conditions"), County shall have the right to exercise its License rights provided in  
1332 Paragraphs 10.2.1(iii) and 10.2.1(iv), at no additional cost to County:

1333 (i) The occurrence of an event that would give rise to County's ability  
1334 to terminate pursuant to Paragraph 31 (Termination for Insolvency);

1335 (ii) Contractor fails to provide a new release or version of any  
1336 Application Software module adding new functionality or significantly improving existing  
1337 functionality within twenty-four (24) months from the previous new release or version;

1338 (iii) Contractor ceases to support any Application Software module  
1339 without making arrangements permitted pursuant to Paragraph 11 (Prohibition Against  
1340 Delegation and Assignment; Continuous Product Support) for continued support by a  
1341 qualified person or organization;

1342 (iv) Contractor ceases to do business without a permitted successor,  
1343 or if there is such a successor, before such successor commences to continue  
1344 Contractor's business; or

1345 (v) Contractor ceases to provide, or otherwise breaches its  
1346 Maintenance and Support Services obligations pursuant to Exhibit D (Maintenance and  
1347 Support Services).

1348 In the event of a claim to the Source Code under Paragraph 10.3.2(iii), then County shall  
1349 provide Contractor with a written notice outlining the facts upon which County bases its claim  
1350 that a Release Condition has occurred. Contractor may contest County's right to use the  
1351 Source Code pursuant to the procedures set forth in Paragraph 59 (Dispute Resolution  
1352 Procedure), other than judicial proceedings as provided in Paragraph 59.9. If the dispute  
1353 resolution procedures result in disagreement between Contractor's President and Director as to  
1354 whether a basis exists for any claim by County to the Source Code, and Director continues to  
1355 believe that such a basis does exist, then Director may, in Director's sole discretion, give notice  
1356 of such belief to Contractor, in which event County may, at any time on or after a date that is  
1357 seven (7) days after the giving of such notice, utilize any or all of the Source Code in the  
1358 manner set forth in Paragraphs 10.2.1(iii), 10.2.1(iv) and 10.3.4 (Possession and Use of Source  
1359 Code) below.

1360 10.3.3 County's Right to Verify Source Code

1361           Regardless of whether one of the Release Conditions occurs, County shall have the  
1362 right to verify the relevance, completeness, currency, accuracy, and functionality of the Source  
1363 Code by, among other things, compiling the Source Code and performing test runs for  
1364 comparison with the Application Software other than Third Party Software.

1365                           10.3.4 Possession and Use of Source Code

1366           Subject to the provisions of Paragraphs 10.2.1(iii) and 10.2.1(iv), Source Code obtained  
1367 by County under the provisions of this Agreement shall remain subject to every License  
1368 restriction, proprietary rights protection, and other County obligation specified in this Agreement.  
1369 County may use Source Code for the sole purpose as it is Licensed hereunder. When Source  
1370 Code is not in use, County agrees to keep such Source Code in a locked, secure place. When  
1371 Source Code resides in a central processing unit, County shall limit access to its authorized  
1372 County Staff who have a need to know in order to support the System.

1373 **11. PROHIBITION AGAINST DELEGATION AND ASSIGNMENT; CONTINUOUS**  
1374 **PRODUCT SUPPORT**

1375           11.1 Limitation on Assignment. Contractor shall not have any right to, and shall not,  
1376 assign its rights or delegate its duties under this Agreement, or both, whether in whole or in part,  
1377 without the prior written consent of County, in its sole discretion, and any attempted assignment  
1378 or delegation without such consent shall be null and void. For purposes of this Paragraph 11,  
1379 County consent shall require a written amendment to this Agreement which is formally approved  
1380 and executed by the parties, including by the Board. Any payments by County to any delegate  
1381 or assignee on any claim under this Agreement, in consequence of any such consent, shall  
1382 reduce dollar for dollar any claims which Contractor may have against County and shall be  
1383 subject to set-off, recoupment or other reduction for any claims which County may have against  
1384 Contractor, whether under this Agreement or otherwise.

1385           11.2 Changes of Control. Shareholders, partners, members or other equity holders of  
1386 Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may  
1387 have therein. However, in the event any such sale, transfer, exchange, assignment, or  
1388 divestment is effected in such a way as to give majority control of Contractor to any person(s),  
1389 corporation, partnership, or legal entity other than the majority controlling interest therein, at the  
1390 time of execution of this Agreement, such disposition is an assignment requiring the prior written  
1391 consent of County in accordance with the applicable provisions of this Agreement.

1392           11.3 Continuous Product Support. If (i) Contractor assigns this Agreement in  
1393 accordance with Paragraph 11 (Prohibition Against Delegation and Assignment; Continuous  
1394 Product Support), or (ii) Contractor sells, assigns, or transfers its interest in the System in  
1395 accordance with Paragraph 9.4 (Further Warranties), and in either case, subsequent to such  
1396 event, the System is not supported to at least the same level that Contractor supported the  
1397 System as determined by County's Project Director (because, for example, Contractor's  
1398 assignee chooses to support other products with similar functions), or, (iii) Contractor markets a  
1399 successor software product which replaces the System Software (other than the Third Party  
1400 Software), and with the consent of County in its sole discretion, ceases to provide Maintenance  
1401 and Support Services for such System Software during the Term (each of conditions (i), (ii), and  
1402 (iii) referred to as a "Successor Event"), then County, at its sole option, may elect to transfer the  
1403 License, without cost or penalty, to another similar product ("Replacement Product") within  
1404 Contractor's or its assignee's or successor's product offering. The assignee or successor, if  
1405 applicable, by taking benefit (including acceptance of any payment under this Agreement) shall

1406 be deemed to have ratified this Agreement. All terms and conditions of this Agreement shall  
1407 continue in full force and effect for the Replacement Product, including Contractor's obligations  
1408 in respect of warranties and Maintenance and Support Services. In addition, the following terms  
1409 and conditions shall apply if County elects to transfer the License to a Replacement Product:

1410                   11.3.1 Any prepaid Maintenance and Support Fees for the System shall transfer  
1411 in full force and effect for the balance of the Replacement Product's Maintenance and Support  
1412 Services term (or equivalent service) at no additional cost. If the prepaid moneys are greater  
1413 than the Replacement Product's Maintenance and Support Fee for the same term, the credit  
1414 balance shall be applied to future Maintenance and Support Fees or returned to County, at  
1415 County's option. Under no circumstances is County obligated to pay Maintenance and Support  
1416 Fees in excess of the amounts expressly agreed hereunder and set forth in Exhibit C (Price and  
1417 Schedule of Payments);

1418                   11.3.2 Any and all modules offered separately, and needed to match the original  
1419 System's level of functionality, as determined by County's Project Director shall be supplied by  
1420 Contractor's assignee or successor without additional cost or penalty, and shall not affect the  
1421 calculation of any Maintenance and Support Fees;

1422                   11.3.3 County shall receive reasonable training for Users, for purposes of  
1423 learning the Replacement Product. Training shall be provided at no cost to County or Users;

1424                   11.3.4 All License terms and conditions shall remain as granted herein with no  
1425 additional fees imposed on County; and

1426                   11.3.5 The definition of System Software shall then mean the Replacement  
1427 Product.

1428   **12.   WARRANTY AGAINST CONTINGENT FEES**

1429                   12.1 Contractor represents and warrants that no person or selling agency has been  
1430 employed or retained to solicit or secure this Agreement upon any agreement or understanding  
1431 for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or  
1432 bona fide established commercial or selling agencies maintained by Contractor for the purpose  
1433 of securing business.

1434                   12.2 For breach of this warranty, County shall have the right to terminate this  
1435 Agreement and, in its sole discretion, deduct from the Agreement price or consideration, or  
1436 otherwise recover, the full amount of such commission, percentage, brokerage, or contingent  
1437 fee.

1438   **13.   INDEPENDENT CONTRACTOR STATUS**

1439                   13.1 This Agreement is by and between County and Contractor and is not intended,  
1440 and shall not be construed, to create the relationship of agent, servant, employee, partnership,  
1441 joint venture, or association, as between County and Contractor. The employees and agents of  
1442 one party shall not be, or be construed to be, the employees or agents of the other party for any  
1443 purpose whatsoever. Contractor shall function as, and in all respects is, an independent  
1444 contractor.

1445           13.2 County shall have no liability or responsibility whatsoever for providing to, or on  
1446 behalf of, all persons, including Contractor's agents, employees, and Subcontractors,  
1447 performing work pursuant to this Agreement, all compensation and benefits and have no liability  
1448 or responsibility for the payment of any salaries, wages, unemployment benefits, disability  
1449 benefits, federal, state, or local taxes, or other compensation, benefits, or taxes for any  
1450 personnel provided by or on behalf of Contractor.

1451           13.3 Contractor understands and agrees that all persons performing Work pursuant to  
1452 this Agreement are, for purposes of workers' compensation liability, the sole employees of  
1453 Contractor or the applicable Subcontractor and not employees of County. Contractor and each  
1454 applicable Subcontractor shall be solely liable and responsible for providing all workers'  
1455 compensation insurance and benefits, liability insurance, employer taxes, compensation and  
1456 benefits to, or on behalf of, persons performing Work pursuant to this Agreement. Contractor  
1457 and its applicable Subcontractors shall be solely liable and responsible for furnishing any and all  
1458 workers' compensation benefits to any persons as a result of any injuries arising from or  
1459 connected with any Work performed by or on behalf of Contractor pursuant to this Agreement.

1460           13.4 Notwithstanding the provisions of this Paragraph 13, the employees and agents  
1461 of Contractor shall, while on the premises of County, comply with all rules and regulations of the  
1462 premises, including, but not limited to, security requirements.

1463           13.5 Contractor shall provide to County an executed Contractor Employee  
1464 Acknowledgment, Confidentiality and Copyright Assignment Agreement, attached hereto as  
1465 Exhibit G, for each of its employees performing Work under this Agreement. Such Agreement  
1466 shall be delivered to County's Department of Human Resources, Health, Safety and Disability  
1467 Benefits Division, 3333 Wilshire Boulevard, 10th Floor, Los Angeles, California 90010, on or  
1468 immediately after the execution of this Agreement by County's Board of Supervisors, but in no  
1469 event later than the date any such employee first performs Work under this Agreement.

1470   **14. SUBCONTRACTING**

1471           14.1 County has relied, in entering into this Agreement, on the reputation of and on  
1472 obtaining the personal performance of Contractor itself. Consequently, no performance of this  
1473 Agreement, or any portion thereof, shall be subcontracted by Contractor without the prior written  
1474 consent of County as provided in this Paragraph 14. Any attempt by Contractor to subcontract  
1475 any performance, obligation, or responsibility under this Agreement, without the prior written  
1476 consent of County, shall be null and void and shall constitute a material breach of this  
1477 Agreement, upon which County may immediately terminate this Agreement. For purposes of  
1478 this Agreement, any purchase of goods (including, non-customized software) by Contractor  
1479 where the vendor of the goods is not providing any services shall not be considered a  
1480 subcontract.

1481           14.2 If Contractor desires to subcontract any portion of its performance, obligations, or  
1482 responsibilities under this Agreement, Contractor shall make a written request to County for  
1483 written approval to enter into the particular subcontract. Contractor's request to County shall  
1484 include:

1485                   14.2.1 The reason(s) for the particular subcontract.

1486                   14.2.2 A detailed description of the work to be performed by the proposed  
1487 Subcontractor.

1488                   14.2.3 Identification of the proposed Subcontractor and an explanation of why  
1489 and how the proposed Subcontractor was selected, including references and a statement of  
1490 qualifications.

1491                   14.2.4 A detailed description of the Contractor's prior relationship with the  
1492 proposed Subcontractor, including an explanation of previous projects of the same scope and  
1493 complexity.

1494                   14.2.5 A draft copy of the proposed subcontract which shall contain, at a  
1495 minimum, the provisions set forth in Exhibit I (Required Subcontractor Provisions). The  
1496 provisions of Exhibit I (Required Subcontractor Provisions) may be changed only with the prior  
1497 written approval of County's Project Director.

1498                   14.2.6 A certificate of insurance from the proposed Subcontractor which  
1499 establishes that the Subcontractor maintains all the programs of insurance required by Exhibit I  
1500 (Required Subcontractor Provisions).

1501                   14.2.7 Any other information and/or certifications requested by County.

1502                   14.3 County's Project Director will review Contractor's request to subcontract and  
1503 determine, in its sole discretion, whether or not to consent to such request on a case-by-case  
1504 basis.

1505                   Contractor may submit a request that does not contain the materials required under  
1506 Paragraphs 14.2.4 and 14.2.6, for the limited purpose of exploring County's view toward the  
1507 particular request, but any response by County to any Contractor request which did not include  
1508 all of the items set forth in Paragraph 14.2 shall be advisory only and not binding on County.

1509                   CONTRACTOR UNDERSTANDS AND AGREES THAT COUNTY CANNOT GIVE FULL  
1510 CONSIDERATION TO ANY REQUEST THAT DOES NOT CONTAIN ALL OF THE ITEMS SET  
1511 FORTH IN PARAGRAPH 14.2, AND ACCORDINGLY THAT CONTRACTOR HAS NO RIGHT  
1512 TO RELY ON ANY SUCH ADVISORY RESPONSE EVEN IF SUCH RESPONSE STATES OR  
1513 IMPLIES THAT CONTRACTOR MAY RELY ON IT.

1514                   COUNTY'S RIGHT TO APPROVE, OR WITHHOLD ITS APPROVAL OF, ANY  
1515 SUBCONTRACT REQUEST UPON SUBMISSION BY CONTRACTOR OF A REQUEST  
1516 WHICH INCLUDES ALL OF THE ITEMS SET FORTH IN PARAGRAPH 14.2 SHALL NOT BE  
1517 LIMITED IN ANY WAY WHATSOEVER BY ANY ADVISORY RESPONSE, INCLUDING ANY  
1518 OBLIGATION BY COUNTY TO ACT REASONABLY AND/OR IN GOOD FAITH IN GIVING  
1519 ANY ADVISORY RESPONSE, NOTWITHSTANDING ANY IMPLIED COVENANT OF GOOD  
1520 FAITH AND FAIR DEALING OR OTHER LEGAL PRINCIPLE.

1521                   14.4 In its proposed subcontract, Contractor may supplement but not amend the  
1522 provisions set forth in Exhibit I (Required Subcontractor Provisions), so long as, after all such  
1523 supplementation, the particular subcontract is not inconsistent with this Agreement, and does  
1524 not reduce or limit County's rights or benefits hereunder. It is essential to County's willingness  
1525 to permit any subcontracting that with respect to any subcontract and the performance,  
1526 obligations, liabilities or responsibilities being subcontracted to that Subcontractor thereunder,  
1527 the results and benefits to County are no less than if Contractor itself discharged such  
1528 performance, obligations, liabilities or responsibilities.

1529 Contractor understands and agrees that no provision of any subcontract entered into by  
1530 Contractor, whether or not a copy of such subcontract is provided to, or reviewed or approved  
1531 by, County, shall alter this Agreement, nor reduce, release, waive or relieve Contractor's  
1532 responsibilities, obligations or liabilities under this Agreement, nor reduce, waive or limit  
1533 County's rights or benefits under this Agreement. The foregoing shall not be construed as  
1534 prohibiting Contractor from including in any subcontract any remedy against the Subcontractor  
1535 that overlaps, in whole or in part, with any remedy of County against the Subcontractor, so long  
1536 as County can be put in the same (or better) position by exercise of the particular remedy  
1537 against Contractor as County would be against the Subcontractor.

1538 14.5 Contractor shall Indemnify the County Indemnitees in accordance with Paragraph  
1539 15.1 (General Indemnification), from and against any and all Liabilities in any way arising from  
1540 or related to Contractor's use of any Subcontractor, including any officers, employees, or agents  
1541 of any Subcontractor, in the same manner as required for Contractor, its officers, employees,  
1542 and agents, under this Agreement. Further, Contractor's indemnities and agreements to defend  
1543 and hold harmless County as set out in this Agreement shall apply with respect to the activities  
1544 of each Subcontractor in the same manner and to the same degree as if such Subcontractor is  
1545 Contractor's employee.

1546 14.6 Notwithstanding any County consent to any subcontracting, Contractor shall  
1547 remain responsible for any and all performance required of it under this Agreement, the  
1548 obligation properly to supervise, coordinate, and perform, all Work required hereunder, and no  
1549 subcontract shall bind or purport to bind County. Further, County approval of any subcontract  
1550 shall not be construed to limit in any way Contractor's performance, obligations, or  
1551 responsibilities, to County, nor shall such approval limit in any way any of County's rights or  
1552 remedies contained in this Agreement. Additionally, County approval of any subcontract shall  
1553 not be construed in any way to constitute the determination of the allowableness or  
1554 appropriateness of any cost or payment under this Agreement.

1555 14.7 In the event that County consents to any subcontracting, such consent shall be  
1556 subject to County's right to withdraw such consent when such Subcontractor is deemed by  
1557 County to be in material breach of its subcontract or this Agreement. If County does withdraw  
1558 its approval, County shall give written notice to Contractor of such withdrawal. From the time of  
1559 such notice forward (but not retroactive to the time prior to such notice during which County's  
1560 approval of the subcontracting was in effect), Contractor shall have no right to use such  
1561 Subcontractor (unless and until, if ever, County re-approves such Subcontractor). County shall  
1562 not be liable or responsible in any way to Contractor, to any Subcontractor, or to any officers,  
1563 employees, or agents of Contractor or any Subcontractor, for any Liabilities in any way arising  
1564 from or related to County's exercise of such rights, except that Contractor shall have the right to  
1565 seek equitable indemnification by County if County's withdrawal of approval is found to be  
1566 wrongful.

