

A G R E E M E N T

THIS AGREEMENT ("Agreement") is made and entered into this 4th day of February, 2020 ("Effective Date"), by and between the COUNTY OF FRESNO, a political subdivision of the state of California, ("COUNTY"), and ElanTech, Inc., dba DataTech911, a Maryland corporation, whose address is 6751 Columbia Gateway Drive, Suite 300, Columbia, MD 21046, ("CONTRACTOR").

W I T N E S S E T H:

WHEREAS, COUNTY purchased a software system called StatusNet911 (SN911 WEB), a hospital communications system utilized by the Department of Public Health, from CONTRACTOR, on February 24, 2015, pursuant to County Agreement No. 15-068;

WHEREAS, CONTRACTOR is willing and able to continue to provide Software Hosting Services on a hosted system via Secure Socket Layer (SSL) for the SN911 WEB system;

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

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

I. **DEFINITIONS**

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

Acceptance Criteria:

The performance and operating specifications that 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.

Application Service Provider (ASP):

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

1 Authorized Facility:

2 An Authorized Facility, includes specified Hospitals (including Emergency Room(s)),
3 Emergency Medical Response Dispatch Centers, or County Administrative Centers, and shall
4 be limited to those specified in Exhibit A – “Authorized Facilities”.

5 Change Control Process:

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

8 County System Hardware:

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

13 County System Software:

14 The operating system and database software installed on COUNTY System Hardware.

15 Deficiency:

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

17 Final System Acceptance:

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

21 First Production Use:

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

23 Hosting Availability:

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

26 ITSD:

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

28 License:

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

4 Monies:

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

6 Primary Work Location:

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

8 Public Records:

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

12 Supplier:

13 The terms "Supplier", "Vendor", "ElanTech, Inc.", "ElanTech, Inc., dba DataTech911", and
14 "DataTech911", all refer to CONTRACTOR, and are considered to be equivalent throughout
15 this Agreement.

16 System:

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

23 System Documentation:

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

27 System Operation:

28 The general operation of COUNTY's hardware and all software including, but not limited to,

1 system restarts, configuration and operation of system peripherals (such as printers, modems,
2 and terminals), installation of new software releases, and other related activities.

3 System Installation:

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

6 System Software:

7 SN911 WEB, that certain computer software described in this Agreement provided by
8 CONTRACTOR, and all interfaces, coding, tapes, disks, modules and similar materials
9 comprising such software or on which it is stored. System Software shall not include operating
10 system software, or any other third-party Software.

11 User:

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

14 II. OBLIGATIONS OF CONTRACTOR

15 A. SOFTWARE LICENSE

16 1. GRANT OF LICENSE

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

19 2. SCOPE OF LICENSE

20 The license granted herein shall consist solely of the non-exclusive, non-transferrable right of
21 COUNTY to operate the System Software in support of COUNTY's Department of Public Health and
22 Authorized Facilities as shown in Exhibit "A".

23 3. OWNERSHIP

24 The parties acknowledge and agree that, as between CONTRACTOR and COUNTY, title and
25 full ownership of all rights in and to the System Software, System Documentation, and all other materials
26 provided to COUNTY by CONTRACTOR under the terms of this Agreement shall remain with
27 CONTRACTOR. The parties acknowledge and agree that, as between CONTRACTOR and COUNTY,
28

1 full ownership of all rights in and to all COUNTY data, whether in magnetic or paper form, including
2 without limitation printed output from the System, are the exclusive property of COUNTY.

3 4. POSSESSION, USE, AND UPDATE OF SOFTWARE

4 COUNTY will use the System Software only for its own internal purposes and shall not further
5 sublicense the System Software. CONTRACTOR may, at reasonable times, inspect COUNTY's
6 premises and equipment to verify that COUNTY is observing all of the terms and conditions of this
7 License. CONTRACTOR may create, from time to time, updated versions of the System Software and
8 System Documentation and CONTRACTOR shall make such System Updates available to COUNTY.
9 All System Updates shall be licensed under the terms of this Agreement. COUNTY agrees to follow the
10 prescribed instructions for updating System Software and System Documentation provided to COUNTY
11 by CONTRACTOR. COUNTY must authorize all System Updates in writing.

12 5. TRANSFER OF SOFTWARE

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

19 6. POSSESSION AND USE OF SOURCE CODE

20 Source code and other material that results from custom programming by CONTRACTOR
21 released to COUNTY under this License shall be deemed to be CONTRACTOR software, subject to all
22 of the terms and conditions of the License set forth in this Agreement. The scope of COUNTY's
23 permitted use of the custom source code under this license shall be limited to maintenance and support
24 of the System Software. For purposes of this Section, the term "maintenance and support" means
25 correction of System Software errors and preparation of System Software modifications and
26 enhancements. If COUNTY creates computer code in the process of enhancing the System Software,
27 that specific new code shall be owned by COUNTY, and may be used by COUNTY's employees,
28 officers, or agents for COUNTY's own internal business operations. However, if COUNTY's

1 enhancement results in the creation of a derivative work from the System Software, the copyright to
2 such derivative work shall be owned by CONTRACTOR and COUNTY's rights to use such derivative
3 work shall be limited to those granted with respect to the System Software in this Agreement.

