APPENDIX E

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

_____

FOR AN

INTEGRATED BEHAVIORAL HEALTH INFORMATION SYSTEM (IBHIS)

_____, 2009

RECITALS

THIS AGREEMENT (the "Agreement") is made and entered into by and among the County of Los Angeles (hereinafter "County"), and [_____], a _____ corporation (hereinafter "Contractor").

WHEREAS, pursuant to California Health and Safety Code Section 7101, County has established and operates, through its Department of Mental Health (hereinafter "DMH" or the "Department"), a comprehensive mental health care system for County's population; and

WHEREAS, County desires to integrate the transfer of patient information, billing information and medical records throughout its healthcare system through the acquisition of an integrated behavioral health information system; and

WHEREAS, Contractor is engaged in the business of providing such an existing, proven, commercial-off-the-shelf integrated solution, as described hereunder; and

WHEREAS, in response to County's information request for proposals for an Integrated Behavioral Health Information System (attached hereto as Exhibit T), Contractor has submitted its proposal to County (attached hereto as Exhibit U) and desires to, and possesses the necessary technical knowledge and skills to, provide such system (as further defined below, the "System") to County; and

WHEREAS, this Agreement is authorized by California Government Code Sections 23004 and 31000.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, Contractor and County agree as follows:

1. APPLICABLE DOCUMENTS AND DEFINITIONS

1.1 Interpretation

The provisions of this document, along with Exhibits A, B, C, D E, F, G, H, I, J, K, L, M, N, O, P, Q, R and S attached hereto and any Attachments thereto, and Exhibits T and U not attached hereto, and the Detailed Work Plan not attached hereto, all described in this Paragraph 1.1 below and incorporated herein by reference, collectively form and hereinafter are referred to as the "Agreement." In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule or the contents or description of any Task, Subtask, Deliverable, good, service or other Work, or otherwise, between this document as the body of the Agreement and the Exhibits, or between the Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the body of this Agreement, and then to the Exhibits, according to the following descending priority:

1.	Exhibit A	Statement of Work
	Attachment A.1	Auditor-Controller eCAPS Interfaces
	Attachment A.2	Project Status Report
2.	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
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)

1.2 Entire Agreement

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

1.3 Construction

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

1.4 Definitions

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

1.4.2 "Acceptance" shall mean County's written approval of any and all Work provided by Contractor to County in accordance with Paragraph 4.2 (Approval of Work).

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

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

1.4.5 "Agreement" shall have the meaning set forth in the Recitals.

1.4.6 "Ancillary Software" shall have the meaning set forth in Paragraph 6 (Change Notices and Amendments).

1.4.7 "Ancillary Software Warranty Period" shall have the meaning set forth in Paragraph 9.2.3.

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

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

1.4.10 "Board of Supervisors" or "Board" shall mean the Los Angeles County Board of Supervisors.

1.4.11 "Change Notice" shall have the meaning set forth in Paragraph 6 (Change Notices and Amendments).

1.4.12 "CSSD" shall mean County's Child Support Services Department.

1.4.13 "Components" shall mean, individually and collectively, each and every component of the System, including System Software.

1.4.14 "Confidential County Data" shall have the meaning set forth in Paragraph 20 (Confidentiality).

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

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

1.4.17 "Contractor" shall have the meaning set forth in the Recitals.

1.4.18 "Contractor's Project Director" shall have the meaning set forth in Paragraph 3.1 (Contractor's Project Director).

1.4.19 "Contractor's Project Manager" shall have the meaning set forth in Paragraph 3.2 (Contractor's Project Manager).

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

1.4.21 "Corrective Maintenance" shall have the meaning set forth in Exhibit D (Maintenance and Support Services).

1.4.22 "County" shall have the meaning set forth in the Recitals.

1.4.23 "County Facilities" shall mean any facilities owned or operated by County.

1.4.24 "County Indemnitees" shall have the meaning set forth in Paragraph 15.1 (General Indemnification).

1.4.25 "County Materials" shall have the meaning set forth in Paragraph 21.2 (Proprietary Considerations).

1.4.26 "County's Project Director" shall have the meaning set forth in Paragraph 2.1 (County's Project Director).

