

**SOFTWARE LICENSE AND SUPPORT SERVICES AGREEMENT
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
DIVERSE COMPUTING, INC.
FOR FISCAL YEARS 2018-2019 THROUGH 2022-2023**

This Agreement, entered into this 26 day of March, 2019, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Diverse Computing, Inc., a Florida corporation, hereinafter referred to as "CONSULTANT," is made upon the following considerations:

WHEREAS, COUNTY, by and through its County Administrative Office – Information Technology Division and the Humboldt County Sheriff's Office, desires to retain the services of CONSULTANT to support and maintain COUNTY's eAgent Message Switch Software and eAgent Warrant Software Systems; 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, CONSULTANT represents that it is adequately, trained, skilled, experienced and qualified to perform the software support and maintenance services required by COUNTY.

NOW THEREFORE the parties hereto mutually agree as follows:

1. DEFINITIONS:

- A. Associate. As used herein, the term "Associate" shall mean an employee of CONSULTANT or an independent contractor hired by CONSULTANT.
- B. Authorized Facility. As used herein, the term "Authorized Facility" shall mean the Humboldt County Sheriff's Office located at 826 Fourth Street, Eureka, California 95501.
- C. Authorized Person. As used herein, the term "Authorized Person" shall mean employees of COUNTY, with a need to know CONSULTANT's Confidential Information, who agree to maintain the confidentiality of such information, and individuals or organizations who obtain written authorization to receive CONSULTANT's Confidential Information.
- D. Bankruptcy. As used herein, the term "Bankruptcy" shall mean all of the following:
 - 1. The filing of a petition under any insolvency or bankruptcy statute seeking the declaration of CONSULTANT as insolvent or bankrupt.
 - 2. The filing of any action seeking receivership or reorganization of CONSULTANT pursuant to any insolvency or bankruptcy statute.
 - 3. The filing of an involuntary petition against CONSULTANT pursuant to any insolvency or bankruptcy statute, if such petition shall remain unstayed or undismissed for a period of ten (10) days after filing.

- E. Computer. As used herein, the term "Computer" shall mean a single computer system, including operating system software, compatible with the Software that is owned or leased by COUNTY and located at the Authorized Facility.
- F. Confidential Information. As used herein, the term "Confidential Information" shall mean all information which is identified by either party as proprietary or confidential at the time such information comes into the possession or knowledge of the other party. For purposes of this definition, Confidential Information shall include the Proprietary Information and any and all information concerning the Proprietary Information.
- G. COUNTY Data. As used herein, the term "COUNTY Data" shall mean any information or data transmitted by COUNTY to CONSULTANT or the Software.
- H. Documentation. As used herein, the term "Documentation" shall mean the user's guides provided to COUNTY by CONSULTANT describing all or part of the utilities and functions of the Software, including, without limitation, any and all updates and modifications as provided by CONSULTANT to COUNTY.
- I. End User. As used herein, the term "End User" shall mean all of the following:
1. An individual identified by COUNTY as authorized under an End User Agreement to receive access to the Multiple User Software via a distinct password for such individual.
 2. Any COUNTY employee authorized by COUNTY to have access to the Localized Software for purposes of this Agreement.
- J. End User Agreement. As used herein, the term "End User Agreement" shall mean those certain End User Agreements between an End User and CONSULTANT under which CONSULTANT grants such End User a license to use the Proprietary Information, excluding any and all source codes, a copy of which is attached hereto in substantial form as Exhibit C – End User Agreement and incorporated herein by reference. Such End User Agreements shall include any and all terms and conditions set forth in Exhibit C – End User Agreement that provide protections and/or benefits to CONSULTANT, as determined by CONSULTANT.
- K. Fee. As used herein, the term "Fee" shall mean those applicable monies set forth in Exhibit B – DCI Rate Schedule, which is attached hereto and incorporated herein by reference, to be paid by COUNTY to CONSULTANT in connection with the licenses and Services provided pursuant to the terms and conditions of this Agreement.
- L. Localized Software. As used herein, the term "Localized Software" shall mean the eAgent Message Switch System, Managed Archive of Retrievable Transactions, eAgent Client Manager, California Law Enforcement Technology System Interface and California Law Enforcement Warrants System computer software.
- M. Multiple User Software. As used herein, the term "Multiple User Software" shall mean the eAgent Client Workstation and eAgent Web Client computer software.
- N. Proprietary Information. As used herein, the term "Proprietary Information" shall mean the Software, including the source code therefor, and any Documentation related thereto.
- O. Proprietary Notice. As used herein, the term "Proprietary Notice" shall mean a written notice displaying the symbol ©, the word "Copyright" or the abbreviation "Copr," the years "2001 –

2019," the name "Diverse Computing, Inc.," the phrase "All Rights Reserved" or the words "CONFIDENTIAL INFORMATION" or "TRADE SECRET" in large upper-case letters.

