

PROFESSIONAL SERVICES AGREEMENT

SERVICE AGREEMENT BY AND BETWEEN County OF HUMBOLDT AND HOMEWAV, LLC

This Agreement, entered into this _____ day of, 2020, (the “**Effective Date**”) by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as “County,” and HomeWAV, LLC, a Delaware limited liability company, hereinafter referred to as “HomeWAV,” is made upon the following considerations:

WHEREAS, HomeWAV is a provider of a unique, custom video visitation solution comprised of patented technology, video software, hosted services, and equipment that has been adapted for use in secured detention facilities as more particularly described herein (collectively, the “**System**”); and

WHEREAS County by and through its Humboldt County Sheriff’s Office, desires to retain HomeWAV to provide the System to one or more of its secured detention facilities operated by the Humboldt County Sheriff’s Office (each a “**Facility**” and collectively, the “**Facilities**”), and HomeWAV desires to provide the System identified herein to County pursuant to the terms and conditions set forth herein; and

WHEREAS, the System and related Licensed Services and Professional Services (as herein defined) involves the performance of professional, expert and technical services, and County has no employees available to provide any type of comparable System or perform such Licensed Services and Professional Services and is unable to hire employees for the performance thereof for the period set forth in this Agreement; and

WHEREAS, HomeWAV has represented that it is qualified to provide the System and perform such Licensed Services and Professional Services.

NOW THEREFORE BE IT AGREED:

1. DEFINITIONS:

- a. “**Equipment**” means the specific HomePAS™ Kiosks, PoE Adaptor Sets, routers, switches and other such hardware and equipment as set forth on Exhibit 1 which is provided to County as part of the System licensed to it under this Agreement.
- b. “**Licensed Services**” means that portion of the System comprised of the Software and cloud-based applications that are run on a hosted system and which are provided by HomeWAV to County pursuant to the license terms herein to enable inmate telephone, video visitation, and messaging services at each Facility.
- c. “**Professional Services**” means the installation, setup, configuration, and testing of the Equipment and the System, and training provided by HomeWAV to County as more particularly described herein.
- d. “**Software**” means the proprietary and patented software program owned by HomeWAV and licensed to County pursuant to the terms of this Agreement.

2. DESCRIPTION OF SERVICES:

HomeWAV agrees to furnish the services described in Exhibit 1 – Scope of Work and Description of Services, which is attached hereto and incorporated herein by reference. In providing System and related Licensed Services and Professional Services, HomeWAV agrees to fully cooperate with the Sheriff or designee thereof, hereinafter referred to as the Sheriff.

3. EXCLUSIVITY:

County acknowledges and agrees that this is an exclusive services agreement between the parties; and accordingly County agrees that for as long as this Agreement remains in full force and effect HomeWAV will be its sole and exclusive provider of video visitation services for all of its Facilities. For purposes of clarity, this exclusive arrangement means, and County agrees that County is expressly prohibited from engaging using, licensing, purchasing, or accepting from any third party, employee, contractor, or related entity any software, equipment or services that are similar to some or any part of the System (including the Licensed Services) or the Professional Services for use at any of its Facilities.

4. LICENSE TO SYSTEM:

HomeWAV hereby grants to County a limited, non-assignable, non-sublicenseable, revocable, and nonexclusive license during the Term (as herein defined) to use the Software, Equipment, and related components comprising the System solely for the limited purposes of providing telephone and Internet video visitation to inmates in each Facility and viewing or monitoring the records of such visitations. In addition, if County exercises its right to receive “**Add On Features**” as set forth in Exhibit 1, HomeWAV will provide County with reasonable assistance to enable County to receive and use such Add On Features with the System and will seek authorization from any third party providers if necessary. County will not, and will not permit any other person to, remove, alter, disfigure or cover up any numbering, lettering, insignia or any owner’s tag(s) displayed upon the Equipment, and County may not move the Equipment from the Facility or the location in the Facility where it is installed by HomeWAV. Any of the foregoing actions are deemed a material breach of this Agreement. The County’s license to and use of the Software is governed by the terms of this Agreement, the Software End User License Agreement provided with the Software (a copy of which is located at <https://app.homewav.com/account/terms>), and the Website Terms of Use and Privacy Policy located at https://www.homewav.com/privacy_policy/, as such items may be updated, amended and modified in accordance with their respective terms (collectively, the “**Software Terms and Conditions**”). County may not copy or modify the Software, or any adaptation, transcription or merged portion thereof, unless expressly authorized in writing by HomeWAV. Any modifications, improvements, enhancements, changes, or any other alterations to the Software, or any derivative works made therefrom (collectively, “**Modifications**”) that are made by County or any third party acting on County’s behalf, whether or not authorized by HomeWAV, are deemed the sole and exclusive property of HomeWAV. Accordingly, County hereby assigns to HomeWAV all of its right, title and interest in and to such Modifications and shall take all necessary actions to ensure that any third party who has participated in the development of any Modifications likewise assigns all of their right, title and interest in the Modifications to HomeWAV. For the avoidance of doubt, the foregoing licenses to the Software, Equipment and any related System components shall terminate immediately upon the termination or expiration of this Agreement.