1.4.27 "County's Project Manager" shall have the meaning set forth in Paragraph 2.2 (County's Project Manager).

1.4.28 "County's Remedial Acts" shall have the meaning set forth in Paragraph 15.2.2 (Intellectual Property Indemnification).

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

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

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

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

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

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

1.4.35 "Director" shall mean the Director of DMH.

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

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

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

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

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

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

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

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

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

1.4.45 "IBHIS" or "Integrated Behavioral Health Information System" means the System as defined in Paragraph 1.4.80.

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

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

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

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

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

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

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

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

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

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

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

1.4.57 "Milestone" shall have the meaning set forth in Paragraph 4.7 (Milestones).

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

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

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

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

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

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

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

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

1.4.66 "Privacy Regulations" shall have the meaning set forth in Paragraph 72 (Contractor's Obligations as a Business Associate Under HIPAA).

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

1.4.68 "Project Schedule" shall mean the schedule attached hereto as Exhibit E (Project Schedule).

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

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

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

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

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

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

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

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

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

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

(c) All Documentation, to the extent not inconsistent with any of the foregoing in this Paragraph 1.4.76;

(d) All functional and operational requirements/features included in Exhibit U (Contractor's Proposal), to the extent not inconsistent with any of the foregoing in this Paragraph 1.4.76;

(e) All manufacturer specifications and Updates thereto denominated as such by respective manufacturer(s), to the extent not inconsistent with any of the foregoing in this Paragraph 1.4.76;

(f) All specifications identified as such by Contractor, only to the extent (i) not inconsistent with any of the foregoing in this Paragraph 1.4.76 and (ii) acceptable to County in its sole discretion; and

(g) All written or electronic materials furnished by or through Contractor regarding Contractor's pre-developed and generally available software products, or otherwise agreed to by Contractor and County, which pertain to any element of the System, and which outline, describe or specify functionality, features, capacity, availability, Response Times, accuracy or any other performance or other criteria for the System or any element of the System, but only to the extent (i) not inconsistent with any of the foregoing in this Paragraph 1.4.76 and (ii) acceptable to County in its sole discretion.

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

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

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

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

1.4.81 "System Component" shall mean, individually and collectively, each and every Component of the System Software.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ADMINISTRATION OF AGREEMENT - COUNTY

2.1 County's Project Director

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

[Name]
[Title]
[Address]
[Phone]
[Fax]
[Email]

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

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

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

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

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

2.2 County's Project Manager

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

[Name]
[Title]
[Address]
[Phone]
[Fax]
[Email]

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

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

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

2.2.5 Except as set forth in Paragraph 6 (Change Notices and Amendments), County's Project Manager is not authorized to make any changes in any of the terms and

conditions of this Agreement and is not authorized to further obligate County in any respect whatsoever.

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

2.3 County Personnel

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

3. ADMINISTRATION OF AGREEMENT

3.1 Contractor's Project Director

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

[Name]
[Title]
[Address]
[Phone]
[Fax]
[Email]

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

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

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

3.2 Contractor's Project Manager

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

[Name]
[Title]
[Address]
[Phone]
[Fax]
[Email]

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

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

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

3.3 Approval of Contractor's Staff

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

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

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

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

3.3.5 In the event Contractor should ever need to remove any staff from performing Work under this Agreement, Contractor shall provide County with notice at least fifteen (15) days in advance, except in circumstances in which such notice is not possible, and shall work with County on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure project continuity. Such plan shall include at least (i) immediate commencement and substantiation of diligent efforts to provide any such replacement from Contractor's existing qualified staff; (ii) prompt commencement and substantiation of diligent and appropriately scoped advertising for any required hiring of replacement(s), within at most seven (7) days of the earlier of such removal or Contractor's prior notice of the need therefor, in each

case if an internal proposed replacement has not already been identified to County within such period; and (iii) a timely opportunity for applicable County Staff to interview each proposed replacement, review such person's resume, and conduct any desired reference or background investigation.