- P. Services. As used herein the term "Services" shall mean any and all software support and maintenance services set forth in Exhibit A – Statement of Work, which is attached hereto and incorporated herein by reference.
- Q. Software. As used herein, the term "Software" shall mean the Localized Software and the Multiple User Software.
- R. Third Party Technology. As used herein, the term "Third Party Technology" shall mean any third party technology provided or made available by COUNTY or CONSULTANT in connection with the Software, Proprietary Information or Services provided hereunder.
- S. Unauthorized Access. As used herein, the term "Unauthorized Access" shall mean any access to the Proprietary Information except for the exclusive purpose of using the Proprietary Information, excluding any and all source codes, in accordance with this Agreement, including evaluating the performance of the Software and training End Users in use of the Software.
- T. Unauthorized User. As used herein, the term "Unauthorized User" shall mean any individual who accesses the Proprietary Information except for:
 - 1. Employees of COUNTY authorized by COUNTY to access the Proprietary Information, excluding any and all source codes, for the exclusive purpose of using the Proprietary Information, excluding any and all source codes, in accordance with this Agreement, including evaluating the performance of the Software and training employees of COUNTY and/or authorized End Users in use of the Software.
 - 2. End Users authorized by COUNTY to access the Software pursuant to an End User Agreement for the exclusive purpose of using the Software for internal purposes.

2. GRANT OF LICENSE AND DESCRIPTION OF SERVICES:

- A. Grant of License to Use Software. CONSULTANT hereby grants to COUNTY, for the term of this Agreement, a non-exclusive and non-transferable license to:
 - 1. Use the Localized Software, in object code form only, on the Computer at the Authorized Facility, and to use the Documentation at the Authorized Facility subject to the terms and conditions of this Agreement.
 - 2. Use the Multiple User Software, in object code form only, and the Documentation at the Authorized Facility subject to the terms and conditions of this Agreement.
 - 3. Sublicense the Multiple User Software, in object code form only, and the Documentation to a combined total of no more than five hundred (500) End Users subject to the terms and conditions of this Agreement and an End User Agreement.
- B. Grant of License to Source Code Solely in the Event of Bankruptcy. Solely in the event of Bankruptcy of CONSULTANT, CONSULTANT hereby grants to COUNTY, for the term of this Agreement, a limited and non-exclusive, non-transferable, license to use and modify the source code on one (1) COUNTY production server and one (1) COUNTY development server strictly and solely for the purpose of enabling COUNTY to continue to use the Software

pursuant to the terms and conditions set forth herein during the term of this Agreement. COUNTY hereby acknowledges that the source code is Confidential Information of CONSULTANT and contains trade secret information that is proprietary to CONSULTANT, and COUNTY agrees to hold such source code in strict confidence and not to disclose such information to any third parties and/or Unauthorized Users. To the extent allowed by law, COUNTY shall defend, indemnify and hold harmless CONSULTANT against any damages or liability arising from use of the source code by COUNTY. COUNTY assumes risk of loss to the source code. Notwithstanding anything to the contrary, COUNTY shall not access the source code except solely in the event of Bankruptcy of CONSULTANT as set forth herein.

- C. COUNTY Data. COUNTY hereby grants CONSULTANT a worldwide and non-exclusive license to use, reproduce and modify COUNTY Data, in whole or in part, solely for the purpose of maintaining the Software or performing any Services under this Agreement. CONSULTANT shall not have any obligation to access, review or maintain COUNTY Data, and COUNTY shall be responsible for uploading, converting and maintaining COUNTY Data, except at the sole discretion of CONSULTANT. Unless advised to the contrary in writing at the time of disclosure, CONSULTANT shall be entitled to rely on COUNTY data provided hereunder as true and correct and, to the extent allowed by law, COUNTY shall indemnify CONSULTANT for any and all damages, liability and costs resulting from such reliance.
- D. Professional Services. CONSULTANT agrees to furnish the Services and assistance described in Exhibit A – Statement of Work. In providing such Services and assistance, CONSULTANT agrees to reasonably cooperate in good faith with the Humboldt County Information Technology Director, or a designee thereof, hereinafter referred to as “Director,” and the Humboldt County Sheriff, or a designee thereof, hereinafter referred to as “Sheriff.” COUNTY hereby acknowledges that successful performance of CONSULTANT’s obligations under this Agreement shall require COUNTY’s good faith cooperation, including, without limitation, reasonably providing information as may be requested by CONSULTANT from time to time. COUNTY hereby agrees to provide such good faith cooperation and information.