1567 14.8 In the event that County consents to any subcontracting, such consent shall be  
1568 subject to County's prior and continuing approval rights with regard to Contractor's staff as set  
1569 forth in Paragraph 3.3 (Approval of Contractor's Staff). County shall not be liable or responsible  
1570 in any way to Contractor, to any Subcontractor, or to any officers, employees, or agents of  
1571 Contractor or any Subcontractor, for any Liabilities in any way arising from or related to County's  
1572 exercise of such rights.

1573           14.9 In the event that County consents to any subcontracting, such consent shall  
1574 apply to each particular subcontract only and shall not be, or be construed to be, a waiver of this  
1575 Paragraph 14 or a blanket consent to any further subcontracting.

1576           14.10 County's Project Director is hereby authorized to act for and on behalf of County  
1577 pursuant to this Paragraph 14, including consenting to any subcontracting or the replacement  
1578 thereof.

1579           14.11 Contractor shall deliver to County's Project Director a fully executed copy of each  
1580 subcontract entered into by Contractor pursuant to this Paragraph 14, on or immediately after  
1581 the Effective Date of the subcontract but in no event later than the date any Work is performed  
1582 under the subcontract.

1583           14.12 In the event that County consents to any subcontracting, Contractor shall obtain  
1584 and provide to County's Project Director, both of the following:

1585           14.12.1 An executed Subcontractor Employee Acknowledgment, Confidentiality  
1586 and Copyright Assignment Agreement (in the form attached to Exhibit I (Required Subcontractor  
1587 Provisions)) for each of Subcontractor's employees performing work under the subcontract.  
1588 Such agreements shall be delivered to County's Project Director on or immediately after the  
1589 effective date of the particular subcontract but in no event later than the date any such employee  
1590 performs work under the subcontract.

1591           14.12.2 Certificates of insurance which establish that the Subcontractor maintains  
1592 all the programs of insurance required by Exhibit I (Required Subcontractor Provisions), and  
1593 Contractor shall ensure delivery of all such documents to County's Project Director before any  
1594 Subcontractor employee may perform any work hereunder.

1595  
1596           14.12.3 Any other information reasonably requested by County.

1597           14.13 In the event that County consents to any subcontracting, Contractor shall cause  
1598 the Subcontractor, on behalf of itself, its successors and administrators, to assume and be  
1599 bound by all and shall be deemed to have assumed and agreed to be bound by each and all of  
1600 the provisions of this Agreement and any amendment hereto as it relates to or affects the Work  
1601 performed by Subcontractor hereunder.

## 1602 **15. INDEMNIFICATION, INSURANCE AND PERFORMANCE SECURITY**

### 1603 15.1 General Indemnification

1604           For the purpose of this Agreement, to "Indemnify" means to indemnify, defend and hold  
1605 harmless from and against any and all alleged or actual liability (whether arising under a theory  
1606 of contract, statute, strict liability, product liability, common law, tort, equity or otherwise),  
1607 including in each case all damages, losses, demands, claims, actions, fees, costs, fines,  
1608 penalties, and expenses (including reasonable attorney's fees, legal, accounting, and other  
1609 expert witness, consulting and professional fees, costs of electronic legal research, costs of  
1610 factual investigation and investigators, other defense costs, and all costs of enforcing such  
1611 indemnity), collectively hereinafter referred to as "Liabilities". Contractor shall Indemnify County,  
1612 and its Special Districts, elected and appointed officers, officials, County Staff, and agents (the  
1613 "County Indemnitees") from and against any and all Liabilities in any way arising from,  
1614 connected with or related to Contractor's, Subcontractors', or any of their respective agents',

1615 employees', officers', directors' or shareholders' breach of this Agreement, the performance or  
1616 nonperformance of the System, or acts, errors or omissions in the performance of Work or  
1617 provision of products or services by Contractor or any Subcontractor hereunder. Any legal  
1618 defense pursuant to Contractor's indemnification obligations under this Paragraph 15 shall be  
1619 conducted by Contractor and performed by counsel selected by Contractor and approved in  
1620 writing by County, such approval not to be unreasonably withheld. Notwithstanding the  
1621 preceding sentence, County shall have the right to participate in any such defense at its cost  
1622 and expense, except that in the event Contractor fails to provide County with a full and  
1623 adequate defense, as required by law and this Agreement, County shall be entitled to  
1624 reimbursement for all such costs and expense. In addition, Contractor shall not have the right  
1625 without County's prior written approval to enter into any settlement, enter any plea of guilt or  
1626 nolo contendere, agree to any injunction or make any admission, in each case, on behalf of  
1627 County without County's prior written approval, other than a monetary judgment against County  
1628 Indemnitees, which monetary judgment shall be covered by and within the policy limits of  
1629 Contractor's insurance obligations under this Agreement and which shall be fully satisfied by a  
1630 one-time monetary payment.

1631           15.2    Intellectual Property Indemnification

1632           15.2.1 Contractor shall Indemnify the County Indemnitees in accordance with  
1633 Paragraph 15.1 (General Indemnification) from and against any and all Liabilities for or by reason  
1634 of any actual or alleged infringement of any patent or copyright, any actual or alleged trade  
1635 secret disclosure or misappropriation, or any other intellectual property rights of any third party,  
1636 in each case arising from or related to the System or its use under this Agreement, or the  
1637 operation and utilization of Contractor's or any Subcontractor's Work under this Agreement  
1638 (hereafter collectively referred to as "Infringement Claim(s)"). Contractor shall have no obligation  
1639 to County under this Paragraph 15.2 to the extent any Infringement Claim is caused by use by  
1640 County of the System in a manner that is in material noncompliance with the Specifications and  
1641 other applicable Documentation.

1642           15.2.2 Without limiting the foregoing, in the event County's Project Director  
1643 becomes aware that ongoing use of the System or any Component(s) thereof are the subject of  
1644 any Infringement Claim that might preclude or impair County's use of the System or any System  
1645 Component (e.g., injunctive relief), or that County's continued use of the System or any System  
1646 Component may subject it to punitive damages or statutory penalties or other costs or expenses,  
1647 County shall give written notice to Contractor of such facts. Upon notice of such facts or upon  
1648 independent determination thereof by Contractor, Contractor shall, at no cost to County, either  
1649 (1) procure the right, by license or otherwise, for County to continue to use the System or  
1650 affected System Components, or parts thereof, to the same extent of County's license under this  
1651 Agreement, or (2) to the extent Contractor is unable to procure such right, replace or modify the  
1652 System or System Components with another system or Components of equivalent quality and  
1653 performance capabilities, in County's determination, to become non-infringing, non-  
1654 misappropriating and/or non-disclosing. If Contractor fails to complete the remedial acts set forth  
1655 above within forty-five (45) days of the date of the written notice from County, County shall have  
1656 the right to take such remedial acts it determines to be reasonable to mitigate any impairment of  
1657 its use of the System or System Components or Liabilities, or any damages or other costs or  
1658 expenses (hereinafter referred to as "County's Remedial Acts"). Contractor shall promptly  
1659 reimburse County for all amounts paid and all direct and indirect Liabilities and other costs  
1660 associated with County's Remedial Acts. Failure by Contractor to pay such amounts and costs  
1661 within ten (10) days of invoice by County shall, in addition to, and cumulative with all other  
1662 remedies entitle County to immediately withhold payments due to Contractor under this

1663 Agreement up to the total of the amounts and costs paid in connection with County's Remedial  
1664 Acts.

1665 15.3 General Provisions for All Insurance Coverage

1666 Without limiting Contractor's indemnification of County, and in the performance of this  
1667 Agreement and until all of its obligations pursuant to this Agreement have been met, Contractor  
1668 shall provide and maintain at its own expense insurance coverage satisfying the requirements  
1669 specified in this Paragraph 15.3 of this Agreement. These minimum insurance coverage terms,  
1670 types and limits (the "Required Insurance") also are in addition to and separate from any other  
1671 contractual obligation imposed upon Contractor pursuant to this Agreement. County in no way  
1672 warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which  
1673 may arise from or relate to this Agreement.

1674 15.3.1 Evidence of Coverage and Notice to County:

1675 (i) Certificate(s) of insurance coverage (Certificate) satisfactory to  
1676 County, and a copy of an Additional Insured endorsement confirming County and its  
1677 Agents (defined below) has been given Insured status under the Contractor's General  
1678 Liability policy, shall be delivered to County at the address shown below and provided  
1679 prior to commencing services under this Agreement.

1680 (ii) Renewal Certificates shall be provided to County not less than ten  
1681 (10) days prior to Contractor's policy expiration dates. County reserves the right to obtain  
1682 complete, certified copies of any required Contractor and/or Subcontractor insurance  
1683 policies at any time.

1684 (iii) Certificates shall identify all Required Insurance coverage types  
1685 and limits specified herein, reference this Agreement by name or number, and be signed  
1686 by an authorized representative of the insurer(s). The Insured party named on the  
1687 Certificate shall match the name of the Contractor identified as the contracting party in  
1688 this Agreement. Certificates shall provide the full name of each insurer providing  
1689 coverage, its NAIC (National Association of Insurance Commissioners) identification  
1690 number, its financial rating, the amounts of any policy deductibles or self-insured  
1691 retentions exceeding fifty thousand (\$50,000.00) dollars, and list any County required  
1692 endorsement forms.

1693 (iv) Neither the County's failure to obtain, nor the County's receipt of,  
1694 or failure to object to a non-complying insurance certificate or endorsement, or any other  
1695 insurance documentation or information provided by the Contractor, its insurance  
1696 broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required  
1697 Insurance provisions.

1698 Certificates and copies of any required endorsements shall be sent to:

1699  
1700 **Los Angeles County Department of Mental Health**  
1701 **Chief Information Office Bureau**  
1702 **695 South Vermont Avenue, 7<sup>th</sup> Floor**  
1703 **Los Angeles California 90005**  
1704 **Attention: Robert Greenless**  
1705

1706 Contractor also shall promptly report to County any injury or property  
1707 damage accident or incident, including any injury to a Contractor employee occurring on  
1708 County property, and any loss, disappearance, destruction, misuse, or theft of County  
1709 property, monies or securities entrusted to Contractor. Contractor also shall promptly  
1710 notify County of any third party claim or suit filed against Contractor or any of its  
1711 Subcontractors which arises from or relates to this Agreement, and could result in the  
1712 filing of a claim or lawsuit against Contractor and/or County.  
1713

#### 1714 15.3.2 Additional Insured Status and Scope of Coverage

1715 The County of Los Angeles, its Special Districts, Elected Officials,  
1716 Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be  
1717 provided additional insured status under Contractor's General Liability policy with respect to  
1718 liability arising out of Contractor's ongoing and completed operations performed on behalf of the  
1719 County. County and its Agents additional insured status shall apply with respect to liability and  
1720 defense of suits arising out of the Contractor's acts or omissions, whether such liability is  
1721 attributable to the Contractor or to the County. The full policy limits and scope of protection also  
1722 shall apply to the County and its Agents as an additional insured, even if they exceed the  
1723 County's minimum Required Insurance specifications herein. Use of an automatic additional  
1724 insured endorsement form is acceptable providing it satisfies the Required Insurance provisions  
1725 herein.  
1726

#### 1727 15.3.3 Cancellation of Insurance

1728 Except in the case of cancellation for non-payment of premium,  
1729 Contractor's insurance policies shall provide, and Certificates shall specify, that County shall  
1730 receive not less than thirty (30) days advance written notice by mail of any cancellation of the  
1731 Required Insurance. Ten (10) days prior notice may be given to County in event of cancellation  
1732 for non-payment of premium.  
1733

#### 1734 15.3.4 Failure to Maintain Insurance

1735 Contractor's failure to maintain or to provide acceptable evidence that it  
1736 maintains the Required Insurance shall constitute a material breach of the Agreement, upon which  
1737 County immediately may withhold payments due to Contractor, and/or suspend or terminate this  
1738 Agreement. County, at its sole discretion, may obtain damages from Contractor resulting from  
1739 said breach.  
1740

#### 1741 15.3.5 Insurer Financial Ratings

1742 Coverage shall be placed with insurers acceptable to the County with A.M.  
1743 Best ratings of not less than A:VII unless otherwise approved by County.  
1744

#### 1745 15.3.6 Contractor's Insurance Shall Be Primary

1746 Contractor's insurance policies, with respect to any claims related to this  
1747 Agreement, shall be primary with respect to all other sources of coverage available to Contractor.  
1748 Any County maintained insurance or self-insurance coverage shall be in excess of and not  
1749 contribute to any Contractor coverage.  
1750

1751

1752 15.3.7 Waivers of Subrogation

1753 To the fullest extent permitted by law, the Contractor hereby waives its  
1754 rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any  
1755 loss arising from or relating to this Agreement. The Contractor shall require its insurers to execute  
1756 any waiver of subrogation endorsements which may be necessary to effect such waiver.

1757  
1758 15.3.8 Subcontractor Insurance Coverage Requirements

1759 Contractor shall include all Subcontractors as insureds under Contractor's  
1760 own policies, or shall provide County with each Subcontractor's separate evidence of insurance  
1761 coverage. Contractor shall be responsible for verifying each Subcontractor complies with the  
1762 Required Insurance provisions herein, and shall require that each Subcontractor name the  
1763 County and Contractor as additional insureds on the Subcontractor's General Liability policy.  
1764 Contractor shall obtain County's prior review and approval of any Subcontractor request for  
1765 modification of the Required Insurance.

1766  
1767 15.3.9 Deductibles and Self-Insured Retentions (SIRs)

1768 Contractor's policies shall not obligate the County to pay any portion of any  
1769 Contractor deductible or SIR. The County retains the right to require Contractor to reduce or  
1770 eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing  
1771 Contractor's payment of all deductibles and SIRs, including all related claims investigation,  
1772 administration and defense expenses. Such bond shall be executed by a corporate surety  
1773 licensed to transact business in the State of California.

1774  
1775 15.3.10 Claims Made Coverage

1776 If any part of the Required Insurance is written on a claims made basis,  
1777 any policy retroactive date shall precede the effective date of this Agreement. Contractor  
1778 understands and agrees it shall maintain such coverage for a period of not less than three (3)  
1779 years following Agreement expiration, termination or cancellation.

1780  
1781 15.3.11 Application of Excess Liability Coverage

1782 Contractors may use a combination of primary, and excess insurance  
1783 policies which provide coverage as broad as ("follow form" over) the underlying primary policies,  
1784 to satisfy the Required Insurance provisions.

1785  
1786 15.3.12 Separation of Insureds

1787 All liability policies shall provide cross-liability coverage as would be  
1788 afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision  
1789 with no insured versus insured exclusions or limitations.

1790  
1791 15.3.13 Alternative risk Financing Programs

1792 The County reserves the right to review, and then approve, Contractor use  
1793 of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive  
1794 insurance to satisfy the Required Insurance provisions. The County and its Agents shall be  
1795 designated as an Additional Covered Party under any approved program.

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15.3.14 County Review and Approval of Insurance Requirements

1798 The County reserves the right to review and adjust the Required  
1799 Insurance provisions, conditioned upon County’s determination of changes in risk exposures.

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15.4 Insurance Coverage Requirements

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

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

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15.4.2 **Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy from 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 shall cover liability arising out of Contractor’s use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

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15.4.3 **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 shall 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, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor’s operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen’s compensation law or any federal occupational disease law.

1824

15.4.4 Unique Insurance Coverage

1825

(i) Sexual Misconduct Liability

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Insurance covering actual or alleged claims for sexual misconduct and/or molestation with limits of not less than \$2 million per claim and \$2 million aggregate, and claims for negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities, a person(s) who committed any act of abuse, molestation, harassment, mistreatment or maltreatment of a sexual nature.

1831  
1832

(ii) Professional Liability/Errors and Omissions

1833  
1834  
1835

Insurance covering Contractor’s liability arising from or related to this Agreement, with limits of not less than \$1 million per claim and \$3 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for

1836 a period of not less than three (3) years following this Agreement's expiration, termination  
1837 or cancellation.

1838  
1839 (iii) Property Coverage

1840 Contractor given exclusive use of County owned or leased property  
1841 shall carry property coverage at least as broad as that provided by the ISO special causes  
1842 of loss (ISO policy form CP 10 30) form. The County and its Agents shall be named as an  
1843 Additional Insured and Loss Payee on Contractor's insurance as its interests may  
1844 appear. Automobiles and mobile equipment shall be insured for their actual cash value.  
1845 Real property and all other personal property shall be insured for their full replacement  
1846 value.