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

3.4 Contractor's Staff Identification

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

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

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

3.5 Background and Security Investigations

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

3.5.2 Without limiting the foregoing, County may request that any or all members of Contractor's staff be immediately removed from working on this Agreement at any time due to information obtained through the background investigation(s). For avoidance of doubt, County is not obligated to provide to Contractor or to Contractor's staff any information obtained through the background investigation(s) except to the extent so required by law.

County may immediately terminate access to County Facilities, access to County Materials and/or the System, and/or continued Work under this Agreement to any or all members of Contractor's staff as to whom any background investigation(s) reveal, in the sole discretion of County, information negatively reflecting on such person(s).

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

4. WORK

4.1 Scope of Work

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

4.2 Approval of Work

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

4.3 Unapproved Work

If Contractor provides any goods or services to County other than the Work required under this Agreement, or if Contractor submits an invoice for payment in respect of any Work, other than Maintenance and Support Services, without first having obtained an approved Task/Deliverable Acceptance Certificate by County's Project Manager in respect of such Work, the same shall be deemed to be a gratuitous effort on the part of Contractor and Contractor shall have no claim whatsoever against County therefor. County shall furthermore have no obligation to approve Work hereunder before the Due Date in respect of such Work as set forth in the Statement of Work, Detailed Work Plan, or applicable Change Notice.

4.4 Maintenance and Support Services

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

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

4.5 Other Professional Services

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

4.6 Delivery and Acceptance of Detailed Work Plan

4.6.1 Delivery of Detailed Work Plan. No later than fifteen (15) Working Days after the Effective Date, Contractor shall provide to County's Project Manager a detailed work plan incorporating the Deliverables set forth in the Statement of Work and the dates utilized in the Project Schedule. The initial detailed work plan, or as subsequently revised pursuant to this Paragraph 4.6, is referred to herein as the "Detailed Work Plan". Contractor and County promptly shall review and revise the draft Detailed Work Plan as necessary, and Contractor shall submit the final Detailed Work Plan within thirty-five (35) Working Days following the Effective Date, but in any event, no payments will be due by County to Contractor under this Agreement until the Detailed Work Plan is approved by County's Project Director pursuant to Paragraph 4.2 (Approval of Work) and this Paragraph 4.6. The Detailed Work Plan is a Deliverable under the Statement of Work and shall be comprehensive in scope and breadth, setting forth in detail the Work plan proposed by Contractor and County to install, configure and make operational, directly or through subcontractors, the System, provide the training, and otherwise deliver the System required by this Agreement. The Detailed Work Plan shall include, without limitation, all subject matter described in Task 1.3 (Develop and Present Detailed Work Plan) of the Statement of Work.

4.6.2 Approval of the Detailed Work Plan.

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

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

4.6.3 Deviation from Detailed Work Plan. Contractor may make only "non-critical path deviations" (as defined herein) from the Detailed Work Plan without obtaining County's prior written consent; provided, however, that Contractor shall give County's Project Manager prior written notification of any such planned deviation through the delivery of an updated Project Status Report**,** and including, if applicable, a Gantt chart or schedule which shows the impact, if any, of such deviations on the remainder of the Project. As used in this Paragraph, "non-critical path deviations" mean those adjustments to the tasks or resources required of Contractor or to the date on which such Deliverable is required to be delivered or approved that do not (i) result in Contractor deviating from the scheduled delivery date of any Deliverable identified in the Detailed Work Plan, or (ii) require any greater resources from County than those identified in the Detailed Work Plan. Contractor may also deviate from the Detailed Work Plan, to change (earlier or later) the scheduled date of any Deliverable, on the condition that the County's Project Manager first expressly agrees in writing with such proposed deviation, and provided further such deviation does not change the scheduled date of delivery of Final System Acceptance, or any other Key Deliverable identified in the Project Schedule or Detailed Work Plan. Notwithstanding any provision of this Paragraph or this Agreement to the contrary, to the extent any proposed deviation from the Detailed Work Plan will alter any process for Contractor's achievement of Final System Acceptance, or any Key Deliverable, such deviation may not be approved solely by County's Project Manager but must first be expressly approved by County in accordance with the Change process more particularly described in Paragraph 6 (Change Notices and Amendments).