4 B. SERVICES TO BE PROVIDED BY CONTRACTOR TO COUNTY

5 1. SYSTEM INSTALLATION – This section intentionally deleted

6 2. TRAINING – This section intentionally deleted

7 3. DOCUMENTATION

8 CONTRACTOR shall provide to COUNTY SN911 WEB System Documentation, which shall
9 consist of electronic media files. The electronic media files must be printable using PC software normally
10 available at COUNTY. CONTRACTOR shall provide new System Documentation corresponding to all
11 new Software Upgrades. COUNTY may print additional copies of all documentation. COUNTY shall only
12 use System Documentation for the purposes identified within this Agreement.

13 C. SYSTEM MAINTENANCE AND SUPPORT BY CONTRACTOR

14 System maintenance and support includes System Updates as they are released by
15 CONTRACTOR, including updates required as a result of Federal Regulatory Changes. CONTRACTOR
16 will support day-to-day operation of the System as follows:

17 1. SUPPORT HOURS / SCOPE:

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

25 2. SUPPORT RESPONSE:

26 During the term of this Agreement, CONTRACTOR will (a) correct any error or malfunctions in
27 the System as supplied by CONTRACTOR, which prevent it from operating in conformance with the
28

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

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

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

14 **3. REMOTE VIRTUAL PRIVATE NETWORK (VPN) DIAGNOSTICS**

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

20 CONTRACTOR product specialists will provide diagnostics via VPN on SN911 WEB. COUNTY
21 will provide any required hardware, and equipment necessary at COUNTY site for CONTRACTOR VPN
22 support.

23 **4. ERROR CORRECTION PROCESS**

24 If, during the term of this Agreement, COUNTY determines that software error(s) exist, COUNTY
25 will first follow the error procedures specified in the System Documentation. If following the error
26 procedures does not correct the software error, COUNTY shall immediately notify CONTRACTOR,
27 setting forth the defects noted with specificity. Upon notification of a reported software error,
28 CONTRACTOR shall have five (5) days to determine if any actual software error(s) exist and, if so,

1 endeavor to correct such software error(s). At CONTRACTOR's request, additional time to solve difficult
2 problems will not be unreasonably withheld. Within fifteen (15) days of correction, COUNTY shall retest
3 the System Software and report any other software error(s).

4 **5. TECHNICAL INFORMATION**

5 CONTRACTOR will provide technical information to COUNTY as necessary and helpful. Such
6 information may cover areas such as SN911 WEB usage, third party software, and other matters
7 considered relevant to COUNTY by CONTRACTOR. Technical information will be provided at the
8 discretion of CONTRACTOR, but will not be unreasonably withheld.

9 **D. ADDITIONAL SYSTEM MAINTENANCE SERVICES BY CONTRACTOR**

10 CONTRACTOR may provide additional maintenance services ("Additional Maintenance and
11 Support Services" or "Additional Maintenance Services") at an additional charge. Charges will be as
12 identified in Section VI of this Agreement; or, if not included in this Agreement, charges will be at current
13 prices in effect at the time goods or services are provided. Any Additional Maintenance and Support
14 Services requested by COUNTY and determined by CONTRACTOR to be billable by CONTRACTOR
15 must be identified as a chargeable service prior to the service being performed, and must be approved
16 in writing in advance by COUNTY's Contract Administrator. Additional Maintenance Services include,
17 but are not limited to, the following:

18 **1. ADDITIONAL TRAINING**

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

24 **2. DATA AND SYSTEM CORRECTIONS**

25 Data and System Corrections include any corrective actions accomplished by
26 CONTRACTOR on-site or via VPN which are necessary due to COUNTY errors or
27 unauthorized source code or data access by COUNTY. Unauthorized access to the data
28 is defined as any COUNTY editing of data through other than normal system usage as

1 defined in System Documentation. Unauthorized access to source code is defined as any
2 COUNTY access whatsoever to System source code. Services provided by
3 CONTRACTOR are not billable when they result from errors caused by SN911 WEB or
4 instruction provided by CONTRACTOR.

5 3. CUSTOMER SITE VISITS

6 Site visits to COUNTY sites, as may be requested in writing by COUNTY and
7 which are within the scope of the project services, are available for reasons including, but
8 not limited to, (1) additional system training on hardware or software usage; (2) resolution
9 of System difficulties not resulting from actions by, or otherwise the responsibility of
10 CONTRACTOR; (3) installation of Software Releases; and (4) assistance in equipment
11 maintenance, movement, or diagnosis. CONTRACTOR will review site visits outside of
12 the scope of project services , which COUNTY's Contract Administer must request in
13 writing in advance. Charges will be at rates identified in this Agreement.

14 4. CUSTOM PROGRAMMING

15 Requests for supplemental programming or customization of system features not
16 covered under this Agreement are available to COUNTY. CONTRACTOR will review
17 such requests, which COUNTY's Contract Administrator, will be reviewed by
18 CONTRACTOR, and must be requested in writing in advance by COUNTY's Contract
19 Administrator. Charges will be at rates identified in this Agreement.

20 E. CONTRACTOR'S PROJECT COORDINATOR

21 Upon execution of this Agreement, CONTRACTOR shall appoint a Project Coordinator who will
22 act as the primary contact person to interface with COUNTY for, maintenance, and support of SN911
23 WEB.