3. SCOPE OF LICENSE:

- A. License Restriction. COUNTY shall not, in whole or in part, sell, rent, lease, access the source code, create derivative works, modify, reverse engineer, reverse compile or reverse assemble in any way the Proprietary Information. COUNTY shall have the right to make one (1) back-up copy of the Localized Software for archival purposes. COUNTY shall not otherwise copy the Proprietary Information and shall not allow the Proprietary Information to be copied without the prior written consent of CONSULTANT. COUNTY shall not have the right to sublicense or distribute the Proprietary Information except to sublicense and/or distribute the Multiple User Software and Documentation to End Users as set forth herein, and shall not have the right to authorize third parties to sublicense or distribute the Proprietary Information. COUNTY hereby represents and warrants that the Localized Software is licensed by COUNTY hereunder for its own use at the Authorized Facility and not for sublicensing or distribution to third parties. COUNTY shall assume risk of loss to the Proprietary Information.
- B. Non-Exclusive. COUNTY hereby acknowledges that the rights and licenses granted under this Agreement are non-exclusive and do not constitute a transfer of ownership.
- C. Authorized Use. COUNTY shall take all reasonable steps necessary to prevent Unauthorized Users from accessing the Proprietary Information and to prevent Unauthorized Access to the Proprietary Information. COUNTY shall promptly inform CONSULTANT of any and all Unauthorized Access and Unauthorized Users of which COUNTY has knowledge or suspicion.

- D. End User Sublicense Restriction. COUNTY shall sublicense the Multiple User Software to End Users solely for End User purposes. Use of the Multiple User Software by End Users shall be solely through one (1) of the following methods:
1. Permanent installation in a single location on a hard disk or other storage device.
 2. Installation on a single file server for use on a single local area network, provided the Software is configured for network use.
- E. End User Agreements. COUNTY shall require each End User that is not an employee of COUNTY to execute an End User Agreement and to abide by any privacy statement provided by CONSULTANT. COUNTY and CONSULTANT hereby agree that CONSULTANT shall be either a direct party or an intended third party beneficiary with vested rights in each End User Agreement.
- G. Third Party Technology. COUNTY hereby acknowledges and agrees that Third Party Technology, not including the Linux server platform, and web browser software on the personal computers of the End User, may be required to use the Software. CONSULTANT shall have no obligation to supply, provide or deliver to COUNTY or the End Users the Third Party Technology or otherwise participate in the acquisition of Third Party Technology by COUNTY or End Users. COUNTY shall be solely responsible for acquiring, maintaining and updating all Third Party Technology necessary to use the Software and paying any and all costs, fees and expenses associated therewith. COUNTY shall be responsible for obtaining all necessary licenses, authorizations and rights for COUNTY and/or the End Users to acquire and use the Third Party Technology and for CONSULTANT to use, modify and distribute the Third Party Technology in connection with the Software.
- H. Internet Access. The licenses and Services provided by CONSULTANT under this Agreement do not include internet service provider accounts. COUNTY hereby acknowledges and agrees that CONSULTANT shall have no obligation to provide COUNTY or its End Users access to the internet. COUNTY shall be solely responsible for, and agrees to pay any and all fees, costs and expenses associated with, acquiring, purchasing, installing, maintaining and implementing the components necessary for accessing the internet, including, without limitation, computer software, computer hardware and telecommunications equipment.
- I. Export Laws. The Software, including technical data, is subject to United States export control laws, including, without limitation, the United States Export Administration Act, and may be subject to export or import regulations in other countries. COUNTY agrees to comply with any and all applicable export control laws, regulations and standards, and acknowledges that it has the responsibility to obtain licenses to export, re-export or import the Software.

