

**AGREEMENT**

THIS AGREEMENT ("Agreement") is made and entered into this 13th day of July, 2021 ("Effective Date"), by and between the COUNTY OF FRESNO, a political subdivision of the state of California ("COUNTY"), and Aeon Nexus Corporation, a Virginia corporation, whose address is 138 State Street, Albany, NY 12207 ("CONTRACTOR").

**WITNESSETH:**

WHEREAS, COUNTY desires to purchase software license, installation, training, data conversion, and software maintenance of JusticeNexus, a legal case and document management software solution, from CONTRACTOR as set forth in the COUNTY's Request for Proposal (RFP) No. 21-004, dated August 26, 2020;

WHEREAS, CONTRACTOR is willing and able to provide the above-described services as requested by COUNTY, and subject to the terms and conditions of this Agreement; and

WHEREAS, COUNTY and CONTRACTOR desire to execute this Agreement for the purchase of the right to use the software license, and maintenance and support of the JusticeNexus software.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. **DEFINITIONS:**

The following terms are defined as follows for purposes of this Agreement:

Acceptance Criteria means the performance and operating specifications that the System must meet at a minimum, as set out or referred to in this Agreement.

Acceptance Test means the process of testing a specific function or functions to determine if the operation or operations are as stated in this Agreement.

Change Control Process means the process used by the Information Technology Services Division of COUNTY's Internal Services Department ("ISD") to inform COUNTY staff of new or updated production use systems.

County System Hardware means the central processing units owned or leased by COUNTY on which COUNTY is licensed to use the System Software, any back-up equipment for such central

1 processing units, and any peripheral hardware such as terminals, printers, and personal computers.

2 COUNTY System Software means the operating system and database software installed on the  
3 COUNTY System Hardware.

4 Final System Acceptance means indexing services are completed, the JusticeNexus software  
5 has been installed and tested, and the JusticeNexus software performs all functions in accordance with  
6 its specifications, and the COUNTY has delivered to CONTRACTOR a written notice of acceptance.

7 First Production Use is the date of first use of the system in a production environment. For  
8 purposes of this Agreement, production environment means the JusticeNexus software with the  
9 COUNTY data is incorporated and ready for use.

10 License is the license granted under Section 2(A) of this Agreement, and the rights and  
11 obligations that it creates under the laws of the United States of America and the State of California,  
12 including without limitation, copyright and intellectual property law.

13 System refers to the System Software and System Documentation, collectively, including all  
14 modifications and enhancements.

15 System Documentation means the documentation relating to the System Software, including all  
16 manuals, reports, brochures, sample runs, specifications, and other materials provided by  
17 CONTRACTOR in connection with the System Software.

18 System Software is the JusticeNexus computer software provided by CONTRACTOR for a legal  
19 case and document management solution. System Software does not include operating system  
20 software, or any other third-party software.

21 System Software Maintenance and Support means support provided for JusticeNexus in case of  
22 errors, mistakes, or other technical difficulties.

23 **2. OBLIGATIONS OF THE CONTRACTOR**

24 **A. SOFTWARE LICENSE**

25 **I. GRANT OF LICENSE**

26 CONTRACTOR grants to COUNTY, and COUNTY accepts a non-exclusive, non-  
27 transferable, perpetual License to use JusticeNexus that is subject to the terms and conditions set  
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1 forth in this Agreement. This perpetual License shall expressly survive termination of this  
2 Agreement.

3 II. SCOPE OF LICENSE

4 The License granted under this Agreement shall consist solely of the non-exclusive, non-  
5 transferable right of COUNTY to operate the System Software.

6 III. OWNERSHIP

7 The parties acknowledge and agree that, as between CONTRACTOR and COUNTY, title  
8 and full ownership of all rights in and to the System Software, System Documentation, and all other  
9 materials provided to COUNTY by CONTRACTOR under the terms of this Agreement, shall remain  
10 with CONTRACTOR. COUNTY will take reasonable steps to protect trade secrets of the System  
11 Software and System Documentation. CONTRACTOR retains ownership of all copies. COUNTY  
12 may not disclose or make available to third parties the System Software or System Documentation  
13 or any portion thereof. CONTRACTOR shall own all right, title and interest in and to all corrections,  
14 modifications, enhancements, programs, and work product conceived, created or developed, alone  
15 or with COUNTY or others, as a result of or related to the performance of this Agreement, including  
16 all proprietary rights therein and based thereon. Except and to the extent expressly provided herein,  
17 CONTRACTOR does not grant to COUNTY any right or license, express or implied, in or to the  
18 System Software and System Documentation or any of the foregoing. The parties acknowledge and  
19 agree that, as between CONTRACTOR and COUNTY, full ownership of all rights in and to all  
20 COUNTY data, whether in magnetic or paper form, including without limitation printed output from  
21 the System, are the exclusive property of COUNTY.

22 IV. POSSESSION, USE, AND UPDATE OF SOFTWARE

23 COUNTY shall use the System Software only for its own internal purposes.  
24 CONTRACTOR may, at reasonable times, inspect COUNTY's premises and equipment to verify that  
25 COUNTY is observing all of the terms and conditions of this License. CONTRACTOR may create,  
26 from time to time, updated versions of the System Software and System Documentation, and  
27 CONTRACTOR shall make such System Updates available to COUNTY. COUNTY agrees to follow  
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1 the prescribed instructions for updating System Software and System Documentation provided to  
2 COUNTY by CONTRACTOR.

3 V. TRANSFER OF SOFTWARE

4 COUNTY shall not rent, lease, license, distribute, sell, transfer, or assign this License, the  
5 System Software, or the System Documentation, or any of the information contained therein, other  
6 than COUNTY data, to any other person or entity, whether on a permanent or temporary basis, and  
7 any attempt to do so will constitute a breach of this Agreement. No right or license is granted under  
8 this Agreement for the use or other utilization of the licensed programs, directly or indirectly, for the  
9 benefit of any other person or entity, except as provided in this Agreement.

10 VI. POSSESSION AND USE OF SOURCE CODE

11 Source code and other material that results from custom programming by  
12 CONTRACTOR released to COUNTY under this License shall be deemed to be CONTRACTOR  
13 software, subject to all of the terms and conditions of the software License set forth in this  
14 Agreement. The scope of COUNTY's permitted use of the custom source code under this License  
15 shall be limited to maintenance and support of the System Software. For purposes of this Section,  
16 the term "maintenance and support" means correction of System Software errors, and preparation of  
17 System Software modifications and enhancements. If COUNTY creates computer code in the  
18 process of enhancing the System Software, that specific new code shall be owned by COUNTY and  
19 may be used by COUNTY's employees, officers, or agents for COUNTY's own internal business  
20 operations. However, if COUNTY's enhancement results in the creation of a derivative work from the  
21 System Software, the copyright to such derivative work shall be owned by CONTRACTOR and  
22 COUNTY's rights to use such derivative work shall be limited to those granted with respect to the  
23 System Software in this Agreement. Any enhancements that are the result of the County's creation  
24 of new computer code shall not be considered in scope of maintenance and support provided by  
25 CONTRACTOR.

26 VII. RESTRICTIONS ON USE

27 COUNTY shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or  
28 otherwise commercially exploit, or make available to any third party the System Software or the

1 System Documentation in any way; (ii) modify or make derivative works based upon the System  
2 Software or the System Documentation; (iii) create Internet “links” to the System Software or “frame”  
3 or “mirror” any System Documentation on any other server or wireless or Internet-based device; (iv)  
4 send spam or otherwise duplicative or unsolicited messages in violation of applicable law; (v) send  
5 or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material,  
6 including material harmful to children or violative of third party privacy rights; (iv) send or store  
7 material containing software viruses, worms, Trojan horses, or other harmful computer code, files,  
8 scripts, agents or programs; (vii) interfere with or disrupt the integrity or performance of the System  
9 Software or the data contained therein, including but not limited to COUNTY Data; (viii) attempt to  
10 gain unauthorized access to the System Software or its related systems or networks; (ix) reverse -  
11 engineer or access the System Software in order to (a) build a competitive product or service, (b)  
12 build a product using similar ideas, features, functions or graphics of the System Software, or (c)  
13 copy any ideas, features, functions or graphics of the System Software.

