

**SOFTWARE LICENSE AND SUPPORT SERVICES AGREEMENT
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND**

**[NAME OF CONTRACTOR]
FOR FISCAL YEARS [20__-20__] THROUGH [20__-20__]**

This Agreement, entered into this ____ day of _____, 20[___], by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as “COUNTY,” and [Name of Contractor], a [Name of State] [type of business], hereinafter referred to as “CONTRACTOR,” is made upon the following considerations:

WHEREAS, COUNTY, by and through its [Name of Department] – [Name of Division], desires to retain a qualified professional to provide time, payroll and attendance software services; and

WHEREAS, such work involves the performance of professional, expert and technical services of a temporary and occasional character; and

WHEREAS, COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof for the temporary period; and

WHEREAS, CONTRACTOR represents that it is adequately trained, skilled, experienced and qualified to perform the time, payroll and attendance software services required by COUNTY.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. DEFINITIONS:

- A. Cloud Services. As used herein, the term “Cloud Services” means, collectively, the COMPANY’s Software as a service including, without limitation: COMPANY’s hosted software and any upgrades, enhancements, or new releases thereto; hardware and other equipment at COMPANY’s hosting site; and use of the telephone support for COUNTY in the operation of the Cloud Services.
- B. Designated Platform. As used herein, the term “Designated Platform” means the required operating environment for the Software, including, without limitation, any and all necessary hardware and software components.
- C. Documentation. As used herein, the term “Documentation” means the most recent documentation of the functional operation of the Software and Cloud Services; provided that if the Software is a product that is cleared by the United States Food and Drug Administration, Documentation means the documentation provided in connection with such clearance.
- D. Permitted User. As used herein, the term “Permitted User” means an authorized user of the Software as defined herein.
- E. Professional Services. As used herein, the term “Professional Services” means, collectively, the implementation, installation, data conversion, validation or training services provided by COMPANY pursuant to the terms and conditions of this Agreement.
- F. Software. As used herein, the term “Software” means the proprietary software products provided by COMPANY pursuant to the terms and conditions of this Agreement.

- G. Support Services. As used herein, the term “Support Services” means the services to keep the Software in working order and to sustain useful life of the Software, including updates.

2. GRANT OF LICENSE AND DESCRIPTION OF SERVICES:

- A. Grant of License to Use Software. Subject to the terms and conditions of this Agreement, COMPANY grants to COUNTY a non-exclusive and non-transferable license to use the Software set forth in Exhibit A – Scope of Work, which is attached hereto and incorporated herein by reference as if set forth in full, solely for internal business purposes.
- B. Cloud Services. Subject to the terms and conditions of this Agreement, COMPANY grants to COUNTY a non-exclusive, non-assignable, limited right to access and use the Cloud Services provided pursuant to the terms and conditions of this Agreement solely for internal use. COUNTY shall not have any physical access to the Cloud Services hardware.
- C. Support Services. Subject to the terms and conditions of this Agreement, COMPANY shall provide the Support Services set forth in Exhibit A – Scope of Work pursuant to COMPANY’s then current support policies.
- D. Professional Services. Subject to the terms and conditions of this Agreement, COMPANY shall provide the Professional Services set forth in Exhibit A – Ordering Document pursuant to COMPANY’s then current consultation and training policies. COUNTY shall have a right to use any deliverables, including, without limitation, any Software, Documentation, codes, training materials or other work product, delivered as part of the Professional Services provided pursuant to the terms and conditions of this Agreement. COUNTY’s use of such deliverables shall be solely in connection with COUNTY’s licensed use of the Software, subject to all the same terms and conditions that apply to COUNTY’s Software license, and subject to any additional terms and conditions provided with such deliverables.