4. TERM:

This Agreement shall begin on December 1, 2018 and shall remain in full force and effect until November 30, 2022, unless sooner terminated as provided herein.

5. TERMINATION:

- A. Breach of Contract. Either party may terminate this Agreement in the event that the other party materially defaults in performing any obligation under this Agreement, or violates any law, regulation or standard applicable to its performance hereunder, and such default or violation continues uncured for a period of thirty (30) days following written notice thereof.

- B. Without Cause. This Agreement may be terminated by COUNTY without cause upon thirty (30) days advance written notice. Such notice shall state the effective date of the termination.
- C. Insufficient Funding. Pursuant to Section 18 of Article XVI of the California Constitution, COUNTY may terminate this Agreement in any fiscal year in which it is determined there is insufficient funding to continue the licenses and/or Services provided hereunder. COUNTY shall provide CONSULTANT fifteen (15) days advance written notice of its intent to terminate this Agreement due to insufficient funding.
- D. Compensation Upon Termination. In the event this Agreement is terminated, CONSULTANT shall be entitled to compensation for any and all uncompensated Fees incurred pursuant to the terms and conditions of this Agreement through and including the effective date of such termination. However, this provision shall in no way limit or reduce any damages owed to COUNTY due to a breach of this Agreement by CONSULTANT.
- E. Effect of Termination or Cancellation. Upon termination or cancellation of this Agreement, COUNTY shall promptly take all of the following actions:
 - 1. Cease and desist any and all efforts of COUNTY and its End Users to use the Proprietary Information.
 - 2. Return or, if so directed, destroy any copies of the Confidential Information in the possession or control of COUNTY and any copies of the Proprietary Information in the possession or control of COUNTY and/or its End Users.
 - 3. Remove, migrate or convert, as applicable, any and all COUNTY Data at COUNTY's expense.
 - 4. Provide CONSULTANT 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 licenses and Services provided pursuant to the terms and conditions of this Agreement is One Hundred Ninety-Two Thousand Seven Hundred Four Dollars and Nineteen Cents (\$192,704.19), excluding any applicable late fees. Any modifications and/or changes to the licenses and/or Services required hereunder may necessarily result in an increase of the maximum amount payable set forth herein.
- B. Additional licenses and Professional Services. Any additional licenses and/or Services not otherwise provided for herein, shall not be provided by CONSULTANT, or compensated by COUNTY, without written authorization by the Humboldt County Administrative Office.
- C. Excluded Items. Any professional services other than those Services described in Exhibit A – Statement of Work, shall not be included in the Fees paid hereunder and shall require payment of a separate fee, including, without limitation, training, support of other software, hardware, repair of damage not caused by CONSULTANT, or any other problems determined by CONSULTANT to be outside the control and responsibility of CONSULTANT. COUNTY is responsible for any and all media, including, diskettes, data tapes or data communications, and distribution costs, including shipping, handling and telephone charges, for the Software and/or any other program or data file that may be provided to COUNTY.

- D. Taxes. COUNTY shall be responsible for the payment of any and all taxes, excluding income taxes assessed against CONSULTANT, arising out of this Agreement.

7. PAYMENT:

- A. Invoices. CONSULTANT shall submit to COUNTY annual invoices itemizing any and all Fees incurred pursuant to the terms and conditions of this Agreement during the applicable invoice period. Invoices shall be in a format approved by, and shall include backup documentation as reasonably specified by, Director, Sheriff and the Humboldt County Auditor-Controller. CONSULTANT shall submit a final invoice for payment no more than thirty (30) days following the expiration, cancellation or termination date of this Agreement. Payment for the licenses and Services provided pursuant to the terms and conditions of this Agreement shall be made within thirty (30) days after the receipt of approved invoices. COUNTY agrees to provide CONSULTANT with written notice of the disapproval of any disputed invoice within ten (10) days of receipt thereof. Such notice shall contain sufficient detail for CONSULTANT to understand why such invoice was not approved and to enable CONSULTANT to resubmit such invoice for approval.
- B. Late Payments. Any amount which is not paid when due shall be increased by a late charge equal to one percent (1%) of such unpaid amount for each month, or portion thereof, in which such amount is due and not paid.