1847  
1848 15.5 Performance Security Requirements

1849  
1850 Within ten (10) days of the Effective Date, and in any event prior to commencing any  
1851 Work under this Agreement, Contractor shall obtain and provide to County evidence satisfactory  
1852 thereto, of performance security in respect of its obligations under this Agreement. Such surety  
1853 may be provided by one of the following forms, as approved by County in its sole discretion, and  
1854 shall be conditioned upon faithful performance and satisfactory completion of all Work  
1855 hereunder by Contractor until the expiration of the System Warranty Period:

1856  
1857 15.5.1 Performance Bond. A faithful performance bond in a form acceptable to  
1858 County, in an amount equal to one-hundred percent (100%) of the total Contract Sum award  
1859 amount and executed by a corporate surety licensed to transact business in the State of  
1860 California. Such performance bond shall be maintained until the expiration of the System  
1861 Warranty Period.

1862  
1863 15.5.2 Certificate of Deposit (CD) or Letter of Credit (LOC). A CD or an  
1864 irrevocable LOC, in either case in a form acceptable to County, payable to County upon demand  
1865 in an amount not less than the total Contract Sum. Such CD or LOC shall comply with minimum  
1866 criteria and standards established by County in its sole discretion and shall be maintained until  
1867 the expiration of the System Warranty Period.

1868 15.6 Failure to Maintain Insurance and Performance Security

1869 Failure by Contractor to maintain the required insurance and performance security, or to  
1870 provide evidence thereof acceptable to County, shall constitute a material breach of the  
1871 Agreement upon which County may immediately terminate or suspend this Agreement. County,  
1872 at its sole option, may obtain damages from Contractor resulting from said breach. Alternatively,  
1873 County may purchase such required insurance coverage, and without further notice to  
1874 Contractor, County may deduct from sums due to Contractor any costs advanced by County for  
1875 such insurance.

1876 **16. RECORDS RETENTION AND INSPECTION/AUDIT SETTLEMENT**

1877 16.1 Contractor shall maintain accurate and complete financial records of its activities  
1878 and operations relating to this Agreement in accordance with generally accepted accounting  
1879 principles. Contractor shall also maintain accurate and complete employment and other records  
1880 relating to its performance of this Agreement. Contractor agrees that County, or its authorized  
1881 representatives, shall have access to and the right to examine, audit, excerpt, copy or transcribe

1882 any pertinent transaction, activity, or records relating to this Agreement provided such access  
1883 rights do not constitute an unlawful invasion of the privacy rights of any Contractor employee  
1884 and would not in the reasonable opinion of Contractor subject Contractor to legal liability. All  
1885 such material, including, all financial records, time cards and other employment records, and  
1886 proprietary data and information, shall be kept and maintained by Contractor and shall be made  
1887 available to County during the Term and for a period of five (5) years thereafter unless County's  
1888 written permission is given to dispose of any such material prior to such time. All such material  
1889 shall be maintained by Contractor at a location in Los Angeles County, provided that if any such  
1890 material is located outside Los Angeles County, then, at Contractor's option, Contractor shall  
1891 either (a) provide County with access to such material at a mutually agreed upon location within  
1892 Los Angeles County or (b) pay County for travel, per diem, and other costs incurred by County  
1893 to examine, audit, excerpt, copy or transcribe such material at such other location outside of Los  
1894 Angeles County.

1895 16.2 In the event that an audit is conducted of Contractor specifically regarding this  
1896 Agreement by any federal or state auditor, or by any auditor or accountant employed by  
1897 Contractor or otherwise specifically regarding this Agreement, then Contractor shall file a copy  
1898 of such audit report with County's Auditor-Controller and County's Project Director within thirty  
1899 (30) days of Contractor's receipt thereof, unless otherwise provided by applicable Federal or  
1900 State law or under this Agreement. Subject to Paragraph 19 (Public Records Act), County shall  
1901 make a reasonable effort to maintain the confidentiality of such audit reports.

1902 16.3 Failure on the part of Contractor to comply with any of the provisions of this  
1903 Paragraph 16 shall constitute a material breach of this Agreement upon which County may  
1904 immediately terminate this Agreement.

1905 16.4 Beginning one (1) year after the Effective Date and every year thereafter, until  
1906 the expiration or termination of this Agreement, Contractor shall submit to County a complete  
1907 set of financial statements for the preceding fiscal year, which shall be no more than eighteen  
1908 (18) months old at the time of submission to County. Such statements shall be prepared in  
1909 accordance with the generally accepted accounting principles, and at a minimum, include a  
1910 balance sheet, and income statement. If audited statements are available, they shall be  
1911 submitted to meet this requirement. In addition, Contractor shall submit a statement regarding  
1912 any pending litigation since the Contractor last reported same to County. County reserves the  
1913 right to request these financial statements on a more frequent basis and will so notify Contractor  
1914 in writing.

## 1915 **17. COUNTY AUDIT SETTLEMENTS**

1916 If, at any time during or after the Term, representatives of County conduct an audit of  
1917 Contractor regarding the Work performed under this Agreement, and if such audit finds that  
1918 County's dollar liability for any such Work is less than payments made by County to Contractor  
1919 (including without limitation due to credits to County accrued pursuant to Paragraph 7.3 (Credits  
1920 to County)), then the difference, together with County's reasonable costs of audit, shall be either  
1921 repaid by Contractor to County by cash payment upon demand or, at the sole option of Director,  
1922 deducted from any amounts due to Contractor from County, whether under this Agreement or  
1923 otherwise. If such audit finds that County's dollar liability for such Work is more than the  
1924 payments made by County to Contractor, then the difference shall be paid to Contractor by  
1925 County, but in no event shall County's payments to Contractor exceed the Contract Sum  
1926 identified in Paragraph 7 (Contract Sum) or the funds appropriated by County for the purpose of  
1927 this Agreement, whichever is less.

1928 **18. FEDERAL ACCESS TO RECORDS**

1929 If, and to the extent that, Section 1861(v)(1)(i) of the Social Security Act (42 United  
1930 States Code Section 1395x(v)(1)(i)) is applicable, Contractor agrees that for a period of four (4)  
1931 years following the furnishing of services under this Agreement, Contractor shall maintain and  
1932 make available, upon written request, to the Secretary of the United States Department of  
1933 Health and Human Services or the Comptroller General of the United States, or to any of their  
1934 authorized representatives, the contracts, books, documents and records of Contractor which  
1935 are necessary to verify the nature and extent of the costs of services provided hereunder.  
1936 Furthermore, if Contractor carries out any of the services provided hereunder through any  
1937 subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve-month  
1938 period with a related organization (as that term is defined under federal law), Contractor agrees  
1939 that each such subcontract shall provide for such access to the subcontract, books, documents,  
1940 and records of the subcontractor.

1941 **19. PUBLIC RECORDS ACT**

1942 19.1 Any documents submitted by Contractor, all information obtained in connection  
1943 with County's right to audit and inspect Contractor's documents, books, and accounting records  
1944 pursuant to Paragraph 16 (Records Retention and Inspection/Audit Settlement) of this  
1945 Agreement; as well as those documents which were required to be submitted in response to the  
1946 solicitation process for this Agreement, become the exclusive property of County. All such  
1947 documents become a matter of public record and shall be regarded as public records.  
1948 Exceptions will be those elements in the California Government Code Section 6250 et seq.  
1949 (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary".  
1950 County shall not in any way be liable or responsible for the disclosure of any such records  
1951 including those so marked, if disclosure is required by law, or by an order to court of competent  
1952 jurisdiction.

1953 19.2 In the event County is required to defend an action on a Public Records Act  
1954 request for any of the aforementioned documents, information, books, records, and/or contents  
1955 of a bid marked "trade secret", "confidential", or "proprietary", Contractor agrees to indemnify  
1956 and hold harmless County from all costs and expenses, including reasonable attorneys' fees, in  
1957 action or liability arising under the Public Records Act.

1958 **20. CONFIDENTIALITY**

1959 20.1 General

1960 Except to the extent otherwise expressly provided in this Agreement or by applicable law,  
1961 Contractor shall strictly maintain the confidentiality of all records, data and information obtained  
1962 as a result of or in connection with its performance of this Agreement, including events or  
1963 circumstances which occur during the course of Contractor's performance hereof, the terms and  
1964 conditions of this Agreement, County Materials, personally identifiable information regarding any  
1965 patient, relative or guardian of a patient, customer, insurer or payor to, service provider to or  
1966 resident of County, data processed using or converted or imported into the System, data  
1967 comprising output of or resulting from use of the System, Contractor or County billings to each  
1968 other or any third party, County records, any information identifying, characterizing, or relating to  
1969 any risk, threat, vulnerability, weakness, or problem regarding data security in County's  
1970 computer systems, or to any safeguard, countermeasure, or contingency plan, policy or  
1971 procedure for data security contemplated or implemented by County, and other nonpublic

1972 federal, state, or County information (collectively "Confidential County Data"). Contractor shall  
1973 inform all of its officers, employees and agents providing Work hereunder, as well as all  
1974 Subcontractors, of the confidentiality provisions of this Agreement, and shall furthermore limit its  
1975 disclosures of Confidential County Data in each case to only those employees, agents and  
1976 Subcontractors as need to know the information in order to fully perform this Agreement.

1977           20.2   Disclosure of Information

1978                   20.2.1       With respect to any Confidential County Data, Contractor shall (i)  
1979 not use any such information for any purpose whatsoever other than carrying out the express  
1980 terms of this Agreement; (ii) promptly transmit to County all requests for disclosure of any such  
1981 information; (iii) not disclose, except as otherwise specifically permitted by this Agreement, any  
1982 such information to any person or organization other than County without County's prior written  
1983 authorization that the records are, or information is, releasable; and (iv) at the expiration or  
1984 termination of this Agreement, return all such information in all media to County, or, at County's  
1985 election, maintain such records and information according to the written procedures sent to  
1986 Contractor by County for this purpose.

1987                   20.2.2       In the event Contractor receives any court or administrative  
1988 agency order, service of process, or request by any person or entity (other than Contractor's  
1989 professionals) for disclosure of any such details, Contractor shall immediately notify County's  
1990 Project Director. Thereafter Contractor shall comply with such order, process or request only to  
1991 the extent required by applicable law. Notwithstanding the preceding sentence, to the extent  
1992 permitted by law, Contractor shall delay such compliance and cooperate with County to obtain  
1993 relief from such obligations to disclose until County shall have been given a reasonable  
1994 opportunity to obtain such relief.

1995                   20.2.3       Contractor hereby acknowledges the right of privacy of all persons  
1996 as to whom there exists any Confidential County Data. Contractor shall protect, secure and keep  
1997 confidential all Confidential County Data in compliance with all federal, state, County and local  
1998 laws, rules, regulations, ordinances, guidelines and directives, relating to confidentiality and  
1999 information security (including any breach of the security of the System, such as any  
2000 unauthorized acquisition of Confidential County Data that compromises the security,  
2001 confidentiality or integrity of personal information), including California Civil Code Section  
2002 1798.82 and the Privacy and Security Regulations. Further, Contractor shall take all reasonable  
2003 actions necessary or advisable to protect all Confidential County Data in its possession, custody  
2004 or control from loss or damage by any cause, including fire, theft or other catastrophe. In  
2005 addition, if requested by County's Project Director, Contractor shall provide notification to all  
2006 persons whose unencrypted personal information was, or is reasonably believed to have been,  
2007 acquired by any unauthorized person, and the content, method and timing of such notification  
2008 shall be at the sole discretion of and subject to the prior approval of County's Project Director.

2009           20.3   Access to County Systems; Use of Portable Devices and Media

2010                   Without limiting Contractor's other obligations hereunder, Contractor agrees to comply in  
2011 full with Board policy 6.101 – Use of County Information Technology Resources, and Board  
2012 policy 6.110 – Protection of Information on Portable Computing Devices, and all other applicable  
2013 Los Angeles County Board of Supervisors and Department policies and procedures pertaining  
2014 to information security, or the use of or access to Confidential County Data or County  
2015 information technology or other resources.

2016                    20.4    Use of County Name

2017                    20.4.1            In recognizing Contractor's need to identify its services and  
2018 related clients to sustain itself, County will not inhibit Contractor from publishing its role under this  
2019 Agreement within the following conditions:

2020                    20.4.2            Contractor shall develop all publicity material in a "first class" and  
2021 professional manner.

2022                    20.4.3            During the Term, Contractor shall not publish or disseminate any  
2023 commercial advertisements, press releases, feature articles, or other materials using the name of  
2024 County without the prior written consent of County's Project Director, which shall not be  
2025 unreasonably withheld.

2026                    20.4.4            Contractor may, without the prior written consent of County,  
2027 indicate in its proposals and sales materials that it has been awarded this Agreement with  
2028 County, provided that the requirements of this Paragraph 20 shall apply.

2029                    20.5    This Provision Not Applicable to Certain Information

2030                    Notwithstanding any other provision of this Agreement, either party may disclose  
2031 information about the other which (i) is lawfully in the public domain at the time of disclosure, (ii)  
2032 is disclosed with the prior written approval of the party to which such information pertains, or (iii)  
2033 is required by law to be disclosed.

2034                    20.6    Indemnification

2035                    Contractor shall indemnify, defend, and hold harmless County Indemnitees in  
2036 accordance with Paragraph 15.1 (General Indemnification) from and against any and all  
2037 Liabilities arising from any disclosure of such records and information by Contractor, its officers,  
2038 employees, Subcontractors or agents, except for any disclosure authorized by this Paragraph  
2039 20.

2040                    20.7    Injunctive Relief

2041                    Contractor acknowledges that a breach or threatened breach by Contractor of this  
2042 Paragraph 20 may result in irreparable injury to County or its residents, patients, parents,  
2043 guardians, customers or taxpayers that may not be adequately compensated by monetary  
2044 damages, and that, in addition to County's other rights under this Paragraph 20 and at law and  
2045 in equity, County shall have the right to injunctive relief to enforce the provisions of this  
2046 Paragraph 20, without the posting of bond or other security.

2047    **21.    PROPRIETARY CONSIDERATIONS**

2048                    21.1    Contractor and County agree that without limiting Contractor's intellectual  
2049 property rights in the System Software, County owns, and Contractor hereby transfers to  
2050 County, all right, title, and interest in the physical media through which the System Software and  
2051 any other Work performed by or on behalf of Contractor is delivered to County pursuant to this  
2052 Agreement, in any form whatsoever, including the physical media through which the Source  
2053 Code is held on deposit in escrow (collectively, the "Physical Materials").

2054           21.2 Contractor and County agree that all plans, reports, Acceptance Test criteria,  
2055 Acceptance Test plans, the Detailed Work Plan, departmental procedures and processes,  
2056 Deliverables, data, and other written information (collectively, "County Materials") developed  
2057 under this Agreement for delivery to County and all copyrights, patent rights, trade secret rights,  
2058 moral rights and other proprietary rights therein shall be the sole property of County, and  
2059 Contractor hereby assigns and transfers to County all Contractor's right, title, and interest in and  
2060 to all such County Materials developed under this Agreement, provided that notwithstanding  
2061 such County ownership, Contractor may retain possession of all working papers prepared by  
2062 Contractor. Notwithstanding the foregoing (i) the above assignment shall not apply to any pre-  
2063 existing Contractor copyright, patent, trade secret, moral rights or other proprietary right in or to  
2064 the extent any such right is included or embodied in County Materials, which pre-existing rights  
2065 have been licensed to County pursuant to the License, and (ii) nothing in this Agreement shall  
2066 prohibit Contractor from creating, on behalf of other customers or for itself, without obligation to  
2067 County, any of the above-mentioned items even if such items are substantially similar, or  
2068 identical to, County Materials.

2069           21.3 Upon request of County, Contractor shall execute all documents requested by  
2070 County and shall perform all other acts requested by County to assign and transfer to, and vest  
2071 in, County all Contractor's right, title, and interest in and to the Physical Materials and the  
2072 County Materials, including, all copyrights, patents, trade secret rights, moral rights and other  
2073 proprietary rights. County shall have the right to register all copyrights and patents in the name  
2074 of the County of Los Angeles. Further, County shall have the right to assign, license, or  
2075 otherwise transfer any and all County's right, title, and interest, including, copyrights and  
2076 patents, in and to the County Materials.

2077           21.4 As requested in writing by County's Project Director, Contractor shall affix the  
2078 following notice to County Materials developed under this Agreement: "Copyright 2008, County  
2079 of Los Angeles. All Rights Reserved" (or such other applicable year of first development or  
2080 publication). Contractor shall affix such notice as directed by County.

2081           21.5 During the Term and for five (5) years thereafter, and without limiting Contractor's  
2082 obligations under Paragraphs 20 (Confidentiality) and 72 (Contractor's Obligations As A  
2083 Business Associate Under HIPAA and HITECH Act), Contractor shall maintain and provide  
2084 security for all Contractor's working papers prepared under this Agreement, and to protect such  
2085 working papers from loss or damage by any cause, including fire and theft. County shall have  
2086 the right to inspect any and all such working papers, make copies thereof, and use the working  
2087 papers and the information contained therein, for County purposes only.

2088           21.6 Any and all Physical Materials and County Materials which are developed or  
2089 were originally acquired by Contractor outside the scope of this Agreement, which Contractor  
2090 desires to use hereunder, and which Contractor considers to be proprietary or confidential, must  
2091 be specifically identified by Contractor to County's Project Director as proprietary or confidential,  
2092 and shall be plainly and prominently marked by Contractor as "PROPRIETARY" or  
2093 "CONFIDENTIAL". Without limiting the foregoing obligation of Contractor to mark proprietary  
2094 and confidential material, County recognizes that the System Software is proprietary and  
2095 confidential.

