

Contract between the

County of Fresno

and

ElanTech Inc, dba DataTech911

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**AGREEMENT**

THIS AGREEMENT is made and entered into this 24 th day of February, 2015, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and ElanTech, Inc., whose address is 9250 Bendix Road, Suite 1030, Columbia, MD 21045, hereinafter referred to as "CONTRACTOR".

**RECITALS**

**WHEREAS**, COUNTY purchased a software system StatusNet911, a hospital communications system, from CONTRACTOR; and

**WHEREAS**, COUNTY desires to upgrade the existing StatusNet911 system to the hosted StatusNet911 Web software system and the non-hosted AutoCAD interface (hereafter "SN911 WEB") and;

**WHEREAS**, COUNTY desires CONTRACTOR to provide Software Hosting Services on a hosted system via Secure Socket Layer (SSL) and;

**WHEREAS**, COUNTY and CONTRACTOR desire to execute this Agreement for the continued maintenance and support of SN911 WEB, as further defined herein.

**NOW, THEREFORE**, for and in consideration of the promises herein, and for other good and valuable consideration, the parties agree as follows:

**WITNESSETH**

**I. DEFINITIONS**

The following terms used throughout this Agreement shall be defined as follows:

Acceptance Criteria:

The performance and operating specifications which the System must meet at a minimum, as set out or referred to in this Agreement.

Acceptance Test:

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

1 Application Service Provider (ASP):

2 When servers are owned and maintained off-site by the software vendor. This is also  
3 known as on-demand software or software as a service.

4 Authorized Facility:

5 An Authorized Facility are specified Hospitals (including Emergency Room(s)),  
6 Emergency Medical Response Dispatch Centers, or County Administrative Centers and  
7 shall be limited to those specified in Exhibit 2 – Authorized Facilities.

8 Change Control Process:

9 Process used by the Information Technology Services Division of COUNTY's Internal  
10 Services Department (ITSD) to inform staff of new or updated production use systems.

11 County System Hardware:

12 The central processing units owned or leased by COUNTY which are described in this  
13 Agreement on which COUNTY is licensed to use the System Software, any back-up  
14 equipment for such central processing units, and any peripheral hardware such as  
15 terminals, printers, and personal computers as described in this Agreement.

16 Deficiency:

17 The System's failure to substantially meet the System Performance Requirements.

18 Final System Acceptance:

19 When it is determined by COUNTY that all necessary deliverables have been delivered,  
20 the data has been converted, the base SN911 WEB License has been successfully  
21 installed and tested, and the SN911 WEB performs all functions in accordance with the  
22 Acceptance Criteria.

23 First Production Use:

24 Date of first use of the System in a production environment.

25 Hosting Availability:

26 Means the percentage of a particular month (based upon 24 hour days for the number of  
27 days in the subject month) that the Hosted System is accessible on the internet.

28 ITSD:

1 Information Technology Services Division of COUNTY's Internal Services Department.

2 License:

3 The meaning assigned to the term "License" as defined in Section II-A of this Agreement  
4 and the rights and obligations which it creates under the laws of the United States of  
5 America and the State of California including without limitation, copyright and intellectual  
6 property law.

7 Monies:

8 The terms "Monies", "Charges", "Price", and "Fees" are considered to be equivalent.

9 Primary Work Location:

10 Physical location for the Application Service Provider off-site facility.

11 Public Records:

12 Public Records includes any writing containing information relating to the conduct of the  
13 public's business that is prepared, owned, used, or retained by any state or local agency,  
14 regardless of physical form or characteristics.

15 Supplier:

16 The terms "Supplier", "Vendor", and "ElanTech, Inc." all refer to CONTRACTOR and are  
17 considered to be equivalent throughout this Agreement.

18 System:

19 The System Software and System Documentation, collectively. Reference to the  
20 "System" shall include any component thereof. All modifications and enhancements to  
21 the System shall be deemed to be part of the System as defined herein and shall be  
22 subject to all terms and conditions set forth herein. The System consists of SN911 WEB  
23 which supports the Fresno County Department of Internal Services, all interfaces, and  
24 third party software required for the system to function.

25 System Documentation:

26 The documentation relating to the System Software, and all manuals, reports, brochures,  
27 sample runs, specifications and other materials comprising such documentation provided  
28 by CONTRACTOR in connection with the System Software pursuant to this Agreement.

1       System Operation:

2       The general operation of COUNTY's hardware and all software including, but not limited  
3       to, system restarts, configuration and operation of system peripherals (such as printers,  
4       modems, and terminals), installation of new software releases, and other related  
5       activities.

6       System Installation:

7       All software has been delivered, has been physically loaded on a Computer, and  
8       COUNTY has successfully executed program sessions.

9       System Software:

10      That certain computer software described in this Agreement provided by  
11      CONTRACTOR, and all interfaces, coding, tapes, disks, modules and similar materials  
12      comprising such software or on which it is stored. System Software shall not include  
13      operating system software, or any other third-party Software.

14      User:

15      The terms "User", "Customer" and "Licensee" all refer to COUNTY and are considered  
16      to be equivalent throughout this Agreement.

17  
18      **II.    OBLIGATIONS OF THE CONTRACTOR**

19      A)    SOFTWARE LICENSE

20           1) GRANT OF LICENSE

21           CONTRACTOR grants to COUNTY and COUNTY accepts a non-exclusive,  
22           non-transferable license to use SN911 WEB that is subject to the terms and  
23           conditions set forth in this Agreement.

24           2) SCOPE OF LICENSE

25           The license granted herein shall consist solely of the non-exclusive, non-  
26           transferable right of COUNTY to operate the System Software in support of  
27           COUNTY's Department of Public Health and Authorized Facilities as shown in Exhibit  
28           2.

1                   3) OWNERSHIP

2                   The parties acknowledge and agree that, as between CONTRACTOR and  
3 COUNTY, title and full ownership of all rights in and to the System Software,  
4 System Documentation, and all other materials provided to COUNTY by  
5 CONTRACTOR under the terms of this Agreement shall remain with  
6 CONTRACTOR. The parties acknowledge and agree that, as between  
7 CONTRACTOR and COUNTY, full ownership of all rights in and to all COUNTY  
8 data, whether in magnetic or paper form, including without limitation printed output  
9 from the System, are the exclusive property of COUNTY.

10                  4) POSSESSION, USE AND UPDATE OF SOFTWARE

11                 COUNTY agrees that only COUNTY will use the System Software for its  
12 own internal purposes and shall not further sublicense the System Software.  
13 CONTRACTOR may, at reasonable times, inspect COUNTY's premises and  
14 equipment to verify that all of the terms and conditions of this license are being  
15 observed. CONTRACTOR may create, from time to time, updated versions of the  
16 System Software and System Documentation and CONTRACTOR shall make such  
17 System Updates available to COUNTY. All System Updates shall be licensed under  
18 the terms of this Agreement. COUNTY agrees to follow the prescribed instructions  
19 for updating System Software and System Documentation provided to COUNTY by  
20 CONTRACTOR.

21                  5) TRANSFER OF SOFTWARE

22                 COUNTY shall not rent, lease, license, distribute, sell, transfer, or assign  
23 this license, the System Software, or the System Documentation, or any of the  
24 information contained therein other than COUNTY data, to any other person or  
25 entity, whether on a permanent or temporary basis, and any attempt to do so will  
26 constitute a breach of this Agreement. No right or license is granted under this  
27 Agreement for the use or other utilization of the licensed programs, directly or  
28



1 indirectly, for the benefit of any other person or entity, except as provided in this  
2 Agreement.