3. SCOPE OF LICENSE:

- A. Ownership. Notwithstanding anything to the contrary, except for the limited license rights expressly provided herein, COMPANY and its licensors have and will retain all rights, title and interest, including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights, in and to the Software, sample code, third party code, deliverables and all copies, modifications and derivative works thereof, including, but not limited to, any and all changes which incorporate any of COUNTY’s ideas, feedback or suggestions. COUNTY acknowledges that it is obtaining only a limited license right to the Software, sample code and third party code and that, irrespective of any use of the words purchase, sale or like terms herein, no ownership rights are being conveyed to COUNTY under this Agreement or otherwise.
- B. License Restrictions. As a condition of COUNTY’s license, COUNTY shall not, and shall not allow any third party to:
 - 1. Decompile, disassemble or otherwise reverse engineer the Software or third party code or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Software or third party code by any means whatsoever, except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions or as permitted by an applicable open source software license.
 - 2. Distribute, sell, sublicense, rent, lease or use the Software, third party code or sample code, or any portion thereof, for time sharing, hosting, service provider or like purposes, except

as expressly permitted hereunder.

3. Remove any product identification, proprietary, copyright trademark, service mark or other notices contained in the Software, third party code or sample code.
 4. Modify any part of the Software, third party code or sample code, create a derivative work of any part of the Software, third party code, or sample code or incorporate the Software, third party code or sample code into or with other software, except to the extent expressly authorized in writing by COMPANY or as permitted by an applicable open source software license.
 5. Publicly disseminate performance information or analysis, including, without limitation, benchmarks, from any source relating to the Software.
 6. Utilize any equipment, device, software or other means designed to circumvent or remove any form of product key or copy protection used by COMPANY in connection with the Software, or use the Software together with any authorization code, product key, serial number or other copy protection device not supplied by COMPANY or an authorized partner thereof.
 7. Use the Software to develop a product which is competitive with any of COMPANY's product offerings.
 8. Use unauthorized product keys or keycodes or distribute or publish keycodes except as may be expressly permitted by COMPANY in writing.
 9. As applicable to desktop, prep or user-based server licenses, enable access to the Software for a greater number of Permitted Users than the sum quantity of licenses purchased pursuant to the terms and conditions of this Agreement.
 10. As applicable to desktop, prep or user-based server licenses, reassign license rights between Permitted Users so frequently as to enable a single license to be shared between multiple users.
 11. Assert, or authorize, assist or encourage any third party to assert, against COMPANY, or any of its affiliates, customers, vendors, business partners or licensors, any patent infringement or other intellectual property infringement claim regarding any Software or Professional, Support and Cloud Services COUNTY has purchased or used pursuant to the terms and conditions of this Agreement.
 12. Use the Software to develop a product that converts any COMPANY file format to an alternative report file format used by any general-purpose report writing, data analysis or report delivery product that is not the property of COMPANY.
- C. Export Compliance. COUNTY acknowledges that the Software is subject to United States ("U.S.") export control and economic sanctions laws, regulations and requirements, as well as the import laws, regulations and requirements of foreign governments. COUNTY agrees that all use, exports and imports related to this Agreement will be in compliance with any and all applicable import and export laws, regulations and requirements. COUNTY shall not allow any third party to export, re-export or transfer any part of the Software in violation of any applicable import or export laws, regulations or requirements. The foregoing obligations include, but are not limited to, COUNTY, or a third party, exporting, transferring or importing the Software to:

1. Any country subject to an export control embargo or economic sanctions implemented by any agency of the U.S. or foreign government.
2. Any person or entity on any of the U.S. Government's Lists of Parties of Concern, which can be found online at <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-ofconcern>, or any applicable international specially-designated parties or economic sanctions programs.
3. Any end-user for any known end-use related to the proliferation of nuclear, chemical or biological weapons or missiles, without first obtaining any export license or other approval that may be required by any U.S. Government agency having jurisdiction with respect to the transaction.

4. TERM:

This Agreement shall begin upon execution by both parties and shall remain in full force and effect until [REDACTED] [REDACTED], 20[REDACTED], unless sooner terminated as provided herein.