2096           21.7 Subject to Paragraph 19 (Public Records Act), County will use reasonable means  
2097 to ensure that Contractor's proprietary and confidential items are safeguarded and held in  
2098 confidence. County agrees not to reproduce, distribute, or disclose to non-County entities (other  
2099 than outside counsel or consultants subject to non-disclosure agreements or obligations)

2100 Contractor's proprietary and confidential material, including the Application Software, without the  
2101 prior written permission of Contractor or as required by law or pursuant to Paragraph 59  
2102 (Dispute Resolution Procedure).

2103 21.8 Notwithstanding any other provision of this Agreement, County shall not be  
2104 obligated in any way under this Agreement for:

2105 21.8.1 Any Contractor's proprietary and/or confidential items not plainly  
2106 and prominently marked with restrictive legends required pursuant to Paragraph 21.6;

2107 21.8.2 Any Physical Materials and County Materials covered under  
2108 Paragraphs 21.1, or 21.2; and

2109 21.8.3 Any disclosure of any County Materials or Physical Materials  
2110 which County is required to make under the California Public Records Act or otherwise by law.

2111 21.9 Contractor understands and agrees that it does not, by virtue of this Agreement  
2112 or otherwise, acquire any rights whatsoever with respect to any of the data or information placed  
2113 into, used within, or resulting from the use of, the System, and that as between Contractor and  
2114 County, County is and shall remain the sole and exclusive owner of all such data or information.

## 2115 **22. COMPLIANCE WITH APPLICABLE LAW**

2116 Contractor's activities in the performance of this Agreement, including the System  
2117 Software and all other Work provided hereunder, shall comply with all applicable federal, state,  
2118 and local laws, ordinances, rules, regulations, manuals, guidelines, policies, procedures and  
2119 directives applicable to its performance hereunder, including without limitation the ADA and the  
2120 Privacy and Security Regulations, and furthermore with all applicable Certification Commission  
2121 for Healthcare Information Technology (CCHIT), Title IV – Health Information Technology for  
2122 Economic and Clinical Health (HITECH) Act, and MHSA Capital Facilities and Technological  
2123 Needs Guidelines and regulations, and all provisions required thereby to be included in this  
2124 Agreement are hereby incorporated herein by reference. Contractor shall have up to thirty (30)  
2125 days to correct any noncompliance with County rules, regulations, ordinances, guidelines,  
2126 policies, procedures and directives following written notice from County thereof. Contractor  
2127 shall indemnify, defend, and hold harmless County Indemnitees in accordance with Paragraph  
2128 15.1 (General Indemnification) from and against any and all Liabilities arising from or related to  
2129 any violation on the part of Contractor, its employees, agents, or Subcontractors of any such  
2130 laws, rules, regulations, ordinances, guidelines, policies, procedures or directives.

## 2131 **23. FAIR LABOR STANDARDS**

2132 Contractor shall comply with all applicable provisions of the Federal Fair Labor  
2133 Standards Act, and shall indemnify, defend, and hold harmless County Indemnitees in  
2134 accordance with Paragraph 15.1 (General Indemnification) from any and all liability, including,  
2135 but not limited to, wages, overtime pay, liquidated damages, penalties, court costs and  
2136 attorneys' fees arising under, any wage and hour law, including, but not limited to, the Federal  
2137 Fair Labor Standards Act, for work performed by Contractor's employees or agents or  
2138 employees or agents of any Subcontractor for which County may be found jointly or solely  
2139 liable.  
2140

2141 **24. NONDISCRIMINATION, AFFIRMATIVE ACTION, AND ASSURANCE OF**  
2142 **COMPLIANCE WITH CIVIL RIGHTS LAWS**

2143 24.1 Contractor certifies and agrees that all persons employed by it, its affiliates,  
2144 subsidiaries, or holding companies are and shall be treated equally without regard to or because  
2145 of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital  
2146 status or political affiliation, in compliance with all applicable federal and state anti-discrimination  
2147 laws and regulations.

2148 24.2 Contractor shall certify to, and comply with, the provisions of Exhibit H  
2149 (Contractor's EEO Certification).

2150 24.3 Contractor shall take affirmative action to ensure that applicants are employed,  
2151 and that employees are treated during employment, without regard to race, color, religion,  
2152 ancestry, national origin, sex, age, physical or mental disability, marital status, or political  
2153 affiliation, in compliance with all applicable federal and state anti-discrimination laws and  
2154 regulations. Such action shall include, but is not limited to: employment, upgrading, demotion,  
2155 transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms  
2156 of compensation, and selection for training, including apprenticeship.

2157 24.4 Contractor certifies and agrees that it will deal with its Subcontractors, bidders, or  
2158 vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age,  
2159 or physical or mental disability, marital status, or political affiliation.

2160 24.5 Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding  
2161 companies shall comply with all applicable federal and state laws and regulations to the end that  
2162 no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age,  
2163 physical or mental disability, marital status, or political affiliation, be excluded from participation  
2164 in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement  
2165 or under any project, program, or activity supported by this Agreement.

2166 24.6 Contractor shall allow County representatives access to Contractor's  
2167 employment records during regular business hours to verify compliance with the provisions of  
2168 this Paragraph 24 when so requested by County.

2169 24.7 If County finds that any of the provisions of this Paragraph 24 have been  
2170 violated, such violation shall constitute a material breach of this Agreement upon which County  
2171 may terminate or suspend this Agreement. While County reserves the right to determine  
2172 independently that the anti-discrimination provisions of this Agreement have been violated, in  
2173 addition, a determination by the California Fair Employment Practices Commission or the  
2174 Federal Equal Employment Opportunity Commission that Contractor has violated federal or  
2175 state anti-discrimination laws or regulations shall constitute a finding by County that Contractor  
2176 has violated the anti-discrimination provisions of this Agreement.

2177 24.8 Without limiting Contractor's indemnification obligations or County's other  
2178 remedies hereunder, the parties agree that in the event Contractor violates any of the anti-  
2179 discrimination provisions of this Agreement, County shall, at its option, be entitled to the sum of  
2180 Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section  
2181 1671 as liquidated damages in lieu of terminating or suspending this Agreement.

2182 **25. COMPLIANCE WITH JURY SERVICE PROGRAM**

2183 25.1 This Agreement is subject to the provisions of County's ordinance entitled  
2184 Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010  
2185 through 2.203.090 of the Los Angeles County Code, a copy of which is attached hereto as  
2186 Exhibit S (Jury Service Ordinance).

2187 25.2 Unless Contractor has demonstrated to County's satisfaction either that  
2188 Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020  
2189 of the County Code) or that Contractor qualifies for an exception to the Jury Service Program  
2190 (Section 2.203.070 of the County Code), Contractor shall have and adhere to a written policy  
2191 that provides that its Employees (as defined in Paragraph 25.3) shall receive from Contractor,  
2192 on an annual basis, no less than five (5) days of regular pay for actual jury service. The policy  
2193 may provide that Employees deposit any fees received for such jury service with Contractor or  
2194 that Contractor deduct from the employee's regular pay the fees received for jury service.

2195 25.3 For purposes of this Paragraph 25, "Employee" means any California resident  
2196 who is a full-time employee of Contractor or any Subcontractor, and "Full-time" means 40 hours  
2197 or more worked per week, or a lesser number of hours if: (1) the lesser number is a recognized  
2198 industry standard as determined by County, or (2) Contractor has a long-standing practice that  
2199 defines the lesser number of hours as full-time. Full-time employees providing short-term,  
2200 temporary services of ninety (90) days or less within a 12-month period are not considered full-  
2201 time for purposes of the Jury Service Program. If Contractor uses any Subcontractor to perform  
2202 services for County under this Agreement, the Subcontractor shall also be subject to the  
2203 provisions of this Paragraph 25. The provisions of this Paragraph 25 shall be inserted into any  
2204 such subcontract agreement and a copy of the Jury Service Program shall be attached to the  
2205 agreement.

2206 25.4 If Contractor is not required to comply with the Jury Service Program when this  
2207 Agreement commences, Contractor shall have a continuing obligation to review the applicability  
2208 of its "exception status" from the Jury Service Program, and Contractor shall immediately notify  
2209 County if Contractor at any time either comes within the Jury Service Program's definition of  
2210 "Contractor" or if Contractor no longer qualifies for an exception to the Jury Service Program. In  
2211 either event, Contractor shall immediately implement a written policy consistent with the Jury  
2212 Service Program. County may also require, at any time during this Agreement and at its sole  
2213 discretion, that Contractor demonstrate to County's satisfaction that Contractor either continues  
2214 to remain outside of the Jury Service Program's definition of "Contractor" and/or that Contractor  
2215 continues to qualify for an exception to the Jury Service Program.

2216 25.5 Contractor's violation of this Paragraph 25 may constitute a material breach of  
2217 the Agreement. In the event of such material breach, County may, in its sole discretion,  
2218 terminate the Agreement and/or bar Contractor from the award of future County contracts for a  
2219 period of time consistent with the seriousness of the breach.

2220 **26. EMPLOYMENT ELIGIBILITY VERIFICATION**

2221 Contractor warrants that it fully complies with all federal and state statutes and  
2222 regulations regarding the employment of aliens and others and that all its employees performing  
2223 Work under this Agreement meet the citizenship or alien status requirements set forth in Federal  
2224 and State statutes and regulations, including but not limited to, the Immigration Reform and  
2225 Control Act of 1986 (P.L. 99-603).

2226 Contractor shall obtain, from all employees performing Work hereunder, all verification  
2227 and other documentation of employment eligibility status required by Federal statutes and  
2228 regulations as they currently exist and as they may be hereafter amended. Contractor shall  
2229 retain all such documentation for the period prescribed by law. Contractor shall indemnify,  
2230 defend, and hold harmless County Indemnitees in accordance with Paragraph 15.1 (General  
2231 Indemnification) from and against any and all Liabilities arising out of or in connection with any  
2232 employer sanctions and any other liability which may be assessed against Contractor or County  
2233 in connection with any alleged violation of any Federal or State statutes or regulations pertaining  
2234 to the eligibility for employment of any persons performing work hereunder.

2235 In the event Contractor fails to comply with the provisions of this Paragraph 26, County  
2236 may, in its sole discretion, terminate this Agreement in default in accordance with Paragraph 32  
2237 (Termination for Default).

## 2238 **27. WAIVER**

2239 No breach by Contractor of any provision of this Agreement can be waived except in  
2240 writing by the Board. No waiver by County of any breach of any provision of this Agreement  
2241 shall constitute a waiver of any other breach or of such provision. Failure of County to enforce  
2242 at any time, or from time to time, any provision of this Agreement shall not be construed as a  
2243 waiver thereof. The rights and remedies set forth in this Agreement shall not be exclusive and  
2244 are in addition to any other rights and remedies provided by law or under this Agreement.

2245 Without limitation of the foregoing, County may deduct from amounts otherwise payable  
2246 to Contractor hereunder County's uncompensated damages for Contractor's breach of any  
2247 provision hereof. The preceding sentence is intended only as a clarification of County's  
2248 remedies in the event of breach, and shall not be deemed to impair any claims that Contractor  
2249 may have against County or Contractor's rights to assert such claims pursuant to Paragraph 59  
2250 (Dispute Resolution Procedure).

## 2251 **28. GOVERNING LAW, JURISDICTION, AND VENUE**

2252 This Agreement shall be governed by, and construed in accordance with, the laws of the  
2253 State of California applicable to agreements made and to be performed within that State.  
2254 Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of  
2255 California (except with respect to claims that are subject to exclusive federal subject matter  
2256 jurisdiction, as to which Contractor agrees and consents to the exclusive jurisdiction of the  
2257 Federal District Court of the Central District of California) for all purposes regarding this  
2258 Agreement and further agrees and consents that venue of any action brought hereunder shall  
2259 be exclusively in the County of Los Angeles, California. As with respect to claims that are  
2260 subject to exclusive Federal subject matter jurisdiction, Contractor agrees and consents to the  
2261 exclusive jurisdiction of the Federal District Court of the Central District of California.

## 2262 **29. SEVERABILITY**

2263 If any provision of this Agreement is adjudged void invalid, or illegal for any reason  
2264 whatsoever, but would be valid if part of the wording thereof were deleted or changed, then  
2265 such provision shall apply with such modifications as may be necessary to make it valid and  
2266 effective. In the event that one or more of the provisions of this Agreement is found to be  
2267 invalid, illegal or unenforceable in any respect, such provision shall be deemed deleted here

2268 from and the validity, legality, and enforceability of the remaining provisions contained herein  
2269 shall not in any way be affected or impaired thereby.

2270 **30. HIRING OF EMPLOYEES**

2271 Contractor and County agree that, during the Term and for a period of one (1) year  
2272 thereafter, except with the prior written consent of the other party, neither party shall in any way  
2273 intentionally induce or persuade any employee of the other (including Contractor's Project  
2274 Director, Contractor's Project Manager, and all County Staff), to become an employee or agent  
2275 of the other party. Notwithstanding the foregoing, County shall be entitled to make offers of  
2276 employment to employees of Contractor necessary or desirable to perform work described in  
2277 this Agreement, in the event that: (1) County has the right to terminate this Agreement pursuant  
2278 to Paragraph 31 (Termination for Insolvency), (2) this Agreement is terminated by County due to  
2279 Contractor's default pursuant to Paragraph 32 (Termination for Default), (3) Contractor and  
2280 County have followed the dispute resolution procedure set forth in Paragraph 59 (Dispute  
2281 Resolution Procedure), and have otherwise exhausted other administrative remedies, if any, as  
2282 determined by County, or (4) Contractor either announces the withdrawal of support of, or  
2283 otherwise no longer provides services County deems essential to, the ongoing support of the  
2284 System. Nothing in this Paragraph shall limit either party's employees from responding to a job  
2285 opening that is publicly posted by the other party, nor limit the posting party from hiring such  
2286 employee.

2287 **31. TERMINATION FOR INSOLVENCY**

2288 31.1 County may terminate this Agreement immediately at any time following the  
2289 occurrence of any of the following:

2290 31.1.1 Contractor shall be deemed to be insolvent if it has ceased to pay or has  
2291 admitted in writing its inability to pay its debts for at least sixty (60) days in the ordinary course of  
2292 business or cannot pay its debts as they become due, whether or not a petition has been filed  
2293 under the United States Bankruptcy Code and whether or not Contractor is insolvent within the  
2294 meaning of the United States Bankruptcy Code, provided that Contractor shall not be deemed  
2295 insolvent if it has ceased in the normal course of business to pay its debts which are disputed in  
2296 good faith and which are not related to this Agreement as determined by County.

2297 31.1.2 The filing of a voluntary or involuntary petition (which involuntary petition  
2298 is not dismissed within sixty (60) days) regarding Contractor under the United States Bankruptcy  
2299 Code.

2300 31.1.3 The appointment of a receiver or trustee for Contractor.

2301 31.1.4 The execution by Contractor of a general assignment for the benefit of  
2302 creditors.

2303 31.2 The rights and remedies of County provided in this Paragraph 31 shall not be  
2304 exclusive and are in addition to any other rights and remedies provided by law or under this  
2305 Agreement.

2306 31.3 Contractor agrees that if Contractor as a debtor-in-possession, or if a trustee in  
2307 bankruptcy, rejects this Agreement, County may elect to retain its rights under this Agreement,  
2308 as provided under Section 365(n) of the United States Bankruptcy Code (11 United States

2309 Code, Section 365(n)). Upon written request of County to Contractor or the trustee in  
2310 bankruptcy, as applicable, Contractor or such trustee shall allow County to exercise all of its  
2311 rights and benefits under this Agreement including, such Section 365(n) (including, the right to  
2312 continued use of all source and Object Code versions of the System Software and related  
2313 Documentation), and shall not interfere with the rights and benefits of County as provided  
2314 therein. Furthermore, failure by County to assert its rights to “retain its benefits” under the  
2315 Agreement pursuant to 11 U.S.C. § 365(n)(1)(B) shall not be construed by either Party or by a  
2316 court as a termination of the Agreement by County under 11 U.S.C. § 365(n)(1)(A). The  
2317 foregoing shall survive the termination or expiration of this Agreement for any reason  
2318 whatsoever.

2319 **32. TERMINATION FOR DEFAULT**

2320 32.1 County may, by written notice to Contractor, terminate the whole or any part of  
2321 this Agreement in any one of the following circumstances:

2322 32.1.1 If Contractor fails to perform or provide any Work within the times  
2323 specified (i) in this Agreement, including the applicable notice and/or cure periods, if any (if no  
2324 cure period is specified in the Agreement, Contractor shall have fifteen (15) days to cure prior to  
2325 termination under this Paragraph 32.1.1), provided that nothing in this Paragraph 32.1.1 shall in  
2326 any way limit or modify any rights of County or obligations of Contractor relating to timely  
2327 performance by Contractor as otherwise set forth in this Agreement); or

2328 32.1.2 Immediately upon notice to Contractor if on two separate occasions in  
2329 any single calendar month, or more than four times in the aggregate, during the Term, if  
2330 Contractor fails to timely correct a Deficiency pursuant to the service level of support set forth in  
2331 Exhibit D (Maintenance and Support Services); or

2332 32.1.3 If Contractor fails to perform or comply with any of the other provisions of  
2333 this Agreement, or so fails to make progress as to endanger performance of this Agreement in  
2334 accordance with its terms and, in either of these two circumstances, does not cure such failure  
2335 within a period of fifteen (15) days (or such longer period as County may authorize in writing)  
2336 after receipt of written notice from County specifying such failure; provided that (i) Contractor  
2337 shall not be entitled to any cure period, and County may terminate immediately, in the case of a  
2338 failure to successfully and timely complete any Key Deliverable, including any Milestone, or in  
2339 the event that Contractor's failure to perform or comply is not reasonably capable of being cured,  
2340 and (ii) that the above cure periods shall in no way apply to the calculation of the credits to  
2341 County described in Paragraph 7.3 (Credits to County). If, pursuant to the preceding sentence,  
2342 County has terminated this Agreement without providing a cure period, and subsequently a final  
2343 determination is made that the default was capable of being cured, then the rights and  
2344 obligations of the parties shall be the same as if the notice of termination had been issued  
2345 pursuant to Paragraph 34 (Termination for Convenience).