5. OWNERSHIP OF EQUIPMENT AND SOFTWARE

HomeWAV is the sole and exclusive owner of the Software and Equipment and retains all right, title and interest in and to the Software and Equipment at all times during the Term. The Software and Equipment are provided to County pursuant to the System license granted in Section 4. HomeWAV will purchase and maintain insurance coverage for the Equipment and the Software comprising the System. HomeWAV will deliver the Equipment to the County's designated Facilities pursuant to a mutually agreed schedule and will install and configure the Equipment with the Software pursuant to the Professional Services.

6. TERM:

This Agreement shall begin on the Effective Date and shall remain in full force and effect for an "Initial Term" of four (4) year(s). This Agreement shall be automatically renewed for additional periods of one (1) year (each a "Renewal Term"), unless either party notifies the other party in writing of its desire not to renew this Agreement at least 90 days prior to the commencement of the next Renewal Term or is sooner terminated as provided herein. The Initial Term and each Renewal Term are collectively, the "Term."

7. TERMINATION:

- A. Breach of Contract. If HomeWAV fails to perform its obligations hereunder within the time limits specified herein, or otherwise fails to comply with the terms of this Agreement, or violates any ordinance, regulation, or other law applicable to its performance herein, County must provide HomeWAV with written notice of the alleged breach, and HomeWAV will have thirty (30) days to cure the breach or otherwise resolve the issue of alleged breach with County. If the allegation is not resolved or the breach remains uncured at the end of the foregoing cure period, County may terminate this Agreement upon notice to HomeWAV in accordance with the notice procedures in Section 10 hereof.
- B. Insufficient Funding. Doesn't apply to this agreement as the County is not providing or obligated for any funding under this Agreement.
- C. Compensation. In the event of any termination of this Agreement, HomeWAV shall be entitled to compensation for uncompensated Licensed Services and Professional Services rendered, usage fees and revenue shares owed, and out of pocket expenses incurred hereunder through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owing to County resulting from a breach of this Agreement by HomeWAV.
- D. Effects of Termination. In addition to the compensation terms set forth above, upon termination or expiration of this Agreement, irrespective of the cause, the licenses granted by HomeWAV to County shall terminate. County shall take the following actions: (i) immediately cease and cause all of its users to immediately cease all access to and use of the System; (ii) return the Equipment to HomeWAV in good, working condition no later than (30) days following the termination or expiration date; and (iii) to the extent any Software is then being run on any of its systems, remove all Software applications. In the event that any returned Equipment is not in good, working condition or any Equipment is not returned pursuant to this Section, County will be liable for the replacement cost of such Equipment, and will remit payment in full upon demand by HomeWAV.

E. Survival. The following Sections shall survive termination or expiration of this Agreement: Sections 1 through 7.

8. COMPENSATION:

The maximum amount payable by County under this Agreement is \$0.00 (No Cost). HomeWAV agrees to perform all services required by this Agreement for an amount not to exceed such maximum dollar amount. The rates and costs shall be as set forth in Exhibit 2 – Schedule of Rates, which is attached hereto and incorporated herein by reference.

9. NOTICES:

Any and all notices required to be given pursuant to the terms 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: Humboldt County Sheriff's Office
Attn: Sheriff William Honsal
826 4th Street
Eureka, CA 95501

HomeWAV: HomeWAV, LLC_
2020 Westport Center Drive
St. Louis, MO 63146
Attn: John Best

10. REPORTS:

HomeWAV agrees to provide County with any and all reports, which may be required by local, state or federal agencies for compliance with this Agreement. Reports shall be submitted no later than thirty (30) days after the end of each calendar quarter using the format required by the State of California as appropriate.