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, sent by certified mail, return receipt requested, or by commercial overnight delivery service 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 Administrative Office – Information Technology Division
Attention: Jim Storm, Information Technology Director
839 Fourth Street
Eureka, California 95501

CONSULTANT: Diverse Computing, Inc.
Attention: Daniel Percy, CoFounder
3717 Apalachee Parkway, Suite 102
Tallahassee, Florida 32311

9. REPORTS:

CONSULTANT 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. Reports shall be provided to COUNTY no later than fifteen (15) days prior to the date on which COUNTY is required to submit such reports to any local, state or federal agency. COUNTY shall be responsible for notifying CONSULTANT, in writing, of any reports that may be required within a reasonable time period for CONSULTANT to prepare and provide COUNTY with such reports. Notwithstanding anything to the contrary, CONSULTANT shall not be required to disclose Confidential Information and/or Proprietary Information, including, without limitation, the source codes to the Software, as part of any report provided pursuant to the terms and conditions of this Agreement.

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10. RECORD RETENTION AND INSPECTION:

- A. Maintenance and Preservation of Records. CONSULTANT agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the licenses and 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 licenses and 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 CONSULTANT, and its subcontractors, related to the licenses and 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 other duly authorized agents of the State of California for a period of three (3) years after the date of final payment hereunder. Upon reasonable notice, CONSULTANT hereby agrees to make such records available during normal business hours for inspection, audit and reproduction by COUNTY and any other duly authorized local, state and/or federal agencies. CONSULTANT further agrees to allow reasonable 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. Notwithstanding anything to the contrary, CONSULTANT shall not be required to disclose Confidential Information and/or Proprietary Information, including, without limitation, the source code to the Software, as part of any examination or audit conducted pursuant to the terms and conditions of this Agreement.
- C. Audit Costs. If, as a result of the examination procedures set forth herein, it is determined that CONSULTANT was overpaid or underpaid for the licenses and/or Services provided pursuant to the terms and conditions of this Agreement, COUNTY will provide CONSULTANT with a copy of the examination results setting forth any discrepancies and detailing the basis upon which any overpayment or underpayment was determined. CONSULTANT will have thirty (30) days to verify or dispute the accuracy of the information contained within such examination results. Upon verification, and the parties' agreement that the amount of the overpayment or underpayment is accurate, the deficient party will remit to the other party, a sum equal to the agreed upon deficiency within thirty (30) days.

11. MONITORING:

COUNTY will provide CONSULTANT with any and all reviews, feedback, testing and approvals or denials necessary to ensure compliance with this Agreement. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the quality of the results of CONSULTANT's performance hereunder. CONSULTANT will be entitled to rely upon any and all approvals and/or denials provided by COUNTY pursuant to the terms and conditions of this Agreement.

12. CONFIDENTIAL INFORMATION:

- A. Use and Disclosure of Confidential Information. In the performance of this Agreement, each party may receive Confidential Information of the other. Each party hereby agrees to use or

disclose only the minimum amount of Confidential Information necessary to accomplish the intended purpose of this Agreement. Each party expressly agrees not to use or disclose Confidential Information obtained pursuant to the terms and conditions of this Agreement in any manner that would constitute a breach of this Agreement or a violation of any applicable local, state or federal laws, regulations or standards. Without limiting the scope of the other confidentiality requirements set forth herein, each party shall ensure that its directors, officers, employees, contractors and agents use or disclose Confidential Information obtained pursuant to the terms and conditions of this Agreement in accordance with any and all applicable local, state and federal laws, regulations and standards. Each party further agrees to maintain and protect all Confidential Information obtained pursuant to the terms and conditions of this Agreement in accordance with any and all local, state and federal laws, regulations and standards.

- B. Use and Disclosure of Personally Identifiable Information. In the performance of this Agreement, CONTRACTOR may receive personally identifiable information that is confidential under local, state or federal law. Each party hereby agrees to protect all personally identifiable information obtained pursuant to the terms and conditions of this Agreement in conformance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, but not limited to: 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, 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.
- C. Trade Secrets. COUNTY hereby acknowledges and agrees that CONSULTANT's Confidential Information derives independent economic value, either actual or potential, from not being generally known to, or readily ascertainable by, other persons who can obtain economic value from its disclosure or use; is the subject of reasonable efforts by CONSULTANT under the circumstances to maintain its secrecy; and is a trade secret of CONSULTANT as defined by any and all applicable local, state or federal laws, regulations and standards.
- D. Proprietary Notices. COUNTY shall not remove or alter any confidentiality, trade secret or copyright notices or proprietary legends displayed by CONSULTANT in connection with the Proprietary Information. COUNTY shall take such reasonable security precautions as necessary to prevent unauthorized copying or disclosure of the Proprietary Information and shall insure that ownership of the Proprietary Information by CONSULTANT is disclosed by prominent and appropriate display of CONSULTANT's trade secret and copyright notices, including the Proprietary Notice, on each and every part of the Software and by prominent and appropriate display of CONSULTANT's trade name and trademarks on the Proprietary Information.
- E. Disclosure of Unrestricted Information. The prohibitions contained in this provision shall not apply to information which:
1. Is received from a source other than a party to this Agreement and such source rightfully and lawfully obtained such information.
 2. Was already known by the recipient prior to its receipt from the disclosing party or is, or becomes, public knowledge without the fault of the recipient and not through any