2346 32.2 In the event that County terminates this Agreement in whole or in part as  
2347 provided in Paragraph 31 (Termination for Insolvency) or this Paragraph 32, then:

2348 32.2.1 County shall have the right, for all Users, and to the extent necessary to  
2349 continue operations, to continued use of all Object Code versions of the System Software for the  
2350 remainder of the term of the System Software license granted to County pursuant to Paragraph  
2351 10.2 (License), and County shall have the right to allow County Staff, Contractors and all Users  
2352 to utilize all such Object Code versions and related Documentation;

2353 32.2.2 County shall have the rights set forth in Paragraphs 10.2 (License) and  
2354 10.3 (Source Code) to access and use the Source Code as set forth therein, including the right to  
2355 modify all source and Object Code versions of the System Software after such time as one of the  
2356 Release Conditions has occurred which would permit County to use the Source Code;

2357 32.2.3 County shall have the right to procure, upon such terms and in such a  
2358 manner as County may deem appropriate, goods, services, and other work, similar to those so  
2359 terminated, and Contractor shall be liable to County for, and shall promptly pay to County by  
2360 cash payment, any and all excess costs incurred by County, as determined by County, to  
2361 procure and furnish such similar goods, services, and other work;

2362 32.2.4 Contractor and County shall continue the performance of this Agreement  
2363 to the extent not terminated under the provisions of Paragraph 31 (Termination for Insolvency)  
2364 and/or this Paragraph 32; and

2365 32.2.5 Contractor shall comply with the requirements of Paragraph 35 (Post-  
2366 Termination Procedure), including but not limited to performing transition services as set forth in  
2367 Paragraph 35.2 (Transition Services) at Contractor's expense.

2368 32.3 Except with respect to defaults of any Subcontractor(s), Contractor shall not be  
2369 liable for excess costs as set forth in Paragraph 32.2.3, if its failure to perform this Agreement  
2370 arises out of fires, floods, epidemics, quarantine restrictions, other Acts of God, strikes or freight  
2371 embargoes, but in every such case the failure to perform must be totally beyond the control and  
2372 without any fault or negligence of Contractor. If the failure to perform is caused by the default of  
2373 a Subcontractor, and if such default arises out of causes beyond the control of both Contractor  
2374 and Subcontractor, and without any fault or negligence of either of them, Contractor shall not be  
2375 liable for any such excess costs for failure to perform, unless the goods or services to be  
2376 furnished by the Subcontractor were obtainable from other sources in sufficient time to permit  
2377 Contractor to meet the required performance schedule. Contractor agrees to use all reasonable  
2378 commercial efforts to obtain such goods or services from other sources. As used in this  
2379 Paragraph 32.3, the terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) at any  
2380 tier.

2381 32.4 If, after County has given notice of termination under the provisions of this  
2382 Paragraph 32, it is determined by County that Contractor was not in default under the provisions  
2383 of this Paragraph 32, or that the default was excusable under the provisions of this Paragraph  
2384 32, the rights and obligations of the parties shall be the same as if the notice of termination had  
2385 been issued pursuant to Paragraph 34 (Termination for Convenience).

2386 32.5 The rights and remedies of County provided in this Paragraph 32 shall not be  
2387 exclusive and are in addition to any other rights and remedies provided by law or under this  
2388 Agreement.

### 2389 **33. TERMINATION FOR IMPROPER CONSIDERATION**

2390 County may, by written notice to Contractor, immediately terminate the right of  
2391 Contractor to proceed under this Agreement, if it is found that consideration, in any form, was  
2392 offered or given by Contractor, either directly or through an intermediary, to any County officer,  
2393 County Staff, or other County agent with the intent of securing this Agreement or securing  
2394 favorable treatment with respect to the award, amendment or extension of this Agreement, or  
2395 the making of any determinations with respect to Contractor's performance pursuant hereto. In

2396 the event of such termination, County shall be entitled to pursue the same remedies against  
2397 Contractor as it could pursue in the event of default by Contractor.

2398 Contractor shall immediately report any attempt by a County officer or County Staff to  
2399 solicit such improper consideration. The report shall be made either to a County manager  
2400 charged with the supervision of the County Staff or to County Auditor Controller's Employee  
2401 Fraud Hotline at (213) 974-0914 or (800) 544-6861 or via Internet at [www.lacountyfraud.org](http://www.lacountyfraud.org).

2402 Among other items, such improper consideration may take the form of cash, discounts,  
2403 service, the provision of travel or entertainment, or tangible gifts.

2404 **34. TERMINATION FOR CONVENIENCE**

2405 34.1 This Agreement may be terminated, in whole or in part, from time to time, when  
2406 such action is deemed by County to be in its best interest. Termination of Work hereunder shall  
2407 be effected by delivery to Contractor of a notice of termination specifying the extent to which  
2408 performance of work is terminated and the date upon which such termination becomes effective.  
2409 The date upon which such termination becomes effective shall be no less than thirty (30) days  
2410 after the notice is sent, provided that in the event County has purported to terminate this  
2411 Agreement for default by notice pursuant to Paragraph 32 (Termination for Default) and it has  
2412 later been determined that Contractor was not in default, no additional notice shall be required  
2413 upon such determination.

2414 34.2 In the event of a termination or partial termination pursuant to this Paragraph 34,  
2415 Contractor shall comply with the requirements of Paragraph 35 (Post-Termination Procedure),  
2416 including but not limited to performing transition services as set forth in Paragraph 35.2  
2417 (Transition Services).

2418 34.3 For the avoidance of doubt, County's rights to completed Work (and to any Work  
2419 continuing in the event of a partial termination) shall be unaffected in the event of a termination  
2420 under this Paragraph 34. By way of example and without limiting County's other rights  
2421 hereunder, this includes:

2422 34.3.1 County shall have the right, for all Users, and to the extent necessary to  
2423 continue operations, to the continued use of all Object Code versions of the System Software for  
2424 the remainder of the term of the System Software license granted to County pursuant to  
2425 Paragraph 10.2 (License), and County shall have the right to allow County Staff, Contractors and  
2426 all Users to utilize all such Object Code versions and related Documentation; and

2427 34.3.2 County shall have the rights set forth in Paragraphs 10.2 (License) and  
2428 10.3 (Source Code) to access and use the Source Code as set forth therein, including the right to  
2429 modify all source and Object Code versions of the System Software after such time as one of the  
2430 Release Conditions has occurred which would permit County to use the Source Code.

2431 34.4 Nothing in this Paragraph 34 shall be deemed to prejudice any right of Contractor  
2432 to make a claim against County in accordance with applicable law and regular County  
2433 procedures for payment for work performed through the effective date of County's termination of  
2434 this Agreement for convenience.

2435 34.5 For a period of five (5) years after final settlement under this Agreement,  
2436 Contractor shall make available to County, at all reasonable times, all its books, records,

2437 documents, or other evidence bearing on the costs and expenses of Contractor under this  
2438 Agreement with respect to the termination of work hereunder. All such material shall be  
2439 maintained by Contractor at a location in Los Angeles County, provided that if such material is  
2440 located outside Los Angeles County, then, at County's option, Contractor shall pay County for  
2441 travel, per diem, and other costs incurred by County to examine, audit, excerpt, copy or  
2442 transcribe such material at such other location.

2443 **35. POST-TERMINATION PROCEDURE**

2444 35.1 General. Upon receipt of a notice of termination from County, or otherwise at the  
2445 end of the Term, and except to the extent otherwise expressly directed by County, in addition to  
2446 those obligations set forth in Paragraph 32 (Termination for Default) and elsewhere in this  
2447 Agreement, Contractor shall:

2448 35.1.1 Stop Work under this Agreement on the date and to the extent  
2449 specified in such notice if applicable;

2450 35.1.2 Transfer title to all System Components to County pursuant to the  
2451 terms of this Agreement;

2452 35.1.3 Return to County all County Materials and County Confidential  
2453 Data that relate to that portion of the Agreement and work terminated by County;

2454 35.1.4 Transfer title and deliver to County all other completed Work and  
2455 Work in process not including title as described in 35.1.2 above; and

2456 35.1.5 Complete performance of such part of the Work as shall not have  
2457 been terminated by such notice on a timely basis and otherwise fully in accordance with  
2458 Agreement.

2459 35.2 Transition Services. Contractor understands and agrees that County has  
2460 obligations that it cannot satisfy without use of the System or an equivalent system, and that a  
2461 failure to satisfy such obligations could result in irreparable injury to County and the patients and  
2462 other entities it serves. Contractor agrees that upon notice of termination of this Agreement, or  
2463 otherwise commencing one hundred and twenty (120) days prior to the natural expiration  
2464 hereof, Contractor shall perform transition services as set forth in Task 11.0 (System Close-  
2465 Out/Shut-Down) of the Statement of Work, and shall invoice County for such transition services  
2466 determined in accordance with the rate for Fixed Price Professional Services as set forth in  
2467 Section V (Other Professional Services) of Exhibit C (Price and Schedule of Payments), in  
2468 accordance with a transition plan to be agreed upon, in advance, by County's Project Director  
2469 and Contractor's Project Director. Contractor further agrees that in the event County terminates  
2470 the Agreement for any breach by Contractor (e.g., pursuant to Paragraphs 32 (Termination for  
2471 Default) or Paragraph 33 (Termination for Improper Consideration)), Contractor shall perform all  
2472 such transition services at its own expense. In connection with the provision of any transition  
2473 services pursuant to this Paragraph 35.2, Contractor shall provide to County's Project Director,  
2474 on request by County's Project Director, documentation that reasonably details the source and  
2475 amount of the expenses Contractor purports to have incurred in the provision of such transition  
2476 services.

2477 35.3 Nothing in this Paragraph 35 shall be deemed to prejudice any right of Contractor  
2478 to make a claim against County in accordance with applicable law and regular County

2479 procedures for payment for Work performed through the effective date of County's termination  
2480 of this Agreement for convenience.

2481 **36. NOTICE OF DELAYS**

2482 In the event Contractor determines at any time that failure, delay or inadequacy of  
2483 performance of any of County's obligations hereunder may prevent or tend to prevent  
2484 Contractor from completing any of Contractor's obligations in a timely manner or may cause or  
2485 tend to cause Contractor to incur additional or unanticipated costs or expenses, Contractor shall  
2486 promptly following such determination (and without limiting Contractor's obligation of prompt  
2487 notification, in any event within fifteen (15) days following such determination), notify County's  
2488 Project Director in writing, which notice shall specify in reasonable detail: (1) any alleged  
2489 failure, delay or inadequacy of performance by County and (2) to the best knowledge of  
2490 Contractor after due inquiry and analysis, the estimated impact of such alleged failure, delay or  
2491 inadequacy on the performance of Contractor's obligations, including, any estimated delay and  
2492 any estimated amount of additional or unanticipated costs or expenses that may be incurred. In  
2493 the event that Contractor fails to fulfill any of its obligations in a timely manner as a direct result  
2494 of a failure, delay or inadequacy of performance of any of County's obligations after timely  
2495 written notice to County by Contractor of such failure, delay or inadequacy of performance, then  
2496 the date for Contractor's completion of such obligation may be appropriately extended, as  
2497 determined in the sole discretion of County's Project Director in accordance with Paragraph 6.6.  
2498 Contractor shall take all reasonable actions to mitigate or reduce any delays. In the event  
2499 Contractor fails to notify County in writing of any alleged failure, delay or inadequacy of  
2500 performance in a timely manner as set forth in this Paragraph 36, Contractor shall not be  
2501 entitled to rely upon such alleged failure, delay or inadequacy of performance for any purpose  
2502 whatsoever, including, but not limited to, as a purported justification for either: (1) claiming that  
2503 Contractor is entitled to receive any additional payments from County hereunder or (2) failing to  
2504 fulfill any of Contractor's obligations in a timely manner. This Paragraph 36 shall not be  
2505 interpreted or construed as expanding in any manner or to any extent the financial obligations of  
2506 County under this Agreement.

2507 **37. CONFLICT OF INTEREST**

2508 37.1 No County Staff whose position with County enables such person to influence  
2509 the award of this Agreement or any competing agreement, and no spouse or economic  
2510 dependent of such County Staff, shall be employed in any capacity by Contractor or any  
2511 Subcontractor have any other direct or indirect financial interest in this Agreement. No officer or  
2512 employee of Contractor or any Subcontractor, who may financially benefit from the performance  
2513 of Work hereunder, shall in any way participate in County's approval, or ongoing evaluation, of  
2514 such Work, or in any way attempt to unlawfully influence County's approval or ongoing  
2515 evaluation of such Work.

2516 37.2 Contractor and all Subcontractors shall comply with all conflict of interest laws,  
2517 ordinances and regulations now in effect or hereafter to be enacted during the Term. Contractor  
2518 warrants that it is not now aware of any facts which do or could create a conflict of interest. If  
2519 Contractor hereafter becomes aware of any facts which might reasonably be expected to create  
2520 a conflict of interest, it shall immediately make full written disclosure of such facts to County.  
2521 Full written disclosure shall include, but is not limited to, identification of all persons implicated  
2522 and a complete description of all relevant circumstances.

2523 37.3 Failure by Contractor to comply with the provisions of this Paragraph 37 shall  
2524 constitute a material breach of this Agreement.

2525 **38. DAMAGE TO COUNTY PROPERTY**

2526 38.1 Contractor shall repair, or cause to be repaired, at its own cost, any and all  
2527 damage to County Facilities, buildings or grounds caused by Contractor or employees, agents  
2528 or Subcontractors of Contractor. Such repairs shall be made immediately after Contractor has  
2529 become aware of such damage, but in no event later than thirty (30) days after the earlier of  
2530 discovery by Contractor or notice to Contractor of discovery by County.

2531 38.2 Contractor at its own cost, shall repair, cause to be repaired, or replace at  
2532 County's sole discretion, any and all County property that is damaged by Contractor, or  
2533 employees or agents of Contractor including any Subcontractor, directly or indirectly including  
2534 but not limited to System Hardware, System Software, office machines, office equipment, and/or  
2535 furniture. Such repairs or replacements shall be made immediately after Contractor has  
2536 become aware of such damage, but in no event later than thirty (30) days after the earlier of  
2537 discovery by Contractor or notice to Contractor of discovery by County.

2538 38.3 If Contractor fails to make timely repairs pursuant to this Paragraph 38, County  
2539 may make any necessary repairs. All costs incurred by County, as determined by County, for  
2540 such repairs shall be repaid by Contractor by cash payment upon demand, or without limitation  
2541 of all County's other rights and remedies provided by law or under this Agreement, County may  
2542 deduct such costs from any amounts due to Contractor from County under this Agreement.

2543 **39. UNLAWFUL SOLICITATION**

2544 Contractor shall inform all of its employees who provide services hereunder of the  
2545 provisions of Article 9 of Chapter 4 of Division 3 (commencing with Section 6150) of the  
2546 California Business and Professions Code (i.e., State Bar Act provisions regarding unlawful  
2547 solicitation as a runner or capper for attorneys) and shall take positive and affirmative steps in  
2548 its performance hereunder to ensure that there is no violation of such provisions by its  
2549 employees. Contractor shall utilize the attorney referral service of all those bar associations  
2550 within Los Angeles County that have such a service.

2551 **40. OTHER PROVIDERS**

2552 Contractor acknowledges that Contractor is not necessarily the exclusive provider to  
2553 County of the System and related services as described hereunder or otherwise, and that  
2554 County has, or may enter into, contracts with other providers.

2555 **41. RESOLICITATION OF BIDS OR PROPOSALS**

2556 41.1 Contractor acknowledges that, prior to the expiration or earlier termination of this  
2557 Agreement, County, in its sole discretion, may exercise its right to invite bids or request  
2558 proposals for the continued provision of the goods and services delivered or contemplated  
2559 under this Agreement. DMH shall make the determination to re-solicit bids or request proposals  
2560 in accordance with applicable County and DMH policies.

2561 41.2 Contractor acknowledges that County, in its sole discretion, may enter into a  
2562 contract for the future provision of goods and services, based upon the bids or proposals

2563 received, with a provider or providers other than Contractor. Further, Contractor acknowledges  
2564 that it obtains no greater right to be selected through any future invitation for bids or request for  
2565 proposals by virtue of its present status as Contractor.

