

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 28th day of April, 2020 ("Effective Date"), by and between the COUNTY OF FRESNO, a political subdivision of the state of California ("COUNTY"), and Kofile Technologies, Inc., a Delaware corporation, whose address is 6300 Cedar Springs Road, Dallas, TX 75235 ("CONTRACTOR").

WITNESSETH:

WHEREAS, the COUNTY Recorder, which is part of the consolidated office of Assessor-Recorder ("Recorder"), is required under Health and Safety Code section 102285 to perform all the duties of the local registrar of marriages, under Health and Safety Code section 102335 to maintain the special county record of each birth certificate and death certificate transmitted to it by the local registrar of births and deaths, and under Government Code section 27252 to keep an index of the certificates of births, deaths, and marriages;

WHEREAS, in order to carry out those statutory duties, the COUNTY recorder needs archival-quality physical storage for paper records and software to provide digital indexing;

WHEREAS, COUNTY desires to purchase an archival-quality physical storage system for vital records and the QuickLink Software program for digital indexing of vital records from CONTRACTOR, to be utilized by the Recorder; and

WHEREAS, COUNTY and CONTRACTOR desire to execute this Agreement for (1) the QuickLink Software, (2) maintenance and support for the QuickLink Software, and (3) an archival-quality physical storage system and related storage supplies, to be utilized by the Recorder.

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:

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

1 County System Hardware means the central processing units owned or leased by COUNTY on
2 which COUNTY is licensed to use the System Software, any back-up equipment for such central
3 processing units, and any peripheral hardware such as terminals, printers, and personal computers.

4 COUNTY System Software means the operating system and database software installed on the
5 County System Hardware.

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

9 First Production Use is the date of first use of the system in a production environment. For
10 purposes of this Agreement, production environment means the QuickLink software with the County
11 data incorporated and ready for use.

12 ISD is the COUNTY's Internal Services Department.

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

16 System refers to the System Software and System Documentation, collectively, including all
17 modifications and enhancements.

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

21 System Software is the QuickLink computer software provided and hosted by CONTRACTOR
22 that provides rapid linking between indexes in the digitized versions of vital record books and each index
23 entries corresponding record. QuickLinks is a web application that will be accessed via internet
24 browsers on personal computers at the Recorder's office. QuickLink includes two service levels: Full
25 Access and Lite. Both service levels will be accessed through a web application using the same user
26 interface. The Full Access version includes digital links from each index in a record series to a digital
27 copy of each specific entry, which will reduce the need to physically access documents that have been
28 digitally scanned and entered into the System. The Lite version provides location information for

1 physical records that are not stored digitally within the System. System Software does not include
2 operating system software, or any other third-party software.

3 System Software Maintenance and Support means software hosting for System Software,
4 regular software updates to System Software, and support provided for System Software in case of
5 errors, mistakes, or other technical difficulties.

6 2. **OBLIGATIONS OF THE CONTRACTOR**

7 A. **SOFTWARE LICENSE**

8 1) **GRANT OF LICENSE**

9 CONTRACTOR grants to COUNTY, and COUNTY accepts a non-exclusive, non-transferable,
10 license to use the System Software, subject to the terms and conditions set forth in this Agreement. This
11 license shall survive termination or expiration of this Agreement, but only if COUNTY continues to
12 purchase System Software Maintenance and Support.

13 2) **SCOPE OF LICENSE**

14 The license granted under this Agreement consists solely of the non-exclusive, non-transferable
15 right of COUNTY to operate the System Software in support of the Recorder in carrying out its duties
16 under Health and Safety Code sections 102285 and 102335, and Government Code section 27252.

17 3) **OWNERSHIP**

18 The parties acknowledge and agree that, as between CONTRACTOR and COUNTY, title and
19 full ownership of all rights in and to the System Software, System Documentation, and all other materials
20 provided to COUNTY by CONTRACTOR under the terms of this Agreement shall remain with
21 CONTRACTOR. COUNTY will take reasonable steps to protect trade secrets of the System Software
22 and System Documentation. COUNTY may not disclose or make available to third parties the System
23 Software or System Documentation or any portion of either. CONTRACTOR owns all right, title and
24 interest in and to all CONTRACTOR's corrections, modifications, or enhancements to the System that
25 are conceived, created or developed, alone or with COUNTY or others, as a result of or related to the
26 performance of this Agreement, including all proprietary rights therein and based thereon. For purposes
27 of this Agreement, "enhancement" means new software that is an interface between the System
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1 Software and other software. Except and to the extent expressly provided herein, CONTRACTOR does
2 not grant to COUNTY any right or license, express or implied, in or to the System. The parties
3 acknowledge and agree that, as between CONTRACTOR and COUNTY, full ownership of all rights in
4 and to all COUNTY data, whether in magnetic or paper form, including without limitation printed output
5 from the System, are the exclusive property of COUNTY.

6 4) POSSESSION, USE, AND UPDATE OF SOFTWARE

7 COUNTY agrees that COUNTY will only use the System Software for the Recorder's purposes,
8 as provided in this Agreement. CONTRACTOR may, at reasonable times, inspect the Recorder's
9 premises and equipment to verify that all of the terms and conditions of the License are being observed.
10 CONTRACTOR may create, from time to time, updated versions of the System Software and System
11 Documentation, and CONTRACTOR shall make such System Updates available to COUNTY. All
12 System Updates shall be licensed under the terms of this Agreement. COUNTY agrees to follow the
13 prescribed instructions for updating System Software and System Documentation provided to COUNTY
14 by CONTRACTOR. COUNTY must authorize all System Updates in writing.

