

LEVI, RAY & SHOUP, INC.
Software License Schedule-Term
Version X2.0
CA0329

This License Schedule ("Agreement") is entered into on January 29, 2019 between Levi, Ray & Shoup, Inc., an Illinois Corporation ("Licensor" or "LRS") and the County of Fresno ("Licensee," "County," or "Customer"), who may be referred to as Parties" or individually, as a Party, and is an Agreement to license the Software listed below pursuant to the terms of this License Schedule and the General Terms and Conditions for Term License Agreement Version X2.0 ,which are attached hereto as Exhibit B and incorporated by this reference ("General Terms").

1. **Software.** The following Software products are licensed pursuant to this Agreement subject to the license restrictions set forth in Section 2 below: VPSX Enterprise® and PageCenterX®
2. **License Restrictions.** Unless specified otherwise herein, the Software may be installed on an unlimited number of Designated Servers provided Licensor is notified of the host name and operating system of each Designated Server upon which the Software is installed, and the Designated Servers are located at a single Installation Location. The Software will be delivered with a license key that will restrict usage to Designated Servers for the Term and enforce other license restrictions set forth herein. Subject to the license restrictions below, if Licensee opts to run the Software on a different Designated Server or on a different operating system, upon Licensee's request which shall include the requisite information to generate a license key, Licensor will provide Licensee with a new license key that enables the Software to operate on the newly designated server and/or operating system at no charge.

Upon written request, Licensor shall provide Licensee with a license key to allow Licensee to operate the Software on failover and/or disaster recovery server(s) provided that the license key does not exceed the aggregate number of supported printers and/or users licensed below and that Licensee shall not use the failover/disaster recovery server concurrently in production with the Designated Server(s).

2.1 Software Licensed by Supported Printers

Software	Operating System	Supported Licensed	Printers
VPSX Enterprise	Windows	Twenty-Five (25)	

The number above is the maximum number of Software definitions of output devices (e.g., printers, multi-function devices, fax servers, email servers) (hereafter "Supported Printers"). If the Software is used on more than one Designated Server, the Supported Printers shall be allocated among the Designated Servers. VPSX/PDM, which is a component of the Software, may be installed on up to 10 workstations for every one Supported Printer.

2.2 Software licensed by Users

Software	Operating System	Concurrent Users Licensed
PageCenterX	Windows	Fifty (50)

The number above is the maximum number of individuals that may use the Software at any one time. Licensed users authorized by Licensee may be third parties provided such licensed users shall only have access to the PageCenterX Software via a web browser and shall have no access to the object code or Documentation.

3. **Term:** Three (3) years, beginning on February 1, 2019, and ending on January 31, 2022, inclusive of both dates ("Initial Term"). The Initial Term will automatically renew annually for two (2) additional one (1) year periods for the license fees set forth in section 5 below ("Renewal Terms") unless Licensee chooses not to renew the Term by providing Licensor written notice on or before November 1st of the then current annual period. ("Non-Renewal Notice"). If Licensor receives the Non-Renewal Notice, Licensee will not be responsible for any Licensee Fees for the next annual time period of any Renewal Term.
4. **Installation Location:** 333 W. Pontiac Way, Clovis, CA 93612. Licensee may change the Installation Location within the country where the Software was originally licensed by providing Licensor with thirty (30) days prior written notice. The Installation Location may not be changed to a country other than the country where the Software was originally licensed without the prior written consent of the Licensor, which consent shall not be unreasonably withheld.

Billing address/Invoices: Licensor shall submit invoices (which must reference the provided contract number), either electronically or via e-mail to Licensee as follows:

If via mail: County of Fresno ISD, Accounts Payable, 333 W. Pontiac Way, Clovis, CA 93612
If by e-mail: Accounts Payable (ISDBusinessOffice@Co.Fresno.Ca.US)
5. **Consulting Services Agreement:** LRS will provide consulting, training, and conversion services related to this Agreement, as detailed in the attached Exhibit A, which is incorporated by this reference.
6. **Fees, and Payments:** The License Fees payable under this Agreement shall be paid in the amounts and on the dates set forth in the table below. Licensee shall not be entitled to a refund or a reduction in license fees due should the usage of the Software be reduced during the Term. The license fees due under this Agreement shall be due and payable within forty-five (45) days of receipt of an invoice for the same.