24 F. SYSTEM UPDATES AND NEW PRODUCTS

25 1. SYSTEM UPDATES

26 From time to time CONTRACTOR will develop and provide System Updates to
27 COUNTY for COUNTY'S licensed CONTRACTOR software. System Updates shall be
28 subject to the terms and conditions of this Agreement and shall be deemed licensed

1 System Software hereunder and will be made available to COUNTY at no additional
2 charge to COUNTY. System Updates will be made available to COUNTY at the discretion
3 of CONTRACTOR but will not be unreasonably withheld.

4 2. NEW PRODUCTS

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

10 G. OPERATING SYSTEM UPDATES

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

15 COUNTY will notify CONTRACTOR when a critical security patch is released. CONTRACTOR
16 will have thirty (30) days to ensure application can perform in the updated environment. With approval
17 from CONTRACTOR, COUNTY will apply patches to both the operating system, and non-critical
18 security subsystems as releases are available from operating system vendors. The application shall
19 perform in this environment. CONTRACTOR shall keep its software within 1 year of current in order to
20 operate in this environment. These patches include critical O/S updates and security patches.

21 H. ANTI-VIRUS MANAGEMENT

22 COUNTY will actively run anti-virus management, where appropriate, on all application servers
23 and PCs. The application shall perform adequately while anti-virus management is active.

24 I. ADHERE TO CHANGE CONTROL PROCESS

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

1 CONTRACTOR must inform ITSD a minimum of one (1) week prior to any planned, non-emergency
2 changes so that the Change Control Process may be followed.

3 J. OTHER

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

6 The System runs in a Local Area Network and Web environment. As such, the performance of
7 the System is directly related to, among other things: available network bandwidth, and the performance
8 of other applications. For this reason, CONTRACTOR makes no guarantees as to System response
9 time.

10 K. SOFTWARE HOSTING SERVICES

11 CONTRACTOR shall select a reputable host for the server on which SN911 WEB is hosted and
12 from which access is to be provided to COUNTY for Authorized Facilities. In the event of a Security
13 Breach, CONTRACTOR will be liable for payment of or reimbursement to COUNTY for all remediation
14 expenses, and any monetary losses up to the maximum Total Agreement not-to-exceed amount. as set
15 forth in Section VI. CONTRACTOR will make every reasonable effort to maintain a 99.9% up-time for
16 the hosted SN911 WEB system. CONTRACTOR reserves the right to establish a monthly maintenance
17 window for the purpose of upgrading, patching, or modifying, or repairing portions of or the entire SN911
18 WEB environment. The monthly window will be mutually agreed to in writing by CONTRACTOR's
19 Project Coordinator.

20 L. SYSTEM RELIABILITY

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

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

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

10 M. PRIVACY REQUIREMENTS

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

- 12 1. To the extent required to carry out the assessment and authorization process and
13 continuous monitoring, to safeguard against threats and hazards to the security, integrity,
14 and confidentiality of any COUNTY data collected and stored by CONTRACTOR,
15 CONTRACTOR shall afford COUNTY access as necessary at CONTRACTOR's
16 discretion, to CONTRACTOR's facilities, installations, technical capabilities, operations,
17 documentation, records, and databases.
- 18 2. If new or unanticipated threats or hazards are discovered by either COUNTY or
19 CONTRACTOR, or if existing safeguards have ceased to function, the discoverer shall
20 immediately bring the situation to the attention of the other party.
- 21 3. CONTRACTOR shall also comply with any additional privacy requirements provided by
22 COUNTY.
- 23 4. During the term of this Agreement, COUNTY has the right to perform manual or
24 automated audits, scans, reviews, or other inspections of CONTRACTOR's IT
25 environment being used to provide or facilitate services for COUNTY. CONTRACTOR
26 shall be responsible for the following privacy and security safeguards:
 - 27 a. Other than for CONTRACTOR's own use and purposes, CONTRACTOR shall not
28 publish or disclose in any manner the details of any safeguards either designed or

1 developed by CONTRACTOR under this Agreement, or otherwise provided by
2 COUNTY.

- 3 b. To the extent required to carry out a program of inspection to safeguard against
4 threats and hazards to the security, integrity, and confidentiality of COUNTY data,
5 CONTRACTOR shall afford COUNTY access as necessary to CONTRACTOR'S
6 facilities, installations, technical capabilities, operations, documentation, records,
7 and databases within 72 hours' request by COUNTY. The program of inspection
8 shall include, but is not limited to: Authenticated and unauthenticated operating
9 system/network vulnerability scans, authenticated and unauthenticated web
10 application vulnerability scans, and authenticated and unauthenticated database
11 application vulnerability scans. Automated scans may be performed by COUNTY
12 personnel, or agents acting on behalf of COUNTY, using COUNTY-operated
13 equipment, and COUNTY-specified tools.

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

18 N. PROTECTION OF INFORMATION

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

27 COUNTY will retain unrestricted rights to COUNTY data. COUNTY retains ownership of any user
28 created/loaded data and applications hosted on CONTRACTOR's infrastructure, as well as maintains

1 the right to request full copies of these at any time. Data processed and stored by the various
2 applications within the network infrastructure contains financial data, personally identifiable information
3 (PII), and protected health information (PHI). This data, PII, and PHI shall be protected against
4 unauthorized access, disclosure, modification, theft, or destruction. CONTRACTOR shall ensure that the
5 facilities housing the network infrastructure are physically secure.