4.6.4 Revised Detailed Work Plans. Contractor shall evidence any deviation from the Detailed Work Plan which, under the provisions of Paragraph 4.6.3 (Deviation from

Detailed Work Plan), may be approved solely by County's Project Manager by preparation and delivery of a revised Detailed Work Plan including all proposed changes therein. From and after Acceptance of such revised Detailed Work Plan pursuant to the process set forth in Paragraph 6 (Change Notices and Amendments), the revised Detailed Work Plan shall be the Detailed Work Plan hereunder and shall supersede the prior approved Detailed Work Plan in all respects.

4.7 Milestones

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

5. TERM

5.1 Term - General

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

5.2 Notice to DMH

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

5.3 Month-To-Month Extensions

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

6. CHANGE NOTICES AND AMENDMENTS

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

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

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

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

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

6.6 Notwithstanding any other provision of this Paragraph 6, to the extent that, in the sole judgment and discretion of County's Project Director, extensions of time for Contractor performance do not impact either the scope of Work or cost of this Agreement, the County's

Project Director, in County's Project Director's sole discretion, subject to the provisions of Paragraph 59 (Dispute Resolution Procedure), may grant Contractor extensions of time in the form of a Change Notice, for the Work listed in the Project Schedule or in the Detailed Work Plan, provided that such extensions shall not exceed an extension of the Term as defined herein.

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

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

6.9 Notwithstanding any other provision of this Paragraph 6 or Paragraph 34 (Termination for Convenience), Director shall take all appropriate action to carry out any orders of County's Board of Supervisors relating to this Agreement, and, for this purpose, Director is authorized to: (1) issue written notice(s) of partial or total termination of this Agreement pursuant to Paragraph 34 (Termination for Convenience) without further action by County's Board of Supervisors or County's Purchasing Agent and (2) prepare and sign amendments to this

Agreement which reduce the scope of Work or the Contract Sum, or terminate Maintenance and Support Services with respect to System Software or any Component thereof, without further action by County's Board of Supervisors or County's Purchasing Agent.

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

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

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

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

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

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

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

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

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

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

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

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

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

6.11.8 final delivery date for completed Work; and

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

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

7. CONTRACT SUM

7.1 Contract Sum - General

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

7.2 Pool Dollars

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

7.3 Credits to County

7.3.1 Key Deliverables

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

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

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

Deliverable. For purposes of this 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

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

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

7.4 County's Obligation in Future Fiscal Years

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

8. INVOICES AND PAYMENTS

8.1 Invoices - General

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

8.2 Content of Invoices

Each invoice submitted by Contractor shall indicate:

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

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

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

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

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

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

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

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

8.3 Invoice Discrepancies

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

8.4 Holdbacks

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

8.5 Sales/Use Tax

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

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

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

8.6 Overpayments

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

8.7 County's Right to Withhold Payments

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

8.8 Source of Funding

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

9. WARRANTY

9.1 Warranty Services

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

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

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

9.2 Warranty Periods For Warranty Services

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

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

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

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

9.3 Warranty Services Response

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

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

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

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

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

9.4 Further Warranties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9.5 Notification of Deficiencies for Warranty Services

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

9.6 Breach of Warranty Obligations

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

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

9.7 Third Party Software

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

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

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

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

9.8 Response Time Warranty

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

10. OWNERSHIP OF THE SYSTEM AND LICENSE

10.1 Ownership

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

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

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

10.2 License

10.2.1 License Grant

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

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

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

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

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

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

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

10.3 Source Code

10.3.1 Self-Escrow of Source Code

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

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

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

10.3.2 Source Code Release Conditions

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

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

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

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

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

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

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

10.3.3 County's Right to Verify Source Code

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

10.3.4 Possession and Use of Source Code

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

11. PROHIBITION AGAINST DELEGATION AND ASSIGNMENT; CONTINUOUS PRODUCT SUPPORT

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

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

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

Contractor's or its assignee's or successor's product offering. The assignee or successor, if applicable, by taking benefit (including acceptance of any payment under this Agreement) shall be deemed to have ratified this Agreement. All terms and conditions of this Agreement shall continue in full force and effect for the Replacement Product, including Contractor's obligations in respect of warranties and Maintenance and Support Services. In addition, the following terms and conditions shall apply if County elects to transfer the License to a Replacement Product:

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

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

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

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

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

12. WARRANTY AGAINST CONTINGENT FEES

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

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

13. INDEPENDENT CONTRACTOR STATUS

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

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

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

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

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

14. SUBCONTRACTING

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

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

14.2.1 The reason(s) for the particular subcontract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14.12.3 Any other information reasonably requested by County.