6.1 License Fees

Time Period Covered	License Fee
February 1, 2019 – January 31, 2020	\$49,791.00
February 1, 2020 – January 31, 2021	\$51,285.00
February 1, 2021 – January 31, 2022	\$52,824.00
February 1, 2022 – January 31, 2023	\$54,409.00
First ¹ Option Year	
February 1, 2023 – January 31, 2023	\$56,041.00
Second Option Year	

In no event shall the compensation for License Fees under this Agreement exceed \$154,000.00 during the Initial Term of this Agreement. If the Initial Term is automatically renewed for the First Option Year, the total compensation for License Fees for the entire four (4) year term of this Agreement shall not exceed \$209,000.00. If the First Option Year is automatically renewed for the Second Option Year, the total compensation for License Fees for the entire five (5) year term of this Agreement shall not exceed \$265,000.00.

- 6.2 Upgrade Fees:** During the Term, Licensee may increase the license restriction limits set forth above by entering into a supplement to this License Schedule and by paying the additional license fees based on Licensor's then current price list for the Software. Upon receipt of the executed supplement, Licensor shall invoice Licensee for the additional license fees on a pro rata basis for the remainder of any prepaid annual period. Thereafter, for the remainder of the Term, the annual license fee shall be increased to include such additional license fees. Upon receipt of payment for such additional license fees, Licensor shall provide Licensee with the necessary key(s) to allow the Software to be used to support the new license restrictions.
- 6.3 Not to Exceed Amounts including Consulting Service Fees:** In no event shall the total compensation, including license fees and consulting service fees, for this Agreement (collectively "Total Fee") exceed \$244,000.00 during the Initial Term of this Agreement. If the Initial Term is automatically renewed for the First Option Year, the Total Fee for the entire four (4) year term of this Agreement shall not exceed \$299,000. If the First Option Year is automatically renewed for the Second Option Year, the Total Fee for the entire five (5) year term of this Agreement shall not exceed \$355,000.00.
- 7. Non-Appropriation Termination.** The continuation of this Agreement is contingent upon the appropriation by the appropriating governmental agency ("Governing Agency"). If sufficient funds as determined by the Governing Agency are not appropriated to provide for continuation of this Agreement, the Agreement shall terminate on the first date in any fiscal year on which sufficient funds are no longer available. Licensee will give thirty (30) days or as much notice as possible of an appropriation problem. Licensee agrees that Licensee will use its best efforts to obtain approval of necessary funds to continue the Agreement by taking the appropriate action to request adequate funds to continue the Agreement in force.
- 8.** The Parties agree to abide by the Health Insurance Portability and Accountability Act ("HIPAA") and HITECH Act as set forth in the attached Exhibit C, attached hereto and made a part hereof.
- 9. Acceptance of Reproductions as Originals.** The parties agree that any reproduction of this Agreement made by reliable means (e.g., photocopy, facsimile, scanned image) may be delivered, fully or partially executed, to the other party electronically (e.g., facsimile or electronic mail). Any such reliable reproduction of this Agreement shall be considered an original in all respects and any authorized signature thereon shall be deemed genuine irrespective of whether the signature is an original or a reproduction made by reliable means.

10. **Authorization.** Each undersigned hereby represents and warrants that he or she has been duly authorized by his or her respective Company to enter into and execute the Agreement.

11. **Hold Harmless**

Licensor agrees to indemnify, save, hold harmless, and at Licensee's request, defend Licensee, its officers, agents, and employees from any and all costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and losses, and any and all claims, damages, costs, fees, regulatory fines and penalties, and forms of legal action involving cyber risks, resulting from Licensor's negligence or misconduct in connection with the performance of Services, or failure to perform Services, by Licensor, its officers, agents, or employees under this Agreement. The parties agree that the total liability under this section shall not exceed \$2,000,000.00.

The provisions of this Section 11 shall survive the termination of this Agreement.

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

LEVI, RAY, & SHOUP, INC.



John Howerter, Senior Vice
President EOM
Levi, Ray, & Shoup, Inc.