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

9 No data shall be released by the CONTRACTOR without the consent of COUNTY in writing. All
10 requests for release must be submitted in writing to COUNTY.

11 III. OBLIGATIONS OF COUNTY

12 A. COUNTY CONTRACT ADMINISTRATION

13 COUNTY appoints its Director of Internal Services/Chief Information Officer (CIO) or his/her
14 designee, as COUNTY's Contract Administrator with full authority to deal with CONTRACTOR in all
15 matters concerning this Agreement.

16 B. CONTRACTOR RESPONSE COMMITMENT

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

20 C. SAFEGUARDING SYSTEM SOFTWARE

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

- 24 1) COUNTY utilizes a backup and recovery system written and maintained
25 by Commvault Systems. This application requires a backup agent to run
26 on the server.

- 1 2) COUNTY will provide CONTRACTOR with an account with appropriate
2 administrative rights to administer the application. The account password
3 shall periodically expire.
- 4 3) In order for the application to run on COUNTY supported servers, the
5 application must not require the users to have administrative rights on the
6 servers.
- 7 4) COUNTY, at all times, during and after the performance of the installation
8 of the System Software, is responsible for maintaining adequate data
9 backups to protect against loss of data.

10 D. FACILITIES AND PREPARATION

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

15 E. ACCEPTANCE TESTING – This section intentionally deleted

16 F. SYSTEM HARDWARE AND SYSTEM SOFTWARE

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

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

24 G. DATA SECURITY

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

28 H. COUNTY PROJECT MANAGER – This section intentionally deleted.

1 I. OTHER COUNTY OBLIGATIONS – This section intentionally deleted

2 IV. TERM

3 The term of this Agreement shall be for a period of three (3) years, commencing on February 24,
4 2020, through and including February 23, 2023. This Agreement may be extended for two (2) additional
5 consecutive twelve (12) month periods upon written approval of both parties no later than thirty (30) days
6 prior to the first day of the next twelve (12) month extension period. The Director of Internal Services/Chief
7 Information Officer is authorized to execute such written approval on behalf of COUNTY based on
8 CONTRACTOR'S satisfactory performance.

9 V. TERMINATION

10 A. NON-ALLOCATION OF FUNDS

11 The terms of this Agreement, and the services to be provided hereunder, are contingent on the
12 approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the
13 services provided may be modified, or this Agreement terminated, at any time by giving CONTRACTOR
14 thirty (30) days advance written notice. Notwithstanding any such termination, COUNTY shall pay
15 CONTRACTOR for all services performed under this Agreement prior to the effective date of
16 termination.

17 B. BREACH OF CONTRACT

18 COUNTY may immediately suspend or terminate this Agreement in whole or in part, where in the
19 determination of COUNTY there is:

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

24 In no event shall any payment by COUNTY constitute a waiver by COUNTY of any breach of this
25 Agreement or any default which may then exist on the part of CONTRACTOR. Neither shall such
26 payment impair or prejudice any remedy available to COUNTY with respect to the breach or default.
27 COUNTY shall have the right to demand of CONTRACTOR the repayment to COUNTY of any funds
28 disbursed to CONTRACTOR under this Agreement, which in the judgment of COUNTY were not

1 expended in accordance with the terms of this Agreement. CONTRACTOR shall promptly refund any
2 such funds upon demand.

3 **C. WITHOUT CAUSE**

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

8 **D. TERMINATION BY CONTRACTOR**

9 CONTRACTOR may, upon thirty (30) days prior written notice to COUNTY, terminate this
10 Agreement if COUNTY fails to comply with any material term or condition of this Agreement unless
11 COUNTY cures such failure within such thirty (30) day period, or other such timeframe as may be
12 mutually agreed upon in writing by the parties. If CONTRACTOR elects to terminate this agreement,
13 CONTRACTOR shall promptly refund a prorated amount of the Annual Maintenance and Support fees,
14 covering the period from the date of termination, to the end of the then current period.

15 **VI. COMPENSATION/INVOICING:**

16 COUNTY agrees to pay CONTRACTOR, and CONTRACTOR agrees to receive compensation as
17 follows:

18 **A. ANNUAL MAINTENANCE AND SUPPORT FEES:**

19 Authorized Facilities are listed in Exhibit "A".

Year	Facility	Period	Total
Year 1 (prorated)	Authorized Facilities (excluding CSCADU & CSCYTH)	08/05/20 – 02/23/21	\$ 15,670
	CSCADU	10/22/20 – 02/23/21	
	CSCYTH	12/31/20 – 02/23/21	
Year 2	Authorized Facilities	02/24/21 – 02/23/22	\$29,100
Year 3	Authorized Facilities	02/24/22 – 02/23/23	\$29,100
Year 4	Authorized Facilities	02/24/23 – 02/23/24	\$29,100
Year 5	Authorized Facilities	02/24/24 – 02/23/25	\$29,100

26
27 COUNTY and CONTRACTOR agree that COUNTY has previously paid to CONTRACTOR, under
28 the previous County Agreement No. 15-068, the Annual Maintenance and Support fees covering the