2566 **42. CONTRACTOR'S OFFICES**

2567 Contractor's business offices are located at \_\_\_\_\_. Contractor shall notify in  
2568 writing Department of Mental Health, Chief Information Office Bureau, 695 South Vermont  
2569 Avenue, 7<sup>th</sup> Floor, Los Angeles, California, 90005, of any change in its business address at least  
2570 ten (10) days prior to the Effective Date thereof.

2571 **43. VALIDITY**

2572 The invalidity in whole or in part of any provision of this Agreement shall not void or  
2573 affect the validity of any other provision, unless the essential purposes of this Agreement shall  
2574 be materially impaired thereby.

2575 **44. RESTRICTIONS ON LOBBYING**

2576 Contractor and each County lobbyist or County lobbying firm as defined in Los Angeles  
2577 County Code Section 2.160.010, retained by Contractor, shall fully comply with County Lobbyist  
2578 Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of Contractor or any  
2579 County lobbyist or County lobbying firm retained by Contractor to fully comply with County  
2580 Lobbyist Ordinance shall constitute a material breach of this Agreement upon which County  
2581 may immediately terminate or suspend this Agreement.

2582 To the extent Federal funds are to be used to pay for a portion of Contractor's Work  
2583 under this Agreement, Contractor shall also fully comply with all certification and disclosure  
2584 requirements prescribed by Section 319 of Public Law 101-121 (31 United States Code Section  
2585 1352) and any implementing regulations, and shall ensure that each of its Subcontractors  
2586 receiving funds provided under this Agreement also fully comply with all such certification and  
2587 disclosure requirements.

2588 **45. CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR**  
2589 **LAYOFFS/OR RE-EMPLOYMENT LIST**

2590 Should Contractor require additional or replacement personnel after the Effective Date to  
2591 perform the Work set forth herein, Contractor shall give first consideration for such employment  
2592 openings to qualified, permanent County employees who are targeted for layoff or qualified,  
2593 former County employees who are on a re-employment list during the Term.

2594 **46. CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS**

2595 Should Contractor require additional or replacement personnel after the Effective Date,  
2596 Contractor shall give consideration for any such employment openings to participants in  
2597 County's Department of Public Social Services Greater Avenues for Independence (GAIN)  
2598 Program or General Relief Opportunity for Work (GROW) Program who meet Contractor's  
2599 minimum qualifications for the open position. For this purpose, consideration shall mean that  
2600 Contractor will interview qualified candidates. County will refer GAIN/GROW participants by job  
2601 category to Contractor.

2602 In the event that both laid-off County employees and GAIN/GROW participants are  
2603 available for hiring, County employees shall be given first priority.

2604 **47. NONDISCRIMINATION IN SERVICES**

2605 47.1 Contractor shall not discriminate in the provision of Work hereunder because of  
2606 race, color, religion, national origin, ancestry, sex, age, physical or mental handicap, marital  
2607 status, sexual orientation or political affiliation in accordance with all applicable requirements of  
2608 federal and state law. For the purpose of this Paragraph 47, discrimination in the provision of  
2609 Work may include, the following: denying any person any service or benefit or the availability of  
2610 the facility, providing any service or benefit to any person which is not equivalent or is not  
2611 provided in an equivalent manner or at an equivalent time to that provided to others; subjecting  
2612 any person to segregation or separate treatment in any manner related to the receipt of any  
2613 service; restricting any person in any way in the enjoyment of any advantage or privilege  
2614 enjoyed by others receiving any service or benefit; and treating any person differently from  
2615 others in determining admission, enrollment quota, eligibility, membership, or any other  
2616 requirements or conditions which persons must meet in order to be provided any service or  
2617 benefit.

2618 47.2 Contractor shall ensure that recipients of Work under this Agreement are  
2619 provided such Work without regard to race, color, religion, national origin, ancestry, sex, age,  
2620 condition of physical or mental handicap, marital status, sexual orientation, or political affiliation.

2621 **48. STAFF PERFORMANCE WHILE UNDER THE INFLUENCE**

2622 Contractor shall use reasonable efforts to ensure that no employee will perform Work  
2623 hereunder while under the influence of any alcoholic beverage, medication, narcotic, or other  
2624 substance, whether prescribed or otherwise, which might impair such person's physical or  
2625 mental performance.

2626 **49. CONTRACTOR PERFORMANCE DURING CIVIL UNREST AND DISASTER**

2627 Contractor recognizes that County provides services essential to the residents of the  
2628 communities it serves, and that the services offered by the Department are of particular  
2629 importance at the time of a riot, insurrection, civil unrest, natural disaster or similar event.  
2630 Notwithstanding any other provision of this Agreement, full performance by Contractor during  
2631 any riot, insurrection, civil unrest, natural disaster or similar event is not excused if such  
2632 performance remains physically possible without related danger to Contractor's or its  
2633 Subcontractors' employees and suppliers. During any such event in which the health or safety  
2634 of any of Contractor's staff members would be endangered by performing their services on-site,  
2635 such staff members may perform any or all of their services remotely. Failure to comply with  
2636 this requirement shall be considered a material breach of this Agreement by Contractor, for  
2637 which County may immediately terminate this Agreement.

2638 **50. CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT**  
2639 **COMPLIANCE PROGRAM**

2640 Contractor acknowledges that County has established a goal of ensuring that all  
2641 individuals who benefit financially from County through contract are in compliance with their  
2642 court-ordered child, family, and spousal support obligations in order to mitigate the economic  
2643 burden otherwise imposed upon County and its taxpayers.

2644 As required by County's Child Support Compliance Program (CSCP) (County Code  
2645 Chapter 2.200) and without limiting Contractor's duty under this Agreement to comply with all  
2646 applicable provisions of law, Contractor warrants that it is now in compliance and shall during  
2647 the term of this Agreement maintain in compliance with employment and wage reporting  
2648 requirements as required by the Federal Social Security Act (42 U.S.C. Section 653a) and  
2649 California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully  
2650 served Wage and Earnings Withholdings Orders or Child Support Service Department (CSSD)  
2651 Notices of Wage and Earnings Assignment for Child, Family, or Spousal Support, pursuant to  
2652 Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

2653 **51. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH**  
2654 **COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

2655 Failure of Contractor to maintain compliance with the requirements set forth in  
2656 Paragraph 50 (Contractor's Warranty of Adherence to County's Child Support Compliance  
2657 Program) shall constitute default under this Agreement. Without limiting the rights and remedies  
2658 available to County under any other provision of this Agreement, failure of Contractor to cure  
2659 such default within ninety (90) calendar days of written notice shall be grounds upon which  
2660 County may terminate this Agreement pursuant to Paragraph 32 (Termination for Default) and  
2661 pursue debarment of Contractor, pursuant to County Code Chapter 2.202.

2662 **52. CONTRACTOR'S ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO CHILD**  
2663 **SUPPORT ENFORCEMENT**

2664 Contractor acknowledges that County places a high priority on the enforcement of child  
2665 support laws and the apprehension of child support evaders. Contractor understands that it is  
2666 County's policy to encourage all County contractors to voluntarily post County's "L.A.'s Most  
2667 Wanted: Delinquent Parents" poster in a prominent position at Contractor's place of business.  
2668 County's Child Support Services Department ("CSSD") will supply Contractor with the poster to  
2669 be used.

2670 **53. DELIVERY AND RISK OF LOSS**

2671 Contractor shall bear the full risk of loss due to total or partial destruction of the System  
2672 Software as follows:

2673 53.1 In the case of any System Component to be installed by County, until such item  
2674 has been unloaded by the carrier at the destination County Facility and signed for by County;  
2675 and

2676 53.2 In the case of any System Component to be installed by Contractor or any third  
2677 party, until such item is installed at its respective designated County Facility and approved by  
2678 County, except that County shall bear the full risk of any damage or destruction of any item of  
2679 System Software which occurs commencing at the time such item has been unloaded by the  
2680 carrier at the destination site and signed for by County, and ending at the time Contractor or  
2681 third party commences to unpack the item at the respective designated site.

2682 **54. ACCESS TO COUNTY FACILITIES**

2683 Contractor, its employees and agents, will be granted access to County Facilities,  
2684 subject to Contractor's prior notification to County's Project Director, for the purpose of

2685 executing Contractor's obligations hereunder. Access to County Facilities shall be restricted to  
2686 normal business hours on Working Days. Access to County Facilities outside of normal  
2687 business hours and on other than Working Days must be approved in writing in advance by  
2688 County's Project Director, which approval will not be unreasonably withheld. Contractor shall  
2689 have no tenancy, or any other property or other rights in County Facilities. While present at  
2690 County Facilities, Contractor's personnel shall be accompanied by County personnel at all  
2691 times, unless this requirement is waived in writing prior to such event by County's Project  
2692 Director.

2693 **55. COUNTY FACILITY OFFICE SPACE**

2694 In order for Contractor to perform services hereunder and only for the performance of  
2695 such services, County will, subject to County's standard administrative and security  
2696 requirements, provide Contractor with office space and equipment, as determined in the sole  
2697 judgment of County's Project Director, at County Facilities, on a non-exclusive use basis.  
2698 County shall also provide Contractor with reasonable telephone service in such office space for  
2699 use only for purposes of this Agreement. County disclaims any and all responsibility for the  
2700 loss, theft or damage of any property or material left at such County office space by Contractor  
2701 or any Subcontractor or their respective personnel or agents. Contractor shall comply with  
2702 County safety and security policies and practices while on County property.

2703 **56. SYSTEM USE**

2704 Following installation by Contractor and prior to Final System Acceptance by County,  
2705 County shall have the right to use, in a Production Use mode, any completed portion of the  
2706 System, without any additional cost to County where County determines that it is necessary for  
2707 County operations. Such Production Use shall not restrict Contractor's performance under this  
2708 Agreement and shall not be deemed Final System Acceptance.

2709 **57. LICENSES, PERMITS, REGISTRATIONS, ACCREDITATIONS, AND CERTIFICATES**

2710 Contractor shall obtain and maintain in effect during the Term all licenses, permits,  
2711 registrations, accreditations, and certificates required by all Federal, State, and local laws,  
2712 ordinances, rules, regulations, guidelines, and directives, which are applicable to Contractor's  
2713 services under this Agreement. Contractor shall further ensure that all of its officers, employees,  
2714 agents, and Subcontractors who perform services hereunder, shall obtain and maintain in effect  
2715 during the Term all licenses, permits, registrations, accreditations, and certificates which are  
2716 applicable to their performance hereunder. A copy of each such license, permit, registration,  
2717 accreditation, and certificate required by all applicable federal, state, and local laws, ordinances,  
2718 rules, regulations, guidelines, and directives shall be provided, in duplicate, to Department of  
2719 Mental Health, Chief Information Office Bureau, 695 South Vermont Avenue, 7<sup>th</sup> Floor, Los  
2720 Angeles, California, 90005.

2721 **58. PHYSICAL ALTERATIONS**

2722 Contractor shall not in any way physically alter or improve any County Facility without  
2723 the prior written approval of Director, County's Project Director, County's Project Manager, and  
2724 County's Director of Internal Services Department, in their sole discretion. Any such alterations  
2725 without the requisite approval may, at County's discretion, be treated as damage pursuant to  
2726 Paragraph 38 (Damage to County Property).

2727 **59. DISPUTE RESOLUTION PROCEDURE**

2728 59.1 Contractor and County agree to act immediately to mutually resolve any disputes  
2729 which may arise with respect to this Agreement. All such disputes shall be subject to the  
2730 provisions of this Paragraph 59. Time is of the essence in the resolution of disputes.

2731 59.2 Contractor and County agree that, the existence and details of a dispute  
2732 notwithstanding, both parties shall continue without delay their performance hereunder, except  
2733 for any performance which County, in its sole discretion, determines should be delayed as a  
2734 result of such dispute.

2735 59.3 If Contractor fails to continue without delay its performance hereunder which  
2736 County, in its sole discretion, determines should not be delayed as a result of such dispute, then  
2737 any additional costs which may be incurred by Contractor or County as a result of Contractor's  
2738 failure to continue to so perform shall be borne by Contractor, and Contractor shall make no  
2739 claim whatsoever against County for such costs. Contractor shall promptly reimburse County  
2740 for such County costs, as determined by County, or County may deduct all such additional costs  
2741 from any amounts due to Contractor from County.

2742 59.4 If County fails to continue without delay to perform its responsibilities under this  
2743 Agreement which County, in its sole discretion, determines should not be delayed as a result of  
2744 such dispute, then any additional costs incurred by Contractor or County as a result of County's  
2745 failure to continue to so perform shall be borne by County, and County shall make no claim  
2746 whatsoever against Contractor for such costs. County shall promptly reimburse Contractor for  
2747 all such additional Contractor costs subject to the approval of such costs by County.

2748 59.5 In the event of any dispute between the parties with respect to this Agreement,  
2749 Contractor and County shall submit the matter to their respective Project Managers for the  
2750 purpose of endeavoring to resolve such dispute.

2751 59.6 In the event that the Project Managers are unable to resolve the dispute within a  
2752 reasonable time not to exceed ten (10) days from the date of submission of the dispute, then the  
2753 matter shall be immediately submitted to the parties' respective Project Directors (with a copy to  
2754 the Director) for further consideration and discussion to attempt to resolve the dispute.

2755 59.7 In the event that the Project Directors are unable to resolve the dispute within a  
2756 reasonable time not to exceed ten (10) days from the date of submission of the dispute, then the  
2757 matter shall be immediately submitted to Contractor's Vice President or General Manager and  
2758 County's Chief Deputy Director, Department of Mental Health. These persons shall have ten  
2759 (10) days to attempt to resolve the dispute.

2760 59.8 In the event that Contractor's Vice President or General Manager and County's  
2761 Chief Deputy to the Director are unable to resolve the dispute within a reasonable time not to  
2762 exceed ten (10) days from the date of submission of the dispute, then the matter shall be  
2763 immediately submitted to Contractor's President and the Director. These persons shall have ten  
2764 (10) days to attempt to resolve the dispute.

2765 59.9 In the event that at these levels, there is not a resolution of the dispute  
2766 acceptable to both parties, then each party may assert its other rights and remedies provided  
2767 under this Agreement and/or its rights and remedies as provided by law.

2768 59.10 All disputes utilizing this dispute resolution procedure shall be documented in  
2769 writing by each party and shall state the specifics of each alleged dispute and all actions taken.  
2770 The parties shall act in good faith to resolve all disputes. At all three (3) levels described in this  
2771 Paragraph 59, the efforts to resolve a dispute shall be undertaken by conference between the  
2772 parties' respective representatives, either orally, by face-to-face meeting or by telephone, or in  
2773 writing by exchange of correspondence.

2774 59.11 Notwithstanding any other provision of this Agreement, County's right to  
2775 terminate this Agreement pursuant to Paragraph 31 (Termination for Insolvency), Paragraph 32  
2776 (Termination for Default), Paragraph 33 (Termination for Improper Consideration), Paragraph 34  
2777 (Termination for Convenience), or any other termination provision hereunder, and County's right  
2778 to seek injunctive relief to enforce the provisions of Paragraphs 21 (Proprietary Considerations)  
2779 and 20 (Confidentiality), shall not be subject to this Dispute Resolution Procedure. The  
2780 preceding sentence is intended only as a clarification of County's rights, and shall not be  
2781 deemed to impair any claims that Contractor may have against County or Contractor's rights to  
2782 assert such claims after any such termination or such injunctive relief has been obtained.

## 2783 **60. NEW TECHNOLOGY**

2784 Contractor and County acknowledge the probability that the technology applicable to the  
2785 System will change and improve during the Term. County desires the flexibility to incorporate  
2786 into the System new technologies as they may become available. Accordingly, Contractor's  
2787 Project Manager shall, promptly upon discovery and on a continuing basis, apprise County's  
2788 Project Manager of all such new technologies. Specifically, upon County's request, Contractor  
2789 shall provide, in writing, a description of such new technologies, methodologies and techniques,  
2790 indicating the advantages and disadvantages of incorporating same into the System, and  
2791 provide an estimate of the impact such incorporation will have on the performance, scheduling,  
2792 and price of the System. County, at its sole discretion, may request that this Agreement be  
2793 amended to incorporate the new technologies, methodologies and techniques into the System  
2794 pursuant to the provisions of Paragraph 6 (Change Notices and Amendments). For clarity,  
2795 nothing in this Paragraph 60 is intended to limit Contractor's obligations in respect of  
2796 Maintenance and Support Services.

## 2797 **61. NOTICES**

2798 All notices or demands required or permitted to be given or made under this Agreement  
2799 shall include the Agreement number as assigned by County and, unless otherwise specified,  
2800 shall be in writing and shall be addressed to the parties at the following addresses and  
2801 delivered: (1) by hand with signed receipt, (2) by first-class registered or certified mail, postage  
2802 prepaid, or (3) by facsimile or electronic mail transmission followed within twenty-four (24) hours  
2803 by a confirmation copy mailed by first-class registered or certified mail, postage prepaid.  
2804 Notices shall be deemed given at the time of signed receipt in the case of hand delivery, three  
2805 (3) days after deposit in the United States mail as set forth above, or on the date of facsimile or  
2806 electronic mail transmission if followed by timely confirmation mailing. Addresses may be  
2807 changed by either party giving ten (10) days prior written notice thereof to the other party.