14 VIII. INTELLECTUAL PROPERTY, TRADEMARK, AND COPYRIGHT

15 a. CONTRACTOR Intellectual Property

16 CONTRACTOR retains ownership of all CONTRACTOR Intellectual Property that  
17 CONTRACTOR delivers to COUNTY pursuant to the Services performed under this Agreement.  
18 CONTRACTOR grants COUNTY a non-transferable license to CONTRACTOR Intellectual  
19 Property that is non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, display,  
20 distribute, transmit and prepare derivative works of CONTRACTOR Intellectual Property  
21 employed in the Work Product.

22 b. Work Product

23 Work Product, including COUNTY Data, derivative works and compilations, and  
24 whether or not such Work Product is considered a “work made for hire,” is the exclusive property  
25 of COUNTY. The parties agree that all Work Product is “work made for hire” of which COUNTY  
26 is the author, within the meaning of the United States Copyright Act. If for any reason the Work  
27 Product is not “work made for hire,” CONTRACTOR hereby irrevocably assigns to COUNTY any  
28 and all of its rights, title, and interest in all Work Product delivered under this Agreement,

1 whether arising from copyright, patent, trademark, trade secret, or any other state or federal  
2 intellectual property law or doctrine. Upon COUNTY's reasonable request, CONTRACTOR shall  
3 execute such further documents and instruments to fully vest such rights in COUNTY.

4 CONTRACTOR waives any and all rights relating to Work Product created pursuant to this  
5 Contract, including without limitation any and all rights arising under 17 USC 106A or any other  
6 rights of identification of authorship or rights of approval, restriction, or limitation on use or  
7 subsequent modifications.

8 c. Third Party Intellectual Property

9 CONTRACTOR shall secure on COUNTY's behalf, in the name of COUNTY and  
10 subject to COUNTY's approval, a license to Third Party Intellectual Property provided to  
11 COUNTY by CONTRACTOR during the term of the Agreement necessary for CONTRACTOR to  
12 deliver Contract Services and Deliverables. Licenses for Third Party Intellectual Property are set  
13 forth in Exhibit C, attached and incorporated by this reference, and will be deemed to include any  
14 additional licenses for Third Party Intellectual Property approved by COUNTY.

15 d. Open Source Elements

16 Any open source materials in the System for which COUNTY may be subject to a  
17 license must be approved in advance and in writing by COUNTY. If CONTRACTOR desires to  
18 include open source materials, CONTRACTOR shall:

- 19 i. Notify COUNTY in writing that the System contains open source materials,
- 20 ii. Identify the specific portion of the System that contain open source materials,
- 21 and
- 22 iii. Provide a copy of the applicable license for each open source item to  
23 COUNTY.

24 e. COUNTY Intellectual Property

25 COUNTY owns all COUNTY Intellectual Property, including COUNTY Data and  
26 background information provided to or collected by CONTRACTOR pursuant to this Agreement.  
27 COUNTY grants CONTRACTOR a non-exclusive, royalty-free, world-wide license to use, copy,  
28 display, distribute, transmit and prepare derivative works of COUNTY Intellectual Property,

1 COUNTY Data and background information, and Work Product only to fulfill the purposes of this  
2 Agreement. COUNTY's license to CONTRACTOR is limited by the term of the Agreement and  
3 the confidentiality obligations of this Agreement

4 f. No Rights

5 Except as expressly set forth in this Agreement, nothing in this Agreement may be  
6 construed as granting to or conferring upon CONTRACTOR any right, title, or interest in any  
7 intellectual property that is now owned or subsequently owned by COUNTY. Except as  
8 expressly set forth in this Agreement, nothing in this Agreement may be construed as granting to  
9 or conferring upon COUNTY any right, title, or interest in any CONTRACTOR Intellectual  
10 Property that is now owned or subsequently owned by CONTRACTOR

11 g. No Rights in Marks

12 Neither party grants the other the right to use its trademarks, trade names, service  
13 marks or other designations in any promotion or publication without prior written consent. Each  
14 party grants only the licenses and rights specified in this Agreement.

15 h. Competing Services

16 Subject to the provisions of this Section 2(VIII)(h), and CONTRACTOR's  
17 obligations with respect to Confidential Information, nothing in this Agreement precludes or limits  
18 in any way the right of CONTRACTOR to:

- 19 (i) provide services similar to those contemplated in this Agreement, or, consulting or  
20 other services of any kind or nature whatsoever to any individual or entity as  
21 CONTRACTOR in its sole discretion deems appropriate, or  
22 (ii) develop for CONTRACTOR or for others, deliverables or other materials that are  
23 competitive with those produced as a result of the Services provided hereunder,  
24 irrespective of their similarity to the Deliverables.

25 Each party is free to utilize any concepts, processes, know-how, techniques,  
26 improvements, or other methods it may develop during the course of performance under this  
27 Agreement free of any use restriction or payment obligation to the other.

28 B. SERVICES TO BE PROVIDED BY CONTRACTOR TO COUNTY

1 I. DOCUMENTATION

2 CONTRACTOR shall provide to COUNTY the JusticeNexus System Documentation,  
3 which shall consist of electronic media files. The electronic media files must be printable using PC  
4 software normally available at COUNTY. CONTRACTOR shall provide new System Documentation  
5 corresponding to all new Software Upgrades. COUNTY may print additional copies of all  
6 documentation. COUNTY shall only use System Documentation for the purposes identified within  
7 this Agreement.

8 II. SYSTEM MAINTENANCE AND SUPPORT BY CONTRACTOR

9 System maintenance and support includes System Updates as they are released by  
10 CONTRACTOR. The first day of production use will be identified by COUNTY and communicated to  
11 CONTRACTOR. CONTRACTOR will support day-to-day operation of the System as follows:

12 III. SUPPORT HOURS/SCOPE

13 Provide unlimited technical assistance by web portal during normal coverage hours (7:30  
14 a.m. to 5:00 p.m. Pacific Standard Time (PST), Monday through Friday, except CONTRACTOR  
15 and COUNTY holidays), telephone assistance in tandem with a ticket logged to CONTRACTOR  
16 support portal for tracking purposes to keep the System in, or restored to, normal operating  
17 condition. The object of this support will be to answer specific questions related to the System  
18 Software and the application thereof. Support provided under this Agreement does not include  
19 training of new personnel (after initial staff is trained), operation of hardware, or solving other  
20 hardware/software problems unrelated to the System Software.

21 IV. SUPPORT RESPONSE

22 During the term of this Agreement, CONTRACTOR will (a) correct any error or  
23 malfunctions in the System as supplied by CONTRACTOR, which prevents it from operating in  
24 conformance with the specifications set forth in this Agreement, or (b) provide a commercially  
25 reasonable alternative that will conform to the specifications set forth in this Agreement.

26 If analysis by CONTRACTOR indicates a reported problem is caused by a reproducible  
27 error or malfunction in the then-current release of the System Software as supplied and  
28 maintained by CONTRACTOR, that significantly impacts effective use of the System by



1 COUNTY, CONTRACTOR will, if the System is inoperable, as reported by COUNTY, provide  
2 continuous effort to correct the error or to resolve the problem by providing a circumvention.

3 In such cases, CONTRACTOR will provide COUNTY with corrective information, such as  
4 corrective documentation and/or program code. CONTRACTOR will respond to COUNTY's  
5 service request no later than four (4) business hours from the time a call has been received by  
6 CONTRACTOR. In the event that a person with the necessary expertise is not available when  
7 the call is received, CONTRACTOR will respond to the service request no later than within one  
8 (1) business day.

9 V. ERROR CORRECTION PROCESS

10 If during the term of this Agreement COUNTY determines that software error(s) exist,  
11 COUNTY will first follow the error procedures specified in the System Documentation. If following the  
12 error procedures does not correct the software error, COUNTY shall immediately notify  
13 CONTRACTOR, setting forth the defects noted with specificity. Upon notification of a reported  
14 software error, CONTRACTOR shall have five (5) days to determine if any actual software error  
15 exist and, if so, endeavor to correct such software errors. At CONTRACTOR's request, additional  
16 time to solve difficult problems will not be unreasonably withheld. Within fifteen (15) days of  
17 correction, COUNTY shall retest the System Software and report any other software errors.