5. TERMINATION:

- A. Termination for Cause. Either party may terminate this Agreement, in the event the other party materially defaults in performing any obligation under this Agreement, or violates any local, state or federal laws, regulations or standards applicable to its performance herein, and such default or violation continues uncured for a period of thirty (30) days following written notice thereof.
- B. Termination without Cause. COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice which states the effective date of the termination.
- C. Termination Due to Insolvency. Either party may immediately terminate this Agreement, if the other party files for bankruptcy, becomes insolvent or makes an assignment of a substantial part of its property for the benefit of creditors.
- D. Termination Due to Insufficient Funding. COUNTY's obligations under this Agreement are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated. COUNTY shall provide COMPANY seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.
- E. Compensation upon Termination. In the event this Agreement is terminated, COMPANY shall be entitled to compensation for uncompensated license and service fees through and including the effective date of the termination. However, this provision shall not limit or reduce any damages owed to COUNTY due to a breach of this Agreement by COMPANY.
- F. Effect of Termination. Upon termination of this Agreement, COUNTY shall promptly take all of the following actions:
 1. Cease any and all use of any Software provided pursuant to the terms and conditions of this Agreement.
 2. Destroy any and all copies of the Software provided pursuant to the terms and conditions of this Agreement.

3. Provide COMPANY with a certificate of compliance with this provision signed by an authorized representative of COUNTY.

6. COMPENSATION:

- A. Maximum Amount Payable. The maximum amount payable by COUNTY for the Software and Professional, Support and Services provided pursuant to the terms and conditions of this Agreement is [REDACTED] Dollars (\$ [REDACTED], [REDACTED]. [REDACTED]). COMPANY agrees to provide all Software and perform all Professional, Support and Services required by this Agreement for an amount not to exceed such maximum dollar amount. However, if local, state or federal funding or allowance rates are reduced or eliminated, COUNTY may, by amendment, reduce the maximum amount payable hereunder or terminate this Agreement as provided herein.
- B. Schedule of Rates. The specific rates and costs applicable to this Agreement are set forth in **Exhibit X.**
- C. Additional Software and Services. Any additional Software and/or Professional, Support and Cloud Services not otherwise set forth herein shall not be provided by COMPANY, or compensated by COUNTY, without COUNTY’s prior written authorization. All unauthorized costs and expenses incurred above the maximum payable amount set forth herein shall be the responsibility of COMPANY. COMPANY shall notify COUNTY, in writing, at least six (6) weeks prior to the date upon which COMPANY estimates that the maximum payable amount will be reached.
- D. Taxes. COUNTY shall be responsible for the payment of any and all taxes associated with the Software and Professional, Support and Cloud Services provided pursuant to the terms and conditions of this Agreement other than federal taxes based on COMPANY’s net income.

7. PAYMENT:

- A. Invoices. CONTRACTOR shall submit to COUNTY [annual/semi-annual/quarterly/monthly] invoices itemizing all services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement. Invoices shall be in a format approved by, and shall include backup documentation as specified by, [Short title of Department Head or Division Director] and the Humboldt County Auditor-Controller. CONTRACTOR shall submit a final invoice for payment within thirty (30) days following the expiration or termination date of this Agreement. Payment for services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement shall be made within thirty (30) days after the receipt of approved invoices. Any and all invoices submitted by CONTRACTOR shall be sent to COUNTY at the following address:

COUNTY: [Name of Department] – [Name of Division]
Attention: [Name of Contact Person], [Job Title]
[Street Address]
[City], [State] [Zip Code]

- B. Disputed Costs. COUNTY shall have the right to reasonably and in good faith dispute any portion of any amount billed by COMPANY. If COUNTY believes that COMPANY has billed COUNTY incorrectly, COUNTY must contact COMPANY’s customer support department no later than thirty (30) days after the date on the invoice in which the error or problem appeared, in order to receive an adjustment or credit. Such notification shall include written documentation

which identifies and substantiates the disputed amount. Notwithstanding the foregoing, COUNTY shall submit to COMPANY, prior to the invoice due date, full payment of the undisputed portion of any fees billed by COMPANY.