1 facilities and periods as follows:

2 Facility	3 Period
4 Authorized Facilities (excluding CSCADU & CSCYTH)	02/24/20 – 08/04/20
CSCADU	02/24/20 – 10/21/20
CSCYTH	02/24/20 – 12/30/20

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6 **B. FEE CHANGES**

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

12 **C. RATES FOR ADDITIONAL SERVICES**

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

15 1)	Online Training	(once per year, included with Annual Subscription Fee)
16 2)	On-site training	\$850 per day, plus related travel expenses billed at actual cost plus 10%
17 3)	Customization Services	\$155 per hour
18 4)	Additional Full Facility	\$2,500 per year
19 5)	Additional Partial Facility	\$600 per year

20
21
22 Additional Service Fees shall only be paid to CONTRACTOR if any such services set forth herein
23 are performed by CONTRACTOR upon COUNTY's written request. The Director of Internal Services/Chief
24 Information Officer, Director of Public Health, or their designees are authorized to purchase additional
25 services on behalf of COUNTY. In no event shall Additional Service Fees exceed \$5,000 per year for each
26 one-year period of this Agreement.

27 **D. INVOICING**

28 CONTRACTOR shall submit annual invoices referencing the provided contract number, either

1 electronically or via mail, in triplicate to the: **County of Fresno, Internal Services Department, Attention:**
2 **Business Office, 333 W. Pontiac Way, Clovis CA 93612, (isdbusinessoffice@fresnocountyca.gov).**

3 E. TOTAL CONTRACT AMOUNT

4 In no event shall compensation paid by COUNTY for services performed under this Agreement
5 exceed \$91,516 during the initial three-year term of this Agreement. If this Agreement is extended for an
6 additional Year 4, in no event shall compensation for the four-year term exceed \$128,314. If this Agreement
7 is extended for an additional Year 5, in no event shall compensation for the total possible five-year term
8 exceed \$166,066. All expenses incidental to CONTRACTOR'S performance of services under this
9 Agreement shall be borne by CONTRACTOR. COUNTY shall pay CONTRACTOR within forty-five (45)
10 days of receipt of an approved invoice, by mail addressed to CONTRACTOR's remittance address at, **6751**
11 **Columbia Gateway Drive, Suite 300, Columbia, MD 21046.**

12 VII. INDEPENDENT CONTRACTOR:

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

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

23 Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right
24 to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable
25 and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In
26 addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating
27 to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all
28 other regulations governing such matters. It is acknowledged that during the term of this Agreement,

1 CONTRACTOR may be providing services to others unrelated to COUNTY or to this Agreement.

2 VIII. MODIFICATION:

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

5 IX. NON-ASSIGNMENT:

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

8 X. HOLD HARMLESS:

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

19 In the event of a claim of alleged infringement of patent rights, copyright, trade secret rights, or
20 intellectual property rights, to the fullest extent permitted by law, CONTRACTOR agrees to and shall
21 indemnify, save, hold harmless, and at COUNTY's request, defend COUNTY, including its officers, officials,
22 agents, and employees from any and all demands, costs and expenses, penalties, attorney's fees and
23 court costs, damages of any nature whatsoever (including, without limitation, injury or damage to or loss or
24 destruction of property), judgments (including, without limitation, amounts paid in settlement and amounts
25 paid to discharge judgments), liabilities, claims and losses, suits, actions or proceedings of every name,
26 kind and description occurring or resulting to COUNTY, out of or in connection with any claim that is based
27 on the infringement (or assertions of infringement) of any of patent rights, copyright, trade secret rights, or
28 intellectual property rights with respect to services, software, or any Equipment provided by

1 CONTRACTOR as part of this Agreement, including, but not limited to, their materials, designs, techniques,
2 processes and information supplied or used by CONTRACTOR or any of CONTRACTOR's subcontractor
3 of any tier in performing or providing any portion of CONTRACTOR's obligations as outlined in this
4 Agreement. If, in any suit, action, proceeding or claim relating to the foregoing, a temporary restraining
5 order or preliminary injunction is granted, CONTRACTOR shall make every reasonable effort to secure the
6 suspension of the injunction or restraining order. If, in any such suit, action, proceeding or claim, the
7 services, software or any Equipment provided by CONTRACTOR or any part, combination or process
8 thereof, is held to constitute an infringement and its use is enjoined, CONTRACTOR shall immediately (a)
9 pay the reasonable direct out-of-pocket costs and expenses to secure a license to use such infringing work,
10 replace the infringing work or modify the same so that it becomes non-infringing, and (b) make every
11 reasonable effort to secure for COUNTY a license, at no cost to COUNTY, authorizing COUNTY's
12 continued use of the infringing work. If CONTRACTOR is unable to secure such license within a reasonable
13 time, CONTRACTOR, at its own expense and without impairing performance requirements of the services,
14 software, or any Equipment provided by CONTRACTOR as part of this Agreement, shall either replace the
15 affected services, software, or any Equipment provided by CONTRACTOR as part of this Agreement,
16 combination or process thereof, with non-infringing services, software, or other equipment, or modify the
17 same so that they become non-infringing.