11. RECORD RETENTION AND INSPECTION:

A. Maintenance and Preservation of Records. HomeWAV agrees to timely prepare accurate and complete financial, performance and payroll records relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this Agreement, 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. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work performed.

B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of HomeWAV, and its subcontractors, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor

and other duly authorized agents of the State of California for a period of three (3) years after final payment under this Agreement. HomeWAV hereby agrees to make such records available during normal business hours to inspection, audit and reproduction by any duly authorized agents of the State of California or County. HomeWAV further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized agents of the State of California or County. All examinations and audits conducted under this section shall be strictly confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement.

- C. Audit Costs. In the event of an audit exception or exceptions, the party responsible for not meeting the program requirements shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because HomeWAV's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by County.

12. MONITORING:

HomeWAV agrees that County has the right to monitor all activities related to this Agreement, including the right to review and monitor HomeWAV's records, programs or procedures, at any time, as well as the overall operation of HomeWAV's programs in order to ensure compliance with the terms and conditions of this Agreement. However, County is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of the results of services performed by HomeWAV pursuant to the terms of this Agreement.

13. CONFIDENTIAL INFORMATION:

- A. Definition of Confidential Information. "**Confidential Information**" means, subject to the limitations set forth below, all, or any part of, and originals or copies of, any non-publicly available information, data, plans, materials, processes, methodologies and concepts, in whatever form embodied (e.g., oral, written, electronic) owned, developed or transmitted by either party hereto (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") in connection with this Agreement that is expressly designated as confidential or that would be understood to be confidential and proprietary by a reasonable person given the circumstances under which it is provided. Without limiting the foregoing, HomeWAV Confidential Information includes (i) the source code and all intellectual property comprising the Licensed Software and (ii) the terms and conditions of this Agreement.
- B. Exclusions. Confidential Information excludes any information which (i) is already in the public domain at the time of disclosure (through a source other than the Receiving Party); (ii) enters the public domain after disclosure through no fault of the Receiving Party; (iii) is already known to the Receiving Party at the time of disclosure through means other than by transmission by the Disclosing Party (as evidenced by written records); or (iv) was independently developed by the Receiving Party without regard to any Confidential Information disclosed to the Receiving Party by the other Party (as evidenced by written records).
- C. Protection and Permitted Use of Confidential Information. During the Term of this Agreement and for five (5) years after its termination or expiration date, Disclosing Party and Receiving Party shall comply with the terms of this Section 14 regarding the use and disclosure of

Confidential Information in any transaction arising from this Agreement, either between the Parties, or with a sublicensing Facility. As a condition to being provided with any access to or use of the Disclosing Party's Confidential Information, the Receiving Party will use at least the same degree of care and security methods to protect the Disclosing Party's Confidential Information as it employs to protect its own Confidential Information from unauthorized use and disclosure, but in no event less than a reasonable standard of care. The Receiving Party may disclose the Disclosing Party's Confidential Information to those of its employees who (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 14. Further, the Receiving Party may not disclose the Disclosing Party's Confidential Information to any third parties unless such disclosure occurs in that Party's scope of responsibilities under this Agreement or is approved in writing by the Disclosing Party.

In addition to the foregoing, HomeWAV hereby agrees to protect all Confidential Information in conformance with any and all applicable local, state and federal laws and regulations, including, but not limited to: California Welfare and Institutions Code Sections 827, 5328 and 10850; California Health & Safety Code Sections 1280.15 and 130203; the California Confidentiality of Medical Information Act ("CMIA"); the federal Health Information Technology for Economic and Clinical Health Act, ("HITECH Act"); the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any current and future implementing regulations promulgated thereunder, including, without limitation, 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.

- D. Continuing Compliance with Confidentiality Laws. The parties acknowledge that federal and state confidentiality laws are rapidly evolving, and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws or regulations.
- E. Compelled Disclosures. Except to the extent prohibited by applicable laws, the Receiving Party will promptly notify the Disclosing Party in writing of any subpoena or other judicial or administrative order by a government authority or proceeding seeking access to or disclosure of the Disclosing Party's Confidential Information. The Receiving Party will reasonably cooperate with the Disclosing Party in seeking a protective order or other appropriate protection for such Confidential Information. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 14, the Receiving Party remains required by applicable laws to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

- F. Actions upon Expiration or Termination. Upon the expiration or termination of this Agreement (except as otherwise provided herein), each party will return or destroy, as the other party may direct, all documentation in any medium that contains, refers to, or relates to the other party's Confidential Information, and retain no copies, except to the extent required by applicable laws or as necessary to satisfy such party's internal audit or compliance policies; provided any such retention will continue to be subject to the terms of this Section 14.

14. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

HomeWAV certifies by its signature below that it is not a Nuclear Weapons Vendor, in that HomeWAV 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. HomeWAV agrees to notify County immediately if it becomes a Nuclear Weapons Vendor as defined above. County may immediately terminate this Agreement if it determines that the foregoing certification is false or if HomeWAV becomes a Nuclear Weapons Vendor.

15. NON-DISCRIMINATION COMPLIANCE:

- A. Professional Services and Employment. In connection with the execution of this Agreement, HomeWAV shall not 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 40 years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, or any other classifications protected by local, state and federal laws and regulations. Nothing herein shall be construed to require employment of unqualified persons.
- B. Compliance with Anti-Discrimination Laws. HomeWAV further assures that it will abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, California Welfare and Institutions Code Section 10000, CDSS MPP Division 21, United States Executive Order 11246, as amended, and any other applicable local, state and federal laws and regulations. Practices in hiring, compensation, benefits and firing are among the employment practices subject to this requirement.

16. DRUG-FREE WORKPLACE:

By signing this Agreement, HomeWAV hereby certifies that HomeWAV will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350 et seq.) and will provide a drug-free workplace by doing all of the following:

- A. Drug-Free Policy. 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 all of the following:
1. The dangers of drug abuse in the workplace;
 2. HomeWAV'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 services hereunder will:
1. Receive a copy of HomeWAV's Drug-Free Policy Statement; and
 2. Agree to abide by the terms of HomeWAV's Drug-Free Policy as a condition of employment.
- D. Noncompliance. Failure to comply with these requirements may result in suspension of payments under this Agreement and/or termination thereof, and HomeWAV may be ineligible for award of future contracts if County determines that the foregoing certification is false or if HomeWAV violates the certification by failing to carry out the above-referenced requirements.

17. COUNTY COVENANTS AND OBLIGATIONS:

County hereby covenants and agrees to the following terms as material conditions to its right to use the System:

1. It will not sell, sublicense, or assign the Equipment, the Software, or any other components of the System.
2. It will keep the Equipment free and clear of all liens and encumbrances.
3. It will only use the Equipment, Software, and other components of the System for (i) the limited purposes provided under the license in Section 4 and (ii) if requested by and, as applicable, purchased by the County, any Add On Features in all cases pursuant to the terms and conditions of this Agreement and the Software Terms and Conditions.
4. It will use the System solely at the Facilities and locations within the Facilities where installed by HomeWAV.
5. It will use its best efforts to ensure that none of the Equipment or Software is damaged by misuse or neglect, including, without limitation, by misuse by the inmates.
6. It will work with HomeWAV to ensure that all individuals to whom it grants access to and use of the System will agree to the Software Terms and Conditions, and further acknowledges and agrees that it will be fully liable to HomeWAV for breach by any such individuals of the Software Terms and Conditions.
7. It acknowledges and agrees that HomeWAV will be the sole and exclusive provider of inmate phone, video visitation, and messaging services and all related Professional Services to all of the

County's Facilities.

8. It will not move the Equipment without the advance written consent of HomeWAV.

9. It will not remove, alter, disfigure, or cover up any numbering, lettering, insignia, or any owner's tag(s) displayed upon the Equipment.

10. It will provide a data file from its "Jail Management Software" or comparable system, via secure FTP or web services integration, at a minimum of every fifteen (15) minutes. Any initial synchronization cost will be paid by HomeWAV.

11. It will grant HomeWAV and its employees and subcontractors reasonable and necessary access to the Facilities on order to enable HomeWAV to perform its obligations and exercise its rights hereunder. HomeWAV shall have the right, upon reasonable notice, to enter into each Facility to inspect the System.