18 VI. TECHNICAL INFORMATION

19 CONTRACTOR shall provide technical information to COUNTY as necessary and  
20 helpful. Such information may cover areas such as JusticeNexus usage, third party software,  
21 and other matters considered relevant to COUNTY by CONTRACTOR. Technical information will  
22 be provided at the discretion of CONTRACTOR, but will not be unreasonably withheld.

23 C. ADDITIONAL SYSTEM MAINTENANCE SERVICES BY CONTRACTOR

24 CONTRACTOR may provide additional maintenance services ("Additional Maintenance and  
25 Support Services" or "Additional Maintenance Services") at an additional charge. Charges will be as  
26 identified in Section 6 of this Agreement, or, if not included in this Agreement, charges will be at current  
27 prices in effect at the time goods or services are provided. Any Additional Maintenance and Support  
28 Services requested by COUNTY and determined by CONTRACTOR to be billable by CONTRACTOR

1 must be identified as a chargeable service prior to the service being performed, and must be approved  
2 in writing in advance by COUNTY's Contract Administrator. Additional Maintenance Services include,  
3 but are not limited to, the following:

4 I. ADDITIONAL TRAINING

5 A specific amount of training is designated in this Agreement. Additional training at a  
6 COUNTY facility is available upon request by COUNTY at an additional charge under the terms  
7 of this Agreement. Requests for additional training will be reviewed by CONTRACTOR, and must  
8 be requested in writing in advance by COUNTY's Contract Administrator. Charges will be at  
9 rates identified in this Agreement.

10 II. DATA AND SYSTEM CORRECTIONS

11 Data and System Corrections include any corrective actions accomplished by  
12 CONTRACTOR which are necessary due to COUNTY errors or unauthorized source code or  
13 data access by COUNTY. Unauthorized access to the data is defined as any COUNTY editing of  
14 data through other than normal system usage, as defined in System Documentation.  
15 Unauthorized access to source code is defined as any COUNTY access whatsoever to system  
16 source code. Services provided by CONTRACTOR are not billable when they result from errors  
17 caused by JusticeNexus or instruction provided by CONTRACTOR.

18 III. CUSTOMER SITE VISITS

19 Site visits to COUNTY sites, as may be requested in writing by COUNTY, and which are  
20 within the scope of the project services, are available for reasons including, but not limited to,  
21 additional system training on hardware or software usage.

22 Due to health concerns related to COVID-19, site visits will be agreed to in writing by both  
23 COUNTY and CONTRACTOR prior to CONTRACTOR resources scheduling onsite visits.  
24 When practical, work will be performed remotely, without the need for CONTRACTOR  
25 personnel to be onsite at COUNTY. CONTRACTOR shall review site visits outside of the scope  
26 of project services, which COUNTY's Contract Administrator must request in writing in advance.  
27 Charges will be at rates identified in this Agreement.

28 IV. CUSTOM PROGRAMMING

1           Requests for supplemental programming or customization of system features not covered  
2           under this Agreement are available to COUNTY. CONTRACTOR will review such requests,  
3           which must be requested in writing in advance by the COUNTY's Contract Administrator.  
4           Charges will be at rates identified in this Agreement.

5           D. CONTRACTOR PROJECT COORDINATOR

6           Upon execution of this Agreement, CONTRACTOR shall appoint a Project Coordinator, who will  
7           act as the primary contact person to interface with COUNTY for implementation, maintenance, and  
8           support of JusticeNexus.

9           E. SYSTEM UPDATES AND NEW PRODUCTS

10           I. SYSTEM UPDATES

11           From time to time, CONTRACTOR may develop and provide System Updates to  
12           COUNTY for the COUNTY'S licensed CONTRACTOR software.

13           II. NEW PRODUCTS

14           CONTRACTOR may from time to time release new software with capabilities  
15           substantially different from or greater than the System Software ("New Products"), and which  
16           therefore do not constitute System Updates. These New Products will be made available to  
17           COUNTY at a cost not to exceed CONTRACTOR's then-standard rates for customers similarly  
18           situated.

19           F. OPERATING SYSTEM UPDATES

20           The application must run on an operating system (O/S) that is consistently and currently  
21           supported by the operating system vendor. Applications under maintenance shall always be within one  
22           (1) year of current in regard to the O/S. Outdated or unsupported O/S will not be implemented on the  
23           production network.

24           COUNTY will apply patches to both the operating system, and non-critical security subsystems,  
25           as releases are available from operating system vendors. The application shall perform in this  
26           environment. These patches include critical O/S updates and security patches.

27           G. ANTI-VIRUS MANAGEMENT

1 COUNTY shall actively run anti-virus management, where appropriate, on all devices accessing  
2 JusticeNexus. The application shall perform adequately while anti-virus management is active.

3 H. ADHERE TO CHANGE CONTROL PROCESS

4 CONTRACTOR must adhere to COUNTY's Change Control Process, which shall be provided to  
5 CONTRACTOR in writing. COUNTY employs a procedure to implement updates, upgrades, and version  
6 releases to a system that is in production use. This forum allows ISD to inform staff (Help Desk,  
7 Network, Server, Database, Security, and Analysts) of upcoming changes to a production system.

8 I. OTHER

9 Unless otherwise specified, for third-party software, CONTRACTOR shall provide standard  
10 documentation in electronic form (via the Internet or File Transfer Protocol (FTP)).

11 The System runs in a Web environment. As such, the performance of the System is directly  
12 related to, among other things: available network bandwidth, and the performance of other applications.  
13 For this reason, CONTRACTOR makes no guarantees as to System response time.

14 J. DATA SECURITY

15 CONTRACTOR shall comply with all obligations in Exhibit A "Data Security", attached and  
16 incorporated by this reference.

17 3. OBLIGATIONS OF COUNTY

18 A. COUNTY CONTRACT ADMINISTRATOR

19 COUNTY hereby appoints the Director of Internal Services/Chief Information Officer (ISD  
20 Director/CIO), or his or her designee, as COUNTY's Contract Administrator with full authority to deal  
21 with CONTRACTOR in the administration of this Agreement.

22 B. SYSTEM HARDWARE AND SYSTEM SOFTWARE

23 COUNTY will, at its own expense, provide and properly maintain and update on an ongoing  
24 basis all necessary hardware required to operate the System Software. COUNTY's hardware shall meet  
25 or exceed CONTRACTOR's recommendations, as provided in the System Documentation.

26 C. OTHER COUNTY OBLIGATIONS

27 1) COUNTY's ISD staff will provide technical assistance to CONTRACTOR during the installation of  
28 the System Software. In particular, COUNTY will provide:

- 1 a) Network connectivity and troubleshooting assistance;
- 2 b) Ability for COUNTY staff to monitor network traffic and isolate bottlenecks;
- 3 c) Technical assistance concerning the integration with existing COUNTY systems (if
- 4 applicable);
- 5 d) Access to systems with which JusticeNexus will need to interface, including legacy systems,
- 6 as well as third-party systems,
- 7 e) Technical assistance concerning the migration of data from existing legacy COUNTY
- 8 systems (if applicable); and
- 9 f) Expertise to handle issues with COUNTY PCs, printers, and cabling before, during, and after
- 10 First Production Use.

11 D. As JusticeNexus is built on the Microsoft Power Platform, ongoing licensure to access the  
12 solution is provided by Microsoft. Licensing for the solution is accomplished by purchasing Microsoft  
13 Power Platform licenses that have an annual cost and are purchased through an Enterprise Agreement  
14 (EA) through the COUNTY's Licensed Solution Provider (LSP).

15 Licenses are allocated by Microsoft to named COUNTY individuals, meaning that each license  
16 used to gain access to JusticeNexus is assigned to a specific individual at the COUNTY. License pricing  
17 is annual, based per user, and typically has volume discounting, usually for three (3) years at a time.