8. NOTICES:

Any and all notices required to be given pursuant to the terms and conditions of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: [Name of Department] – [Name of Division]
Attention: [Name of Contact Person], [Job Title]
[Street Address]
[City], [State] [Zip Code]

CONTRACTOR: [Name of Contractor]
Attention: [Name of Contact Person], [Job Title]
[Street Address]
[City], [State] [Zip Code]

9. REPORTS:

COMPANY agrees to provide COUNTY with any and all reports that may be required by any local, state and/or federal agencies for compliance with this Agreement. COMPANY shall submit one (1) hard copy and one (1) electronic copy of all reports required hereunder in a format that complies with the Americans with Disabilities Act and any other applicable accessibility laws, regulations and standards. Any and all reports required hereunder shall be submitted in accordance with any and all applicable timeframes using the format required by the State of California as appropriate.

10. RECORD RETENTION AND INSPECTION:

A. Maintenance and Preservation of Records. COMPANY agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the Software and Professional, Support and Cloud Services provided pursuant to the terms and conditions of this Agreement, and to maintain and preserve said records for at least three (3) years from the date of final payment hereunder, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. Such records shall be original entry books with a general ledger itemizing all debits and credits for the Software and Professional, Support and Cloud Services provided pursuant to the terms and conditions of this Agreement.

B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of COMPANY, and its subcontractors, related to the Software and Professional, Support and Cloud Services provided pursuant to the terms and conditions of this Agreement, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after final payment hereunder. COMPANY hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by COUNTY and any other duly authorized local, state and/or federal agencies. COMPANY further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY and any other duly authorized local, state and/or federal agencies. All

examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, without limitation, the costs of administering this Agreement.

- C. Audit Costs. In the event of an audit exception or exceptions related to the Software and Professional, Support and Cloud Services provided pursuant to the terms and conditions of this Agreement, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because COMPANY’s documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

11. MONITORING:

COMPANY agrees that COUNTY has the right to monitor all activities related to this Agreement, including, without limitation, the right to review and monitor COMPANY’s records, policies, procedures and overall business operations, at any time, in order to ensure compliance with the terms and conditions of this Agreement. COMPANY will cooperate with a corrective action plan, if deficiencies in COMPANY’s records, policies or procedures are identified by COUNTY. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of COMPANY’s performance hereunder.

12. CONFIDENTIAL INFORMATION:

- A. Use and Disclosure of Proprietary Information. In the performance of this Agreement, each party may receive information of the other party that is not generally known to the public, including, without limitation, trade secrets, know-how, inventions, techniques, algorithms programs, documentation and data which may be designated as being confidential, or which under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, “Proprietary Information”). Each party shall use and disclose only the minimum amount of Proprietary Information necessary to accomplish the intended purpose of this Agreement. Each party further agrees to protect all Proprietary Information in accordance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards.
- B. Use and Disclosure of Personally Identifiable Information. In the performance of this Agreement, COMPANY may receive personally identifiable information that is confidential under local, state or federal law. COMPANY hereby agrees to protect all personally identifiable information in accordance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, without limitation: California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act (“CMIA”); the United States Health Information Technology for Economic and Clinical Health Act (“HITECH Act”); the United States Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and any current and future implementing regulations promulgated thereunder, including, but not limited to, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations (“C.F.R.”) Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.
- C. Use and Disclosure of Unrestricted Information. The prohibitions contained in this provision shall not apply to information which:
 - 1. Is known by the recipient prior to its receipt from the disclosing party or is, or becomes,

public knowledge without the fault of the recipient.

2. Is received from a source other than a party to this Agreement without causing a breach of the terms and conditions of this Agreement.
3. Is independently developed by a party without causing a breach of the terms and conditions of this Agreement.
4. Is required to be disclosed by court order or applicable law, including, without limitation, the California Public Records Act, provided that advance notice of the disclosure is provided to other party.

D. Continuing Compliance with Confidentiality Laws. Each party hereby acknowledges that local, state and federal laws, regulations and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance therewith. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the requirements of any applicable local, state and federal laws, regulations or standards.

13. NON-DISCRIMINATION COMPLIANCE:

A. Professional Services and Employment. In connection with the execution of this Agreement, COMPANY, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of: race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any applicable local, state or federal laws, regulations or standards. Nothing herein shall be construed to require the employment of unqualified persons.