18. COOPERATIVE PURCHASE PROGRAM:

Other counties that are political subdivisions of the State of California will be offered the opportunity to participate in a "Cooperative Purchase Program", pursuant to which, such participating counties may retain HomeWAV to provide the System to one or more of their own secured detention facilities and to purchase the Licensed Services and Professional Services all in accordance with the same terms, conditions, obligations, responsibilities, liabilities and benefits as set forth in this Agreement and as offered to County HomeWAV. Any county desiring to participate in the Cooperative Purchase Program will be responsible for entering into a separate agreement with HomeWAV containing the same terms as those set forth herein.

19. CALL RECORDING:

County hereby agrees that HomeWAV shall have no obligation to verify the users of the System and that County is strictly liable to HomeWAV for any use of the Software by any of its users that violates the Software Terms and Conditions. HomeWAV will endeavor to make certain recordings available to County on demand for a period of not less than 90 days after the date of such recording and, with advanced written notice, for a period of one year from the date this Agreement expires or is terminated. County agrees that HomeWAV has no liability to County or any third party for any failure to record, store, transmit, relay, review, or monitor any call.

20. INDEMNIFICATION:

A. Hold Harmless, Defense, and Indemnification. HomeWAV shall hold harmless, defend and indemnify County and its agents, officers, officials, employees and volunteers ("**Indemnities**") from and against any and all claims, demands, or actions ("**Claims**") and related losses, damages, liabilities, expenses and costs of any kind or nature incurred by the Indemnities, including, without limitation, attorney' fees and other costs of litigation, to the extent such Claim arises out of, or is directly in connection with, HomeWAV's 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 County.

B. Effect of Insurance. Acceptance of the insurance required by this Agreement shall not relieve HomeWAV from liability under this provision. This provision shall apply to all claims for damages related to HomeWAV'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.

21. INSURANCE REQUIREMENTS:

This Agreement shall not be executed by County, and HomeWAV is not entitled to any rights hereunder, unless certificates of insurance or other sufficient 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 HomeWAV's indemnification obligations provided for herein, HomeWAV shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the period of this Agreement and any extended term thereof, the following policies of insurance placed with insurers authorized to do business in California and 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 HomeWAV, 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 (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000) per occurrence for any one incident, including, but not limited to, 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 occurrence limit.
2. Automobile/Motor Liability Insurance with a limit of liability of not less than One Million Dollars (\$1,000,000) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles. Said coverage shall be at least as broad as Insurance Service Office Form Code 1 (any auto).
3. Workers' Compensation Insurance, as required by the Labor Code of the State of California, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against County, its agents, officers, officials, employees and volunteers.
4. Professional Liability Insurance – Error and Omission Coverage including coverage in an amount no less than Two Million Dollars (\$2,000,000) for each occurrence (Four Million Dollars (\$4,000,000) general aggregate). Said insurance shall be maintained for the statutory period during which HomeWAV may be exposed to liability. HomeWAV shall require that such coverage be incorporated into its professional 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, 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 HomeWAV. The coverage shall contain no special limitations on the scope of protection afforded to County, 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 loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to "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 provisions set forth herein. It is further understood that HomeWAV shall not terminate such coverage until County receives adequate proof that equal or better insurance has been secured.
 3. The inclusion of more than one insured shall not operate to impair the rights of one 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 insured shall not operate to increase the limits of the insurer's liability.
 4. For claims related to this Agreement, HomeWAV's insurance is the primary coverage to County, and any insurance or self-insurance programs maintained thereby are excess to HomeWAV's insurance and will not be used to contribute therewith.
 5. Any failure to comply with the provisions of this Agreement, including breach of warranties, shall not affect coverage provided to County, its agents, officers, officials, employees and volunteers.
 6. HomeWAV 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 or County Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000) shall be disclosed to and approved by County. If HomeWAV does not keep all required policies in full force and effect, County may, in addition to other remedies under this Agreement, take out the necessary insurance, and HomeWAV agrees to pay the cost thereof. County is also hereby authorized with the discretion to deduct the cost of said insurance from the monies owed to HomeWAV 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 HomeWAV shall be required to purchase additional coverage to meet the above 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

Attn: Risk Management
825 5th Street, Room 131
Eureka, California 95501

HomeWAV HomeWAV, LLC
2020 Westport Center Drive
St. Louis, MO 63146
Attn: John Best

22. RELATIONSHIP OF PARTIES:

It is understood that this is an Agreement by and between two independent contractors 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 HomeWAV shall not be entitled to any benefits to which County employees are entitled, including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation.