18 With the proposed hosting model, the COUNTY's data is stored in the Microsoft Azure  
19 Government Community Cloud; the COUNTY owns the relationship with Microsoft directly. Under this  
20 model, the COUNTY licenses the tenant environment and data storage for JusticeNexus directly from  
21 Microsoft. The COUNTY will also license Microsoft Office, Microsoft SharePoint for document and digital  
22 asset storage, retrieval and collaboration, and Microsoft Power BI for business intelligence reports.

#### 23 4. **TERM**

24 The term of this Agreement shall be for a period of three (3) years, commencing on the Effective  
25 Date through and including the last day of the three-year period. This Agreement may be extended for two  
26 (2) additional consecutive twelve (12) month periods upon written approval of both parties no later than  
27 thirty (30) days prior to the first day of the next twelve (12) month extension period. The ISD Director/CIO  
28 or his or her designee is authorized to execute such written approval on behalf of COUNTY based on

1 CONTRACTOR'S satisfactory performance.

2 5. **TERMINATION**

3 A. **Non-Allocation of Funds** – The terms of this Agreement, and the services to be provided  
4 hereunder, are contingent on the approval of funds by the appropriating government agency. Should  
5 sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated,  
6 at any time without penalty by giving the CONTRACTOR thirty (30) days advance written notice.

7 B. **Breach of Contract** – The COUNTY may immediately suspend or terminate this Agreement in  
8 whole or in part, where in the determination of the COUNTY there is:

- 9 1) An illegal or improper use of funds;
- 10 2) A failure to comply with any term of this Agreement;
- 11 3) A substantially incorrect or incomplete report submitted to the COUNTY;
- 12 4) Improperly performed service.

13 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach  
14 of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such  
15 payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default.  
16 The COUNTY shall have the right to demand of the CONTRACTOR the repayment to the COUNTY of any  
17 funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were  
18 not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund  
19 any such funds upon demand.

20 C. **Without Cause** – Under circumstances other than those set forth above, this Agreement may be  
21 terminated by COUNTY by giving thirty (30) days advance written notice of an intention to  
22 terminate to CONTRACTOR.

23 6. **COMPENSATION/INVOICING:** COUNTY agrees to pay CONTRACTOR, and  
24 CONTRACTOR agrees to receive compensation, as follows:

25 CONTRACTOR's pricing model includes a one-time implementation component to deliver and  
26 configure the proposed JusticeNexus solution for the COUNTY. CONTRACTOR will invoice COUNTY  
27 after the completion of each milestone, and after receiving written acceptance of the deliverables  
28 associated with each milestone.

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Phase	Description	Compensation
<b>Project Kickoff</b>	Due to COVID-19 restrictions, during kickoff, CONTRACTOR will meet remotely via Microsoft Teams with the COUNTY team to define project roles and responsibilities, and to agree upon the frequency and type(s) of meetings and project communication. Establishing consistent communication with the proper individuals and teams at CONTRACTOR and the COUNTY will ensure that timelines and expectations are met. Additionally, COUNTY and CONTRACTOR teams will review the Statement of Work (SOW) to ensure that the scope is clearly defined.	\$5,200.00
<b>Discovery</b>	<p>During Discovery, CONTRACTOR team will work with COUNTY user groups to document the “as-is” processes (workflows), templates, forms and reports, and document any additional requirements outlined in the SOW. CONTRACTOR resources will meet via Microsoft Teams with COUNTY subject matter experts (SMEs) to document requirements, creating detailed technical and functional specification documentation that will be agreed upon and signed off on by both parties.</p> <p>Simultaneously, CONTRACTOR’s technical team will work with the COUNTY to establish, configure, test and deploy the Production, Development and Test environments.</p>	\$182,000.00
<b>Configuration/Build</b>	During the Configuration/Build phase, CONTRACTOR team will configure JusticeNexus to meet the requirements outlined in the Discovery phase, as defined and agreed to by the COUNTY. All forms, templates, workflows and reports will be created during this milestone.	\$427,000.00
<b>Migration</b>	CONTRACTOR team will work with COUNTY team currently responsible for legacy systems, to capture, validate and migrate existing legacy data, documents and other digital assets to the JusticeNexus solution.	\$104,000.00
<b>User Acceptance Testing (UAT)</b>	During UAT, a group of end users will be selected by the COUNTY (typically “super users”) and will proceed through test scripts to ensure the JusticeNexus solution is operating as described in the Acceptance Criteria. Any errors or issues are resolved through an iterative process until no errors are documented.	\$52,000.00

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<b>Training (15-day training period)</b>	Due to COVID-19 restrictions, training will be conducted remotely via Microsoft Teams by CONTRACTOR. Training is provided to all COUNTY JusticeNexus users.	\$57,750.00
<b>Go-Live</b>	During this two (2)-day event, the JusticeNexus system will go live and become the new system of record.	\$8,600.00
<b>Post-Go-Live Support</b>	During the twenty (20) days following Go-Live, CONTRACTOR staff will support the COUNTY with any system issues while they are getting used to the new system.	\$43,500.00
<b>Aeon Nexus Annual Support (Year 1)</b>		\$40,506.90
<b>Aquaforest Searchlight third-party software to provide Optical Character Recognition (OCR) (Year 1)</b>		\$2,997.00
<b>Aeon Nexus Annual Support (Year 2)</b>		\$70,404.00
<b>Aquaforest Searchlight third-party software to provide Optical Character Recognition (OCR) (Year 2)</b>		\$2,997.00
<b>Aeon Nexus Annual Support (Year 3)</b>		\$70,404.00
<b>Aquaforest Searchlight third-party software to provide Optical Character Recognition (OCR) (Year 3)</b>		\$2,997.00
<b>Aeon Nexus Annual Support (Option Year 4)</b>		\$70,404.00
<b>Aquaforest Searchlight third-party software to provide Optical Character Recognition (OCR) (Option Year 4)</b>		\$2,997.00
<b>Aeon Nexus Annual Support (Option Year 5)</b>		\$70,404.00
<b>Aquaforest Searchlight third-party software to provide Optical Character Recognition (OCR) (Option Year 5)</b>		\$2,997.00



<b>Additional Products and/or Services</b>	\$182,842.10
<b>TOTAL</b>	\$1,400,000.00

CONTRACTOR shall submit monthly invoices referencing the provided Agreement number, either electronically or via mail, in triplicate to the County of Fresno, Public Defender’s Office, 2135 Fresno St., Ste 100, Fresno, CA 93721 ([pdinvoices@fresnocountyca.gov](mailto:pdinvoices@fresnocountyca.gov)). COUNTY shall pay CONTRACTOR within forty-five (45) days of receipt of an approved invoice. COUNTY shall remit payment to CONTRACTOR’s address specified in the approved invoice.

In no event shall compensation paid for services performed under this Agreement exceed \$1,400,000.00. It is understood that all expenses incidental to CONTRACTOR's performance of services under this Agreement shall be borne solely by CONTRACTOR.

7. **INDEPENDENT CONTRACTOR:** In performance of the work, duties and obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating

1 to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all  
2 other regulations governing such matters. It is acknowledged that during the term of this Agreement,  
3 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

4 8. **MODIFICATION**: Any matters of this Agreement may be modified from time to time by  
5 the written consent of all the parties without, in any way, affecting the remainder.

6 9. **NON-ASSIGNMENT**: Neither party shall assign, transfer or sub-contract this Agreement  
7 nor their rights or duties under this Agreement without the prior written consent of the other party.

8 10. **HOLD HARMLESS**: CONTRACTOR agrees to indemnify, save, hold harmless, and at  
9 COUNTY's request, defend the COUNTY, its officers, agents, and employees from any and all costs  
10 and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or  
11 resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its  
12 officers, agents, or employees under this Agreement, and from any and all costs and expenses  
13 (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to  
14 any person, firm, or corporation who may be injured or damaged by the performance, or failure to  
15 perform, of CONTRACTOR, its officers, agents, or employees under this Agreement.