disclosure made pursuant to the terms and conditions of this Agreement.

3. Is released by the disclosing party without restriction.
4. Is independently developed by the recipient without any access to the Confidential Information in question as evidenced by the recipient and without causing a breach of the terms or conditions of this Agreement.
5. Is required to be disclosed by court order or applicable law, including, without limitation, the California Public Records Act and California Government Code Section 8546.7, provided that sufficient advanced written notice of the disclosure is provided to the other party to enable the other party sufficient time to defend against any alleged required disclosure. Notwithstanding anything to the contrary, the Proprietary Information shall be deemed Confidential Information at all times.

F. Continuing Compliance with Confidentiality Laws. The parties acknowledge 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 each party's compliance with such developments. Each party agrees to promptly enter into reasonable negotiations in good faith concerning an amendment to this Agreement embodying written assurances consistent with the requirements of HIPAA, the HITECH Act, the CMLA and any other 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, CONSULTANT, 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 local, state or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.
- B. Compliance with Anti-Discrimination Laws. CONSULTANT 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, as amended; the Age Discrimination Act of 1975; the Food Stamp Act of 1975; 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 federal laws, regulations or 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 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, CONSULTANT certifies that it is not a Nuclear Weapons Contractor, in that CONSULTANT 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. CONSULTANT 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 CONSULTANT subsequently becomes a Nuclear Weapons Contractor.

15. DRUG-FREE WORKPLACE:

By executing this Agreement, CONSULTANT certifies that it will provide a drug-free workplace in accordance with 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. CONSULTANT'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 pursuant to the terms and conditions of this Agreement will:
 - 1. Receive a copy of CONSULTANT's Drug-Free Policy Statement; and
 - 2. Agree to abide by CONSULTANT's Drug-Free Policy as a condition of employment.
- D. 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. Mutual Indemnification. To the extent allowed by law, each party hereto shall hold harmless, defend and indemnify the other party and its agents, officers, officials, employees and properly authorized volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney 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 material duties and/or 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 properly authorized volunteers.

- B. 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.
- C. 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 effective, 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. CONSULTANT's General Insurance Requirements. Without limiting CONSULTANT's indemnification obligations provided for herein, CONSULTANT shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the entire period of this Agreement, and any extended term 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 directly arises from, or in connection with, the actions of CONSULTANT and its agents, officers, directors, employees, 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 (\$2,000,000.00) per occurrence for any one (1) 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 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 Office 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 properly authorized volunteers.
 - 4. Professional Liability Insurance – Error and Omission Coverage including 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 CONSULTANT may be exposed to liability. CONSULTANT shall require that such coverage be incorporated into its professional services agreements with any other entities.

B. CONSULTANT's 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 properly authorized volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY or its agents, officers, officials, employees and properly authorized 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 "XCU Hazards."
 - c. Is the primary insurance with regards 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 CONSULTANT 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 (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.
4. For claims that directly arise from, or in connection with, the actions of CONSULTANT or its agents, officers, directors, employees, invitees, assignees or subcontractors, CONSULTANT's insurance is the primary insurance coverage to COUNTY, and any insurance or self-insurance programs maintained by COUNTY are excess to CONSULTANT's insurance and will not be called upon to contribute therewith.
5. Any failure of CONSULTANT to comply with the provisions of this Agreement, including breach of warranties, shall not affect the coverage provided to COUNTY, its agents, officers, employees, officials, employees and properly authorized volunteers.
6. CONSULTANT shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms as approved by the Humboldt County Risk Manager or County Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to and approved by COUNTY. If CONSULTANT 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 CONSULTANT 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 due to CONSULTANT's actions, and CONSULTANT shall be required to purchase additional coverage to meet the above-referenced aggregate limits.