15 5) POSSESSION AND USE OF SOURCE CODE

16 Source code and other material that results from custom programming by CONTRACTOR
17 released to COUNTY under the License are deemed CONTRACTOR software subject to all of the terms
18 and conditions of the License. The scope of COUNTY's permitted use of the custom source code under
19 the License is limited to maintenance and support of the System Software. For purposes of this Section,
20 the term "maintenance and support" means correction of System Software errors and preparation of
21 System Software modifications and enhancements. If COUNTY creates computer code in the process of
22 developing an enhancement for the System Software, that specific new code shall be owned by
23 COUNTY, and may be used by COUNTY's employees, officers, or agents for COUNTY's own internal
24 business operations to carry out statutory public functions that benefit the public, including individual
25 members of the public. However, if COUNTY's enhancement results in the creation of a derivative work
26 from the System Software, the copyright to such derivative work shall be owned by CONTRACTOR, and
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1 COUNTY's right to use such derivative work is limited to those granted with respect to the System
2 Software in this Agreement.

3 6) RESTRICTIONS ON USE

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

19 No right or license is granted under this Agreement for the use of the System, directly or
20 indirectly, for the benefit of any other person or entity, except as provided in this Agreement, except that
21 CONTRACTOR acknowledges that COUNTY intends to use the System to carry out statutory public
22 functions that benefit the public, including individual members of the public.

23 7) INTELLECTUAL PROPERTY, TRADEMARK, AND COPYRIGHT

24 CONTRACTOR retains ownership of and all rights in the System Software, any portions or
25 copies thereof. CONTRACTOR reserves all rights not expressly granted to COUNTY. This License does
26 not grant COUNTY any rights in connection with any trademarks or service marks of CONTRACTOR, its
27 suppliers or licensors. All right, title, interest and copyrights in and to the System, and any copies of the
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System Software are owned by CONTRACTOR, its suppliers or its licensors. All title and intellectual property rights in and to the content which may be accessed through use of the System Software are the property of the respective content owner, and may be protected by applicable copyright or other intellectual property laws and treaties. This License grants COUNTY no rights to use such content.

B. SERVICES TO BE PROVIDED BY CONTRACTOR TO COUNTY

1) IMPLEMENTATION SERVICES

CONTRACTOR will complete the implementation of services as described in the schedule below. CONTRACTOR agrees to accomplish this implementation within six (6) months from the Effective Date. Items 3, 4, and 5 may be performed concurrently.

Step	Time Required
1. Receive and process digitized images	1 day
2. Site development	1 day
3. Production and creation of links	4.5 months
4. Site data build	1 week
5. Link correction	1 month
6. Punch list - corrections	1 week
7. Training	1 day

a. SITE DEVELOPMENT

CONTRACTOR will develop a unique digital instance of the QuickLink software for exclusive use of the COUNTY Recorder's Office. This instance will be hosted by CONTRACTOR for the duration of the Agreement and available via web browser, so long as the COUNTY pays annual System Software Maintenance and Support.

b. CREATION OF LINKS

CONTRACTOR shall develop a digital index to link index entries in the documents below to their corresponding record book digitized page images within the QuickLink system.

Record Series Title	Date	Approximate Quantity			Level of Service
		Vols.	Pages	Links	
Indexes to Births	1876-1999	20	9,128	412,800	QuickLink Full Access Indexing

Indexes to Marriages	1855-1977	23	8,096	47130	QuickLink Full Access Indexing
	1958-1971	4	2,135	N/A	QuickLink Lite Indexing
Indexes to Deaths	1873-1977	19	4,540	199,000	QuickLink Full Access Indexing
Indexes to Patents	1860-1878	2	381	9,500	QuickLink Full Access Indexing

All indexes and corresponding record books are already imaged, and will be provided by COUNTY to CONTRACTOR.

c. LINK REVIEW AND CORRECTION

The links within the indexes referenced in step 2 of the table in Section 2(B)(1) herein shall be available for review by COUNTY a minimum of 30-days prior to the First Production Use. This feedback will be used to develop a punch list of corrections and any other issues for CONTRACTOR to resolve before the First Production Use.

d. TRAINING

CONTRACTOR will conduct one session of “train-the-trainer” training of certain COUNTY staff at a COUNTY-designated location and at a time approved in writing by COUNTY’s Assessor-Recorder. For purposes of this Agreement, “train-the-trainer” means certain County staff are given the teaching skills they need to convey information to other staff members in a replicable way.

e. DOCUMENTATION

CONTRACTOR shall provide to COUNTY the System Documentation, which shall consist of electronic media files. The electronic media files must be provided in Portable Document Format (.pdf). CONTRACTOR shall provide new System Documentation for each upgrade to the System Software. COUNTY may print copies of all System Documentation. All System Documentation is to be used by COUNTY only for the purposes identified within this Agreement.

C. SYSTEM MAINTENANCE AND SUPPORT BY CONTRACTOR

CONTRACTOR shall provide System Software Maintenance and Support. System maintenance and support includes, but is not limited to, hosting of the System Software, and updates to the System Software as they are released by CONTRACTOR, including updates required because of federal regulatory changes. CONTRACTOR will support day-to-day operation of the System as follows:

1 received, CONTRACTOR will promptly notify COUNTY of that fact, and then endeavor to
2 respond to the service request no later than within one (1) business day.