16 The provisions of this Section 10 survive the termination of this Agreement.

17 11. **INSURANCE**

18 A. **Required Policies**

19 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third  
20 parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect the following insurance  
21 policies throughout the term of the Agreement:

22 1. **Commercial General Liability**. Commercial general liability insurance with limits of not less  
23 than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million  
24 Dollars (\$4,000,000). This policy shall be issued on a per occurrence basis. COUNTY may require  
25 specific coverages including completed operations, products liability, contractual liability, Explosion-  
26 Collapse-Underground, fire legal liability, or any other liability insurance deemed necessary because  
27 of the nature of this contract.

28 In the event the CONTRACTOR purchases an Umbrella or Excess insurance policy(ies) to

1 meet the “Minimum Limits of Insurance”, this insurance policy(ies) shall “follow form” and afford no  
2 less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance  
3 policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the COUNTY, its  
4 officers, officials, employees, agents, and volunteers.

5 2. Automobile Liability. Automobile liability insurance with limits of not less than One Million  
6 Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must  
7 include any auto used in connection with this Agreement.

8 3. Workers Compensation. Workers compensation insurance as required by the California  
9 Labor Code.

10 4. Cyber Liability. Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence  
11 or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and  
12 obligations as is undertaken by CONTRACTOR in this Agreement and shall include, but not be  
13 limited to, claims involving infringement of intellectual property, including but not limited to  
14 infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft,  
15 damage to or destruction of electronic information, release of private information, alteration of  
16 electronic information, extortion and network security. The policy shall provide coverage for breach  
17 response costs as well as regulatory fines and penalties as well as credit monitoring expenses with  
18 limits sufficient to respond to these obligations.

19 5. Technology Professional Liability (Errors and Omissions). Technology professional liability  
20 (errors and omissions) insurance with limits of not less than Two Million Dollars (\$2,000,000) per  
21 occurrence. Coverage must encompass all of the Contractor’s obligations under this Agreement,  
22 including but not limited to claims involving Cyber Risks.

23 **Definition of Cyber Risks.** “Cyber Risks” include but are not limited to (i) Security Breaches, which  
24 may include Disclosure of Personal Information to an Unauthorized Third Party; (ii) breach of any of  
25 CONTRACTOR’s obligations under Exhibit A to this Agreement, “Data Security”; (iii) infringement of  
26 intellectual property, including but not limited to infringement of copyright, trademark, and trade  
27 dress; (iv) invasion of privacy, including release of private information; (v) information theft; (vi)  
28 damage to or destruction or alteration of electronic information; (vii) extortion related to

1 CONTRACTOR's obligations under this Agreement regarding electronic information, including  
2 Personal Information; (viii) network security; (ix) data breach response costs, including Security  
3 Breach response costs; (x) regulatory fines and penalties related to CONTRACTOR's obligations  
4 under this Agreement regarding electronic information, including Personal Information; and (xi)  
5 credit monitoring expenses. Capitalized terms in this paragraph have the meaning given to them in  
6 Exhibit A, "Data Security."

7 B. Additional Requirements Relating to Insurance

8 1. Verification of Coverage. Within thirty (30) days after CONTRACTOR signs this Agreement,  
9 CONTRACTOR shall deliver, or cause its broker or producer to deliver, to the ISD Business Office  
10 at 333 W. Pontiac Way, Clovis, CA 93612, or at [ISDBusinessOffice@fresnocountyca.gov](mailto:ISDBusinessOffice@fresnocountyca.gov) copies of  
11 insurance policies as produced by the broker or producer, and certificates of insurance and  
12 endorsements for all of the coverages required under this Agreement.

- 13 a. All insurance certificates must state that: (1) the insurance coverage has been  
14 obtained and is in full force; (2) COUNTY, its officers, agents, employees, and  
15 volunteers are not responsible for any premiums on the policy; and (3)  
16 CONTRACTOR has waived its right to recover from COUNTY, its officers, agents,  
17 employees, and volunteers any amounts paid under any insurance policy required  
18 by this Agreement and that waiver does not invalidate the insurance policy.
- 19 b. The commercial general liability insurance certificate must also state that: (1) the  
20 County of Fresno, its officers, agents, employees, and volunteers, individually and  
21 collectively, are additional insureds insofar as the operations under this Agreement  
22 are concerned; (2) the coverage shall apply as primary insurance and any other  
23 insurance, or self-insurance, maintained by COUNTY shall be excess only and not  
24 contributing with insurance provided under CONTRACTOR's policy.
- 25 c. The automobile liability insurance certificate must state that the policy covers any  
26 auto used in connection with this Agreement.

27 2. Acceptability of Insurers. All insurance policies required under this Agreement must  
28 be issued by admitted insurers licensed to do business in the State of California and possessing

1 at all times during the term of this Agreement an A.M. Best, Inc. rating of A:VII or greater.

2 3. Notice of Cancellation of Coverage. For each insurance policy required under this  
3 Agreement, CONTRACTOR shall provide to COUNTY, or ensure that the policy requires the  
4 insurer to provide to COUNTY, written notice of any cancellation or change in the policy as  
5 required in this paragraph. For cancellation of the policy for nonpayment of premium,  
6 CONTRACTOR shall, or shall cause the insurer to, provide written notice to COUNTY not less  
7 than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and  
8 for any other change to the policy, CONTRACTOR shall, or shall cause the insurer to, provide  
9 written notice to COUNTY not less than 30 days in advance of cancellation or change.  
10 COUNTY in its sole discretion may determine that the failure of CONTRACTOR or its insurer to  
11 timely provide a written notice required by this paragraph is a breach of this Agreement.

12 4. COUNTY's Entitlement to Greater Coverage. If CONTRACTOR has or obtains  
13 insurance with broader coverage, higher limits, or both, than what is required under this  
14 Agreement, then COUNTY requires and is entitled to the broader coverage, higher limits, or  
15 both. To that end, CONTRACTOR shall deliver, or cause its broker or producer to deliver, to the  
16 COUNTY's Risk Manager copies of insurance policies that have such broader coverage, higher  
17 limits, or both, as produced by the broker or producer, and certificates of insurance and  
18 endorsements for all of the coverages that have such broader coverage, higher limits, or both,  
19 as required under this Agreement.

20 5. Waiver of Subrogation. CONTRACTOR waives its right to recover from COUNTY,  
21 its officers, agents, employees, and volunteers any amounts paid under the policy of worker's  
22 compensation insurance required by this Agreement. CONTRACTOR is solely responsible to  
23 obtain any policy endorsement that may be necessary to accomplish that waiver, but  
24 CONTRACTOR's waiver of subrogation under this paragraph is effective whether or not  
25 CONTRACTOR obtains such an endorsement.

26 6. County's Remedy for Contractor's Failure to Maintain. If CONTRACTOR fails to  
27 keep in effect at all times any insurance coverage required under this Agreement, COUNTY  
28 may, in addition to any other remedies it may have, suspend or terminate this Agreement upon

1 the occurrence of that failure.

2 12. **AUDITS AND INSPECTIONS**: The CONTRACTOR shall at any time during business  
3 hours, and as often as the COUNTY may deem necessary, make available to the COUNTY for  
4 examination all of its records and data with respect to the matters covered by this Agreement. The  
5 CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of  
6 such records and data necessary to ensure CONTRACTOR'S compliance with the terms of this  
7 Agreement.

8 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to  
9 the examination and audit of the California State Auditor for a period of three (3) years after final payment  
10 under contract (Government Code Section 8546.7).

11 13. **NOTICES**: The persons and their addresses having authority to give and receive notices  
12 under this Agreement include the following:

<u>COUNTY</u>	<u>CONTRACTOR</u>
COUNTY OF FRESNO	Aeon Nexus Corporation
Director of Internal Services/CIO	Dennis Blaine, Managing Director
333 W. Pontiac Way	138 State Street
Clovis, CA 93612	Albany, NY 12207
ISDContracts@FresnoCountyCA.gov	dennisblaine@aeonnexus.com

13  
14  
15  
16  
17 All notices between the COUNTY and CONTRACTOR provided for or permitted under this  
18 Agreement must be in writing and delivered either by personal service, by first-class United States mail, by  
19 email to the address listed above, or by an overnight commercial courier service. A notice delivered by  
20 personal service is effective upon service to the recipient. A notice delivered by first-class United States  
21 mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid,  
22 addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one  
23 COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid,  
24 with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by email  
25 is effective when transmission to the recipient is completed (but, if such transmission is completed outside  
26 of COUNTY business hours, then such delivery shall be deemed to be effective at the next beginning of a  
27 COUNTY business day), provided that the sender maintains a machine record of the completed  
28 transmission. For all claims arising out of or related to this Agreement, nothing in this section establishes,

1 waives, or modifies any claims presentation requirements or procedures provided by law, including but not  
2 limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with  
3 section 810).