3 6) POSSESSION AND USE OF SOURCE CODE

4 Source code and other material that results from custom programming by  
5 CONTRACTOR released to COUNTY under this license shall be deemed  
6 CONTRACTOR software subject to all of the terms and conditions of the software  
7 license set forth in this Agreement. The scope of COUNTY's permitted use of the  
8 custom source code under this license shall be limited to maintenance and support  
9 of the System Software. For purposes of this Section, the term "maintenance and  
10 support" means correction of System Software errors and preparation of System  
11 Software modifications and enhancements. If COUNTY creates computer code in  
12 the process of enhancing the System Software, that specific new code shall be  
13 owned by COUNTY and may be used by COUNTY's employees, officers, or agents  
14 for COUNTY's own internal business operations. However, if COUNTY's  
15 enhancement results in the creation of a derivative work from the System Software,  
16 the copyright to such derivative work shall be owned by CONTRACTOR and  
17 COUNTY's rights to use such derivative work shall be limited to those granted with  
18 respect to the System Software in this Agreement.

19 B) SERVICES TO BE PROVIDED BY CONTRACTOR TO COUNTY

20 1) SYSTEM INSTALLATION

21 CONTRACTOR shall supply and install the SN911 WEB in accordance with  
22 this Agreement. Software installation includes hardware/network review and  
23 recommendations, consultation, software installation and remote technical support.

24 2) TRAINING

25 CONTRACTOR will conduct two 4-hour "train-the-trainer", training COUNTY  
26 staff at a COUNTY designated location or Webinar at a time approved in writing  
27 by COUNTY.

28 3) DOCUMENTATION

1 CONTRACTOR shall provide to COUNTY SN911 WEB System  
2 Documentation, which shall consist of electronic media files. The electronic media  
3 files must be printable using PC software normally available at COUNTY.

4 CONTRACTOR shall provide new System Documentation corresponding to all new  
5 Software Upgrades. COUNTY may print additional copies of all documentation. All  
6 System Documentation is to be used by COUNTY only for the purposes identified  
7 within this Agreement.

8 C) SYSTEM MAINTENANCE AND SUPPORT BY CONTRACTOR

9 System maintenance and support includes System Updates as they are released by  
10 CONTRACTOR, including updates required as a result of Federal Regulatory Changes.  
11 The first day of production use will be identified by COUNTY and communicated to  
12 CONTRACTOR. CONTRACTOR will support day-to-day operation of the System as  
13 follows:

14 1) SUPPORT HOURS/SCOPE:

15 During the term of this Agreement, CONTRACTOR shall provide technical  
16 assistance by phone during normal coverage hours (7:30 a.m. to 5:30 p.m. Pacific  
17 Standard Time (PST), Monday through Friday, except CONTRACTOR and  
18 COUNTY holidays), toll-free telephone assistance to keep the System in, or  
19 restored to, normal operating condition. The object of this support will be to  
20 answer specific questions related to the System Software and the application  
21 thereof. Support provided under this Agreement does not include training of new  
22 personnel (after initial staff is trained), operation of hardware, or solving other  
23 hardware/software problems unrelated to the System Software.

24 2) SUPPORT RESPONSE:

25 During the term of this Agreement, CONTRACTOR will (a) correct any error or  
26 malfunctions in the System as supplied by CONTRACTOR which prevents it from  
27 operating in conformance with the Acceptance Test Criteria set forth in this  
28

1 Agreement or (b) provide a commercially reasonable alternative that will conform  
2 to the Acceptance Test Criteria set forth in this Agreement.

3 If analysis by CONTRACTOR indicates a reported problem is caused by a  
4 reproducible error or malfunction in the then-current release of the System  
5 Software as supplied and maintained by CONTRACTOR that significantly impacts  
6 effective use of the System by COUNTY, CONTRACTOR will, if the System is  
7 inoperable, provide continuous effort to correct the error or to resolve the problem  
8 by providing a circumvention.

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

### 16 3) REMOTE VIRTUAL PRIVATE NETWORK (VPN) DIAGNOSTICS

17 Remote VPN Diagnostics Support includes:

- 18 a. Diagnostic or corrective actions necessary to restore proper SN911  
19 WEB operation;
- 20 b. Diagnostic actions which attempt to identify the cause of system  
21 problem;
- 22 c. Correction of data file problem; and
- 23 d. SN911 WEB modifications

24 During the term of this Agreement, CONTRACTOR product specialists  
25 will provide diagnostics via VPN on SN911 WEB. COUNTY will provide and  
26 maintain any required hardware, software, and equipment necessary at COUNTY  
27 for CONTRACTOR VPN support.  
28

1                   4)    ERROR CORRECTION PROCESS:

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

12                  5)    TECHNICAL INFORMATION

13                  During the term of this Agreement, CONTRACTOR will provide technical  
14                  information to COUNTY from time to time. Such information may cover areas such  
15                  as SN911 WEB usage, third party software, and other matters considered relevant  
16                  to COUNTY by CONTRACTOR. Technical information will be provided at the  
17                  discretion of CONTRACTOR, but will not be unreasonably withheld.

18       D)   ADDITIONAL SYSTEM MAINTENANCE SERVICES BY CONTRACTOR

19                  CONTRACTOR may provide additional maintenance services ("Additional  
20                  Maintenance and Support Services" or "Additional Maintenance Services") at an additional  
21                  charge. Charges will be as identified in Section VII-F of this Agreement; or, if not included  
22                  in this Agreement, charges will be at current prices in effect at the time goods or services  
23                  are provided. Any Additional Maintenance and Support Services requested by COUNTY  
24                  and determined by CONTRACTOR to be billable by CONTRACTOR must be identified as  
25                  a chargeable service prior to the service being performed and must be approved in writing  
26                  in advance by COUNTY's Contract Administrator or his/her designee. Additional  
27                  Maintenance Services include, but are not limited to, the following:

28                  1)    ADDITIONAL TRAINING

1 A specific amount of training is included as part of Annual Maintenance and  
2 Support Fees. Additional training at a County facility is available upon request by  
3 COUNTY at an additional charge under the terms of this Agreement. Requests for  
4 additional training will be reviewed by CONTRACTOR and must be requested in  
5 writing in advance by COUNTY's Contract Administrator or his/her designee.  
6 Charges will be at rates identified in this Agreement.

## 7 2) DATA AND SYSTEM CORRECTIONS

8 Data and System Corrections include any corrective actions accomplished  
9 by CONTRACTOR on-site or via VPN which are necessary due to COUNTY errors  
10 or unauthorized source code or data access by COUNTY. Unauthorized access to  
11 the data is defined as any COUNTY editing of data through other than normal  
12 system usage as defined in System Documentation. Unauthorized access to  
13 source code is defined as any COUNTY access whatsoever to System source  
14 code. Services provided by CONTRACTOR are not billable when they result from  
15 errors caused by SN911 WEB or instruction provided by CONTRACTOR.

## 16 3) CUSTOMER SITE VISITS

17 Site visits to COUNTY sites, as may be requested in writing by COUNTY  
18 and that are within the scope of the project services, are available for reasons such  
19 as, but not limited to, (1) additional system training on hardware or software usage;  
20 (2) resolution of System difficulties not resulting from actions by, or otherwise the  
21 responsibility of CONTRACTOR; (3) installation of Software Releases; and (4)  
22 assistance in equipment maintenance, movement or diagnosis. Site visits outside  
23 of the scope of project services will be reviewed by CONTRACTOR and must be  
24 requested in writing in advance by COUNTY's Contract Administrator or his/her  
25 designee. Charges will be at rates identified in this Agreement.