2808 Director shall have the authority to issue all notices or demands which are required or  
2809 permitted by County under this Agreement.

2810

- To County:
- (1) County's Project Director  
[TBD]
  - (2) County's Project Manager  
[TBD]
  - (3) Department of Mental Health  
Chief Information Office Bureau  
Attn: [TBD]  
695 South Vermont Avenue, 7<sup>th</sup> Floor  
Los Angeles, California, 90005  
Facsimile:

To Contractor: \_\_\_\_\_  
 \_\_\_\_\_  
 Attention: \_\_\_\_\_  
 Facsimile:  
 Electronic mail:

2811 Each party may change the names of the people designated to receive notices pursuant  
 2812 to this Paragraph 61 by giving written notice of change to the other party, subject to County's  
 2813 right of approval in accordance with Paragraph 3.3 (Approval of Contractor's Staff).

2814 **62. NO THIRD PARTY BENEFICIARIES**

2815 Notwithstanding any other provision of this Agreement, Contractor and County do not in  
 2816 any way intend that any person or entity shall acquire any rights as a third party beneficiary of  
 2817 this Agreement, except that this provision shall not be construed to diminish Contractor's  
 2818 indemnification obligations hereunder.

2819 **63. MOST FAVORED PUBLIC ENTITY**

2820 If Contractor's prices decline, or should Contractor, at any time during the Term, provide  
 2821 the same goods or services under similar quantity and delivery conditions to the State of  
 2822 California or any county, municipality or district of the State at prices below those set forth in this  
 2823 Agreement, then such lower prices shall be extended immediately to County. County shall have  
 2824 the right to utilize a County auditor to verify Contractor's compliance with this Paragraph 63 by  
 2825 review of Contractor's books and records.

2826 **64. COUNTY'S QUALITY ASSURANCE PLAN**

2827 County or its agent will evaluate Contractor's performance under this Agreement on not  
 2828 less than an annual basis. Such evaluation will include assessing Contractor's compliance with  
 2829 all terms and performance standards of this Agreement. Deficiencies or other failures or delays  
 2830 in Contractor's performance hereunder which County determines are severe or continuing and  
 2831 that may place performance of this Agreement in jeopardy if not corrected will be reported to the  
 2832 Board. The report will include improvement and corrective action measures taken by County  
 2833 and Contractor. If improvement does not occur consistent with the corrective action measures,  
 2834 County may terminate this Agreement, in whole or in part, or impose other penalties as  
 2835 specified in this Agreement.

2836 **65. CAPTIONS AND PARAGRAPH HEADINGS**

2837 Captions and paragraph headings used in this Agreement are for convenience only and  
2838 are not a part of this Agreement and shall not be used in construing this Agreement.

2839 **66. ARM'S LENGTH NEGOTIATIONS**

2840 This Agreement is the product of arm's length negotiation between Contractor and  
2841 County. Each party has had the opportunity to receive advice from independent counsel of its  
2842 own choosing, by \_\_\_\_\_, in the case of Contractor, and Robert E. Kalunian,  
2843 Acting County Counsel, by Jose Silva, Esq., Deputy County Counsel and outside counsel, Eric  
2844 Clarke, Esq., in the case of County. This Agreement is to be interpreted fairly as between the  
2845 parties, and not strictly construed as against either party.

2846 **67. NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

2847 Contractor shall notify its employees, and shall require each Subcontractor to notify its  
2848 employees, that they may be eligible for the federal earned income credit under the federal  
2849 income tax laws. Such notice shall be provided in accordance with the requirements set forth in  
2850 Internal Revenue Service Notice 1015. Copies of the Notice can be obtained by calling 1-800-  
2851 829-3676 or from the IRS website at [www.irs.gov](http://www.irs.gov).

2852 **68. CONTRACTOR'S EXCLUSION FROM PARTICIPATION IN A FEDERALLY FUNDED**  
2853 **PROGRAM**

2854 Contractor hereby warrants that neither it nor any of its staff members is restricted or  
2855 excluded from providing services under any health care program funded by the Federal  
2856 government, directly or indirectly, in whole or in part, and that Contractor shall notify Director  
2857 within thirty (30) days in writing of: (1) any event that would require Contractor or a staff  
2858 member's mandatory exclusion from participation in a federally funded health care program; and  
2859 (2) any exclusionary action taken by any agency of the federal government against Contractor  
2860 or one or more staff members barring it or the staff members from participation in a federally  
2861 funded health program, whether such bar is direct or indirect, or whether such bar is in whole or  
2862 in part.

2863 Contractor shall indemnify and hold County Indemnitees in accordance with Paragraph  
2864 15.1 (General Indemnification) harmless against any and all Liabilities County may suffer arising  
2865 from any federal exclusion of Contractor or its staff members from such participation in a  
2866 federally funded health program.

2867 Failure by Contractor to meet the requirements of this Paragraph 68 shall constitute a  
2868 material breach of contract upon which County may immediately terminate or suspend this  
2869 Agreement.

2870 **69. CONTRACTOR RESPONSIBILITY AND DEBARMENT**

2871 69.1 A responsible contractor is a contractor who has demonstrated the attribute of  
2872 trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the  
2873 terms of the Agreement. It is County's policy to conduct business only with responsible  
2874 contractors.

2875           69.2 Contractor is hereby notified that, in accordance with Chapter 2.202 of the Los  
2876 Angeles County Code (see Appendix R (Determinations of Contractor Non-Responsibility and  
2877 Contractor Debarment Ordinance) and Appendix P (Listing of Contractors Debarred in Los  
2878 Angeles County)), if County acquires information concerning the performance of Contractor on  
2879 this or in other agreements which indicates that Contractor is not responsible, County may, in  
2880 addition to other remedies provided in this Agreement, debar Contractor from bidding or  
2881 proposing on, or being awarded, and/or performing work on County contracts for a specified  
2882 period of time not to exceed five (5) years, but may exceed five (5) years or be permanent if  
2883 warranted by the circumstances, and terminate any or all existing agreements Contractor may  
2884 have with the County.

2885           69.3 County may debar Contractor if County's Board of Supervisors finds, in its  
2886 discretion, that Contractor has done any of the following: (1) violated any term of an agreement  
2887 with County or a nonprofit corporation created by the County, (2) committed any act or omission  
2888 which negatively reflects on Contractor's quality, fitness or capacity to perform a contract with  
2889 County or any other public entity, or nonprofit corporation created by County, or engaged in a  
2890 pattern or practice which negatively reflects on same, (3) committed an act or offense which  
2891 indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim  
2892 against the County or any other public entity.

2893           69.4 If there is evidence that Contractor may be subject to debarment, the Department  
2894 will notify Contractor in writing of the evidence which is the basis for the proposed debarment  
2895 and will advise Contractor of the scheduled date for a debarment hearing before the Contractor  
2896 Hearing Board.

2897           69.5 The Contractor Hearing Board will conduct a hearing where evidence on the  
2898 proposed debarment is presented. The Contractor and/or the Contractor's representative shall  
2899 be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor  
2900 Hearing Board shall prepare a tentative proposed decision, which shall contain a  
2901 recommendation regarding whether the Contractor should be debarred, and, if so, the  
2902 appropriate length of time of the debarment. The Contractor and the Department shall be  
2903 provided an opportunity to object to the tentative proposed decision prior to its presentation to  
2904 the Board of Supervisors.

2905           69.6 After consideration of any objections, or if no objections are submitted, a record  
2906 of the hearing, the proposed decision and any other recommendation of the Contractor Hearing  
2907 Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the  
2908 right to modify, deny or adopt the proposed decision and recommendation of the Contractor  
2909 Hearing Board.

2910           69.7 If Contractor has been debarred for a period longer than five (5) years, then  
2911 Contractor may, after the debarment has been in effect for at least five (5) years, submit a  
2912 written request for review of the debarment determination to reduce the period of debarment or  
2913 terminate the debarment. County may, in its discretion, reduce the period of debarment or  
2914 terminate the debarment if it finds that such Contractor has adequately demonstrated one or  
2915 more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a  
2916 bona fide change in ownership or management; (3) material evidence discovered after  
2917 debarment was imposed; or (4) any other reason that is in the best interests of the County.

2918           69.8 The Contractor Hearing Board will consider a request for review of a debarment  
2919 determination only where: (1) the requesting contractor has been debarred for a period longer

2920 than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the  
2921 request is in writing, states one or more of the grounds for reduction of the debarment period or  
2922 termination of the debarment, and includes supporting documentation. Upon receiving an  
2923 appropriate request, the Contractor Hearing Board will provide notice of the hearing on the  
2924 request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence  
2925 on the proposed reduction of debarment period or termination of debarment is presented. This  
2926 hearing shall be conducted and the request for review decided by the Contractor Hearing Board  
2927 pursuant to the same procedures as for a debarment hearing.

2928 69.9 The Contractor Hearing Board's proposed decision shall contain a  
2929 recommendation on the request to reduce the period of debarment or terminate the debarment.  
2930 The Contractor Hearing Board shall present its proposed decision and recommendation to  
2931 County's Board of Supervisors. County's Board of Supervisors shall have the right to modify,  
2932 deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

2933 69.10 These terms shall also apply to Contractor's Subcontractors, consultants and  
2934 partners of Contractor performing work under this Agreement.

2935 69.11 Appendix P (Listing of Contractors Debarred in Los Angeles County) provides a  
2936 link to the County's website where there is a listing of Contractors that are currently on the  
2937 Debarment List for Los Angeles County.

2938 **70. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND**  
2939 **VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS (45 C.F.R.**  
2940 **PART 76):**

2941 Contractor hereby acknowledges that the County is prohibited from contracting with and  
2942 making sub-awards to parties that are suspended, debarred, ineligible, or excluded or whose  
2943 principals are suspended, debarred, ineligible, or excluded from securing federally funded  
2944 contracts. By executing this Agreement, Contractor certifies that neither it nor any of its owners,  
2945 officers, partners, directors, or principals is currently suspended, debarred, ineligible, or  
2946 excluded from securing federally funded contracts. Further, by executing this Agreement,  
2947 Contractor certifies that, to its knowledge, none of its Subcontractors, at any tier, or any owner,  
2948 officer, partner, director, or other principal of any Subcontractor is currently suspended,  
2949 debarred, ineligible, or excluded from securing federally funded contracts. Contractor shall  
2950 immediately notify County in writing, during the term of this Agreement, should it or any of its  
2951 Subcontractors or any principals of either be suspended, debarred, ineligible, or excluded from  
2952 securing federally funded contracts. Failure of Contractor to comply with this provision shall  
2953 constitute a material breach of this Agreement upon which the County may immediately  
2954 terminate or suspend this Agreement.

2955 **71. ASSIGNMENT BY COUNTY**

2956 This Agreement may be assigned in whole or in part by County, without the further  
2957 consent of Contractor, to a party which is not a competitor of Contractor and which agrees in  
2958 writing to perform County's obligations under this Agreement.

2959 **72. CONTRACTOR’S OBLIGATIONS AS A BUSINESS ASSOCIATE UNDER THE**  
2960 **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 AND**  
2961 **THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL**  
2962 **HEALTH ACT**

2963 County is subject to the Administrative Simplification requirements of the Health  
2964 Insurance Portability and Accountability Act of 1996 and the Health Information Technology for  
2965 Economic and Clinical Health Act, and regulations promulgated thereunder, including without  
2966 limitation the Standards for Privacy of Individually Identifiable Health Information (“Privacy  
2967 Regulations”) and the Health Insurance Reform: Security Standards (“the Security  
2968 Regulations”) codified at 45 C.F.R. Parts 160 and 164 (collectively the “Privacy and Security  
2969 Regulations”). Under this Agreement, Contractor provides, and County receives Work which  
2970 provides Contractor with access to Protected Health Information as such term is defined the  
2971 Business Associate Agreement attached hereto as Exhibit M (Business Associate Agreement).  
2972 Contractor understands and agrees that its Work hereunder subjects Contractor and any  
2973 applicable Subcontractors to the requirements of the Privacy and Security Regulations and the  
2974 HITECH Act, and covenants, represents, and warrants that each of them shall execute and  
2975 strictly comply with the terms of the Business Associate Agreement.

2976  
2977 **73. PURCHASING RECYCLED-CONTENT BOND PAPER**

2978 Consistent with County’s Board of Supervisors’ policy to reduce the amount of solid  
2979 waste deposited at County landfills, Contractor agrees to use recycled-content paper to the  
2980 maximum extent possible in the services to be performed by Contractor under this Agreement.

2981 **74. AUTHORIZATION WARRANTY**

2982 Contractor and the undersigned representative thereof hereby each represent and  
2983 warrant that the person executing this Agreement for Contractor is an authorized agent who has  
2984 actual authority to bind Contractor to each and every term, condition, and obligation of this  
2985 Agreement and that all requirements of Contractor have been fulfilled to provide such actual  
2986 authority.

2987  
2988 **75. NO PAYMENT FOR SERVICES PROVIDED FOLLOWING**  
2989 **EXPIRATION/TERMINATION OF AGREEMENT**

2990  
2991 Contractor shall have no claim against County for payment of any money or  
2992 reimbursement, of any kind whatsoever, for any service provided by Contractor after the  
2993 suspension, expiration or other termination of this Agreement, or for any service provided in an  
2994 area of terminated or suspended activity after any partial termination or suspension of this  
2995 Agreement in such area except in each case to the extent expressly provided herein. Should  
2996 Contractor receive any such payment it shall immediately notify County and shall immediately  
2997 repay all such funds to County. Payment by County for services rendered after expiration or  
2998 termination of the Agreement shall not constitute a waiver of County’s right to recover such  
2999 payment from Contractor. This provision shall survive the expiration or other termination of this  
3000 Agreement.

3001  
3002 **76. SAFELY SURRENDERED BABY**

3003 76.1 Notice To Employees Regarding The Safely Surrendered Baby Law

3004 Contractor shall notify and provide to its employees, and shall require each  
3005 Subcontractor to notify and provide to its employees, a fact sheet regarding the Safely  
3006 Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely  
3007 surrender a baby. The fact sheet is set forth in Exhibit L (Safely Surrendered Baby Law) of this  
3008 Agreement and is also available on Internet at [www.babysafela.org](http://www.babysafela.org) for printing purposes.

3009 76.2 Contractor's Acknowledgment Of County's Commitment To The Safely  
3010 Surrendered Baby Law

3011 The Contractor acknowledges that the County places a high priority on the  
3012 implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the  
3013 County's policy to encourage all County Contractors to voluntarily post the County's "Safely  
3014 Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. A  
3015 copy of such poster is set forth in Exhibit L (Safely Surrendered Baby Law). The Contractor will  
3016 also encourage its Subcontractors, if any, to post this poster in a prominent position in the  
3017 Subcontractor's place of business. The County's Department of Children and Family Services  
3018 will supply the Contractor with the poster to be used. Information on how to receive the poster  
3019 can be found on the Internet at [www.babysafela.org](http://www.babysafela.org).

3020 **77. CONTRACTOR TO NOTIFY COUNTY WHEN IT HAS REACHED 75% OF TOTAL**  
3021 **CONTRACT SUM (UNDER CONTRACT PROVISION)**

3022 Contractor shall maintain a system of record keeping that will allow Contractor to  
3023 determine when it has incurred seventy-five percent (75%) of the Contract Sum. Upon  
3024 occurrence of this event, Contractor shall send written notification to County's Project Director.

3025 **78. BUDGET REDUCTIONS**

3026 In the event that County's Board of Supervisors adopts, in any fiscal year, a County  
3027 budget which provides for reductions in the salaries and benefits paid to the majority of County  
3028 employees and imposes similar reductions with respect to County contracts, County reserves  
3029 the right to reduce its payment obligation correspondingly for that fiscal year and any  
3030 subsequent fiscal year and any subsequent fiscal year during the term of this Agreement  
3031 (including any extensions), and the Work to be provided by Contractor under this Agreement  
3032 shall also be reduced correspondingly at the direction of County's Project Director. County's  
3033 notice to the Contractor regarding said reduction in payment obligation shall be provided within  
3034 thirty (30) days of the Board of Supervisors approval of such actions. Except as set forth in this  
3035 Paragraph 78, Contractor shall continue to perform all of the Work set forth in this Agreement.

3036 **79. TIME IS OF THE ESSENCE**

3037 Contractor agrees and acknowledges that County's need for implementation of the  
3038 System is urgent, and that therefore, time is of the essence in Contractor's performance of this  
3039 Agreement.

3040 **80. SURVIVAL**

3041 In addition to any provisions relating to indemnification obligations of any party  
3042 hereunder, the provisions in the following Paragraphs shall survive the expiration or termination  
3043 of this Agreement for any reason:

4.3	Unapproved Work
8.7	County's Right to Withhold Payments
9	Warranty
9.7	Third Party Software
10	Ownership of the System and License
15	Indemnification, Insurance and Performance Security
16	Records Retention and Inspection/Audit Settlement
17	County Audit Settlements
18	Federal Access to Records
20	Confidentiality; Disclosure of Information
21	Proprietary Considerations
22	Compliance with Applicable Law
23	Fair Labor Standards
24	Nondiscrimination, Affirmative Action, and Assurance of Compliance with Civil Rights Laws
26	Employment Eligibility Verification
28	Governing Law, Jurisdiction, and Venue
29	Severability
30	Hiring of Employees
31	Termination for Insolvency
32	Termination for Default
33	Termination for Improper Consideration
34	Termination for Convenience
36	Notice of Delays
56	System Use
59	Dispute Resolution Procedure
62	No Third Party Beneficiaries
72	Contractor's Obligations as a Business Associate Under HIPAA and HITECH Act
74	Authorization Warranty
75	No Payment for Services Provided Following Expiration/Termination of Agreement

3044 **81. TRANSITIONAL JOB OPPORTUNITIES PREFERENCE PROGRAM**

3045  
3046 81.1 This Agreement is subject to the provisions of the County's ordinance entitles  
3047 Transitional Job Opportunities Preference Program, as codified in Chapter 2.205 of the Los  
3048 Angeles County Code.