3 3) ERROR CORRECTION PROCESS

4 If, during the term of this Agreement, COUNTY determines that a System Software error exists,
5 COUNTY will first follow the error procedures specified in the System Documentation. If following the
6 error procedures does not correct the software error, COUNTY shall immediately notify CONTRACTOR
7 via phone or email, setting forth the defects noted with specificity. Upon notification of a reported
8 software error, CONTRACTOR shall have five (5) business days to determine if any actual software
9 errors exist and, if so, endeavor to correct such software errors. CONTRACTOR may request
10 reasonable additional time to solve difficult problems and COUNTY will not unreasonably deny such
11 requests. Within fifteen (15) days of correction, COUNTY shall retest the System Software and report
12 any other software errors.

13 D. ADDITIONAL SYSTEM MAINTENANCE SERVICES BY CONTRACTOR

14 CONTRACTOR may provide additional maintenance services (“Additional Maintenance and
15 Support Services” or “Additional Maintenance Services”) at an additional charge. Charges will be as
16 identified in Section 6 of this Agreement; or, if the Additional Maintenance and Support Services are not
17 specifically listed in this Agreement, charges will be at current prices in effect at the time goods or
18 services are provided. Any Additional Maintenance and Support Services requested by COUNTY and
19 determined by CONTRACTOR not to be specifically listed in this Agreement must be identified as a
20 chargeable service prior to the service being performed, and must be approved in writing in advance by
21 COUNTY’s Contract Administrator, as defined in Section 3, below. Additional Maintenance Services
22 include, but are not limited to, the following:

23 1) ADDITIONAL TRAINING

24 A specific amount of training is specified in Section 2(B)(iv) of this Agreement.
25 Additional training at a COUNTY facility is available upon request by COUNTY at an
26 additional charge under the terms of this Agreement. Requests for additional training will
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1 be reviewed by CONTRACTOR, and must be requested in writing in advance by
2 COUNTY's Contract Administrator.

3 1) DATA AND SYSTEM CORRECTIONS

4 CONTRACTOR shall provide data and system corrections that are necessary due
5 to COUNTY errors or unauthorized source code or data access by COUNTY.

6 CONTRACTOR shall provide such corrections . Unauthorized data access is defined as
7 any COUNTY editing of data through other than normal System Software usage, as
8 defined in System Documentation. Unauthorized source code access is defined as any
9 COUNTY access whatsoever to System Software source code. COUNTY will not pay any
10 compensation to CONTRACTOR for services that result from errors caused by QuickLink
11 or instruction provided by CONTRACTOR.

12 E. SYSTEM UPDATES

13 1) SYSTEM UPDATES

14 From time to time CONTRACTOR will develop and provide updates to the System
15 Software. CONTRACTOR shall provide updates to the System Software at no additional
16 charge to COUNTY during the term of this Agreement. Updates to the System Software
17 are subject to the terms and conditions of this Agreement, and shall be deemed licensed
18 System Software under this Agreement.

19 F. OPERATING SYSTEM UPDATES

20 The System Software must run on an operating system (O/S) that is consistently and currently
21 supported by the O/S vendor. The System Software version is expected to always be no more than one
22 year older than the current released O/S version.

23 COUNTY will notify CONTRACTOR when a critical security patch is released for the supported
24 O/S or related subsystems. CONTRACTOR will have thirty (30) days to ensure the System Software
25 can perform in the updated environment. With approval from CONTRACTOR, COUNTY will apply
26 patches to both the O/S and non-critical subsystems as releases are available from vendors. The
27 System Software must continue to perform as the O/S and other subsystems are updated.
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1	Color: Mist Green Unit Capacity: 800 maps 26" x 18" (1,600 back-to-back) Size 90" H x 29 W x 29" D	
2	• Wishbone Hangars, 26.75" / 8"-7"-8" Punch	400
3	• 4 mil Mylar Pockets with acid-free divider paper, 26.75" x 19" / 8"-7"-8" Punch	800
4	Model No. 400 UD (Double Wide) Color: Mist Green & Formica Top Unit Capacity: 200 envelopes or 400 plats at 24" x 36" Size: 46" H x 58" W x 27" D; Welded frame 1" tubular steel	1 Unit
5	• Wishbone Hangars, 24.75", 7"-7"-7" Punch Numbered	200
6	• 4 mil Mylar Pockets with acid-free divider paper, 24.75" x 36.75"	200
7		
8		

9 CONTRACTOR shall deliver the physical goods described above to the Fresno County
10 Recorder's Office building at 1250 Van Ness Ave. Fresno, CA 93721 upon written request of the
11 COUNTY's Contract Administrator. CONTRACTOR and the COUNTY's Contract Administrator will then
12 coordinate delivery and installation at a date specified in writing by the COUNTY's Contract
13 Administrator. CONTRACTOR shall provide all labor, materials, rigging services, and transportation
14 required to pack, load, unload, and install the physical goods described above. Before installation,
15 CONTRACTOR's personnel shall check the goods for errors and damage. CONTRACTOR shall replace
16 erroneous or damaged components prior to installation. CONTRACTOR shall then assemble each
17 cabinet or shelving unit. After assembly, CONTRACTOR shall clean each shelf and install the physical
18 copies of the vital records. CONTRACTOR staff will take the materials off the current shelves and return
19 them to the new shelves at the conclusion of the installation of these physical goods. CONTRACTOR
20 shall clean the area where the installation occurs, shall not leave any materials unshelved, and shall not
21 leave any refuse or debris.