## 26 4) CUSTOM PROGRAMMING

27 Requests for supplemental programming or customization of system  
28 features not covered under this Agreement are available to COUNTY. Such

1 requests will be reviewed by CONTRACTOR and must be requested in writing in  
2 advance by COUNTY's Contract Administrator or his/her designee Charges will be  
3 at rates identified in this Agreement.

4 E) CONTRACTOR'S PROJECT COORDINATOR

5 Upon execution of this Agreement, CONTRACTOR shall appoint a Project Coordinator  
6 who will act as the primary contact person to interface with COUNTY for implementation,  
7 of SN911 WEB.

8 F) SYSTEM UPDATES AND NEW PRODUCTS

9 1) SYSTEM UPDATES

10 During the term of this Agreement, CONTRACTOR may develop and  
11 provide System Updates to COUNTY for the COUNTY'S licensed CONTRACTOR  
12 software. System Updates shall be subject to the terms and conditions of this  
13 Agreement and shall be deemed licensed System Software hereunder and will be  
14 made available to COUNTY at no additional charge to COUNTY. System Updates  
15 will be made available to COUNTY at the discretion of CONTRACTOR but will not  
16 be unreasonably withheld.

17 2) NEW PRODUCTS

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

23 G) OPERATING SYSTEM UPDATES

24 The application must run on an operating system (O/S) that is consistently and  
25 currently supported by the operating system vendor. Applications under maintenance are  
26 expected to always be within 1 year of current in regards to the O/S. Outdated or  
27 unsupported O/S will not be implemented on the production network.

28 With approval from CONTRACTOR, COUNTY will apply patches to both the *operating*

1 system, and security subsystems as releases are available from operating system  
2 vendors. The application is expected to perform in this environment. CONTRACTOR is  
3 expected to keep their software within 1 year of current in order to operate in this  
4 environment. These patches include critical O/S updates and security patches.

5 H) ANTI-VIRUS MANAGEMENT

6 COUNTY will actively run anti-virus management, where appropriate, on all application  
7 servers and PCs. The application is expected to perform adequately while anti-virus  
8 management is active.

9 I) ADHERE TO CHANGE CONTROL PROCESS

10 CONTRACTOR must adhere to COUNTY's Change Control Process, which shall be  
11 provided to CONTRACTOR in writing. COUNTY employs a procedure to implement  
12 updates, upgrades, and version releases to a system that is in production use. This forum  
13 allows ITSD to inform staff (Help Desk, Network, Server, Database, Security, and  
14 Analysts) of upcoming changes to a production system. CONTRACTOR must inform  
15 ITSD a minimum of 1 week prior to any planned, non-emergency changes so that the  
16 Change Control Process may be followed.

17 J) OTHER

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

21 The system being provided runs in a Local Area Network and Web environment. As such,  
22 the performance of the system is directly related to, among other things: available network  
23 bandwidth, and the performance of other applications. For this reason, CONTRACTOR  
24 makes no guarantees as to system response time.

25 K) SOFTWARE HOSTING SERVICES

26 CONTRACTOR shall select a reputable host for the server on which SN911 WEB  
27 is hosted and from which access is to be provided to COUNTY for Authorized Facilities.  
28 In the event of a Security Breach, CONTRACTOR will be liable for payment of or

1 reimbursement to the COUNTY for all remediation expenses, and any monetary losses up  
2 to the maximum Total Contract Cost as set forth in Section VI-D. CONTRACTOR will  
3 make every reasonable effort to maintain a 99.9% up-time for the hosted SN911 WEB  
4 system. CONTRACTOR reserves the right to establish a monthly maintenance window for  
5 the purpose of upgrading, patching, or modifying, or repairing portions of or the entire  
6 SN911 WEB environment. The monthly window will be mutually agreed to in writing by  
7 CONTRACTOR's Project Coordinator and COUNTY's Project Manager.

8 L) SYSTEM RELIABILITY

9 "Downtime" shall be defined as System non-availability due to System Software error,  
10 malfunction, or Deficiency in the Application Software, or due to System Maintenance  
11 activity other than in accordance with the scheduling parameters set forth in this  
12 Agreement. Examples of Downtime include, without limitation:

- 13 1. One (1) or more COUNTY facilities cannot access the System for reasons within  
14 CONTRACTOR'S Control; or
- 15 2. Any functional Component of the System or Interface is not available and is  
16 within CONTRACTOR'S control.

17  
18 COUNTY requires that there be no unscheduled Downtime for routine maintenance of the  
19 Application Software. COUNTY will accept occasional scheduled Downtime for significant  
20 non-routine Updates and maintenance to be scheduled by CONTRACTOR only with  
21 COUNTY'S prior written approval and at COUNTY'S discretion, exercised in good faith.  
22 Such scheduled Downtime for non-routine maintenance shall not occur more than four (4)  
23 times per year and shall not last more than four (4) hours per occurrence. Non-routine  
24 maintenance includes such tasks as major System Software version Updates.  
25 CONTRACTOR shall use its best efforts to keep scheduled Downtime for non-routine  
26 maintenance to a minimum and if required, any excess scheduled Downtime will be  
27 agreed to in writing in advance by COUNTY.

28 M) PRIVACY REQUIREMENTS



1 CONTRACTOR shall be responsible for the following privacy and security safeguards:

2 1. To the extent required to carry out the assessment and authorization process and  
3 continuous monitoring, to safeguard against threats and hazards to the security,  
4 integrity, and confidentiality of any COUNTY data collected and stored by the  
5 CONTRACTOR, CONTRACTOR shall afford the COUNTY access as necessary at  
6 CONTRACTOR's discretion, to the CONTRACTOR's facilities, installations,  
7 technical capabilities, operations, documentation, records, and databases.

8 2. If new or unanticipated threats or hazards are discovered by either the COUNTY  
9 or the CONTRACTOR, or if existing safeguards have ceased to function, the  
10 discoverer shall immediately bring the situation to the attention of the other party.

11 3. The CONTRACTOR shall also comply with any additional privacy requirements  
12 provided by the COUNTY.

13 4. During the term of this Agreement, the COUNTY has the right to perform manual  
14 or automated audits, scans, reviews, or other inspections of the CONTRACTOR's IT  
15 environment being used to provide or facilitate services for the COUNTY.

16 CONTRACTOR shall be responsible for the following privacy and security  
17 safeguards:

18 a) Other than for CONTRACTOR's own use and purposes, the CONTRACTOR  
19 shall not publish or disclose in any manner the details of any safeguards either  
20 designed or developed by the CONTRACTOR under this contract or otherwise  
21 provided by the COUNTY.

22 b) To the extent required to carry out a program of inspection to safeguard  
23 against threats and hazards to the security, integrity, and confidentiality of  
24 COUNTY data, the CONTRACTOR shall afford the COUNTY access as  
25 necessary at CONTRACTOR's discretion, to the CONTRACTOR'S facilities,  
26 installations, technical capabilities, operations, documentation, records, and  
27 databases within 72 hours. The program of inspection shall include, but is not  
28 limited to: Authenticated and unauthenticated operating system/network

1 vulnerability scans, authenticated and unauthenticated web application  
2 vulnerability scans, and authenticated and unauthenticated database  
3 application vulnerability scans. Automated scans may be performed by  
4 COUNTY personnel, or agents acting on behalf of the COUNTY, using  
5 COUNTY operated equipment, and COUNTY specified tools.

6 Should CONTRACTOR choose to run its own automated scans or audits, results  
7 from these scans may, at the COUNTY's discretion, be accepted in lieu of COUNTY  
8 performed vulnerability scans. In these cases, scanning tools and their configuration shall  
9 be approved by the COUNTY. In addition, the results of CONTRACTOR -conducted  
10 scans shall be provided in full to the COUNTY.