18 The provisions of this Section 10 shall survive the termination of this Agreement.

19 XI. INSURANCE

20 Without limiting COUNTY's right to obtain indemnification from CONTRACTOR or any third parties,
21 CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance policies
22 or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint
23 Powers Agreement (JPA) throughout the term of the Agreement:

24 A. Commercial General Liability

25 Commercial General Liability Insurance with limits of not less than Two Million Dollars
26 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This
27 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including
28 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal

1 liability or any other liability insurance deemed necessary because of the nature of this contract.

2 B. Automobile Liability

3 Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars
4 (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto
5 used in connection with this Agreement.

6 C. Technology Professional Liability (Errors and Omissions) and Cyber Liability

7 CONTRACTOR shall obtain Technology Professional Liability (Errors and Omissions) and Cyber
8 Liability Insurance appropriate to CONTRACTOR's profession, with limits not less than Three Million
9 Dollars (\$3,000,000) per occurrence or claim, Three Million Dollars (\$3,000,000) aggregate. Coverage
10 shall be sufficiently broad to respond to the duties and obligations as is undertaken by CONTRACTOR
11 in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual
12 property, infringement of copyright, trademark, trade dress, invasion of privacy violations, information
13 theft, damage to or destruction of electronic information, release of private information, alteration of
14 electronic information, extortion and network security, and claims involving Cyber Risks. The policy shall
15 be endorsed to provide coverage for breach response costs as well as regulatory fines and penalties as
16 well as credit monitoring expenses with limits sufficient to respond to these obligations, and cover the
17 full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including
18 but not limited to information or data) that is in the care, custody, or control of CONTRACTOR.

19 For purposes of the technology professional liability insurance and the cyber liability insurance
20 required under this Agreement, Cyber Risks include, but are not limited to, (i) security breaches, which
21 include disclosure of, whether intentional or unintentional, information provided by COUNTY, information
22 provided by or obtained from any person, or personal-identifying information relating to any person, to
23 an unauthorized third party; (ii) breach of any of CONTRACTOR's obligations under this Agreement
24 relating to data security, protection, preservation, usage, storage, transmission, and the like; (iii)
25 infringement of intellectual property including, but not limited to, infringement of copyright, trademark,
26 and trade dress; (iv) invasion of privacy, including any release of private information; (v) information theft
27 by any person or entity, whatsoever; (vi) damage to or destruction or alteration of electronic information;
28 (vii) extortion related to CONTRACTOR's obligations under this Agreement regarding electronic

1 information, including information provided by COUNTY, information provided by or obtained from any
2 person, or personal-identifying information relating to any person; (viii) network security; (ix) data breach
3 response costs, including security breach response costs; (x) regulatory fines and penalties related to
4 CONTRACTOR's obligations under this Agreement regarding electronic information, including
5 information provided by COUNTY, information provided by or obtained from any person, or personal-
6 identifying information relating to any person; and (xi) credit monitoring expenses.

7 D. Professional Liability

8 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in
9 providing services, Professional Liability Insurance with limits of not less than One Million Dollars
10 (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

11 E. Worker's Compensation

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

13 Additional Requirements Relating to Insurance

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

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

26 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
27 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
28 foregoing policies, as required herein, to the County of Fresno, Internal Services Department, Attention:

1 Director of Internal Services/Chief Information Officer, 333 W. Pontiac Way, Clovis, CA 93612, stating that
2 such insurance coverage have been obtained and are in full force; that the County of Fresno, its officers,
3 agents and employees will not be responsible for any premiums on the policies; that for such worker's
4 compensation insurance the CONTRACTOR has waived its right to recover from the COUNTY, its officers,
5 agents, and employees any amounts paid under the insurance policy and that waiver does not invalidate
6 the insurance policy; that such Commercial General Liability insurance names the County of Fresno, its
7 officers, agents and employees, individually and collectively, as additional insured, but only insofar as the
8 operations under this Agreement are concerned; that such coverage for additional insured shall apply as
9 primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents
10 and employees, shall be excess only and not contributing with insurance provided under CONTRACTOR's
11 policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30)
12 days advance, written notice given to COUNTY.

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

16 All policies shall be issued by admitted insurers licensed to do business in the State of California,
17 and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A
18 FSC VII or better.

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

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

27 XIII. NOTICES:

28 A. AUTHORITY TO GIVE NOTICES

1 The persons and their addresses having authority to give and receive notices under this Agreement
2 include the following:

3 COUNTY

4 County of Fresno
5 Director of Internal Services/CIO
6 333 W. Pontiac Way
7 Clovis, CA 93612

CONTRACTOR

ElanTech, Inc., dba DataTech911
President
6751 Columbia Gateway Drive, Suite 300
Columbia, MD 21046

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

23 B. PRIMARY-ESCALATION CONTACT INFORMATION

24 The person and their contact information that COUNTY or CONTRACTOR can use to escalate
25 problems of situations.

26 COUNTY

27 Contact #1
28 Applications IT Manager
Office: (559) 600-5800

CONTRACTOR

Contact #1
Vice President
Office: (301) 486-0600 x102
Cell: (301) 922-8366
Email: support@datatech911.com

1
2 Contact #2
3 Applications IT Division Manager
4 Office: (559) 600-5800

Contact #2
 President
 Office: (301) 486-0600 x101
 Cell: (301) 922-8367
 Email: contracts@elantech-inc.com

5
6 XIV. GOVERNING LAW: Venue for any action arising out of or related to this Agreement shall
7 only be in Fresno County, California.