B. Compliance with Anti-Discrimination Laws. COMPANY further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, *et seq.*; California Government Code Sections 4450, *et seq.*; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws, regulations and standards, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Sections 8101, *et seq.* of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

14. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this Agreement, COMPANY certifies that it is not a Nuclear Weapons Contractor, in that COMPANY is not knowingly or intentionally engaged in the research, development, production

or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components, as defined by the Nuclear Free Humboldt County Ordinance. COMPANY agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if COMPANY subsequently becomes a Nuclear Weapons Contractor.

15. DRUG-FREE WORKPLACE CERTIFICATION:

By executing this Agreement, COMPANY certifies that it will provide a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1990, California Government Code Sections 8350, et seq., by doing all of the following:

- A. Drug-Free Policy Statement. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.
- B. Drug-Free Awareness Program. Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about the following:
 - 1. The dangers of drug abuse in the workplace;
 - 2. COMPANY's policy of maintaining a drug-free workplace;
 - 3. Any available counseling, rehabilitation and employee assistance programs; and
 - 4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides Professional, Support and/or Cloud Services pursuant to the terms and conditions of this Agreement will:
 - 1. Receive a copy of COMPANY's Drug-Free Policy Statement; and
 - 2. Agree to abide by COMPANY's Drug-Free Policy as a condition of employment.
- D. Effect of Noncompliance. Failure to comply with the requirements set forth herein may result in termination of this Agreement and/or ineligibility for award of future contracts.

16. INDEMNIFICATION:

- A. General Indemnification. Each party hereto shall hold harmless, defend and indemnify the other party and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party or its agents, officers, officials, employees or volunteers.
- B. Third Party Software Indemnification. COMPANY shall hold harmless, defend and indemnify COUNTY from liability to third parties resulting from infringement by the Software of any patent or copyright or misappropriation of any trade secret, provided COMPANY is promptly

notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement. COMPANY will not be responsible for any settlement it does not approve in writing. If, due to a claim of infringement, the Software or Professional, Support and Cloud Services are held by a court of competent jurisdiction to be or are believed by COMPANY to be infringing, COMPANY may, at its option and expense, replace or modify the Software to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, obtain a license which allows COUNTY to continue using the Software or terminate this Agreement and provide COUNTY a refund of any prepaid, unused fees. The foregoing obligations shall not apply when the alleged infringement relates to:

1. Situations in which the Software is modified by any person or entity other than COMPANY, but only to extent the alleged infringement is caused by such modification.
 2. Situations in which the Software is combined with products or processes not provided or authorized by COMPANY, but only to the extent the alleged infringement is caused by such combination.
 3. Situations in which COUNTY's use of the Software or the Professional, Support and Cloud Services provided hereunder is not strictly in accordance with the terms and conditions of this Agreement.
 4. Situations in which the underlying claim pertains to any third party code provided with the Software.
 5. Situations in which COUNTY settles or makes any admissions with respect to a claim without COMPANY's prior written consent.
- C. Comparative Liability. Notwithstanding anything to the contrary, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each party will bear their own costs and attorney's fees.
- D. Effect of Insurance. Acceptance of the insurance required by this Agreement shall not relieve either party from liability under this provision. This provision shall apply to all claims for damages related to either party's performance hereunder, regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided hereunder.

17. INSURANCE REQUIREMENTS:

This Agreement shall not be executed by COUNTY, and COMPANY is not entitled to any rights hereunder, unless certificates of insurance, or other proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

- A. General Insurance Requirements. Without limiting COMPANY's indemnification obligations set forth herein, COMPANY, and its subcontractors hereunder, shall take out and maintain, throughout the entire term of this Agreement, and any extensions thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of COMPANY and its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one (1) incident, including, without limitation, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required limit.
 2. Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles, and be at least as broad as Insurance Service Offices Form Code 1 (any auto).
 3. Workers' Compensation Insurance, as required by the California Labor Code, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY and its agents, officers, officials, employees and volunteers.
 4. Professional Liability Insurance – Error and Omission Coverage in an amount no less than Two Million Dollars (\$2,000,000.00) for each occurrence (Four Million Dollars (\$4,000,000.00) general aggregate). Said insurance shall be maintained for the statutory period during which COMPANY may be exposed to liability. COMPANY shall require that such coverage be incorporated into its services agreements with any other entities.
- B. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:
1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, COMPANY. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY or its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:
 - a. Includes contractual liability.
 - b. Does not contain exclusions as to property damage caused by explosion or collapse of structures or underground damage, commonly referred to as "XCU Hazards."
 - c. Is the primary insurance with regard to COUNTY.
 - d. Does not contain a pro-rata, excess only and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insureds clause.
 2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice requirements set forth herein. It is further understood that COMPANY shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.
 3. For claims related to this Agreement, COMPANY's insurance is the primary coverage to