11 **N) PROTECTION OF INFORMATION**

12 CONTRACTOR shall be responsible for properly protecting all information used,  
13 gathered, or developed as a result of work under this Agreement. CONTRACTOR shall  
14 also protect all COUNTY data, equipment, etc. by treating such information as sensitive. It  
15 is anticipated that this information will be gathered, created, and stored within the Primary  
16 Work Location. Should CONTRACTOR personnel remove any information from the  
17 Primary Work Location, CONTRACTOR shall protect such information to the same extent  
18 it would its own proprietary data and/or company trade secrets. The use of any  
19 information subject to the Privacy Act will be utilized in full accordance with all rules of  
20 conduct applicable to Privacy Act Information.

21 COUNTY will retain unrestricted rights to COUNTY data. The COUNTY retains  
22 ownership of any user created/loaded data and applications hosted on CONTRACTOR's  
23 infrastructure, as well as maintains the right to request full copies of these at any time.  
24 Data processed and stored by the various applications within the network infrastructure  
25 contains financial data as well as personally identifiable information (PII). This data and  
26 PII shall be protected against unauthorized access, disclosure, modification, theft, or  
27 destruction. CONTRACTOR shall ensure that the facilities housing the network  
28 infrastructure are physically secure.

1 The data must be available to the COUNTY upon request within one business day or  
2 within the timeframe specified otherwise, and shall not be used for any other purpose  
3 other than that specified herein. The CONTACTOR shall provide requested data at no  
4 additional cost to the COUNTY.

5 No data shall be released by the CONTACTOR without the consent of the COUNTY in  
6 writing. All requests for release must be submitted in writing to the COUNTY.  
7

### 8 **III. OBLIGATIONS OF THE COUNTY**

#### 9 **A) COUNTY CONTRACT ADMINISTRATOR**

10 COUNTY appoints its Chief Information Officer (CIO) or his designee, as COUNTY's  
11 Contract Administrator with full authority to deal with CONTRACTOR in all matters  
12 concerning this Agreement.

#### 13 **B) SAFEGUARDING SYSTEM SOFTWARE**

14 COUNTY will follow its present practices to safeguard System Software delivered to  
15 COUNTY by CONTRACTOR. A copy of COUNTY'S "Information Technology (IT)  
16 Standards and Preferences" will be made available to CONTRACTOR upon request by  
17 CONTRACTOR.

#### 18 **C) BACKUP AND RECOVERY MANAGEMENT**

19 COUNTY utilizes a backup and recovery system written and maintained by Commvault  
20 Systems. This application requires a backup agent to run on the server.

21 COUNTY will provide the vendor with an account with appropriate administrative rights  
22 to administer the application. The account password is expected to periodically expire.

23 In order for the application to run on COUNTY supported servers, the application must  
24 not require the users to have administrative rights on the servers.

25 COUNTY, at all times, during and after the performance of the installation of the  
26 System Software, is responsible for maintaining adequate data backups to protect against  
27 loss of data.

#### 28 **D) ACCEPTANCE TESTING**

COUNTY shall approve Final System Acceptance when the SN911 WEB has been successfully tested and satisfactorily performs all functions necessary pursuant to this Agreement, and all deliverables identified in this Agreement as required for acceptance have been received by COUNTY.

E) ACCEPTANCE TESTING PROCESS

Following delivery and installation, CONTRACTOR shall test the SN911 WEB along with COUNTY personnel.

F) FACILITIES AND PREPARATION

COUNTY will at its own expense provide all necessary labor and materials for site preparation, electrical services, and cabling required for System Installation. COUNTY shall receive the System Software and will follow instructions provided by CONTRACTOR to load it on COUNTY's System Hardware to prepare the System for processing.

G) SYSTEM HARDWARE AND SYSTEM SOFTWARE

COUNTY will at its own expense provide and properly maintain and update on an on-going basis all necessary COUNTY System Software and County System Hardware required to operate SN911 WEB. Said COUNTY System Software and County System Hardware shall meet or exceed CONTRACTOR's recommendations.

As part of COUNTY's responsibility for computer infrastructure, COUNTY is responsible for ensuring that data is secure and protected at all times. CONTRACTOR is not responsible for and cannot be held liable for inadvertent data disclosure or theft from COUNTY facilities.

H) COUNTY PROJECT MANAGER

Upon execution of this Agreement, COUNTY's Contract Administrator shall designate one individual from ITSD who will function as Project Manager with responsibility for day-to-day management of the project for implementation of SN911 WEB. The Project Manager and COUNTY personnel shall have the necessary and appropriate training and experience to implement the terms of this Agreement. COUNTY acknowledges CONTRACTOR'S reliance on same.

1 I) OTHER COUNTY OBLIGATIONS

2 Technical assistance from COUNTY's ITSD staff will be provided during the  
3 performance of the installation of the System Software. In particular, COUNTY will  
4 provide:

- 5 a. Network connectivity and troubleshooting assistance.
- 6 b. Ability to monitor network traffic and isolate bottlenecks.
- 7 c. Technical assistance concerning the integration with existing COUNTY
- 8 systems (if applicable).
- 9 d. Expertise to handle issues with PCs, printers, and cabling before, during,
- 10 and after rollout.

11 **IV. TERM**

12 This Agreement shall become effective on the date first written hereinabove for a term of  
13 three (3) years, and may be renewed by COUNTY for a maximum of two (2), one (1) year  
14 periods, upon provision of written notice by the Department Director of Public Health or his/her  
15 designee, and payment of Annual Maintenance Fees.

16  
17 **V. TERMINATION**

18 A) NON-ALLOCATION OF FUNDS

19 The terms of this Agreement, and the services to be provided thereunder, are  
20 contingent on the approval of funds by the appropriating government agency. Should  
21 sufficient funds not be allocated, the services provided may be modified, or this  
22 Agreement terminated, at any time by giving the CONTRACTOR thirty (30) days advance  
23 written notice. Notwithstanding any such termination, CONTRACTOR will be paid for all  
24 services performed under this Agreement prior to the effective date of the termination.

25 B) BREACH OF CONTRACT

- 26 1. The COUNTY may immediately suspend or terminate this Agreement in whole or
- 27 in part, where in the determination of the COUNTY there is an illegal or improper
- 28 use of funds.

1           2. COUNTY may terminate this Agreement upon thirty (30) days prior written notice  
2           to CONTRACTOR, if CONTRACTOR fails to comply with any term or condition  
3           of this Agreement, unless CONTRACTOR cures such failure within the thirty (30)  
4           days, or such other timeframe as may be mutually agreed upon in writing by the  
5           parties;

6           In no event shall any payment by the COUNTY constitute a waiver by the COUNTY  
7           of any breach of this Agreement or any default which may then exist on the part of the  
8           CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to  
9           the COUNTY with respect to the breach or default. The COUNTY shall have the right to  
10          demand of the CONTRACTOR the repayment to the COUNTY of any funds disbursed to  
11          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  
13          promptly refund any such funds upon demand.

14          C) WITHOUT CAUSE

15          Under circumstances other than those set forth above, this Agreement may be  
16          terminated by COUNTY upon the giving of thirty (30) days advance written notice of an  
17          intention to terminate to CONTRACTOR. Notwithstanding any such termination,  
18          CONTRACTOR will be paid for all services performed under this Agreement prior to the  
19          effective date of the termination.