Date

January 4, 2019

COUNTY OF FRESNO

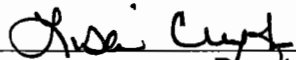


Nathan Magsig, Chairman of the Board of
Supervisors of the County of Fresno

ATTEST:

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

By:



Deputy

FOR ACCOUNTING USE ONLY:

ORG No.: 89050000
Account No.: 7309

Exhibit A
LEVI, RAY & SHOUP, INC.
Consulting Services Agreement

Account # CA0329 – County of Fresno

This Consulting Services Agreement (“Services Agreement”) is incorporated into the Software License Schedule for VPSX Enterprise® and PageCenterX® and governs consulting services provided by LRS to Customer related to the Conversion and Migration of Customer’s existing archive system(s) to PageCenterX® pursuant to the terms of this wider Services Agreement.

1. Scope of Work

LRS is providing consulting services to Customer, for the purpose of migrating a single instance, unless otherwise noted, of one archive, CA ViewDirect for Networks (“Archive”), to a single instance of LRS’s PageCenterX software (“PageCenterX”), which is licensed pursuant to this Agreement. For purposes of this Services Agreement, “Conversion” shall mean adapting and modifying the existing available user and report definitions/functions into a single set of applicable and generally available PageCenterX definitions/functions, as described herein (i.e., Users/Groups, Folders, Reports, Destinations, decollation, etc.). For purposes of this Agreement, “Migration” shall mean providing and using a LRS-proprietary utility to migrate Customer’s existing historical report data from the Archive to a single instance of PageCenterX, as described herein. Based on LRS review of Customer’s Archive, (information from January 26, 2018), there are 686,526 reports dating back to January 1996. Of those, there are 2,226 unique reports. There are 555 unique Recipients, 22,580 distributions (they have both full and partial distributions), 639 unique hierarchy codes. There are 3,814 Users defined and 268 groups. There are 1,037 policy definitions.

- 1.1 LRS will provide appropriate consulting resources for the Conversion and Migration services as described above. LRS tasks may be performed remotely or onsite, as required, at LRS’ discretion.
- 1.2 LRS shall provide a Conversion Specifications Document for Customer’s signature after collaborating with Customer during the Conversion Planning Meeting. Deliverables from the Conversion Planning Meeting will include 1) a spreadsheet of any mapping or translation issues addressed between Customer’s Archive and PageCenterX, and 2) a specifications document outlining decisions that were made in how metadata from the Archive will be converted to PageCenterX.
- 1.3 LRS will bring forward the available metadata from Customer’s Archive and populate PageCenterX with the information. Metadata not available will be entered manually by the Customer or programmatically from a spreadsheet, if made available to LRS. This will be determined in the Conversion Planning Meeting and documented in the Conversion Specifications Document.
- 1.4 LRS will provide implementation planning guidelines to the Customer for parallel processing and production.
- 1.5 LRS will develop and/or customize LRS proprietary programs and scripts necessary for migrating existing historical reports from Customer’s Archive into PageCenterX (the “LRS Proprietary Programs”).
- 1.6 The LRS Proprietary Program may include selection criteria of date range and/or report name/prefix.
- 1.7 LRS Proprietary Programs will be provided to Customer for use in the Migration of their historical reports. The LRS Proprietary Programs shall remain the sole property of LRS. LRS hereby grants Customer a non-exclusive, nontransferable license to use the

LRS Proprietary Programs until the completion of the Migration of the Archive or twelve (12) months after providing the Migration Approval. The LRS Proprietary Programs are not part of PageCenterX and are not covered under Customer's license maintenance agreements for PageCenterX. LRS represents and warrants that it has all rights in and to the LRS Proprietary Programs necessary to grant the license set forth in this Section.