C. COUNTY's General Insurance Requirements. Notwithstanding anything to the contrary, COUNTY shall maintain at its own expense any and all necessary insurance, including, without limitation, workers' compensation, disability and unemployment insurance, as well as public liability, product liability, property damage and automobile liability insurance against all losses, claims, demands, proceedings, damages, costs, charges and expenses for injuries or damage to any person or property arising out of, or in connection with, COUNTY's actions hereunder.

D. 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

CONSULTANT: Diverse Computing, Inc.
Attention: Daniel Percy, CoFounder
3717 Apalachee Parkway, Suite 102
Tallahassee, Florida 32311

18. RELATIONSHIP OF PARTIES:

It is understood that this Agreement is by and between two (2) independent entities, primarily as licensee and licensor, 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 CONSULTANT 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. Each party shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

19. COMPLIANCE WITH APPLICABLE LAWS AND LICENSURE REQUIREMENTS:

Each party agrees to comply with any and all local, state and federal laws, regulations, policies, procedures and standards applicable to the licenses and Services provided pursuant to the terms and conditions of this Agreement. Each party further agree to comply with any and all applicable local, state and federal licensure and certification requirements at all times during this Agreement.

20. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and/or federal restrictions, limitations or conditions that may affect the provisions, terms 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.

21. REFERENCE TO LAWS AND RULES:

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.

22. 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.

23. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without prior written consent of the other party, which shall not be unreasonably withheld, except that CONSULTANT shall be permitted to assign its rights and obligations under this Agreement in conjunction with a merger, consolidation or sale of substantially all of the assets to which this Agreement pertains. Any such assignee of CONSULTANT shall be bound by all the obligations provided under the Agreement, and such assignee shall accept all liabilities hereunder. Any assignment by either party 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 or professional services.

24. 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.

25. 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 CONSULTANT. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach. COUNTY shall have the right to demand repayment of, and CONSULTANT shall promptly refund, any funds disbursed to CONSULTANT which COUNTY determines were not expended in accordance with the terms of this Agreement.

26. 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.

27. STANDARD OF PRACTICE:

CONSULTANT 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. CONSULTANT's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

28. LIMITATION OF LIABILITY:

- A. Warranty and Disclaimer. CONSULTANT represents and warrants that the Services provided hereunder will be performed in a good and workmanlike manner. Except as expressly stated in the preceding sentence, CONSULTANT, for itself, and its officers, employees, agents, directors and subcontractors, hereby disclaims any and all warranties, express or implied, and COUNTY hereby waives any and all warranties, express or implied, with respect to any of the products, including, without limitation, the Proprietary Information, Services or reports provided hereunder, including, without limitation, any and all implied warranties of merchantability and fitness for a particular purpose, performance suitability or non-infringement and any warranties relating to Third Party Technology or services.
- B. COUNTY Data Warranty. COUNTY hereby represents and warrants that COUNTY possesses all necessary rights, title and interest in and to COUNTY Data free and clear of any encumbrances, third party interests and restrictions for purposes of using the Software and any Services provided pursuant to the terms and conditions of this Agreement. COUNTY further represents and warrants that COUNTY Data and all COUNTY access to the Software and any Services provided pursuant to the terms and conditions of this Agreement shall not violate any contract, statute, rule, regulation or other obligation under which COUNTY is bound.
- C. Loss of COUNTY Data. CONSULTANT shall not be responsible for any loss or corruption of COUNTY Data resulting from programming or software design errors, maintenance of the Software or any other Services provided pursuant to the terms and conditions of this Agreement or Unauthorized Access to the Software.
- D. Limitation of Damages. CONSULTANT shall not be liable to COUNTY or its End Users under this Agreement or any End User Agreements related hereto, or in connection with the Proprietary Information, for any lost profits or consequential, exemplary, incidental or punitive damages, regardless of whether CONSULTANT has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable. Notwithstanding anything to the contrary, the liability of CONSULTANT arising from, or in connection with this Agreement, or any End User Agreement related hereto, and the Proprietary Information shall be limited to the amount of money paid by COUNTY for the licenses and Services provided pursuant to the terms and conditions of this Agreement. The foregoing limitations shall apply even if the above-stated warranty fails to meet its essential purpose.