20          D) TERMINATION BY CONTRACTOR

21          CONTRACTOR may, upon thirty (30) days prior written notice to COUNTY, terminate  
22          this Agreement if COUNTY fails to comply with any material term or condition of this  
23          Agreement unless COUNTY cures such failure within such thirty (30) day period, or other  
24          such timeframe as may be mutually agreed upon in writing by the parties.

25  
26  
27          **VI.     COMPENSATION/INVOICING**

COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation as follows:

A) ANNUAL MAINTENANCE AND SUPPORT FEES:

Total Annual Maintenance and Support Fees	\$25,565.00
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B) FEE CHANGES

CONTRACTOR may increase Annual Maintenance and Support fees for years 2-5 of this Agreement, upon thirty (30) days' advance written notice to COUNTY, provided CONTRACTOR shall not increase such fees more than once in any one year period, and provided further that each increase will not exceed the previous fees by the lesser of three percent (3%) per year or (ii) the cumulative percentage increase in the Consumer Price Index, All Urban Consumers for the U.S., during the previous year.

C) RATES FOR ADDITIONAL SERVICE FEES

Interfaces will be negotiated at the time they are needed and will be agreed upon by both parties in writing. Optional, additional services may include, but are not limited to:

1. On-site System training/day	\$ 840.00
2. Billable Services / Hour	\$105.00
3. Additional Authorized Facility / year	\$ 3,500.00

Additional Service Fees shall only be paid to CONTRACTOR if any such services set forth hereinabove are performed by CONTRACTOR upon COUNTY's written request. In no event shall Additional Service Fees exceed **\$5,000** per year for each one year period of this Agreement.

D) TOTAL CONTRACT AMOUNT

In no event shall services performed under this Agreement be in excess of **\$161,000** during the entire possible five (5) year term of this Agreement. It is understood that all expenses incidental to CONTRACTOR'S performance of services under this Agreement shall be borne by CONTRACTOR.

E) INVOICING

CONTRACTOR shall submit invoices, either electronically or via mail (and must

reference the provided contract number on the invoice) to the County of Fresno ITSD, Accounts Payable, 2048 N. Fine Avenue, Fresno, CA 93727 or Accounts Payable ([ITSDBusinessOffice@Co.Fresno.Ca.US](mailto:ITSDBusinessOffice@Co.Fresno.Ca.US) ). COUNTY will pay CONTRACTOR within forty-five (45) days of receipt of an approved invoice, by mail addressed to CONTRACTOR's remittance address at 410 S Melrose Drive, Suite 100, Vista, CA 92081.

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



1     **VIII.     MODIFICATION**

2           Any matters of this Agreement may be modified from time to time by the written consent  
3 of all the parties without, in any way, affecting the remainder.

4  
5     **IX.     NON-ASSIGNMENT**

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

8  
9     **X.     HOLD HARMLESS**

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

18  
19  
20  
21  
22     **XI.    INSURANCE**

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

26         A)    COMMERCIAL GENERAL LIABILITY

27               Commercial General Liability Insurance with limits of not less than One Million Dollars  
28 (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars

1 (\$2,000,000). This policy shall be issued on a per occurrence basis. COUNTY may  
2 require specific coverages including completed operations, products liability, contractual  
3 liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance  
4 deemed necessary because of the nature of this contract.

5 B) AUTOMOBILE LIABILITY

6 Comprehensive Automobile Liability Insurance with limits for bodily injury of not less  
7 than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred  
8 Thousand Dollars (\$500,000.00) per accident and for property damages of not less than  
9 Fifty Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five  
10 Hundred Thousand Dollars (\$500,000.00). Coverage should include owned and non-  
11 owned vehicles used in connection with this Agreement.

12 C) PROFESSIONAL LIABILITY

13 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W.,  
14 M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than  
15 One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00)  
16 annual aggregate.

17 D) WORKER'S COMPENSATION

18 A policy of Worker's Compensation insurance as may be required by the California  
19 Labor Code.

20 CONTRACTOR shall obtain endorsements to the Commercial General Liability  
21 insurance naming the County of Fresno, its officers, agents, and employees, individually  
22 and collectively, as additional insured, but only insofar as the operations under this  
23 Agreement are concerned. Such coverage for additional insured shall apply as primary  
24 insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers,  
25 agents and employees shall be excess only and not contributing with insurance provided  
26 under CONTRACTOR's policies herein. This insurance shall not be cancelled or changed  
27 without a minimum of thirty (30) days advance written notice given to COUNTY.

28 Within Thirty (30) days from the date CONTRACTOR executes this Agreement,

1 CONTRACTOR shall provide certificates of insurance and endorsement as stated above  
2 for all of the foregoing policies, as required herein, to the County of Fresno, Robert Bash,  
3 Chief Information Officer, 2048 N Fine Street, Fresno CA 93727, stating that such  
4 insurance coverages have been obtained and are in full force; that the County of Fresno,  
5 its officers, agents and employees will not be responsible for any premiums on the  
6 policies; that such Commercial General Liability insurance names the County of Fresno,  
7 its officers, agents and employees, individually and collectively, as additional insured, but  
8 only insofar as the operations under this Agreement are concerned; that such coverage  
9 for additional insured shall apply as primary insurance and any other insurance, or  
10 self-insurance, maintained by COUNTY, its officers, agents and employees, shall be  
11 excess only and not contributing with insurance provided under CONTRACTOR's policies  
12 herein; and that this insurance shall not be cancelled or changed without a minimum of  
13 thirty (30) days advance, written notice given to COUNTY.

14 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as  
15 herein provided, the COUNTY may, in addition to other remedies it may have, suspend or  
16 terminate this Agreement upon the occurrence of such event.

17 All policies shall be with admitted insurers licensed to do business in the State of  
18 California. Insurance purchased shall be purchased from companies possessing a current  
19 A.M. Best, Inc. rating of A FSC VII or better.

## 20 21 22 **XII. AUDITS AND INSPECTIONS**

23 CONTRACTOR shall at any time during CONTRACTOR'S normal business hours, and  
24 upon reasonable prior written notice, as often as the COUNTY may deem necessary, make  
25 available to the COUNTY for examination all of its records and data with respect to the matters  
26 covered by this Agreement. CONTRACTOR shall, upon request by the COUNTY, permit the  
27 COUNTY to audit and inspect all of such records and data necessary to ensure  
28

1 CONTRACTOR'S compliance with the terms of this Agreement. Any such examinations or  
2 audits shall be at the COUNTY'S expense.

3 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be  
4 subject to the examination and audit of the Auditor General for a period of three (3) years after  
5 final payment under contract (Government Code Section 8546.7).  
6

7 **XIII. NOTICES**

8 A) AUTHORITY TO GIVE AND RECEIVE NOTICES

9 The following persons (with addresses noted below) have authority to give and receive notices  
10 under this Agreement:

11 COUNTY OF FRESNO

CONTRACTOR

12 Robert Bash

Swati D. Allen

13 Chief Information Officer

ElanTech, Inc. dba DataTech911

14 2048 N Fine

9250 Bendix Road, Suite 1030

15 Fresno, CA 93727

Columbia, MD 21045

16 Any and all notices between the COUNTY and the CONTRACTOR provided  
17 for or permitted under this Agreement or by law shall be in writing and shall be deemed duly  
18 served when personally delivered to one of the parties, or in lieu of such personal services, when  
19 deposited in the United States Mail, postage prepaid, addressed to such party or by electronic  
20 mail sent to and confirmed by CONTRACTOR at CONTRACTOR's email address.