4 14. **VENUE AND GOVERNING LAW**: Venue for any action arising out of or related to this  
5 Agreement shall only be in Fresno County, California.

6 The rights and obligations of the parties and all interpretation and performance of this Agreement  
7 shall be governed in all respects by the laws of the State of California.

8 15. **DISCLOSURE OF SELF-DEALING TRANSACTIONS**

9 This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit  
10 or non-profit corporation) or if during the term of the agreement, the CONTRACTOR changes its status  
11 to operate as a corporation.

12 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions  
13 that they are a party to while CONTRACTOR is providing goods or performing services under this  
14 agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party  
15 and in which one or more of its directors has a material financial interest. Members of the Board of  
16 Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a  
17 Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit B and incorporated herein by  
18 reference, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or  
19 immediately thereafter.

20 16. **ELECTRONIC SIGNATURES**. The parties agree that this Agreement may be executed  
21 by electronic signature as provided in this section. An "electronic signature" means any symbol or  
22 process intended by an individual signing this Agreement to represent their signature, including but not  
23 limited to (1) a digital signature; (2) a faxed version of an original handwritten signature; or (3) an  
24 electronically scanned and transmitted (for example by PDF document) of a handwritten signature. Each  
25 electronic signature affixed or attached to this Agreement (1) is deemed equivalent to a valid original  
26 handwritten signature of the person signing this Agreement for all purposes, including but not limited to  
27 evidentiary proof in any administrative or judicial proceeding, and (2) has the same force and effect as  
28 the valid original handwritten signature of that person. The provisions of this section satisfy the

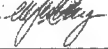
1 requirements of Civil Code section 1633.5, subdivision (b), in the Uniform Electronic Transaction Act  
2 (Civil Code, Division 3, Part 2, Title 2.5, beginning with section 1633.1). Each party using a digital  
3 signature represents that it has undertaken and satisfied the requirements of Government Code section  
4 16.5, subdivision (a), paragraphs (1) through (5), and agrees that each other party may rely upon that  
5 representation. This Agreement is not conditioned upon the parties conducting the transactions under it  
6 by electronic means and either party may sign this Agreement with an original handwritten signature.

7       17.    **ENTIRE AGREEMENT**: This Agreement constitutes the entire agreement between the  
8 CONTRACTOR and COUNTY with respect to the subject matter hereof, and supersedes all previous  
9 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and  
10 understanding of any nature whatsoever unless expressly included in this Agreement.



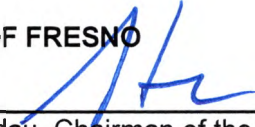
1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first  
2 hereinabove written.

3  
4 **CONTRACTOR**


5   
6 \_\_\_\_\_  
7 Meghan A. Barkley  
8 Chief Operating Officer

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Aeon Nexus Corporation  
138 State Street  
Albany, NY 12207

**COUNTY OF FRESNO**

  
\_\_\_\_\_   
Steve Brandau, Chairman of the Board of  
Supervisors of the County of Fresno

**ATTEST:**  
Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

By:   
\_\_\_\_\_   
Deputy

**FOR ACCOUNTING USE ONLY:**

Fund: 0001  
Subclass: 10000  
ORG: 28809999  
Account: 7311

1 **Exhibit A**

2 **“Data Security”**

3 **A. Definitions.**

4 Capitalized terms used in this Exhibit A have the meanings set forth in this section A.

5 **“Authorized Employees”** means CONTRACTOR’s employees who have access to Personal  
6 Information.

7 **“Authorized Persons”** means: (i) any and all Authorized Employees; and (ii) any and all of  
8 CONTRACTOR’s subcontractors, representatives, agents, outsourcers, and consultants, and providers  
9 of professional services to CONTRACTOR, who have access to Personal Information and are bound by  
10 law or in writing by confidentiality obligations sufficient to protect Personal Information in accordance  
11 with the terms of this Exhibit A.

12 **“Director”** means COUNTY’s Director of Internal Services-Chief Information Officer or his or her  
13 designee.

14 **“Disclose”** or any derivative of that word means to disclose, release, transfer, disseminate, or  
15 otherwise provide access to or communicate all or any part of any Personal Information orally, in writing,  
16 or by electronic or any other means to any person.

17 **“Person”** means any natural person, corporation, partnership, limited liability company, firm, or  
18 association.

19 **“Personal Information”** means any and all information, including any data, provided, or to  
20 which access is provided, to CONTRACTOR by or upon the authorization of COUNTY, under this  
21 Agreement, including but not limited to vital records, that: (i) identifies, describes, or relates to, or is  
22 associated with, or is capable of being used to identify, describe, or relate to, or associate with, a person  
23 (including, without limitation, names, physical descriptions, signatures, addresses, telephone numbers,  
24 e-mail addresses, education, financial matters, employment history, and other unique identifiers, as well  
25 as statements made by or attributable to the person); (ii) is used or is capable of being used to  
26 authenticate a person (including, without limitation, employee identification numbers, government-issued  
27 identification numbers, passwords or personal identification numbers (PINs), financial account numbers,  
28 credit report information, answers to security questions, and other personal identifiers); or is personal

1 information within the meaning of California Civil Code section 1798.3, subdivision (a), or 1798.80,  
2 subdivision (e). Personal Information does not include publicly available information that is lawfully made  
3 available to the general public from federal, state, or local government records.

4 **“Privacy Practices Complaint”** means a complaint received by COUNTY relating to  
5 CONTRACTOR’s (or any Authorized Person’s) privacy practices, or alleging a Security Breach. Such  
6 complaint shall have sufficient detail to enable CONTRACTOR to promptly investigate and take  
7 remedial action under this Exhibit A.

8 **“Security Safeguards”** means physical, technical, administrative or organizational security  
9 procedures and practices put in place by CONTRACTOR (or any Authorized Persons) that relate to the  
10 protection of the security, confidentiality, value, or integrity of Personal Information. Security Safeguards  
11 shall satisfy the minimal requirements set forth in subsection C.(5) of this Exhibit A.

12 **“Security Breach”** means (i) any act or omission that compromises either the security,  
13 confidentiality, value, or integrity of any Personal Information or the Security Safeguards, or (ii) any  
14 unauthorized Use, Disclosure, or modification of, or any loss or destruction of, or any corruption of or  
15 damage to, any Personal Information.

16 **“Use”** or any derivative thereof means to receive, acquire, collect, apply, manipulate, employ,  
17 process, transmit, disseminate, access, store, disclose, or dispose of Personal Information.

18 **B. Standard of Care.**

19 (1) CONTRACTOR acknowledges that, in the course of its engagement by COUNTY under this  
20 Agreement, CONTRACTOR, or any Authorized Persons, may Use Personal Information only as  
21 permitted in this Agreement.

22 (2) CONTRACTOR acknowledges that Personal Information is deemed to be confidential  
23 information of, or owned by, COUNTY (or persons from whom COUNTY receives or has received  
24 Personal Information) and is not confidential information of, or owned or by, CONTRACTOR, or any  
25 Authorized Persons. CONTRACTOR further acknowledges that all right, title, and interest in or to the  
26 Personal Information remains in COUNTY (or persons from whom COUNTY receives or has received  
27 Personal Information) regardless of CONTRACTOR’s, or any Authorized Person’s, Use of that Personal  
28 Information.