22 3. **OBLIGATIONS OF COUNTY**

23 A. **COUNTY CONTRACT ADMINISTRATOR**

24 COUNTY hereby appoints its Assessor-Recorder, or his or her designee, as COUNTY's Contract
25 Administrator with full authority to deal with CONTRACTOR in the administration of this Agreement.

26 B. **SYSTEM HARDWARE AND SYSTEM SOFTWARE**

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

4 C. OTHER COUNTY OBLIGATIONS

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

- 8 a. Network connectivity and troubleshooting assistance;
- 9 b. Ability for COUNTY staff to monitor network traffic and isolate
10 bottlenecks;
- 11 c. Technical assistance concerning the integration with existing COUNTY
12 systems (if applicable); and
- 13 d. Expertise to handle issues with COUNTY PCs, printers, and cabling
14 before, during, and after First Production Use.

15 4. TERM

16 The term of this Agreement shall be for a period of three (3) years, commencing on April 28, 2020
17 through and including April 27, 2023. This Agreement may be extended for two (2) additional consecutive
18 twelve (12) month periods upon written approval of both parties no later than thirty (30) days prior to the first
19 day of the next twelve (12) month extension period. The Assessor-Recorder or his or her designee is
20 authorized to execute such written approval on behalf of COUNTY based on CONTRACTOR's satisfactory
21 performance.

22 5. TERMINATION

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

1 B. Breach of Contract - The COUNTY may immediately suspend or terminate this
2 Agreement in whole or in part, where in the determination of the COUNTY there is:

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

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

14 C. Without Cause - Under circumstances other than those set forth above, this
15 Agreement may be terminated by COUNTY by giving thirty (30) days advance written
16 notice of an intention to terminate to CONTRACTOR.

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

19 A. Indexing and implementation services for QuickLink:

20 COUNTY agrees to compensate CONTRACTOR for the System and for indexing services, as
21 described in this section 6.A. The COUNTY shall pay CONTRACTOR \$6,500 for setting up the
22 System, and \$493,468.50 for indexing services as shown below:

Record Series Title	Date	Level of Service	Cost
Indexes to Births	1876-1999	QuickLink Full Access Indexing	\$202,272.00
Indexes to Marriages	1855-1977	QuickLink Full Access Indexing	\$187,964.00
	1958-1971	QuickLink Lite Indexing	\$1,067.50

Indexes to Deaths	1873-1977	QuickLink Full Access Indexing	\$97,510.00
Indexes to Patents	1860-1878	QuickLink Full Access Indexing	\$4,655.00

B. Maintenance and Support for QuickLink

The maximum total compensation payable for annual Maintenance and Support for QuickLink as described in Section 2.C is \$3,000 for each year of the Agreement.

C. Physical Goods & Supplies:

COUNTY agrees to compensate CONTRACTOR for physical goods, as described in this Section 6.C. The maximum total compensation payable for physical goods is \$111,000.00, as provided in the table below:

Unit Description	Quantity	Unit Price	Total
4Post Archival Shelving			
Unit Size: 85.25" H x 36" W x 20" D Color: TBD Unit Capacity: 45-50 Binders	50 Units	\$1,500.00	\$75,000
Enduro Map Cabinet System			
4-Tier-Un-Cabinet (Custom 'Cal-Cab' Style) Color: Mist Green Unit Capacity: 800 maps 26" x 18" (1,600 back-to-back) Size 90" H x 29 W x 29" D	1 Unit	\$6,000.00	\$6,000.00
<ul style="list-style-type: none"> Wishbone Hangars, 26.75" / 8"-7"-8" Punch 	400	\$11.70	\$4,680.00
<ul style="list-style-type: none"> 4 mil Mylar Pockets with acid-free divider paper, 26.75" x 19" / 8"-7"-8" Punch 	800	\$8.14	\$6,512.00
Model No. 400 UD (Double Wide) Color: Mist Green & Formica Top Unit Capacity: 200 envelopes or 400 plats at 24" x 36" Size: 46" H x 58" W x 27" D; Welded frame 1" tubular steel	1 Unit	\$3,876.00	\$3,876.00
<ul style="list-style-type: none"> Wishbone Hangars, 24.75", 7"-7"-7" Punch Numbered 	200	\$11.40	\$2,280.00
<ul style="list-style-type: none"> 4 mil Mylar Pockets with acid-free divider paper, 24.75" x 36.75" 	200	\$11.54	2,308.00
Subtotal			\$100,656.00
Tax			\$8,027.32

Freight and Installation	\$2,020.00
Total	\$110,703.32

Additional hangers and pockets may be purchased by COUNTY at the prices listed in the following table:

Unit Description	Quantity	Unit Price
Wishbone Hangers for Enduro Map Cabinet System, 26.75" / 8" - 7" - 8" Punch	1-250	\$12.87/Each
	251-500	\$11.70/Each
	500-1,000	\$10.25/Each
4 mil Mylar Pocket, 26.75" x 19" punch 8" - 7" - 8"	1-250	\$8.90/Each
	251-500	\$8.54/Each
	500-1,000	\$8.14/Each

D. Additional Services:

COUNTY may request additional services, including additional training, additional document linking services, or other services that COUNTY, in consultation with CONTRACTOR, deems necessary.

CONTRACTOR will provide a written quotation for the required services for approval by the COUNTY's Contract Administrator. The maximum total compensation payable for these additional services is \$20,000.