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

15. INDEMNIFICATION, INSURANCE AND PERFORMANCE SECURITY

15.1 General Indemnification

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

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

15.2 Intellectual Property Indemnification

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

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

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

15.3 General Provisions for All Insurance Coverage

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

15.3.1 Evidence of Coverage and Notice to County:

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

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

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

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

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

Los Angeles County Department of Mental Health
Chief Information Office Bureau
695 South Vermont Avenue, 7th Floor
Los Angeles California 90005
Attention: Robert Greenless

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

15.3.2 Additional Insured Status and Scope of Coverage

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

15.3.3 Cancellation of Insurance

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

15.3.4 Failure to Maintain Insurance

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

15.3.5 Insurer Financial Ratings

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

15.3.6 Contractor's Insurance Shall Be Primary

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

15.3.7 Waivers of Subrogation

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

15.3.8 Subcontractor Insurance Coverage Requirements

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

15.3.9 Deductibles and Self-Insured Retentions (SIRs)

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

15.3.10 Claims Made Coverage

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

15.3.11 Application of Excess Liability Coverage

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

15.3.12 Separation of Insureds

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

15.3.13 Alternative risk Financing Programs

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

15.3.14 County Review and Approval of Insurance Requirements

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

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

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.

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.

15.4.4 Unique Insurance Coverage

(i) Sexual Misconduct Liability

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.