COUNTY, and any insurance or self-insurance programs maintained thereby are excess to COMPANY’s insurance and will not be used to contribute therewith.

- 4. The inclusion of more than one (1) insured shall not operate to impair the rights of one (1) insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one (1) insured shall not operate to increase the limits of the insurer’s liability.
- 5. Any failure to comply with the provisions of this Agreement shall not affect the coverage provided to COUNTY or its agents, officers, officials, employees and volunteers.
- 6. COMPANY shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If COMPANY does not keep all required policies in full force and effect, COUNTY may, in addition to any other available remedies, take out the necessary insurance and deduct the cost of said insurance from the monies owed to COMPANY under this Agreement.
- 7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and COMPANY shall be required to purchase additional coverage to meet the above-referenced aggregate limits.

C. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms of this Agreement shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

COMPANY: [Name of Contractor]
Attention: [Name of Contact Person], [Job Title]
[Street Address]
[City], [State] [Zip Code]

18. LIMITATION OF LIABILITY:

A. Limited Warranty. COMPANY hereby warrants that the Software shall operate in substantial conformity with the Documentation for a period of thirty (30) days after delivery thereof. However, COMPANY does not warrant that COUNTY’s use of the Software will be uninterrupted or error free or that any security mechanisms implemented by the Software will not have inherent limitations. COMPANY’s sole liability, and COUNTY’s exclusive remedy, for any breach of this limited warranty shall be, in COMPANY’s sole discretion to use commercially reasonable efforts to provide COUNTY with an error-correction or work-around which corrects the reported non-conformity, or if COMPANY determines such remedies to be impracticable within a reasonable period of time, to refund the license fees paid for the applicable Software. COMPANY shall have no obligation with respect to a warranty claim unless notified of such claim within the above-referenced warranty period. For the avoidance of doubt, this limited warranty applies only to the initial delivery of the Software pursuant to the terms and

conditions of this Agreement, and does not renew or reset, for example, with renewal license terms or the delivery of Software updates, maintenance releases or product keys. This limited warranty shall not apply when the Software's failure to operate in substantial conformity with the Documentation relates to:

1. Situations in which the Software is used with hardware or software not authorized in the Documentation.
2. Situations in which modifications are made to the Software by COUNTY or any unauthorized third party.
3. Situations in which defects in the Software are caused by accident, abuse or improper use by COUNTY.
4. Situations in which the Software is provided to COUNTY on a no charge or evaluation basis.

B. Disclaimer of Warranties. Except as expressly set forth herein, the Software, including, without limitation, any and all maps and third party codes provided therewith, and all Professional, Support and Cloud Services are provided "as is" and COMPANY disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose and non-infringement. The duration of any statutorily required warranties, if any, shall be limited to the warranty period set forth herein.

C. Limitation of Damages. Notwithstanding anything to the contrary, neither party shall be responsible or liable, with respect to any terms or conditions of this Agreement, or terms or conditions related thereto, under any contract, negligence, strict liability or other theory, for:

1. Any error or interruption of use or for loss or inaccuracy or corruption of data, cost of procurement of substitute goods, services or technology or any other matter beyond either party's reasonable control.
2. Any indirect, exemplary, incidental, special or consequential damages of any kind, including, without limitation, lost profits or costs of cover, even if informed of the possibility of such damages in advance.
3. Any amounts that, together with amounts associated with all other claims, exceed the fees paid by COUNTY for the Software and Professional, Support and Cloud Services provided pursuant to the terms and conditions of this Agreement in the twelve (12) months prior to the act that gave rise to the liability.