CONTRACTOR shall submit monthly invoices referencing the provided contract number via mail, to the County of Fresno, Recorder's Office, Attention: Business Manager, 2281 Tulare St., Room 302, Fresno, CA 93721. 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.

The total maximum compensation payable to CONTRACTOR during the first year of this Agreement is \$634,000.00. The total maximum compensation payable to CONTRACTOR during the second year of this Agreement is \$3,000.00. The total maximum compensation payable to CONTRACTOR during the third year of this agreement is \$3,000.00. If this Agreement is extended for any additional years as provided in Section 4, above, the total maximum compensation payable to CONTRACTOR for each additional year is \$3,000. The maximum total compensation payable for all goods and services under this Agreement for all five years, if the Agreement is extended for both additional years as provided in Section 4, above, is \$646,000. 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

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

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

11 Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right
12 to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable
13 and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In
14 addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating
15 to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all
16 other regulations governing such matters. It is acknowledged that during the term of this Agreement,
17 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

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

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

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

1 perform, of CONTRACTOR, its officers, agents, or employees under this Agreement.

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

3 11. **INSURANCE**

4 A. **Required Policies**

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

8 1. **Commercial General Liability**. Commercial general liability insurance with limits of not less
9 than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million
10 Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. CONTRACTOR shall
11 obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees,
12 and volunteers, individually and collectively, as additional insureds, but only insofar as the
13 operations under this Agreement are concerned. Such coverage for additional insureds will apply as
14 primary insurance and any other insurance, or self-insurance, maintained by COUNTY is excess
15 only and not contributing with insurance provided under CONTRACTOR's policy.

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

19 3. **Workers Compensation**. Workers compensation insurance as required by the California
20 Labor Code.

21 4. **Technology Professional Liability**. Technology professional liability (errors and omissions)
22 insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage
23 must encompass all of CONTRACTOR's obligations under this Agreement, including but not limited
24 to claims involving Cyber Risks.

25 5. **Cyber Liability**. Cyber liability insurance with limits of not less than Two Million Dollars
26 (\$2,000,000) per occurrence. Coverage must include, but not be limited to, claims involving Cyber
27 Risks. The cyber liability policy must be endorsed to cover the full replacement value of damage to,
28 alteration of, loss of, or destruction of intangible property (including but not limited to information or

1 data) that is in the care, custody, or control of CONTRACTOR.

2 6. Definition of Cyber Risks. "Cyber Risks" include but are not limited to (i) Security Breaches,
3 which may include Disclosure of Personal Information to an Unauthorized Third Party; (ii) breach of
4 any of CONTRACTOR's obligations under Exhibit A to this Agreement, "Data Security"; (iii)
5 infringement of intellectual property, including but not limited to infringement of copyright, trademark,
6 and trade dress; (iv) invasion of privacy, including release of private information; (v) information
7 theft; (vi) damage to or destruction or alteration of electronic information; (vii) extortion related to
8 CONTRACTOR's obligations under this Agreement regarding electronic information, including
9 Personal Information; (viii) network security; (ix) data breach response costs, including Security
10 Breach response costs; (x) regulatory fines and penalties related to CONTRACTOR's obligations
11 under this Agreement regarding electronic information, including Personal Information; and (xi)
12 credit monitoring expenses. Capitalized terms in this paragraph have the meaning given to them in
13 Exhibit A, "Data Security."

14 B. Additional Requirements Relating to Insurance

15 1. Verification of Coverage. Within 30 days after CONTRACTOR signs this Agreement,
16 CONTRACTOR shall deliver, or cause its broker or producer to deliver, to the ISD Business Office
17 at 333 W. Pontiac Way, Clovis, CA 93612, or at ISDBusinessOffice@fresnocountyca.gov copies of
18 insurance policies as produced by the broker or producer, and certificates of insurance and
19 endorsements for all of the coverages required under this Agreement.

- 20 a. All insurance certificates must state that: (1) the insurance coverage has been
21 obtained and is in full force; (2) COUNTY, its officers, agents, employees, and
22 volunteers are not responsible for any premiums on the policy; and (3)
23 CONTRACTOR has waived its right to recover from COUNTY, its officers, agents,
24 employees, and volunteers any amounts paid under any insurance policy required
25 by this Agreement and that waiver does not invalidate the insurance policy.
- 26 b. The commercial general liability insurance certificate must also state that: (1) the
27 County of Fresno, its officers, agents, employees, and volunteers, individually and
28 collectively, are additional insureds insofar as the operations under this Agreement

1 are concerned; (2) the coverage shall apply as primary insurance and any other
2 insurance, or self-insurance, maintained by COUNTY shall be excess only and not
3 contributing with insurance provided under CONTRACTOR's policy.

- 4 c. The automobile liability insurance certificate must state that the policy covers any
5 auto used in connection with this Agreement.
- 6 d. The technology professional liability insurance certificate must also state that
7 coverage encompasses all of CONTRACTOR's obligations under this Agreement,
8 including but not limited to claims involving Cyber Risks, as that term is defined in
9 this Agreement.
- 10 e. The cyber liability insurance certificate must also state that it is endorsed to cover
11 the full replacement value of damage to, alteration of, loss of, or destruction of
12 intangible property (including but not limited to information or data) that is in the care,
13 custody, or control of CONTRACTOR.

14 2. Acceptability of Insurers. All insurance policies required under this Agreement must
15 be issued by admitted insurers licensed to do business in the State of California and possessing
16 at all times during the term of this Agreement an A.M. Best, Inc. rating of A:VII or greater.