(ii) Professional Liability/Errors and Omissions

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

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

(iii) Property Coverage

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

15.5 Performance Security Requirements

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

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

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

15.6 Failure to Maintain Insurance and Performance Security

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

16. RECORDS RETENTION AND INSPECTION/AUDIT SETTLEMENT

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

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

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

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

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

17. COUNTY AUDIT SETTLEMENTS

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

18. FEDERAL ACCESS TO RECORDS

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

19. PUBLIC RECORDS ACT

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

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

20. CONFIDENTIALITY

20.1 General

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

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

20.2 Disclosure of Information

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

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

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

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

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

20.4 Use of County Name

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

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

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

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

20.5 This Provision Not Applicable to Certain Information

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

20.6 Indemnification

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

20.7 Injunctive Relief

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

21. PROPRIETARY CONSIDERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

22. COMPLIANCE WITH APPLICABLE LAW

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

23. FAIR LABOR STANDARDS

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

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

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

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

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

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

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

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

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

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

25. COMPLIANCE WITH JURY SERVICE PROGRAM

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

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

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

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

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

26. EMPLOYMENT ELIGIBILITY VERIFICATION

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

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

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

27. WAIVER

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

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

28. GOVERNING LAW, JURISDICTION, AND VENUE

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

29. SEVERABILITY

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

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

30. HIRING OF EMPLOYEES

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

31. TERMINATION FOR INSOLVENCY

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

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

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

31.1.3 The appointment of a receiver or trustee for Contractor.

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

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

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

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

32. TERMINATION FOR DEFAULT

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

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

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

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

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

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

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

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

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

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

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

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

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

33. TERMINATION FOR IMPROPER CONSIDERATION

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

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

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

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

34. TERMINATION FOR CONVENIENCE

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

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

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

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

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

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

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

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

35. POST-TERMINATION PROCEDURE

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

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

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

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

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

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

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

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

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

36. NOTICE OF DELAYS

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

37. CONFLICT OF INTEREST

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

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

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

38. DAMAGE TO COUNTY PROPERTY

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

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

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

39. UNLAWFUL SOLICITATION

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

40. OTHER PROVIDERS

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

41. RESOLICITATION OF BIDS OR PROPOSALS

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

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

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

42. CONTRACTOR'S OFFICES

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

43. VALIDITY

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

44. RESTRICTIONS ON LOBBYING

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

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

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

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

46. CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS

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

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

47. NONDISCRIMINATION IN SERVICES

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

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

48. STAFF PERFORMANCE WHILE UNDER THE INFLUENCE

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

49. CONTRACTOR PERFORMANCE DURING CIVIL UNREST AND DISASTER

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

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

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

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

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

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

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

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

53. DELIVERY AND RISK OF LOSS

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

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

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

54. ACCESS TO COUNTY FACILITIES

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

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

55. COUNTY FACILITY OFFICE SPACE

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

56. SYSTEM USE

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

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

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

58. PHYSICAL ALTERATIONS

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

59. DISPUTE RESOLUTION PROCEDURE

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

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

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

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

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

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

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

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

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

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

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

60. NEW TECHNOLOGY

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

61. NOTICES

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

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

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, 7th Floor
Los Angeles, California, 90005
Facsimile:

To Contractor: _____
_____
Attention:_____
Facsimile:
Electronic mail:

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

62. NO THIRD PARTY BENEFICIARIES

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

63. MOST FAVORED PUBLIC ENTITY

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

64. COUNTY'S QUALITY ASSURANCE PLAN

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

65. CAPTIONS AND PARAGRAPH HEADINGS

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

66. ARM'S LENGTH NEGOTIATIONS

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

67. NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

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

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

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

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

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

69. CONTRACTOR RESPONSIBILITY AND DEBARMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

71. ASSIGNMENT BY COUNTY

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

72. CONTRACTOR'S OBLIGATIONS AS A BUSINESS ASSOCIATE UNDER HIPAA

County is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and regulations promulgated

thereunder, including without limitation the Standards for Privacy of Individually Identifiable Health Information codified at 45 C.F.R. Parts 160 and 164 (collectively the "Privacy Regulations"). Under this Agreement, Contractor provides, and County receives Work which provides Contractor with access to Protected Health Information as such term is defined the Business Associate Agreement attached hereto as Exhibit M (Business Associate Agreement). Contractor understands and agrees that its Work hereunder subjects Contractor and any applicable Subcontractors to the requirements of the Privacy Regulations, and covenants, represents, and warrants that each of them shall execute and strictly comply with the terms of the Business Associate Agreement.

73. PURCHASING RECYCLED-CONTENT BOND PAPER

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

74. AUTHORIZATION WARRANTY

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

75. NO PAYMENT FOR SERVICES PROVIDED FOLLOWING EXPIRATION/TERMINATION OF AGREEMENT

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

76. SAFELY SURRENDERED BABY

76.1 Notice To Employees Regarding The Safely Surrendered Baby Law

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

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

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

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

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

78. BUDGET REDUCTIONS

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

79. TIME IS OF THE ESSENCE

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

80. SURVIVAL

In addition to any provisions relating to indemnification obligations of any party hereunder, the provisions in the following Paragraphs shall survive the expiration or termination 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
74	Authorization Warranty
75	No Payment for Services Provided Following Expiration/Termination of Agreement

81. TRANSITIONAL JOB OPPORTUNITIES PREFERENCE PROGRAM

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

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

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

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

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

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

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

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

82. LOCAL SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE PROGRAM

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

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

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

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

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

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

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

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

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

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

83. FORCE MAJEURE

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

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

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

84. CONTRACTOR’S WARRANTY OF COMPLIANCE WITH COUNTY’S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

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

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

85. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY’S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 84 (Contractor’s Warranty of Compliance with County’s Defaulted Property Tax Reduction Program) shall constitute default under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure of Contractor to cure such default within ten (10) days of notice shall be grounds upon which

County may terminate this Agreement and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206.

INTEGRATED BEHAVIORAL HEALTH INFORMATION SYSTEM AGREEMENT

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

COUNTY OF LOS ANGELES

By _____
Chairperson, Board of Supervisors

ATTEST:

SACHI HAMAI
Executive Officer-Clerk
of the Board of Supervisors

By: _____

_____
CONTRACTOR

Signed: _____

Printed: _____

Title: _____

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

Signed: _____
Printed: Jose Silva
Title: Deputy County Counsel

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