19. RELATIONSHIP OF PARTIES:

It is understood that this Agreement is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that COMPANY shall not be entitled to any benefits to which COUNTY employees are entitled, including, without limitation, overtime, retirement, leave or workers' compensation benefits. COMPANY shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

20. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:

- A. General Legal Requirements. COMPANY agrees to comply with any and all local, state and federal laws, regulations, policies, procedures and standards applicable to the Software and Professional, Support and Cloud Services provided pursuant to the terms and conditions of this Agreement.
- B. Licensure Requirements. COMPANY agrees to comply with any and all local, state and federal licensure, certification and accreditation requirements applicable to its performance hereunder.
- C. Accessibility Requirements. COMPANY agrees to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 1135 and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.
- D. Conflict of Interest Requirements. COMPANY agrees to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, COUNTY's Conflict of Interest Code, all as may be amended from time to time.

21. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

22. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:

In the event any law, regulation or standard referred to herein is amended during the term of this Agreement, the parties agree to comply with the amended provision as of the effective date thereof.

23. SEVERABILITY:

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

24. ASSIGNMENT:

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

25. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

26. WAIVER OF DEFAULT:

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

27. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

28. AMENDMENT:

This Agreement may be amended at any time during the term of this Agreement upon the mutual consent of both parties. No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

29. STANDARD OF PRACTICE:

COMPANY warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. COMPANY's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

30. JURISDICTION AND VENUE:

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

31. ADVERTISING AND MEDIA RELEASE:

Any and all informational material related to this Agreement shall receive approval from COUNTY prior to being used as advertising or released to the media, including, without limitation, television, radio, newspapers and internet. COMPANY shall inform COUNTY of all requests for interviews by the media related to this Agreement before such interviews take place; and COUNTY shall be entitled to have a representative present at such interviews. All notices required by this provision shall be given to [Short title of Department Head or Division Director] in accordance with the notice requirements set forth herein.

32. SUBCONTRACTS:

COMPANY shall obtain prior written approval from COUNTY before subcontracting any of the Professional, Support and Cloud Services to be provided pursuant to the terms and conditions of this Agreement. Any and all subcontracts shall be subject to all applicable terms and conditions of this Agreement, including, without limitation, the licensing, certification and confidentiality requirements

set forth herein. COMPANY shall remain legally responsible for the performance of all terms and conditions of this Agreement, including, without limitation, any and all products and services provided by third parties under subcontracts, whether approved by COUNTY or not.

33. ATTORNEYS' FEES:

If either party shall commence any legal action, including, without limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform any of its obligations hereunder, the party prevailing in said action shall be entitled to recover court costs and reasonable attorneys' fees, including, but not limited to, the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

34. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section 3(A) – Ownership, Section 3(B) – License Restrictions, Section 3(C) – Export Compliance, Section 5(E) – Compensation upon Termination, Section 5(F) – Effect of Termination, Section 10 – Record Retention and Inspection, Section 12 – Confidential Information, Section 16 – Indemnification and Section 18 – Limitation of Liability shall survive the expiration or termination of this Agreement.

35. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this Agreement, the terms and conditions set forth herein shall have priority.

36. INTERPRETATION:

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

37. INDEPENDENT CONSTRUCTION:

The titles of the sections and subsections set forth herein are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

38. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

39. ENTIRE AGREEMENT:

This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other

agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Agreement are hereby ratified.

40. COUNTERPART EXECUTION:

This Agreement, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. A signed copy of this Agreement, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement and any amendments hereto.

41. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the first date written above.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

[NAME OF CONTRACTOR]:

By: _____

Date: _____

Name: _____

Title: _____

By: _____

Date: _____

Name: _____

Title: _____

COUNTY OF HUMBOLDT:

By: _____

Date: _____

[Name of Board Chair]

Chair, Humboldt County Board of Supervisors

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: _____

Date: _____

Risk Management

LIST OF EXHIBITS:

Exhibit A – Scope of Work

EXHIBIT A
Scope of Work