17 3. Notice of Cancellation of Coverage. For each insurance policy required under this
18 Agreement, CONTRACTOR shall provide to COUNTY, or ensure that the policy requires the
19 insurer to provide to COUNTY, written notice of any cancellation or change in the policy as
20 required in this paragraph. For cancellation of the policy for nonpayment of premium,
21 CONTRACTOR shall, or shall cause the insurer to, provide written notice to COUNTY not less
22 than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and
23 for any other change to the policy, CONTRACTOR shall, or shall cause the insurer to, provide
24 written notice to COUNTY not less than 30 days in advance of cancellation or change.
25 COUNTY in its sole discretion may determine that the failure of CONTRACTOR or its insurer to
26 timely provide a written notice required by this paragraph is a breach of this Agreement.

27 4. COUNTY's Entitlement to Greater Coverage. If CONTRACTOR has or obtains
28 insurance with broader coverage, higher limits, or both, than what is required under this Agreement,

1 then COUNTY requires and is entitled to the broader coverage, higher limits, or both. To that end,
2 CONTRACTOR shall deliver, or cause its broker or producer to deliver, to the COUNTY's Risk
3 Manager copies of insurance policies that have such broader coverage, higher limits, or both, as
4 produced by the broker or producer, and certificates of insurance and endorsements for all of the
5 coverages that have such broader coverage, higher limits, or both, as required under this
6 Agreement.

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

13 6. County's Remedy for Contractor's Failure to Maintain. If CONTRACTOR fails to keep in
14 effect at all times any insurance coverage required under this Agreement, COUNTY may, in addition
15 to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that
16 failure, or purchase such insurance coverage, and charge the cost of that coverage to
17 CONTRACTOR. COUNTY may offset such charges against any amounts owed by COUNTY to
18 CONTRACTOR under this Agreement.

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

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

28 13. **NOTICES:** The persons and their addresses having authority to give and receive notices

1 under this Agreement include the following:

2	<u>COUNTY</u>	<u>CONTRACTOR</u>
3	COUNTY OF FRESNO	Kofile Technologies, Inc.
4	Director of Internal Services/CIO	S. Records
5	333 W. Pontiac Way	6300 Cedar Springs Road
6	Clovis, CA 93612	Dallas, TX 75235

7 All notices between the COUNTY and CONTRACTOR provided for or permitted under this
8 Agreement must be in writing and delivered either by personal service, by first-class United States mail, by
9 an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by
10 personal service is effective upon service to the recipient. A notice delivered by first-class United States
11 mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid,
12 addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one
13 COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid,
14 with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by
15 telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is
16 completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the
17 next beginning of a COUNTY business day), provided that the sender maintains a machine record of the
18 completed transmission. For all claims arising out of or related to this Agreement, nothing in this section
19 establishes, waives, or modifies any claims presentation requirements or procedures provided by law,
20 including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
21 beginning with section 810).

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

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

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

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

Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions


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

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

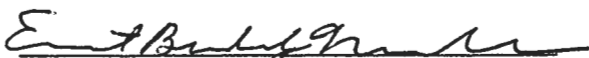
1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first
2 hereinabove written.

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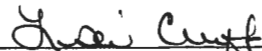
CONTRACTOR


Hubert P Auburn – SVP Sales
6300 Cedar Springs Road
Dallas, TX 75235

COUNTY OF FRESNO


Ernest Buddy Mendes, 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: 0035
Subclass: 17054
ORG: 1044
Account: 7295

Exhibit A
“Data Security”

1 **A. Definitions.**

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

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

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

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

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

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

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

Exhibit A
“Data Security”

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

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

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

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

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

20 **B. Standard of Care.**

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

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

Exhibit A
“Data Security”

1 COUNTY (or persons from whom COUNTY receives or has received Personal Information)
2 regardless of CONTRACTOR’s, or any Authorized Person’s, Use of that Personal
3 Information.

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

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

Exhibit A
“Data Security”

1 CONTRACTOR shall remain liable to COUNTY for the actions and omissions of any
2 Unauthorized Third Party concerning its Use of such Personal Information as if they were
3 CONTRACTOR’s own actions and omissions.

4 **C. Information Security.**

5 (1) CONTRACTOR covenants, represents and warrants to COUNTY that
6 Contractor’s Use of Personal Information under this Agreement does and shall at all times
7 comply with all applicable federal, state, and local, privacy and data protection laws, as well
8 as all other applicable regulations and directives, including but not limited to California Civil
9 Code, Division 3, Part 4, Title 1.81 (beginning with section 1798.80), and the Song-Beverly
10 Credit Card Act of 1971 (California Civil Code, Division 3, Part 4, Title 1.3, beginning with
11 section 1747). If CONTRACTOR Uses credit, debit or other payment cardholder information,
12 CONTRACTOR shall at all times remain in compliance with the Payment Card Industry Data
13 Security Standard (“PCI DSS”) requirements, including remaining aware at all times of
14 changes to the PCI DSS and promptly implementing and maintaining all procedures and
15 practices as may be necessary to remain in compliance with the PCI DSS, in each case, at
16 CONTRACTOR’s sole cost and expense.