3049 81.2 Contractor shall not knowingly and with the intent to defraud, fraudulently obtain,  
3050 retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or  
3051 attempting to obtain or retain certification as a Transitional Job Opportunity vendor.

3052 81.3 Contractor shall not willfully and knowingly make a false statement with the intent  
3053 to defraud, whether by affidavit, report, or other representation, to a County official or employee  
3054 for the purpose of influencing the certification or denial of certification of any entity as a  
3055 Transitional Job Opportunity vendor.

3056 81.4 If Contractor has obtained County certification as a Transitional Job Opportunity  
3057 vendor by reason of having furnished incorrect supporting information or by reason of having  
3058 withheld information, and which knew, or should have known, the information furnished was

3059 incorrect or the information withheld was relevant to its request for certification, and which by  
3060 reason of such certification has been awarded this contract to which it would not otherwise have  
3061 been entitled, shall:

3062 (i) Pay to the County any difference between the Agreement amount  
3063 and what the County's costs would have been if the contract had been properly  
3064 awarded;

3065 (ii) In addition to the amount described in subdivision (i), be assessed  
3066 a penalty in an amount of not more than ten percent (10%) of the amount of the  
3067 Agreement; and

3068 (iii) Be subject to the provisions of Chapter 2.202 of the Los Angeles  
3069 County Code (Determinations of Contractor Non-responsibility and Contractor  
3070 Debarment).

3071 The above penalties shall also apply to any entity that has previously obtained proper  
3072 certification, however, as a result of a change in their status would no longer be eligible for  
3073 certification, and fails to notify the certifying department of this information prior to responding to  
3074 a solicitation or accepting a contract award.  
3075

3076 **82. LOCAL SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE PROGRAM**  
3077

3078 82.1 This Agreement is subject to the provisions of the County's ordinance entitled  
3079 Local Business Enterprise Preference Program, as codified in Chapter 2.204 of the Los Angeles  
3080 County Code.

3081 82.2 Contractor shall not knowingly and with the intent to defraud, fraudulently obtain,  
3082 retain, attempt to obtain or retain, or aid another in fraudulent obtaining or retaining or  
3083 attempting to obtain or retain certification as a Local Small Business Enterprise.

3084 82.3 Contractor shall not willfully and knowingly make a false statement with the intent  
3085 to defraud, whether by affidavit, report, or other representation, to a County official or employee  
3086 for the purpose of influencing the certification or denial of certification of any entity as a Local  
3087 Small Business Enterprise.

3088 82.4 If Contractor has obtained certification as a Local Small Business Enterprise by  
3089 reason of having furnished incorrect supporting information or by reason of having withheld  
3090 information, and which knew, or should have known, the information furnished was incorrect or  
3091 the information withheld was relevant to its request for certification, and which by reason of such  
3092 certification has been awarded this Agreement to which it would not otherwise have been  
3093 entitled, shall:

3094 (i) Pay to County any difference between the Agreement amount and  
3095 County's costs would have been if the Agreement had been properly awarded;

3096 (ii) In addition to the amount described in subdivision (i), be assessed  
3097 a penalty in an amount of not more than ten percent (10%) of the amount of the  
3098 Agreement; and

3099 (iii) Be subject to the provisions of Chapter 2.202 of the Los Angeles  
3100 County Code (Determinations of Contractor Non-Responsibility and Contractor  
3101 Debarment).

3102 The above penalties shall also apply to any business that has previously obtained proper  
3103 certification, however, as a result of a change in their status would no longer be eligible for  
3104 certification, and fails to notify the state and County's Office of Affirmative Action Compliance  
3105 (OAAC) of this information prior to responding to a solicitation or accepting a contract award.

3106  
3107 **82.5 Local Small Business Enterprise (SBE) Prompt Payment Program**

3108 Certified Local SBEs will receive prompt payment for services they provide to  
3109 County departments. Prompt payment is defined as fifteen (15) calendar days after receipt of  
3110 an undisputed invoice.

3111 **83. FORCE MAJEURE**

3112  
3113 83.1 Neither party shall be liable for such party's failure to perform its obligations  
3114 under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics,  
3115 quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such  
3116 party or any of such party's subcontractors), freight embargoes, or other similar events to those  
3117 described above, but in every such case the failure to perform must be totally beyond the  
3118 control and without any fault or negligence of such party (such events are referred to in this sub-  
3119 paragraph as "force majeure events").

3120  
3121 83.2 Notwithstanding the foregoing, a default by a subcontractor of Contractor shall  
3122 not constitute a force majeure event, unless such default arises out of causes beyond the  
3123 control of both Contractor and such subcontractor, and without any fault or negligence of either  
3124 of them. In such case, Contractor shall not be liable for failure to perform, unless the goods or  
3125 services to be furnished by the subcontractor were obtainable from other sources in sufficient  
3126 time to permit Contractor to meet the required performance schedule. As used in this sub-  
3127 paragraph, the term "subcontractor" and "subcontractors" mean subcontractors at any tier.

3128 83.3 In the event Contractor's failure to perform arises out of a force majeure event,  
3129 Contractor agrees to use commercially reasonable best efforts to obtain goods or services from  
3130 other sources, if applicable, and to otherwise mitigate the damages and reduce the delay  
3131 caused by such force majeure event.

3132 **84. CONTRACTOR'S WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED**  
3133 **PROPERTY TAX REDUCTION PROGRAM**

3134 84.1 Contractor acknowledges that County has established a goal of ensuring that all  
3135 individuals and businesses that benefit financially from County through contract are current in  
3136 paying their property tax obligations (secured and unsecured roll) in order to mitigate the  
3137 economic burden otherwise imposed upon County and its taxpayers.

3138 84.2 Unless Contractor qualifies for an exemption or exclusion, Contractor warrants  
3139 and certifies that to the best of its knowledge it is now in compliance, and during the term of this  
3140 Agreement will maintain compliance, with the Los Angeles County Code Chapter 2.206.

3141 **85. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH**  
3142 **COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

3143 Failure of Contractor to maintain compliance with the requirements set forth in  
3144 Paragraph 84 (Contractor's Warranty of Compliance with County's Defaulted Property Tax  
3145 Reduction Program) shall constitute default under this Agreement. Without limiting the rights  
3146 and remedies available to County under any other provision of this Agreement, failure of  
3147 Contractor to cure such default within ten (10) days of notice shall be grounds upon which  
3148 County may terminate this Agreement and/or pursue debarment of Contractor, pursuant to  
3149 County Code Chapter 2.206.

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3187 **INTEGRATED BEHAVIORAL HEALTH INFORMATION SYSTEM AGREEMENT**

3188 IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has  
3189 caused this Agreement to be subscribed by the Chairman, Board of Supervisors, and Contractor  
3190 has caused this Agreement to be subscribed in its behalf by it duly authorized officers, the day,  
3191 month, and year first above written.

3192

3193 COUNTY OF LOS ANGELES

3194 By \_\_\_\_\_  
3195 Chairperson, Board of Supervisors

3196 ATTEST:

3197 SACHI HAMAI  
3198 Executive Officer-Clerk  
3199 of the Board of Supervisors

3200 By: \_\_\_\_\_  
3201

3202 \_\_\_\_\_  
3203 CONTRACTOR

3204 Signed: \_\_\_\_\_

3205 Printed: \_\_\_\_\_

3206 Title: \_\_\_\_\_  
3207  
3208

3209 APPROVED AS TO FORM:  
3210 ROBERT E. KALUNIAN  
3211 Acting County Counsel

3212  
3213  
3214  
3215 Signed: \_\_\_\_\_  
3216 Printed: Jose Silva  
3217 Title: Deputy County Counsel

## TABLE OF CONTENTS

<u>PARAGRAPH</u>	<u>PAGE</u>
1. APPLICABLE DOCUMENTS AND DEFINITIONS.....	1
2. ADMINISTRATION OF AGREEMENT - COUNTY.....	11
3. ADMINISTRATION OF AGREEMENT .....	12
4. WORK.....	15
5. TERM .....	18
6. CHANGE NOTICES AND AMENDMENTS .....	19
7. CONTRACT SUM .....	22
8. INVOICES AND PAYMENTS .....	25
9. WARRANTY .....	27
10. OWNERSHIP OF THE SYSTEM AND LICENSE.....	32
11. PROHIBITION AGAINST DELEGATION AND ASSIGNMENT; CONTINUOUS PRODUCT SUPPORT .....	35
12. WARRANTY AGAINST CONTINGENT FEES .....	36
13. INDEPENDENT CONTRACTOR STATUS.....	36
14. SUBCONTRACTING .....	37
15. INDEMNIFICATION, INSURANCE AND PERFORMANCE SECURITY.....	40
16. RECORDS RETENTION AND INSPECTION/AUDIT SETTLEMENT.....	46
17. COUNTY AUDIT SETTLEMENTS.....	47
18. FEDERAL ACCESS TO RECORDS .....	48
19. PUBLIC RECORDS ACT .....	48
20. CONFIDENTIALITY .....	48
21. PROPRIETARY CONSIDERATIONS.....	50
22. COMPLIANCE WITH APPLICABLE LAW.....	52
23. FAIR LABOR STANDARDS .....	52

24.	<b>NONDISCRIMINATION, AFFIRMATIVE ACTION, AND ASSURANCE OF COMPLIANCE WITH CIVIL RIGHTS LAWS.....</b>	<b>53</b>
25.	<b>COMPLIANCE WITH JURY SERVICE PROGRAM.....</b>	<b>54</b>
26.	<b>EMPLOYMENT ELIGIBILITY VERIFICATION.....</b>	<b>54</b>
27.	<b>WAIVER.....</b>	<b>55</b>
28.	<b>GOVERNING LAW, JURISDICTION, AND VENUE.....</b>	<b>55</b>
29.	<b>SEVERABILITY .....</b>	<b>55</b>
30.	<b>HIRING OF EMPLOYEES .....</b>	<b>56</b>
31.	<b>TERMINATION FOR INSOLVENCY .....</b>	<b>56</b>
32.	<b>TERMINATION FOR DEFAULT .....</b>	<b>57</b>
33.	<b>TERMINATION FOR IMPROPER CONSIDERATION .....</b>	<b>58</b>
34.	<b>TERMINATION FOR CONVENIENCE .....</b>	<b>59</b>
35.	<b>POST-TERMINATION PROCEDURE .....</b>	<b>60</b>
36.	<b>NOTICE OF DELAYS .....</b>	<b>61</b>
37.	<b>CONFLICT OF INTEREST .....</b>	<b>61</b>
38.	<b>DAMAGE TO COUNTY PROPERTY .....</b>	<b>62</b>
39.	<b>UNLAWFUL SOLICITATION .....</b>	<b>62</b>
40.	<b>OTHER PROVIDERS .....</b>	<b>62</b>
41.	<b>RESOLICITATION OF BIDS OR PROPOSALS .....</b>	<b>62</b>
42.	<b>CONTRACTOR’S OFFICES.....</b>	<b>63</b>
43.	<b>VALIDITY .....</b>	<b>63</b>
44.	<b>RESTRICTIONS ON LOBBYING .....</b>	<b>63</b>
45.	<b>CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFFS/OR RE-EMPLOYMENT LIST.....</b>	<b>63</b>
46.	<b>CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS.....</b>	<b>63</b>
47.	<b>NONDISCRIMINATION IN SERVICES .....</b>	<b>64</b>
48.	<b>STAFF PERFORMANCE WHILE UNDER THE INFLUENCE .....</b>	<b>64</b>

49.	CONTRACTOR PERFORMANCE DURING CIVIL UNREST AND DISASTER .....	64
50.	CONTRACTOR’S WARRANTY OF ADHERENCE TO COUNTY’S CHILD SUPPORT COMPLIANCE PROGRAM .....	64
51.	TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY’S CHILD SUPPORT COMPLIANCE PROGRAM .....	65
52.	CONTRACTOR’S ACKNOWLEDGMENT OF COUNTY’S COMMITMENT TO CHILD SUPPORT ENFORCEMENT .....	65
53.	DELIVERY AND RISK OF LOSS .....	65
54.	ACCESS TO COUNTY FACILITIES .....	65
55.	COUNTY FACILITY OFFICE SPACE .....	66
56.	SYSTEM USE .....	66
57.	LICENSES, PERMITS, REGISTRATIONS, ACCREDITATIONS, AND CERTIFICATES .....	66
58.	PHYSICAL ALTERATIONS .....	66
59.	DISPUTE RESOLUTION PROCEDURE .....	67
60.	NEW TECHNOLOGY .....	68
61.	NOTICES .....	68
62.	NO THIRD PARTY BENEFICIARIES .....	69
63.	MOST FAVORED PUBLIC ENTITY .....	69
64.	COUNTY’S QUALITY ASSURANCE PLAN .....	69
65.	CAPTIONS AND PARAGRAPH HEADINGS.....	70
66.	ARM’S LENGTH NEGOTIATIONS .....	70
67.	NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT .....	70
68.	CONTRACTOR’S EXCLUSION FROM PARTICIPATION IN A FEDERALLY FUNDED PROGRAM .....	70
69.	CONTRACTOR RESPONSIBILITY AND DEBARMENT .....	70
70.	CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS (45 C.F.R. PART 76): .....	72

71.	ASSIGNMENT BY COUNTY .....	72
72.	CONTRACTOR’S OBLIGATIONS AS A BUSINESS ASSOCIATE UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 AND THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT .....	73
73.	PURCHASING RECYCLED-CONTENT BOND PAPER.....	73
74.	AUTHORIZATION WARRANTY .....	73
75.	NO PAYMENT FOR SERVICES PROVIDED FOLLOWING EXPIRATION/TERMINATION OF AGREEMENT .....	73
76.	SAFELY SURRENDERED BABY .....	73
77.	CONTRACTOR TO NOTIFY COUNTY WHEN IT HAS REACHED 75% OF TOTAL CONTRACT SUM (UNDER CONTRACT PROVISION).....	74
78.	BUDGET REDUCTIONS .....	74
79.	TIME IS OF THE ESSENCE.....	74
80.	SURVIVAL .....	74
81.	TRANSITIONAL JOB OPPORTUNITIES PREFERENCE PROGRAM .....	75
82.	LOCAL SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE PROGRAM.....	76
83.	FORCE MAJEURE .....	77
84.	CONTRACTOR’S WARRANTY OF COMPLIANCE WITH COUNTY’S DEFAULTED PROPERTY TAX REDUCTION PROGRAM .....	77
85.	TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY’S DEFAULTED PROPERTY TAX REDUCTION PROGRAM.....	78

## EXHIBITS AND ATTACHMENTS

Exhibit A	Statement of Work
Attachment A.1	Auditor-Controller eCAPS Interfaces
Attachment A.2	Project Status Report
Exhibit B	Technical Solution Requirements
Attachment B.1	Functional Requirements
Attachment B.2	Technical Requirements
Attachment B.2.1	Technical Narrative Requirements
Attachment B.3	System Hardware
Attachment B.4	System Software
Exhibit C	Price and Schedule of Payments
Section I	System Software
Section I.A	System Software: Baseline Application Software
Section I.B	System Software: Third Party Software
Section II	System Training
Section III	Fixed Price Professional Services
Section III.A	Professional Services: Custom Programming Modifications
Section III.B	Professional Services: Interfaces
Section III.C	Professional Services: Fixed Price Professional Services
Section IV	Maintenance and Support Services
Section V	Other Professional Services
Schedule of Payments	
Pricing Summary Table	
Exhibit D	Maintenance and Support Services
Schedule D.1	Response Time Requirements
Exhibit E	Project Schedule
Exhibit F	Glossary
Exhibit G	Employee Acknowledgment, Confidentiality and Copyright Assignment Agreement
Exhibit H	Contractor's EEO Certification
Exhibit I	Required Subcontractor Provisions
Exhibit J	Form of Change Notice
Exhibit K	Task/Deliverable Acceptance Certificate
Exhibit L	Safely Surrendered Baby Law
Exhibit M	Business Associate Agreement
Exhibit N	County of Los Angeles Policy on Doing Business with Small Business
Exhibit O	Listing of Contractors Debarred in Los Angeles County
Exhibit P	IRS Notice 1015
Exhibit Q	Title 2 Administration Determinations of Contractor Non-Responsibility and Contractor Debarment Ordinance
Exhibit R	Background and Resources: California Charities Regulation
Exhibit S	Jury Service Ordinance Title 2 Administration Chapter 2.203.010 through 2.203.090
Exhibit T	County's Request for Proposal (Incorporated by Reference)
Exhibit U	Contractor's Proposal (dated _____) (Incorporated by Reference)