29. PROPRIETARY INTERESTS:

- A. Ownership and Title of Proprietary Information. Title to the Proprietary Information and any and all derivative works from such Proprietary Information, including, without limitation, ownership rights to patents, copyrights, trademarks, derivative works and trade secrets related thereto, shall at all times be the exclusive property of CONSULTANT. Except as otherwise set forth herein, COUNTY hereby acknowledges and agrees that COUNTY shall not have or accrue any rights, title or ownership interests to the Proprietary Information, including, without limitation, any and all ownership rights to patents, copyrights, trademarks, derivative works and trade secrets related thereto. COUNTY hereby assigns, transfers and conveys to CONSULTANT any and all rights, title and interests COUNTY may have or accrue in the Proprietary Information, including, without limitation, any and all patents, copyrights, trademarks, derivative works and trade secrets related thereto.
- B. Ownership and Title to COUNTY Data. Title to any and all COUNTY Data, including, without limitation, any and all ownership rights to patents, copyrights, trademarks and trade secrets related thereto shall be the exclusive property of COUNTY.

- C. Cooperation. COUNTY shall cooperate with CONSULTANT and provide CONSULTANT assistance in securing, maintaining and enforcing any rights, title and interests of CONSULTANT in and to the Proprietary Information.
- D. No Contest. COUNTY shall not contest or aid in contesting the ownership or validity of the trademarks, service marks, trade secrets or copyrights of CONSULTANT.
- E. Employee Pirating. COUNTY shall not directly or indirectly induce or solicit any Associate to leave the employ or hire of CONSULTANT. COUNTY shall not directly or indirectly engage the services of such Associate, either as an employee, consultant, independent contractor or otherwise, without the advance written consent of CONSULTANT.
- F. Noncompetition. COUNTY agrees that it shall not create, license, sublicense, market or distribute any software similar to, or competitive with, the Proprietary Information.

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 and 395.

31. ADVERTISING AND MEDIA RELEASE:

All informational material related to this Agreement shall receive approval from both parties prior to being used as advertising or released to the media, including, without limitation, television, radio, newspapers and internet. Each party shall give notice to the other party of all requests for interviews by media related to this Agreement before such interviews take place; and each party is entitled to have a representative present at such interviews. All notices required by this provision shall be provided in accordance with the notice provisions set forth herein.

32. SUBCONTRACTS:

CONSULTANT shall obtain prior written approval from COUNTY before subcontracting any of the 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. CONSULTANT 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.

33. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section 5(D) – Compensation Upon Termination, Section 10 – Record Retention and Inspection, Section 12 – Confidential Information, Section 16 – Indemnification, Section 28 – Limitation of Liability and Section 29 – Proprietary Interests shall survive the expiration or termination of this Agreement.

34. 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, including, without limitation, any and all exhibits and sub-agreements attached

hereto, and the terms and conditions set forth in this Agreement, the terms and conditions set forth herein shall have priority.

35. 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.

36. 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.

37. FORCE MAJEURE:

Except for the payment of any fees or costs herein, 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, sabotage, internet outages or delays, delays in transportation or deliveries of supplies or materials, telecommunications failure, misuse of the Proprietary Information by COUNTY or End Users, breach of this Agreement by the other party, 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.

38. EQUITABLE REMEDIES:

The parties hereby acknowledge that in certain cases damages at law may be an inadequate remedy to either party. Therefore, in such cases each party shall have the right of specific performance, injunction or other equitable remedy in the event of a breach of this Agreement by the other party.

39. ENTIRE AGREEMENT:

This Agreement, and any End User Agreements related hereto, contain all the of 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.

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, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

DIVERSE COMPUTING, INC.:

By: 

Date: 2/19/2019

Name: Craig Gibbons

Title: President

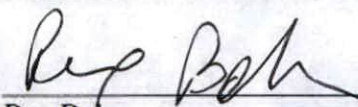
By: 

Date: 2/19/19

Name: Daniel G. Perry

Title: Co Founder

COUNTY OF HUMBOLDT:

By: 

Date: 3/26/19

Rex Bohn
Chair, Humboldt County Board of Supervisors

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: 
Risk Management

Date: 3/22/2019

LIST OF EXHIBITS:

- Exhibit A – Statement of Work
- Exhibit B – DCI Rate Schedule
- Exhibit C – End User Agreement