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

22 (3) Without limiting CONTRACTOR’s obligations under subsection C.(1) of this
23 Exhibit A, CONTRACTOR’s (or Authorized Person’s) Security Safeguards shall be no less
24 rigorous than accepted industry practices and, at a minimum, include the following: (i)
25 limiting Use of Personal Information strictly to CONTRACTOR’s and Authorized Persons’
26 technical and administrative personnel who are necessary for the CONTRACTOR’s, or
27 Authorized Persons’, Use of the Personal Information pursuant to this Agreement; (ii)
28 ensuring that all of CONTRACTOR’s connectivity to County computing systems will only be

Exhibit A
“Data Security”

1 through COUNTY’s security gateways and firewalls, and only through security procedures
2 approved upon the express prior written consent of the Director; (iii) to the extent that they
3 contain or provide access to Personal Information, (a) securing business facilities, data
4 centers, paper files, servers, back-up systems and computing equipment, operating
5 systems, and software applications, including, but not limited to, all mobile devices and other
6 equipment, operating systems, and software applications with information storage capability;
7 (b) employing adequate controls and data security measures, both internally and externally,
8 to protect (1) the Personal Information from potential loss or misappropriation, or
9 unauthorized Use, and (2) the COUNTY’s operations from disruption and abuse; (c) having
10 and maintaining network, device application, database and platform security; (d) maintaining
11 authentication and access controls within media, computing equipment, operating systems,
12 and software applications; and (e) installing and maintaining in all mobile, wireless, or
13 handheld devices a secure internet connection, having continuously updated anti-virus
14 software protection and a remote wipe feature always enabled, all of which is subject to
15 express prior written consent of the Director; (iv) encrypting all Personal Information at
16 advance encryption standards of Advanced Encryption Standards (AES) of 128 bit or higher
17 (a) stored on any mobile devices, including but not limited to hard disks, portable storage
18 devices, or remote installation, or (b) transmitted over public or wireless networks (the
19 encrypted Personal Information must be subject to password or pass phrase, and be stored
20 on a secure server and transferred by means of a Virtual Private Network (VPN) connection,
21 or another type of secure connection, all of which is subject to express prior written consent
22 of the Director); (v) strictly segregating Personal Information from all other information of
23 CONTRACTOR, including any Authorized Person, or anyone with whom CONTRACTOR or
24 any Authorized Person deals so that Personal Information is not commingled with any other
25 types of information; (vi) having a patch management process including installation of all
26 operating system/software vendor security patches; (vii) maintaining appropriate personnel
27 security and integrity procedures and practices, including, but not limited to, conducting
28

Exhibit A
“Data Security”

1 background checks of Authorized Employees consistent with applicable law; and (viii)
2 providing appropriate privacy and information security training to Authorized Employees.

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

8 (5) CONTRACTOR shall, in a secure manner, backup daily, or more frequently if it is
9 CONTRACTOR’s practice to do so more frequently, Personal Information received from
10 COUNTY, and the COUNTY shall have immediate, real time access, at all times, to such
11 backups via a secure, remote access connection provided by CONTRACTOR, through the
12 Internet.

13 (6) CONTRACTOR shall provide COUNTY with the name and contact information for
14 each Authorized Employee (including such Authorized Employee’s work shift, and at least
15 one alternate Authorized Employee for each Authorized Employee during such work shift)
16 who shall serve as COUNTY’s primary security contact with CONTRACTOR and shall be
17 available to assist COUNTY twenty-four (24) hours per day, seven (7) days per week as a
18 contact in resolving CONTRACTOR’s and any Authorized Persons’ obligations associated
19 with a Security Breach or a Privacy Practices Complaint.

20 **D. Security Breach Procedures.**

21 (1) Immediately upon CONTRACTOR’s awareness or reasonable belief of a Security
22 Breach, CONTRACTOR shall (a) notify the Director of the Security Breach, such notice to
23 be given first by telephone at the following telephone number, followed promptly by email at
24 the following email address: (559) 600-6200 / ematthews@fresnocountyca.gov (which
25 telephone number and email address COUNTY may update by providing notice to
26 CONTRACTOR), and (b) preserve all relevant evidence (and cause any affected Authorized
27 Person to preserve all relevant evidence) relating to the Security Breach. The notification
28 shall include, to the extent reasonably possible, the identification of each type and the extent

Exhibit A
“Data Security”

1 of Personal Information that has been, or is reasonably believed to have been, breached,
2 including but not limited to, compromised, or subjected to unauthorized Use, Disclosure, or
3 modification, or any loss or destruction, corruption, or damage.

4 (2) Immediately following CONTRACTOR’s notification to COUNTY of a Security
5 Breach, as provided pursuant to subsection D.(1) of this Exhibit A, the Parties shall
6 coordinate with each other to investigate the Security Breach. CONTRACTOR agrees to
7 fully cooperate with COUNTY, including, without limitation: (i) assisting COUNTY in
8 conducting any investigation; (ii) providing COUNTY with physical access to the facilities
9 and operations affected; (iii) facilitating interviews with Authorized Persons and any of
10 CONTRACTOR’s other employees knowledgeable of the matter; and (iv) making available
11 all relevant records, logs, files, data reporting and other materials required to comply with
12 applicable law, regulation, industry standards, or as otherwise reasonably required by
13 COUNTY. To that end, CONTRACTOR shall, with respect to a Security Breach, be solely
14 responsible, at its cost, for all notifications required by law and regulation, or deemed
15 reasonably necessary by COUNTY, and CONTRACTOR shall provide a written report of the
16 investigation and reporting required to the Director within thirty (30) days after the
17 CONTRACTOR’s discovery of the Security Breach.