23. COMPLIANCE WITH LAWS:

HomeWAV agrees to comply with all applicable local, state and federal laws and regulations, including, but not limited to, the Americans with Disabilities Act. HomeWAV further agrees to comply with all applicable local, state and federal licensure and certification requirements.

24. 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.

25. ASSIGNMENT:

Neither party may delegate its duties or assign its rights hereunder, either in whole or in part, without the other party's prior written consent which shall not be unreasonably withheld or delayed. Any assignment by either party in violation of this provision shall be void. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by HomeWAV to obtain supplies, technical support or professional services.

26. 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.

27. WAIVER OF DEFAULT:

The waiver by either party of any breach or violation of any requirement 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 or any default which may then exist on the part of HomeWAV. 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 HomeWAV shall promptly refund, any funds

disbursed to HomeWAV, which in the judgment of County were not expended in accordance with the terms of this Agreement.

28. 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.

29. AMENDMENT:

No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

30. STANDARD OF PRACTICE:

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

EXCEPT AS PROVIDED HEREIN, THE SYSTEM ALL RELATED SERVICES IN THIS AGREEMENT ARE DELIVERED AND PROVIDED "AS IS" AND WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

31. 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.

32. ADVERTISING AND MEDIA RELEASE:

All informational material related to this Agreement shall receive approval from both HomeWAV and County prior to being used as advertising or released to the media (television, radio, newspapers and internet). HomeWAV shall inform County of all requests for interviews by media related to this Agreement before such interviews take place; and County is entitled to have a representative present at such interviews. County shall not issue press releases or use HomeWAV's name in any publicly released materials without HomeWAV's prior review and written consent. All notices required by this provision shall be given to Sheriff or designee.

33. SUBCONTRACTORS:

HomeWAV shall have the right in its sole and absolute discretion to use subcontractors to assist with its performance obligations hereunder and to choose such subcontractors, provided, that HomeWAV will provide a list of any such subcontractors to County and will obtain prior written approval from County before subcontracting any of the services to be delivered hereunder. County must act

reasonably and promptly in reviewing and approving or rejecting a proposed subcontractor, and rejecting of a subcontractor must be reasonable and for good cause. Any and all subcontracts will be subject to all applicable provisions of this Agreement. HomeWAV shall remain legally responsible for the performance of all terms and conditions of this Agreement, including work performed by third parties under subcontracts, whether approved by County or not.

34. 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 party on the basis that the other party prepared it.

35. INDEPENDENT CONSTRUCTION:

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

36. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, but not be limited to, 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.

37. ENTIRE AGREEMENT:

This Agreement, including the Schedules attached hereto and incorporated herein, 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 its entirety any and all prior agreements of the parties.

38. 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.

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND

(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

HomeWAV, LLC

By: John Best

Date: 9/15/20

Name: John Best

Title: CEO

By: _____

Date: _____

Name: _____

Title: _____

County OF HUMBOLDT

By: _ William Honsal
Sheriff, Humboldt County

Date: _____

APPROVED AS TO FORM:

Name

By: _ Deputy County Counsel

Date: September 16, 2020

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: Kutik
Risk Analyst

Date: 9/16/2020

EXHIBIT 1
SCOPE OF WORK AND DESCRIPTION OF SERVICES

HomeWAV's Solution

HomeWAV will provide at **no cost**:

- Estimated at thirty-one (31) HomePAS™ Kiosks (final number to be determined after site survey and to be agreed upon by HomeWAV and the County)
 - One (1) router/firewall
 - Two (2) 24-port PoE switch
 - Equipment installation
 - Necessary data cabling to all kiosk locations (pending site survey)
 - Arrange for HomeWAV dedicated internet service
 - Ninety (90) days of storage
 - Marketing package (includes lobby and inmate posters)
 - Remote and onsite testing and training
 - HomeWAV Hardware & Software Service Level Agreement
- 2.

Professional Services (No Charge). HomeWAV will provide the following Professional Services to the County at no charge during the Term:

- arrange for the delivery of the Equipment to each of the County's Facilities included under this Agreement,
- load the Software onto the Equipment,
- coordinate the installation of the Equipment in designated wall mount locations within the Facilities,
- provide system testing and acceptance on all kiosks,
- provide staff and inmate training on platform features and functionality,
- arrange for high speed Internet service at minimum of 0.5MB up/0.5MB down per kiosk, and any Equipment associated therewith to service the System, and
- arrange for cat 5e or greater cable to be installed (if necessary) to each location within the Facility where Equipment is to be installed.