1 (3) CONTRACTOR agrees and covenants in favor of COUNTY that CONTRACTOR shall: (i)  
2 keep and maintain all Personal Information in strict confidence, using such degree of care under this  
3 Subsection B as is reasonable and appropriate to avoid a Security Breach; (ii) Use Personal Information  
4 exclusively for the purposes for which the Personal Information is made accessible to CONTRACTOR  
5 pursuant to the terms of this Exhibit A; (iii) not Use, Disclose, sell, rent, license, or otherwise make  
6 available Personal Information for CONTRACTOR's own purposes or for the benefit of anyone other  
7 than COUNTY, without COUNTY's express prior written consent, which the COUNTY may give or  
8 withhold in its sole and absolute discretion; and (iv) not, directly or indirectly, Disclose Personal  
9 Information to any person (an "Unauthorized Third Party") other than Authorized Persons pursuant to  
10 this Agreement, without the Director's and the Recorder's express prior written consent.

11 Notwithstanding the foregoing paragraph, in any case in which CONTRACTOR believes it, or  
12 any Authorized Person, is required to disclose Personal Information to government regulatory  
13 authorities, or pursuant to a legal proceeding, or otherwise as may be required by applicable law,  
14 Contractor shall (a) immediately notify COUNTY of the specific demand for, and legal authority for the  
15 disclosure, including providing County with a copy of any notice, discovery demand, subpoena, or order,  
16 as applicable, received by CONTRACTOR, or any Authorized Person, from any government regulatory  
17 authorities, or in relation to any legal proceeding, and (b) promptly notify COUNTY before such Personal  
18 Information is offered by CONTRACTOR for such disclosure so that COUNTY may have sufficient time  
19 to obtain a court order or take any other action COUNTY may deem necessary to protect the Personal  
20 Information from such disclosure, and CONTRACTOR shall cooperate with COUNTY to minimize the  
21 scope of such disclosure of such Personal Information.

22 CONTRACTOR shall remain liable to COUNTY for the actions and omissions of any  
23 Unauthorized Third Party concerning its Use of such Personal Information as if they were  
24 CONTRACTOR's own actions and omissions.

25 **C. Information Security.**

26 (1) CONTRACTOR covenants, represents and warrants to COUNTY that Contractor's Use of  
27 Personal Information under this Agreement does and shall at all times comply with all applicable federal,  
28 state, and local, privacy and data protection laws, as well as all other applicable regulations and

1 directives, including but not limited to California Civil Code, Division 3, Part 4, Title 1.81 (beginning with  
2 section 1798.80), and the Song-Beverly Credit Card Act of 1971 (California Civil Code, Division 3, Part  
3 4, Title 1.3, beginning with section 1747). If CONTRACTOR Uses credit, debit or other payment  
4 cardholder information, CONTRACTOR shall at all times remain in compliance with the Payment Card  
5 Industry Data Security Standard (“PCI DSS”) requirements, including remaining aware at all times of  
6 changes to the PCI DSS and promptly implementing and maintaining all procedures and practices as  
7 may be necessary to remain in compliance with the PCI DSS, in each case, at CONTRACTOR’s sole  
8 cost and expense.

9 (2) CONTRACTOR covenants, represents and warrants to COUNTY that, as of the Effective  
10 Date, CONTRACTOR has not received notice of any violation of any privacy or data protection laws, as  
11 well as any other applicable regulations or directives, and is not the subject of any pending legal action  
12 or investigation by, any government regulatory authority regarding same.

13 (3) Without limiting CONTRACTOR’s obligations under subsection C.(1) of this Exhibit A,  
14 CONTRACTOR’s (or Authorized Person’s) Security Safeguards shall be no less rigorous than accepted  
15 industry practices and, at a minimum, include the following: (i) limiting Use of Personal Information  
16 strictly to CONTRACTOR’s and Authorized Persons’ technical and administrative personnel who are  
17 necessary for the CONTRACTOR’s, or Authorized Persons’, Use of the Personal Information pursuant  
18 to this Agreement; (ii) ensuring that all of CONTRACTOR’s connectivity to County computing systems  
19 will only be through security procedures approved upon the express prior written consent of the Director;  
20 (iii) to the extent that they contain or provide access to Personal Information, (a) securing business  
21 facilities, data centers, paper files, servers, back-up systems and computing equipment, operating  
22 systems, and software applications, including, but not limited to, all mobile devices and other equipment,  
23 operating systems, and software applications with information storage capability; (b) employing  
24 adequate controls and data security measures, both internally and externally, to protect (1) the Personal  
25 Information from potential loss or misappropriation, or unauthorized Use, and (2) the COUNTY’s  
26 operations from disruption and abuse; (c) having and maintaining network, device application, database  
27 and platform security; (d) maintaining authentication and access controls within media, computing  
28 equipment, operating systems, and software applications; and (e) installing and maintaining in all

1 mobile, wireless, or handheld devices a secure internet connection, having continuously updated anti-  
2 virus software protection and a remote wipe feature always enabled, all of which is subject to express  
3 prior written consent of the Director; (iv) encrypting all Personal Information at advance encryption  
4 standards of Advanced Encryption Standards (AES) of 128 bit or higher (a) stored on any mobile  
5 devices, including but not limited to hard disks, portable storage devices, or remote installation, or (b)  
6 transmitted over public or wireless networks (the encrypted Personal Information must be subject to  
7 password or pass phrase, and be stored on a secure server and transferred by means of a secure  
8 connection, all of which is subject to express prior written consent of the Director); (v) strictly  
9 segregating Personal Information from all other information of CONTRACTOR, including any Authorized  
10 Person, or anyone with whom CONTRACTOR or any Authorized Person deals so that Personal  
11 Information is not commingled with any other types of information; (vi) maintaining appropriate  
12 personnel security and integrity procedures and practices, including, but not limited to, conducting  
13 background checks of Authorized Employees consistent with applicable law; and (vii) providing  
14 appropriate privacy and information security training to Authorized Employees.

15 (4) During the term of each Authorized Employee's employment by CONTRACTOR,  
16 CONTRACTOR shall cause such Authorized Employees to abide strictly by CONTRACTOR's  
17 obligations under this Exhibit A. CONTRACTOR further agrees that it shall maintain a disciplinary  
18 process to address any unauthorized Use of Personal Information by any Authorized Employees.

19 (5) CONTRACTOR shall, in a secure manner, backup daily, or more frequently if it is  
20 CONTRACTOR's practice to do so more frequently, Personal Information received from COUNTY, and  
21 the COUNTY shall have immediate, real time access, at all times, to such backups via a secure, remote  
22 access connection provided by CONTRACTOR, through the Internet. These backups are performed by  
23 Microsoft via the Microsoft Azure Government Community Cloud (GCC).

24 (6) CONTRACTOR shall provide COUNTY with the name and contact information for each  
25 Authorized Employee (including such Authorized Employee's work shift, and at least one alternate  
26 Authorized Employee for each Authorized Employee during such work shift) who shall serve as  
27 COUNTY's primary security contact with CONTRACTOR and shall be available to assist COUNTY  
28 twenty-four (24) hours per day, seven (7) days per week as a contact in resolving CONTRACTOR's and

1 any Authorized Persons' obligations associated with a Security Breach or a Privacy Practices  
2 Complaint.

3 **D. Security Breach Procedures.**

4 (1) Immediately upon CONTRACTOR's awareness or reasonable belief of a Security Breach,  
5 CONTRACTOR shall (a) notify the Director of the Security Breach, such notice to be given first by  
6 telephone at the following telephone number, followed promptly by email at the following email address:  
7 (559) 600-6200 / ematthews@fresnocountyca.gov (which telephone number and email address  
8 COUNTY may update by providing notice to CONTRACTOR), and (b) preserve all relevant evidence  
9 (and cause any affected Authorized Person to preserve all relevant evidence) relating to the Security  
10 Breach. The notification shall include, to the extent reasonably possible, the identification of each type  
11 and the extent of Personal Information that has been, or is reasonably believed to have been, breached,  
12 including but not limited to, compromised, or subjected to unauthorized Use, Disclosure, or modification,  
13 or any loss or destruction, corruption, or damage.

14 (2) Immediately following CONTRACTOR's notification to COUNTY of a Security Breach, as  
15 provided pursuant to subsection D.(1) of this Exhibit A, the Parties shall coordinate with each other to  
16 investigate the Security Breach. CONTRACTOR agrees to fully cooperate with COUNTY, including,  
17 without limitation: (i) assisting COUNTY in conducting any investigation; (ii) facilitating interviews with  
18 Authorized Persons and any of CONTRACTOR's other employees knowledgeable of the matter; and (iii)  
19 making available all relevant records, logs, files, data reporting and other materials required to comply  
20 with applicable law, regulation, industry standards, or as otherwise reasonably required by COUNTY.