21 B) PRIMARY ESCALATION CONTACT INFORMATION

22 The persons and their contact information that the COUNTY or CONTRACTOR can use to  
23 escalate problems or situations:

24 (1)

25 COUNTY

CONTRACTOR

26 Contact # 1:

Contact # 1:

27 Applications Information Technology Manager Michael Salonish

28 Office Phone: (559) 600-5800

Vice President

Email: ITSD@co.fresno.ca.us

Office Phone: (301) 486-0600

Cell Phone: (301) 922-8366

Email: sales@datatech911.com

COUNTY

CONTRACTOR

Contact # 2:

Contact # 2:

Mark Zack

Lou Garnica

Information Technology Division Manager

Senior Sales Engineer

Office Phone: (559) 600-5800

Office Phone: (559) 297-3388

Email: mzack@co.fresno.ca.us

Cell Phone: (559) 681-8861

Email: support@datatech911.com

**XIV. GOVERNING LAW**

Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California.

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

**XV. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

A. The parties to this Agreement shall be in strict conformance with all applicable Federal and State of California laws and regulations, including but not limited to Sections 5328, 10850, and 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1 and 431.300 *et seq.* of Title 42, Code of Federal Regulations (CFR), Section 56 *et seq.* of the California Civil Code, Sections 11977 and 11812 of Title 22 of the California Code of Regulations, and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section 1320 D *et seq.* of Title 42, United States Code (USC) and its implementing regulations, including, but not limited to Title 45, CFR, Sections 142, 160, 162, and 164, The Health Information Technology for Economic and Clinical Health Act (HITECH) regarding the confidentiality and security of patient information, and the Genetic Information Nondiscrimination Act (GINA) of 2008 regarding the confidentiality of genetic information.

1 Except as otherwise provided in this Agreement, CONTRACTOR, as a Business  
2 Associate of COUNTY, may use or disclose Protected Health Information (PHI) to perform  
3 functions, activities or services for or on behalf of COUNTY, as specified in this Agreement,  
4 provided that such use or disclosure shall not violate the Health Insurance Portability and  
5 Accountability Act (HIPAA), USC 1320d *et seq.* The uses and disclosures of PHI may not  
6 be more expansive than those applicable to COUNTY, as the "Covered Entity" under the  
7 HIPAA Privacy Rule (45 CFR 164.500 *et seq.*), except as authorized for management,  
8 administrative or legal responsibilities of the Business Associate.

9 B. CONTRACTOR, including its subcontractors and employees, shall protect, from  
10 unauthorized access, use, or disclosure of names and other identifying information, including  
11 genetic information, concerning persons receiving services pursuant to this Agreement,  
12 except where permitted in order to carry out data aggregation purposes for health care  
13 operations [45 CFR Sections 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)]  
14 This pertains to any and all persons receiving services pursuant to a COUNTY funded  
15 program. This requirement applies to electronic PHI. CONTRACTOR shall not use such  
16 identifying information or genetic information for any purpose other than carrying out  
17 CONTRACTOR's obligations under this Agreement.

18 C. CONTRACTOR, including its subcontractors and employees, shall not disclose  
19 any such identifying information or genetic information to any person or entity, except as  
20 otherwise specifically permitted by this Agreement, authorized by Subpart E of 45 CFR Part  
21 164 or other law, required by the Secretary, or authorized by the client/patient in writing. In  
22 using or disclosing PHI that is permitted by this Agreement or authorized by law,  
23 CONTRACTOR shall make reasonable efforts to limit PHI to the minimum necessary to  
24 accomplish intended purpose of use, disclosure or request.

25 D. For purposes of the above sections, identifying information shall include, but not  
26 be limited to name, identifying number, symbol, or other identifying particular assigned to the  
27 individual, such as finger or voice print, or photograph.  
28

1           E.     For purposes of the above sections, genetic information shall include genetic  
2 tests of family members of an individual or individual, manifestation of disease or disorder of  
3 family members of an individual, or any request for or receipt of, genetic services by  
4 individual or family members. Family member means a dependent or any person who is  
5 first, second, third, or fourth degree relative.

6           F.     CONTRACTOR shall provide access, at the request of COUNTY, and in the  
7 time and manner designated by COUNTY, to PHI in a designated record set (as defined  
8 in 45 CFR Section 164.501), to an individual or to COUNTY in order to meet the  
9 requirements of 45 CFR Section 164.524 regarding access by individuals to their PHI.  
10 With respect to individual requests, access shall be provided within thirty (30) days from  
11 request. Access may be extended if CONTRACTOR cannot provide access and provides  
12 individual with the reasons for the delay and the date when access may be granted. PHI  
13 shall be provided in the form and format requested by the individual or COUNTY.

14           CONTRACTOR shall make any amendment(s) to PHI in a designated record set at  
15 the request of COUNTY or individual, and in the time and manner designated by  
16 COUNTY in accordance with 45 CFR Section 164.526.

17           CONTRACTOR shall provide to COUNTY or to an individual, in a time and manner  
18 designated by COUNTY, information collected in accordance with 45 CFR Section  
19 164.528, to permit COUNTY to respond to a request by the individual for an accounting of  
20 disclosures of PHI in accordance with 45 CFR Section 164.528.

21           G.     CONTRACTOR shall report to COUNTY, in writing, any knowledge or reasonable  
22 belief that there has been unauthorized access, viewing, use, disclosure, security incident, or  
23 breach of unsecured PHI not permitted by this Agreement of which it becomes aware,  
24 immediately and without reasonable delay and in no case later than two (2) business days of  
25 discovery. Immediate notification shall be made to COUNTY's Information Security Officer  
26 and Privacy Officer and COUNTY's DPH HIPAA Representative, within two (2) business  
27 days of discovery. The notification shall include, to the extent possible, the identification of  
28 each individual whose unsecured PHI has been, or is reasonably believed to have been,

1 accessed, acquired, used, disclosed, or breached. CONTRACTOR shall take prompt  
2 corrective action to cure any deficiencies and any action pertaining to such unauthorized  
3 disclosure required by applicable Federal and State Laws and regulations. CONTRACTOR  
4 shall investigate such breach and is responsible for all notifications required by law and  
5 regulation or deemed necessary by COUNTY and shall provide a written report of the  
6 investigation and reporting required to COUNTY's Information Security Officer and Privacy  
7 Officer and COUNTY's DPH HIPAA Representative. This written investigation and  
8 description of any reporting necessary shall be postmarked within the thirty (30) working  
9 days of the discovery of the breach to the addresses below:

10 County of Fresno	County of Fresno	County of Fresno
11 Dept. of Public Health	Dept. of Public Health	Information Technology
		Services
12 HIPAA Representative	Information Security Officer	
13 Privacy Officer		
(559) 600-6439	(559) 600-6405	(559) 600-5800
14 P.O. Box 11867 Fresno, CA 93775	P.O. Box 11867 Fresno, CA 93775	2048 N. Fine Street Fresno, CA 93727

15  
16 H. CONTRACTOR shall make its internal practices, books, and records relating to  
17 the use and disclosure of PHI received from COUNTY, or created or received by the  
18 CONTRACTOR on behalf of COUNTY, in compliance with HIPAA's Privacy Rule, including,  
19 but not limited to the requirements set forth in Title 45, CFR, Sections 160 and 164.  
20 CONTRACTOR shall make its internal practices, books, and records relating to the use and  
21 disclosure of PHI received from COUNTY, or created or received by the CONTRACTOR on  
22 behalf of COUNTY, available to the United States Department of Health and Human  
23 Services (Secretary) upon demand.