Support and Maintenance (No Charge). For the entire Term of this Agreement, and at no charge to the County, HomeWAV will support and maintain the Equipment located at each Facility pursuant to HomeWAV's Software and Hardware Service Level Agreement attached hereto as Exhibit C (the "**Service Agreement**"). Under no circumstances may the County or any third party acting on behalf of the County install, uninstall, or perform any maintenance or related services on the Equipment, it being understood and agreed that only an approved HomeWAV technician may provide Professional Services, support and maintenance on the Equipment.

Add-on Services

HomeWAV will provide to the County the add-on services selected below.

Add-Ons	Description of Features/Benefits	Yes/No
GoLegal™ Law Library Integration	Integrate w/current or future provider through the all-in-one HomePAS™ kiosk.	No
Digital Docs Paperless System	Digital inmate medical grievance requests, custom/misc. inmate grievance requests, read-only documents, rules, handbook with digital inmate/visitor signature/acknowledgement, etc. through the all-in-one HomePAS™ kiosk.	Yes
Commissary Ordering Integration	Integrate w/current or future provider through the all-in-one HomePAS™ kiosk.	Yes
LegalEyes Video Court & Arraignment	Remote video court/arraignment through the all-in-one HomePAS™ kiosk.	Yes
Professional Remote Visits	Professional remote attorney visits through the all-in-one HomePAS™ kiosk.	Yes
Lobby Call Feature	Feature available onsite, through the all-in-one HomePAS™ kiosk, for visitors to call for HomeWAV contact center assistance.	No
Premium Add-Ons	Description of Features/Benefits	Yes/No
Background Filtering	Configurable technology for custom backgrounds such as logos, SmartBlur, a solid color, or any other desired image. The appropriate lighting is important for video calls to work properly.	No
Argus Investigative Platform	Full biometric identification system/investigative suite for administrative users for voice and video calls.	Yes
Earth Class Mail Scanning	Full mail scanning services to allow for physical mail sent to inmates to be routed to a secure processing facility for scanning into digitized mail. All mail is logged, organized, and stored securely by a certified technician. The mail is converted to a PDF with full-text search capability. \$1.00 per piece of scanned mail.	No

EXHIBIT 2
Schedule of Rates

Proposed Usage Fees

System Usage Fee. The Facility’s inmates shall be charged the following fees for using the System, or such other prices as may be agreed to by the County and HomeWAV (such amounts, the “Usage Fees”). Usage Fee shall be defined as the cost per minute for phone calls, video calls, and the cost per message for messaging.

HomeWAV believes in transparency, integrity, and socially acceptable practices. That’s why we have a simple fee structure that is easy for users to understand. HomeWAV is offered at a significantly lower cost than our competitors with **NO HIDDEN FEES** and **NO CONNECTION FEES**.

Service	Fees
Remote Video Calls	\$0.20/minute
Video Messages	\$0.40/message
Deposit Fee	\$2.00 for any amount deposited
PayNearMe Fee	\$1.99
Surcharge Fee	\$0.00
Connection Fee	\$0.00
Refund Fee	\$7.50

Revenue Share

HomeWAV will pay to Humboldt County (CA) Sheriff’s Office—on a monthly basis—a Minimum Monthly Guarantee or percentage of the Gross Billable Revenue (GBR), whichever is greater, on ALL inmate video calls and messaging, based on the minimum ADP as outlined below. If the inmate population falls below the ADP, as outlined below, for a given month, the County Revenue Share shall default to 30% until the population meets or exceeds the ADP inmates.

Financial Offering for the County	
Minimum ADP	Offer
Minimum of 200+ ADP	Minimum Monthly Guarantee MMG: \$3,000 OR Percentage of Gross Billable Revenue (GBR*): 30% for video calls and messaging
Minimum of 300+ ADP	Minimum Monthly Guarantee MMG: \$4,000 OR Percentage of Gross Billable Revenue (GBR*): 30% for video calls and messaging
Minimum of 375+ ADP	Minimum Monthly Guarantee MMG: \$5,000 OR Percentage of Gross Billable Revenue (GBR*):

	30% for video calls and messaging
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