21 (3) County shall promptly notify CONTRACTOR of the Director's knowledge, or reasonable  
22 belief, of any Privacy Practices Complaint, and upon CONTRACTOR's receipt of notification thereof,  
23 CONTRACTOR shall promptly address such Privacy Practices Complaint, including taking any  
24 corrective action under this Exhibit A, all at CONTRACTOR's sole expense, in accordance with  
25 applicable privacy rights, laws, regulations and standards. In the event CONTRACTOR discovers a  
26 Security Breach, CONTRACTOR shall treat the Privacy Practices Complaint as a Security Breach.  
27 Within twenty-four (24) hours of CONTRACTOR's receipt of notification of such Privacy Practices  
28 Complaint, CONTRACTOR shall notify COUNTY whether the matter is a Security Breach, or otherwise

1 has been corrected and the manner of correction, or determined not to require corrective action and the  
2 reason therefor.

3 (4) CONTRACTOR agrees to cooperate, at its sole expense, with COUNTY in any litigation or  
4 other action to protect COUNTY's rights relating to Personal Information, including the rights of persons  
5 from whom COUNTY receives Personal Information.

6 **E. Oversight of Security Compliance.**

7 (1) CONTRACTOR shall have and maintain a written information security policy that specifies  
8 Security Safeguards appropriate to the size and complexity of CONTRACTOR's operations and the  
9 nature and scope of its activities.

10 (2) Upon COUNTY's written request, to confirm CONTRACTOR's compliance with this Exhibit A,  
11 as well as any applicable laws, regulations and industry standards, CONTRACTOR grants COUNTY or,  
12 upon COUNTY's election, a third party on COUNTY's behalf, permission to perform an assessment,  
13 audit, examination or review of all controls in CONTRACTOR's physical and technical environment in  
14 relation to all Personal Information that is Used by CONTRACTOR pursuant to this Agreement.  
15 CONTRACTOR shall fully cooperate with such assessment, audit or examination, as applicable, by  
16 providing COUNTY or the third party on COUNTY's behalf, access to all Authorized Employees and  
17 other knowledgeable personnel, physical premises, documentation, infrastructure and application  
18 software that is Used by CONTRACTOR for Personal Information pursuant to this Agreement. In  
19 addition, CONTRACTOR shall provide COUNTY with the results of any audit by or on behalf of  
20 CONTRACTOR that assesses the effectiveness of CONTRACTOR's information security program as  
21 relevant to the security and confidentiality of Personal Information Used by CONTRACTOR or  
22 Authorized Persons during the course of this Agreement under this Exhibit A.

23 (3) CONTRACTOR shall ensure that all Authorized Persons who Use Personal Information  
24 agree to the same restrictions and conditions in this Exhibit A that apply to CONTRACTOR with respect  
25 to such Personal Information by incorporating the relevant provisions of these provisions into a valid and  
26 binding written agreement between CONTRACTOR and such Authorized Persons, or amending any  
27 written agreements to provide same.

28 **F. Return or Destruction of Personal Information.**



1           Upon the termination of this Agreement, CONTRACTOR shall, and shall instruct all Authorized  
2 Persons to, promptly return to COUNTY all Personal Information, whether in written, electronic or other  
3 form or media, in its possession or the possession of such Authorized Persons, in a machine readable  
4 form used by COUNTY at the time of such return, or upon the express prior written consent of the  
5 Recorder and the Director, securely destroy all such Personal Information, and certify in writing to the  
6 COUNTY that such Personal Information have been returned to COUNTY or disposed of securely, as  
7 applicable. If CONTRACTOR is authorized to dispose of any such Personal Information, as provided in  
8 this Exhibit A, such certification shall state the date, time, and manner (including standard) of disposal  
9 and by whom, specifying the title of the individual. CONTRACTOR shall comply with all reasonable  
10 directions provided by the Recorder and the Director with respect to the return or disposal of Personal  
11 Information and copies thereof. If return or disposal of such Personal Information or copies of Personal  
12 Information is not feasible, CONTRACTOR shall notify COUNTY accordingly, specifying the reason, and  
13 continue to extend the protections of this Exhibit A to all such Personal Information and copies of  
14 Personal Information. CONTRACTOR shall not retain any copy of any Personal Information after  
15 returning or disposing of Personal Information as required by this section F. CONTRACTOR's  
16 obligations under this section F survive the termination of this Agreement and apply to all Personal  
17 Information that CONTRACTOR retains if return or disposal is not feasible and to all Personal  
18 Information that CONTRACTOR may later discover.

19           **G. Equitable Relief.**

20           CONTRACTOR acknowledges that any breach of its covenants or obligations set forth in this  
21 Exhibit A may cause COUNTY irreparable harm for which monetary damages would not be adequate  
22 compensation and agrees that, in the event of such breach or threatened breach, COUNTY is entitled to  
23 seek equitable relief, including a restraining order, injunctive relief, specific performance and any other  
24 relief that may be available from any court, in addition to any other remedy to which COUNTY may be  
25 entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to  
26 all other remedies available to COUNTY at law or in equity or under this Agreement.

27           **H. Indemnification.**

28           CONTRACTOR shall defend, indemnify and hold harmless COUNTY, its officers, employees,

1 and agents, (each, a "COUNTY Indemnitee") from and against any and all infringement of intellectual  
2 property including, but not limited to infringement of copyright, trademark, and trade dress, invasion of  
3 privacy, information theft, and extortion, unauthorized Use, Disclosure, or modification of, or any loss or  
4 destruction of, or any corruption of or damage to, Personal Information, Security Breach response and  
5 remedy costs, credit monitoring expenses, forfeitures, losses, damages, liabilities, deficiencies, actions,  
6 judgments, interest, awards, fines and penalties (including regulatory fines and penalties), costs or  
7 expenses of whatever kind, including attorneys' fees and costs, the cost of enforcing any right to  
8 indemnification or defense under this Exhibit A and the cost of pursuing any insurance providers, arising  
9 out of or resulting from any third party claim or action against any COUNTY Indemnitee in relation to  
10 CONTRACTOR's, its officers, employees, or agents, or any Authorized Employee's or Authorized  
11 Person's, performance or failure to perform under this Exhibit A or arising out of or resulting from  
12 CONTRACTOR's failure to comply with any of its obligations under this section H. The provisions of this  
13 section H are cumulative to any other obligation of CONTRACTOR to, defend, indemnify, or hold  
14 harmless any COUNTY Indemnity under this Agreement. The provisions of this section H shall survive  
15 the termination of this Agreement.

16 **I. Survival.**

17 The respective rights and obligations of CONTRACTOR and COUNTY as stated in this Exhibit A  
18 shall survive the termination of this Agreement. J. No Third Party Beneficiary. Nothing express or  
19 implied in the provisions of in this Exhibit A is intended to confer, nor shall anything herein confer, upon  
20 any person other than COUNTY or CONTRACTOR and their respective successors or assignees, any  
21 rights, remedies, obligations or liabilities whatsoever.

22 **L. No County Warranty.**

23 COUNTY does not make any warranty or representation whether any Personal Information in  
24 CONTRACTOR's (or any Authorized Person's) possession or control, or Use by CONTRACTOR (or any  
25 Authorized Person), pursuant to the terms of this Agreement is or will be secure from unauthorized Use,  
26 or a Security Breach or Privacy Practices Complaint.

## SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

*"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"*

The definition above will be utilized for purposes of completing this disclosure form.

### INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
  - a. The name of the agency/company with which the corporation has the transaction; and
  - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit B

<b>(1) Company Board Member Information:</b>			
<b>Name:</b>		<b>Date:</b>	
<b>Job Title:</b>			
<b>(2) Company/Agency Name and Address:</b>			
<b>(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):</b>			
<b>(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):</b>			
<b>(5) Authorized Signature</b>			
<b>Signature:</b>		<b>Date:</b>	

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