24 CONTRACTOR shall cooperate with the compliance and investigation reviews  
25 conducted by the Secretary. PHI access to the Secretary must be provided during the  
26 CONTRACTOR's normal business hours, however, upon exigent circumstances access at  
27 any time must be granted. Upon the Secretary's compliance or investigation review, if PHI is  
28



1 unavailable to CONTRACTOR and in possession of a Subcontractor, it must certify efforts to  
2 obtain the information to the Secretary.

3 I. Safeguards

4 CONTRACTOR shall implement administrative, physical, and technical safeguards as  
5 required by the HIPAA Security Rule, Subpart C of 45 CFR 164, that reasonably and  
6 appropriately protect the confidentiality, integrity, and availability of PHI, including electronic  
7 PHI, that it creates, receives, maintains or transmits on behalf of COUNTY and to prevent  
8 unauthorized access, viewing, use, disclosure, or breach of PHI other than as provided for  
9 by this Agreement. CONTRACTOR shall conduct an accurate and thorough assessment of  
10 the potential risks and vulnerabilities to the confidentiality, integrity and availability of electronic  
11 PHI. CONTRACTOR shall develop and maintain a written information privacy and security  
12 program that includes administrative, technical and physical safeguards appropriate to the  
13 size and complexity of CONTRACTOR's operations and the nature and scope of its  
14 activities. Upon COUNTY's request, CONTRACTOR shall provide COUNTY with  
15 information concerning such safeguards.

16 CONTRACTOR shall implement strong access controls and other security safeguards  
17 and precautions in order to restrict logical and physical access to confidential, personal (e.g.,  
18 PHI) or sensitive data to authorized users only. Said safeguards and precautions shall  
19 include the following administrative and technical password controls for all systems used to  
20 process or store confidential, personal, or sensitive data:

21 1. Passwords must not be:

22 a. Shared or written down where they are accessible or recognizable by  
23 anyone else; such as taped to computer screens, stored under keyboards, or visible  
24 in a work area;

25 b. A dictionary word; or

26 c. Stored in clear text.

27 2. Passwords must be:

28 a. Eight (8) characters or more in length;

- b. Changed every ninety (90) days;
- c. Changed immediately if revealed or compromised; and
- d. Composed of characters from at least three (3) of the following four (4) groups from the standard keyboard:
  - 1) Upper case letters (A-Z);
  - 2) Lowercase letters (a-z);
  - 3) Arabic numerals (0 through 9); and
  - 4) Non-alphanumeric characters (punctuation symbols).

CONTRACTOR shall implement the following security controls on each workstation or portable computing device (e.g., laptop computer) containing confidential, personal, or sensitive data:

- 1. Network-based firewall and/or personal firewall;
- 2. Continuously updated anti-virus software; and
- 3. Patch management process including installation of all operating system/software vendor security patches.

CONTRACTOR shall utilize a commercial encryption solution that has received FIPS 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, compact disks and thumb drives) and on portable computing devices (including, but not limited to, laptop and notebook computers).

CONTRACTOR shall not transmit confidential, personal, or sensitive data via e-mail or other internet transport protocol unless the data is encrypted by a solution that has been validated by the National Institute of Standards and Technology (NIST) as conforming to the Advanced Encryption Standard (AES) Algorithm. CONTRACTOR must apply appropriate sanctions against its employees who fail to comply with these safeguards. CONTRACTOR must adopt procedures for terminating access to PHI when employment of employee ends.

J. Mitigation of Harmful Effects

CONTRACTOR shall mitigate, to the extent practicable, any harmful effect that is

1 suspected or known to CONTRACTOR of an unauthorized access, viewing, use,  
2 disclosure, or breach of PHI by CONTRACTOR or its subcontractors in violation of the  
3 requirements of these provisions. CONTRACTOR must document suspected or known  
4 harmful effects and the outcome.

5 K. CONTRACTOR's Subcontractors

6 CONTRACTOR shall ensure that any of its contractors, including subcontractors, if  
7 applicable, to whom CONTRACTOR provides PHI received from or created or received by  
8 CONTRACTOR on behalf of COUNTY, agree to the same restrictions, safeguards, and  
9 conditions that apply to CONTRACTOR with respect to such PHI and to incorporate,  
10 when applicable, the relevant provisions of these provisions into each subcontract or sub-  
11 award to such agents or subcontractors..

12 L. Employee Training and Discipline

13 CONTRACTOR shall train and use reasonable measures to ensure compliance with  
14 the requirements of these provisions by employees who assist in the performance of  
15 functions or activities on behalf of COUNTY under this Agreement and use or disclose  
16 PHI and discipline such employees who intentionally violate any provisions of these  
17 provisions, including termination of employment.

18 M. Termination for Cause

19 Upon COUNTY's knowledge of a material breach of these provisions by  
20 CONTRACTOR, COUNTY shall either:

- 21 1. Provide an opportunity for CONTRACTOR to cure the breach or end the violation  
22 and terminate this Agreement if CONTRACTOR does not cure the breach or end the  
23 violation within the time specified by COUNTY; or
- 24 2. Immediately terminate this Agreement if CONTRACTOR has breached a material  
25 term of these provisions and cure is not possible.
- 26 3. If neither cure nor termination is feasible, the COUNTY's Privacy Officer shall report  
27 the violation to the Secretary of the U.S. Department of Health and Human Services.

28 N. Judicial or Administrative Proceedings

COUNTY may terminate this Agreement in accordance with the terms and conditions of this Agreement as written hereinabove, if: (1) CONTRACTOR is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) there is a finding or stipulation that the CONTRACTOR has violated a privacy or security standard or requirement of the HITECH Act, HIPAA or other security or privacy laws in an administrative or civil proceeding in which the CONTRACTOR is a party.

O. Effect of Termination

Upon termination or expiration of this Agreement for any reason, CONTRACTOR shall return or destroy all PHI received from COUNTY (or created or received by CONTRACTOR on behalf of COUNTY) that CONTRACTOR still maintains in any form, and shall retain no copies of such PHI. If return or destruction of PHI is not feasible, it shall continue to extend the protections of these provisions to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents, if applicable, of CONTRACTOR. If CONTRACTOR destroys the PHI data, a certification of date and time of destruction shall be provided to the COUNTY by CONTRACTOR.

P. Disclaimer

COUNTY makes no warranty or representation that compliance by CONTRACTOR with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be adequate or satisfactory for CONTRACTOR's own purposes or that any information in CONTRACTOR's possession or control, or transmitted or received by CONTRACTOR, is or will be secure from unauthorized access, viewing, use, disclosure, or breach. CONTRACTOR is solely responsible for all decisions made by CONTRACTOR regarding the safeguarding of PHI.

Q. Amendment

The parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of these provisions may be

1 required to provide for procedures to ensure compliance with such developments. The  
2 parties specifically agree to take such action as is necessary to amend this agreement in  
3 order to implement the standards and requirements of HIPAA, the HIPAA regulations, the  
4 HITECH Act and other applicable laws relating to the security or privacy of PHI. COUNTY  
5 may terminate this Agreement upon thirty (30) days written notice in the event that  
6 CONTRACTOR does not enter into an amendment providing assurances regarding the  
7 safeguarding of PHI that COUNTY in its sole discretion, deems sufficient to satisfy the  
8 standards and requirements of HIPAA, the HIPAA regulations and the HITECH Act.

9 R. No Third-Party Beneficiaries

10 Nothing express or implied in the terms and conditions of these provisions is  
11 intended to confer, nor shall anything herein confer, upon any person other than COUNTY  
12 or CONTRACTOR and their respective successors or assignees, any rights, remedies,  
13 obligations or liabilities whatsoever.