18 (3) County shall promptly notify CONTRACTOR of the Director’s knowledge, or
19 reasonable belief, of any Privacy Practices Complaint, and upon CONTRACTOR’s receipt of
20 notification thereof, CONTRACTOR shall promptly address such Privacy Practices
21 Complaint, including taking any corrective action under this Exhibit A, all at
22 CONTRACTOR’s sole expense, in accordance with applicable privacy rights, laws,
23 regulations and standards. In the event CONTRACTOR discovers a Security Breach,
24 CONTRACTOR shall treat the Privacy Practices Complaint as a Security Breach. Within
25 twenty-four (24) hours of CONTRACTOR’s receipt of notification of such Privacy Practices
26 Complaint, CONTRACTOR shall notify COUNTY whether the matter is a Security Breach, or
27 otherwise has been corrected and the manner of correction, or determined not to require
28 corrective action and the reason therefor.

Exhibit A
“Data Security”

1 (4) CONTRACTOR shall take prompt corrective action to respond to and remedy any
2 Security Breach and take mitigating actions, including but not limiting to, preventing any
3 reoccurrence of the Security Breach and correcting any deficiency in Security Safeguards as a
4 result of such incident, all at CONTRACTOR’s sole expense, in accordance with
5 applicable privacy rights, laws, regulations and standards. CONTRACTOR shall reimburse
6 COUNTY for all reasonable costs incurred by COUNTY in responding to, and mitigating
7 damages caused by, any Security Breach, including all costs of COUNTY incurred relation
8 to any litigation or other action described subsection D.(5) of this Exhibit A.

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

12 **E. Oversight of Security Compliance.**

13 (1) CONTRACTOR shall have and maintain a written information security policy that
14 specifies Security Safeguards appropriate to the size and complexity of CONTRACTOR’s
15 operations and the nature and scope of its activities.

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

Exhibit A
“Data Security”

1 Information Used by CONTRACTOR or Authorized Persons during the course of this
2 Agreement under this Exhibit A.

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

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

10 Upon the termination of this Agreement, CONTRACTOR shall, and shall instruct all
11 Authorized Persons to, promptly return to COUNTY all Personal Information, whether in
12 written, electronic or other form or media, in its possession or the possession of such
13 Authorized Persons, in a machine readable form used by COUNTY at the time of such
14 return, or upon the express prior written consent of the Recorder and the Director, securely
15 destroy all such Personal Information, and certify in writing to the COUNTY that such
16 Personal Information have been returned to COUNTY or disposed of securely, as
17 applicable. If CONTRACTOR is authorized to dispose of any such Personal Information, as
18 provided in this Exhibit A, such certification shall state the date, time, and manner (including
19 standard) of disposal and by whom, specifying the title of the individual. CONTRACTOR
20 shall comply with all reasonable directions provided by the Recorder and the Director with
21 respect to the return or disposal of Personal Information and copies thereof. If return or
22 disposal of such Personal Information or copies of Personal Information is not feasible,
23 CONTRACTOR shall notify COUNTY according, specifying the reason, and continue to
24 extend the protections of this Exhibit A to all such Personal Information and copies of
25 Personal Information. CONTRACTOR shall not retain any copy of any Personal Information
26 after returning or disposing of Personal Information as required by this section F.
27 CONTRACTOR’s obligations under this section F survive the termination of this Agreement
28

Exhibit A
“Data Security”

1 and apply to all Personal Information that CONTRACTOR retains if return or disposal is not
2 feasible and to all Personal Information that CONTRACTOR may later discover.

3 **G. Equitable Relief.**

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

12 **H. Indemnification.**

13 CONTRACTOR shall defend, indemnify and hold harmless COUNTY, its officers,
14 employees, and agents, (each, a **“COUNTY Indemnitee”**) from and against any and all
15 infringement of intellectual property including, but not limited to infringement of copyright,
16 trademark, and trade dress, invasion of privacy, information theft, and extortion,
17 unauthorized Use, Disclosure, or modification of, or any loss or destruction of, or any
18 corruption of or damage to, Personal Information, Security Breach response and remedy
19 costs, credit monitoring expenses, forfeitures, losses, damages, liabilities, deficiencies,
20 actions, judgments, interest, awards, fines and penalties (including regulatory fines and
21 penalties), costs or expenses of whatever kind, including attorneys’ fees and costs, the cost
22 of enforcing any right to indemnification or defense under this Exhibit A and the cost of
23 pursuing any insurance providers, arising out of or resulting from any third party claim or
24 action against any COUNTY Indemnitee in relation to CONTRACTOR’s, its officers,
25 employees, or agents, or any Authorized Employee’s or Authorized Person’s, performance
26 or failure to perform under this Exhibit A or arising out of or resulting from CONTRACTOR’s
27 failure to comply with any of its obligations under this section H. The provisions of this
28 section H do not apply to the acts or omissions of COUNTY. The provisions of this section H

Exhibit A
“Data Security”

1 are cumulative to any other obligation of CONTRACTOR to, defend, indemnify, or hold
2 harmless any COUNTY Indemnity under this Agreement. The provisions of this section H
3 shall survive the termination of this Agreement.

4 **I. Survival.**

5 The respective rights and obligations of CONTRACTOR and COUNTY as stated in
6 this Exhibit A shall survive the termination of this Agreement.

7 **J. No Third Party Beneficiary.**

8 Nothing express or implied in the provisions of in this Exhibit A is intended to confer,
9 nor shall anything herein confer, upon any person other than COUNTY or CONTRACTOR
10 and their respective successors or assignees, any rights, remedies, obligations or liabilities
11 whatsoever.

12 **L. No County Warranty.**

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

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