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

10 XV. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY

11 A. The parties to this Agreement shall be in strict conformance with all applicable Federal
12 and State of California laws and regulations, including but not limited to Sections 5328, 10850, and
13 14100.2 et seq. of the Welfare and Institutions Code, Sections 2.1 and 431.300 et seq. of Title 42, Code
14 of Federal Regulations (CFR), Section 56 et seq. of the California Civil Code, Sections 11977 and
15 11812 of Title 22 of the California Code of Regulations, and the Health Insurance Portability and
16 Accountability Act (HIPAA), including but not limited to Section 1320 D et seq. of Title 42, United States
17 Code (USC) and its implementing regulations, including, but not limited to Title 45, CFR, Sections 142,
18 160, 162, and 164, The Health Information Technology for Economic and Clinical Health Act (HITECH)
19 regarding the confidentiality and security of patient information, and the Genetic Information
20 Nondiscrimination Act (GINA) of 2008 regarding the confidentiality of genetic information.

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

28 B. CONTRACTOR, including its subcontractors and employees, shall protect, from

1 unauthorized access, use, or disclosure of names and other identifying information, including genetic
2 information, concerning persons receiving services pursuant to this Agreement, except where permitted
3 in order to carry out data aggregation purposes for health care operations [45 CFR Sections 164.504
4 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)] This pertains to any and all persons receiving
5 services pursuant to a COUNTY funded program. This requirement applies to electronic PHI.
6 CONTRACTOR shall not use such identifying information or genetic information for any purpose other
7 than carrying out CONTRACTOR's obligations under this Agreement.

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

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

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

21 F. CONTRACTOR shall provide access, at the request of COUNTY, and in the time and
22 manner designated by COUNTY, to PHI in a designated record set (as defined in 45 CFR Section
23 164.501), to an individual or to COUNTY in order to meet the requirements of 45 CFR Section 164.524
24 regarding access by individuals to their PHI. With respect to individual requests, access shall be
25 provided within thirty (30) days from request. Access may be extended if CONTRACTOR cannot
26 provide access and provides individual with the reasons for the delay and the date when access may be
27 granted. PHI shall be provided in the form and format requested by the individual or COUNTY.

28 CONTRACTOR shall make any amendment(s) to PHI in a designated record set at the request

1 of COUNTY or individual, and in the time and manner designated by COUNTY in accordance with 45
2 CFR Section 164.526. CONTRACTOR shall provide to COUNTY or to an individual, in a time and
3 manner designated by COUNTY, information collected in accordance with 45 CFR Section 164.528, to
4 permit COUNTY to respond to a request by the individual for an accounting of disclosures of PHI in
5 accordance with 45 CFR Section 164.528.

6 G. CONTRACTOR shall report to COUNTY, in writing, any knowledge or reasonable belief
7 that there has been unauthorized access, viewing, use, disclosure, security incident, or breach of
8 unsecured PHI not permitted by this Agreement of which it becomes aware, immediately and without
9 reasonable delay and in no case later than two (2) business days of discovery. Immediate notification
10 shall be made to COUNTY's Information Security Officer and Privacy Officer and COUNTY's DPH
11 HIPAA Representative, within two (2) business days of discovery. The notification shall include, to the
12 extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably
13 believed to have been, accessed, acquired, used, disclosed, or breached. CONTRACTOR shall take
14 prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized
15 disclosure required by applicable Federal and State Laws and regulations. CONTRACTOR shall
16 investigate such breach and is responsible for all notifications required by law and regulation or deemed
17 necessary by COUNTY and shall provide a written report of the investigation and reporting required to
18 COUNTY's Information Security Officer and Privacy Officer and COUNTY's DPH HIPAA Representative.
19 This written investigation and description of any reporting necessary shall be postmarked within the
20 thirty (30) working days of the discovery of the breach to the addresses below:

21	County of Fresno	County of Fresno
22	Department of Public Health	Internal Services Department
23	HIPPA Responsibility	Director of Internal Services/
	Privacy Officer	Chief Information Officer
24	(559) 600-6439	(559) 600-5800
25	P.O. Box 11867	333 W. Pontiac Way
	Fresno, CA 93775	Clovis, CA 93612

26 H. CONTRACTOR shall make its internal practices, books, and records relating to the use
27 and disclosure of PHI received from COUNTY, or created or received by CONTRACTOR on behalf of
28

1 COUNTY, in compliance with HIPAA's Privacy Rule, including, but not limited to the requirements set
2 forth in Title 45, CFR, Sections 160 and 164. CONTRACTOR shall make its internal practices, books,
3 and records relating to the use and disclosure of PHI received from COUNTY, or created or received by
4 CONTRACTOR on behalf of COUNTY, available to the United States Department of Health and Human
5 Services (Secretary) upon demand. CONTRACTOR shall cooperate with the compliance and
6 investigation reviews conducted by the Secretary. PHI access to the Secretary must be provided during
7 CONTRACTOR's normal business hours, however, upon exigent circumstances access at any time
8 must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable to
9 CONTRACTOR and in possession of a Subcontractor, it must certify efforts to obtain the information to
10 the Secretary.