- 1.8 The Migration process will include an audit program that will compare the files in PageCenterX to the files that were in the Customer's Archive to confirm that all of the documents were migrated successfully.
- 1.9 LRS will assist the Customer to successfully migrate at least four (4) of Customer's historical reports from the Archive. This exercise is meant to prove that the migration utility works as designed and that the PageCenterX metadata is correct.
- 1.10 LRS will provide instructions and remote support to the Customer to run the LRS Proprietary Programs so Customer can migrate any remaining historical reports from the Archive.
- 1.11 LRS will provide up to twenty-four (24) hours of implementation, administrator, and end-user training to assist Customer in the successful implementation and Migration from Customer's Archive to PageCenterX. Training may be performed at the Customer's site or via remote desktop sharing, as agreed upon by Customer and LRS. The LRS Project Manager will provide sample training objectives, agendas, and supplemental administrative & end user training guides during the Conversion Planning Meeting.
 - 1.11.1 Remote desktop sharing training must be used in minimum increments of two (2) hours or more. If requested, LRS will provide one (1) onsite training session for a minimum of eight (8) hours, and such onsite training shall be counted towards Customer's twenty-four (24) hour training limit.
 - 1.11.2 The training provided pursuant to this section must be utilized by the Customer within one (1) year from the date of Customer's signature below; any remaining unused training will expire.
- 1.12 Any command procedure that has similar functionality in PageCenterX and can be made available with minor changes, will be provided at no additional cost. **Command procedures that require significant custom development will be estimated and planned outside the current scope.**
- 1.13 LRS will provide the necessary EOM System Engineer(s) ("SE") to perform the following non-Migration Services remotely or onsite, as required. The services in Section 1.13 shall be collectively referred to as **"Integration Services"**:
 - 1.13.1 General installation and configuration of VPSX Enterprise® and PageCenterX for use in a production environment.
 - 1.13.1.1 Assist with the installation and system level configuration of VPSX Enterprise on a Windows® server.
 - 1.13.1.2 Assist with installation and configuration of the LRS infrastructure component (LRS/Web Connect) on a Microsoft Internet Information Server (IIS) web server, as required to enable the browser interface for VPSX Enterprise.
 - 1.13.1.3 Assist with the installation and configuration of the LRS Directory Integration Server (LRS/DIS) including assistance with the configuration of Active Directory integration with VPSX Enterprise.
 - 1.13.1.4 Installation and configuration of LRS/Queue job submission agent on a production Windows® server.
 - 1.13.2 Installation and system level configuration of PageCenterX on a Windows server.
 - 1.13.2.1 Assist with basic configuration of PageCenterX.

- 1.13.2.2 Assist with PageCenterX basic administration services, including basic "Folder", and "Report" definition procedures – up to three (3) reports and usage.
- 1.13.2.3 Demonstrate loading and accessing reports in PageCenterX.
- 1.13.3 LRS Systems Engineer(s) will provide basic knowledge transfer training to Customer personnel in conjunction with these Integration Services:
 - 1.13.3.1 Basic architecture, installation, and configuration.
 - 1.13.3.2 VPSX Enterprise basic administration, including system settings, printer definition – up to five (5) printers, user definition, and usage.
 - 1.13.3.3 Define up to five (5) users in PageCenterX, to provide basic level access to PageCenterX 'Folder' and reports
 - 1.13.3.4 LRS will provide Customer with initial architecture recommendations and best practices for integrating the Customer's Application Delivery Controllers (commonly referred to as Network Load Balancers) with LRS solutions to achieve high availability and/or disaster recovery capability.
 - 1.13.3.5 LRS will provide Customer with general sizing guidelines and guidance for initial sizing of hardware to support the LRS solutions. LRS recommendations are general guidelines based on product knowledge and past experience with representative LRS customers.

The Migration and Conversion services set forth in Sections 1.1 – 1.2 and the Integration Services set forth in Section 1.13 above shall be collectively referred to as "Services".

If LRS determines that the Customer needs services performed beyond the scope of this Services Agreement, then LRS shall consult with the Customer about such services. If the Customer chooses to proceed, the parties shall enter into a separate agreement before such services are commenced.

Services not specifically identified herein (or in any document specifically incorporated herein and signed by both parties) are specifically excluded.

Notwithstanding anything stated to the contrary in the section below titled Limited Warranty and Limitation of Liability, the parties agree that any scripts, filters, utilities or code delivered pursuant to this Services Agreement ("Supported Script") shall be considered an Enhancement to LRS' VPSX Enterprise product. Upon delivery, the Supported Script(s) shall be governed by the parties' software license agreement applicable to VPSX Enterprise ("License Agreement") in all respects and will be maintained and supported pursuant to the terms of the License Agreement.

2. **Performance and Scheduling of Integration Services.** The Integration Services will be performed onsite at Customer's location and/or remotely via telephone, email, and/or via remote desktop sharing sessions as agreed upon by Customer and LRS. LRS does not anticipate allocating an SE to provide the Integration Services on an "on demand" or full-time basis. LRS will work with the Customer on scheduling of Integration Services to meet the Customer's requirements as closely as possible, subject to the availability of LRS SE resources.