14 S. Interpretation

15 The terms and conditions in these provisions shall be interpreted as broadly as  
16 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable  
17 State laws. The parties agree that any ambiguity in the terms and conditions of these  
18 provisions shall be resolved in favor of a meaning that complies and is consistent with  
19 HIPAA and the HIPAA regulations.

20 T. Regulatory References

21 A reference in the terms and conditions of these provisions to a section in the HIPAA  
22 regulations means the section as in effect or as amended.

23 U. Survival

24 The respective rights and obligations of CONTRACTOR as stated in this Section shall  
25 survive the termination or expiration of this Agreement.

26 V. No Waiver of Obligations

27 No change, waiver or discharge of any liability or obligation hereunder on any one or  
28 more occasions shall be deemed a waiver of performance of any continuing or other

1 obligation, or shall prohibit enforcement of any obligation on any other occasion.

2  
3 **XVI. DISCLOSURE OF SELF-DEALING TRANSACTIONS**

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

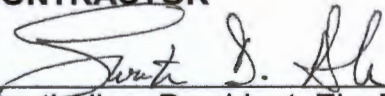
7 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing  
8 transactions that they are a party to while CONTRACTOR is providing goods or performing  
9 services under this agreement. A self-dealing transaction shall mean a transaction to which the  
10 CONTRACTOR is a party and in which one or more of its directors has a material financial  
11 interest. Members of the Board of Directors shall disclose any self-dealing transactions that  
12 they are a party to by completing and signing a *Self-Dealing Transaction Disclosure Form*  
13 (Exhibit 1) and submitting it to the COUNTY prior to commencing with the self-dealing  
14 transaction or immediately thereafter.

15  
16 **XVII. ENTIRE AGREEMENT**

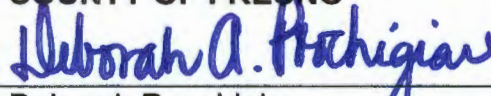
17 This Agreement constitutes the entire agreement between the CONTRACTOR and  
18 COUNTY with respect to the subject matter hereof and supersedes all previous Agreement  
19 negotiations, proposals, commitments, writings, advertisements, publications, and  
20 understandings of any nature whatsoever unless expressly included in this Agreement.

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

3 **CONTRACTOR**

4   
5 Swati Allen, President, ElanTech

**COUNTY OF FRESNO**

6   
7 Deborah Poochigian  
8 Chairman, Board Supervisor

9   
10 Michael Salonish, Secretary

11 DATE:

12 1/9/2015

13 DATE:

14 2/24/15

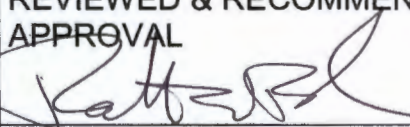
15 ATTEST:

16 BERNICE E. SEIDEL, Clerk  
17 Board of Supervisors

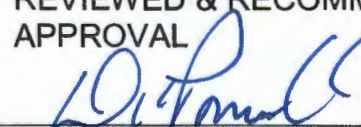
18 By Susan Bishop  
19 Deputy

20 Date: 2.24.15

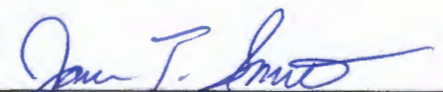
21 REVIEWED & RECOMMENDED FOR  
22 APPROVAL

23   
24 Robert W. Bash  
25 Director of Internal Services/  
26 Chief Information Officer

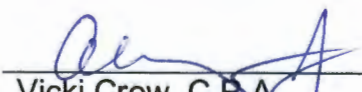
27 REVIEWED & RECOMMENDED FOR  
28 APPROVAL

  
David Pomaville  
Director of the Department of Public  
Health

APPROVED AS TO LEGAL FORM

23   
24 Daniel C. Cederborg, County Counsel

APPROVED AS TO ACCOUNTING  
FORM

  
Vicki Crow, C.P.A.  
Auditor-Controller/Treasurer-Tax Collector

FOR ACCOUNTING USE ONLY:

ORG No.: 56208550

Account No./Fund: 7309/0001/10000



1 **Exhibit 1 – Self-Dealing Transaction Disclosure Form**

2 **SELF-DEALING TRANSACTION DISCLOSURE FORM**

3  
4 In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a  
5 contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing  
6 transactions that they are a party to while providing goods, performing services, or both for the County. A self-  
7 dealing transaction is defined below:

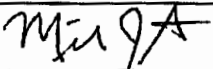
8 *"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of  
9 its directors has a material financial interest"*

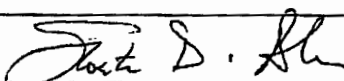
10 The definition above will be utilized for purposes of completing this disclosure form.

11 **INSTRUCTIONS**

- 12 (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- 13 (2) Enter the board member's company/agency name and address.
- 14 (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a  
15 minimum, include a description of the following:
- 16 a. The name of the agency/company with which the corporation has the transaction; and
  - 17 b. The nature of the material financial interest in the Corporation's transaction that the board  
18 member has.
- 19 (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the  
20 Corporations Code.
- 21 (5) Form must be signed by the board member that is involved in the self-dealing transaction described in  
22 Sections (3) and (4).
- 23  
24  
25  
26  
27  
28



<b>(1) Company Board Member Information:</b>			
<b>Name:</b>	Michael Salonish	<b>Date:</b>	1/9/2015
<b>Job Title:</b>	Secretary		
<b>(2) Company/Agency Name and Address:</b>			
ElanTech, Inc dba DataTech911 9250 Bendix Road, Suite 1030 Columbia, MD 21045			
<b>(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):</b>			
No self-dealing transactions			
<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>	1/9/2015

<b>(1) Company Board Member Information:</b>			
<b>Name:</b>	Swati Allen	<b>Date:</b>	1/9/2015
<b>Job Title:</b>	President		
<b>(2) Company/Agency Name and Address:</b>			
ElanTech, Inc dba DataTech911 9250 Bendix Road, Suite 1030 Columbia, MD 21045			
<b>(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):</b>			
No self-dealing transactions			
<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>	1/9/2015

**Exhibit 2 – Authorized Facilities**

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<b>Abbr</b>	<b>Hospital / Emergency Response Dispatch Center</b>	<b>Address</b>
AMC-H	Adventist Medical Center – Hanford	115 Mall Drive Hanford, CA 93230
AMC-R	Adventist Medical Center – Reedley	372 W Cypress Ave Reedley, CA 93654
AMC-S	Adventist Medical Center – Selma	1141 Rose Ave Selma, CA 93622
CCEMSA	Central California EMS Agency	1221 Fulton Mall Fresno, CA 93721
CHCC	Children’s Hospital Central California	9300 Valley Children’s Place Madera, CA 93638
CCMC	Clovis Community Medical Center	2755 Herndon Ave Clovis, CA 93611
COM	Fresno EMS Communications Center	4555 E Hamilton Ave Fresno, CA 93702
CRMC	Coalinga Regional Medical Center	1191 Phelps Ave Coalinga, CA 93210
KH	Kaiser Hospital	7300 N Fresno St Fresno, CA 93720
MCH	Madera Community Hospital	1250 E Almond Ave Madera, CA 93637
MPH	Madera Public Health	200 W 4th St Madera, CA 93637
RMC	Community Regional Medical Center	2823 Fresno St Fresno, CA 93721
SAMC	Saint Agnes Medical Center	1303 E Herndon Ave Fresno, CA 93711
VAH	Veterans Administration Hospital	2615 E Clinton Ave Fresno, CA 93705
KCDPH	Kings County Department of Public Health	330 Campus Drive Hanford, CA 93230