11 I. SAFEGUARDS

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

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

- 28 1. Passwords must not be:

- a) Shared or written down where they are accessible or recognizable by anyone else, such as taped to computer screens, stored under keyboards, or visible in a work area;
- b) A dictionary word; or
- c) Stored in clear text.

2. Passwords must be:

- 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) for the following four (4) groups from the standard keyboard:
 - 1. Uppercase letters (A-Z);
 - 2. Lowercase Letters (a-z);
 - 3. Arabic numerals (0-9); 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

1 against its employees who fail to comply with these safeguards. CONTRACTOR must adopt procedures
2 for terminating access to PHI when employment of employee ends.

3 J. MITIGATION OF HARMFUL EFFECTS

4 CONTRACTOR shall mitigate, to the extent practicable, any harmful effect that is suspected or
5 known to CONTRACTOR of an unauthorized access, viewing, use, disclosure, or breach of PHI by
6 CONTRACTOR or its subcontractors in violation of the requirements of these provisions.

7 CONTRACTOR must document suspected or known harmful effects and the outcome.

8 K. CONTRACTOR'S SUBCONTRACTORS

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

14 L. EMPLOYEE TRAINING AND DISCIPLINE

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

19 M. TERMINATION FOR CAUSE

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

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

1 N. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS

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

8 O. EFFECT OF TERMINATION

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

17 P. DISCLAIMER

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

24 Q. AMENDMENT

25 The parties acknowledge that Federal and State laws relating to electronic data security and
26 privacy are rapidly evolving and that amendment of these provisions may be required to provide for
27 procedures to ensure compliance with such developments. The parties specifically agree to take such
28 action as is necessary to amend this agreement in order to implement the standards and requirements

1 of HIPAA, the HIPAA regulations, the HITECH Act and other applicable laws relating to the security or
2 privacy of PHI. COUNTY may terminate this Agreement upon thirty (30) days written notice in the event
3 that CONTRACTOR does not enter into an amendment providing assurances regarding the
4 safeguarding of PHI that COUNTY in its sole discretion, deems sufficient to satisfy the standards and
5 requirements of HIPAA, the HIPAA regulations and the HITECH Act.

6 R. NO THIRD-PARTY BENEFICIARIES

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

10 S. INTERPRETATION

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

15 T. REGULATORY REFERENCES

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

18 U. SURVIVAL

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

21 V. NO WAIVER OF OBLIGATIONS

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

24 XVI. DISCLOSURE OF SELF-DEALING TRANSACTIONS

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

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

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

8 XVII. ENTIRE AGREEMENT:

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

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

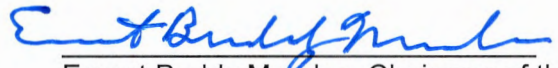
3
4 **CONTRACTOR**

ElanTech, Inc., dba DataTech911

5 By: 
6 Swati Allen, President

7 6751 Columbia Gateway Drive, Suite 300
8 Columbia, MD 21046

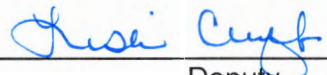
COUNTY OF FRESNO:



Ernest Buddy Mendes, Chairman of the
Board of Supervisors of the County of Fresno

9 **ATTEST:**

10 Bernice E. Seidel
11 Clerk of the Board of Supervisors
12 County of Fresno, State of California

13 By: 
14 Deputy

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23 **FOR ACCOUNTING USE ONLY:**

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25 ORG: 56201693
26 Account: 7309
27 Fund: 0001
28 Subclass: 10000

Exhibit "A"

Authorized Facilities

Abbreviation	Hospital / Emergency Response Dispatch Center	Address
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 Street Fresno, CA 93721
CCMC	Clovis Community Medical Center	2755 Herndon Ave Fresno, CA 93611
COM	Fresno EMS Communications Center	4555 E Hamilton Ave Fresno, CA 93702
CSCADU	Fresno County Crisis Stabilization Center – Adult	4411 E Kings Canyon Rd Fresno, CA 93702
CSCYTH	Fresno County Crisis Stabilization Center – Youth	4411 E Kings Canyon Rd Fresno, CA 93702
KCDPH	Kings County Department of Public Health	330 Campus Drive Hanford, CA 93230
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 4 th 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
VCH	Valley Children's Hospital	9300 Valley Children's Place Madera, CA 93638

1 Exhibit "B"

2 SELF-DEALING TRANSACTION DISCLOSURE FORM

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

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

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

10 INSTRUCTIONS

11 (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.

12 (2) Enter the board member's company/agency name and address.

13 (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the
14 County. At a minimum, include a description of the following:

- 15 a. The name of the agency/company with which the corporation has the transaction; and
- 16 b. The nature of the material financial interest in the Corporation's transaction that the
17 board member has.

18 (4) Describe in detail why the self-dealing transaction is appropriate based on applicable
19 provisions of the Corporations Code.

20 (5) Form must be signed by the board member that is involved in the self-dealing transaction
21 described in Sections (3) and (4).

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(1) Company Board Member Information:

Name:		Date:	
Job Title:			

(2) Company/Agency Name and Address:

(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):

(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):

(5) Authorized Signature

Signature:		Date:	
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