3. Customer Responsibilities and Requirements

- 3.1 The Customer is responsible for performing the necessary set-up of the required hardware as well as ensuring that network preparation has been made for the installation of the licensed LRS products in Customer's environment, as outlined in the LRS-provided product manuals. This includes testing and historical reports Migration. Customer is responsible for monitoring these resources during installation and historical reports Migration phases.
- 3.2 The Customer must provide report/file data from the Archive in the original formats or in a format suitable for processing.
- 3.3 If LRS reasonably requires any other information for the PageCenterX system that is not accessible from machine readable sources or cannot be externally loaded into PageCenterX, the Customer will manually enter this information directly into PageCenterX.
- 3.4 Due to differences of certain fields in the Archive versus PageCenterX, in some cases the Customer may be required to supply either a workable algorithm and/or table to map/translate Archive data fields to related PageCenterX data fields.
- 3.5 Portions of the Migration tasks may be performed via remote desktop sharing sessions. Customer will allow use of remote desktop sharing software or an equivalent meeting software, as reasonably required for LRS to remotely access necessary systems and applications (with monitoring by and assistance from Customer staff where reasonably required). LRS can only view and gain access to Customer's systems after Customer logs onto remote desktop sharing, control of the remote desktop sharing session is passed to Customer, and Customer grants said access to the LRS staff.
- 3.6 The Customer will identify internal personnel to participate as part of the Customer's Migration team. Skill sets required by Customer throughout the project will be provided by the LRS Project Manager before the project begins.
- 3.7 The Customer must designate a primary contact with knowledge of and access to all applicable Customer systems, at the required security levels, to be available to LRS during all remote desktop sharing sessions, as well as during any onsite work. In order to complete these tasks in the time allotted, the Customer must be fully available and committed to accomplishing these tasks. Remote desktop sharing sessions shall take place during times mutually agreed to by the parties.
- 3.8 Customer shall provide existing datasets from the Archive, where required, to provide information for PageCenterX users/groups, and report characteristics (i.e., report names, report generations to retain, etc.) LRS is not able to process any permissions that are defined in external security products.
- 3.9 Customer will provide information on the installation of the Archive, setup and implementation. This may include, but is not limited to, file layouts and access to documentation on the Archive.
- 3.10 Customer will determine and notify LRS of the PageCenterX folder structure, within the PageCenterX capabilities that the software provides, to be used for the reports coming from the Archive.
- 3.11 Customer will participate in a three (3) day on-site planning session to discuss details of the Archive project ("Conversion Planning Meeting"). During the Conversion Planning Meeting, Customer shall collaborate with LRS to develop and execute a document which will contain detailed information on how decision points taken in the Conversion Planning Meeting will be implemented ("Conversion Specifications Document"). This Conversion Specifications Document will be technical in nature, detailing specific technical issues which were discovered that need to be addressed as part of the Conversion process. The Conversion Specifications Document will be used

as the specification to which the Conversion team will work. If any questions arise during the Conversion work, the parties will work in good faith to amend the Conversion Specifications Document.

- 3.12 Customer must approve the Conversion Specifications Document, which includes the structure and naming conventions of the PageCenterX folders, before LRS will generate the metadata for PageCenterX. If no response is received from the Customer within ten (10) business days, the Conversion Specifications Document will be deemed approved.
- 3.13 Within ten (10) business days of receipt, the Customer will review and approve the final metadata Conversion results. If no response is received from the Customer within these ten (10) business days, the metadata Conversion results will be deemed approved. If Customer rejects the metadata Conversion results, LRS shall make any necessary and mutually agreed upon revisions to the metadata Conversion results, and Customer shall have an additional five (5) business days after receipt of the revised metadata Conversion results to either approve or reject the metadata Conversion results in writing.
- 3.14 If it is determined that parallel processing is required, the Customer will provide sufficient space on a server that will be used for re-queuing reports to the Archive once VPSX Enterprise has processed them for PageCenterX to allow for parallel processing between Customer's Archive and PageCenterX. The simplest way to achieve this is to leave all Production jobs unchanged and have the Customer send their reports wherever the reports are currently sent. LRS will set VPSX Enterprise up to intercept these reports, then pass the reports on to the other directory in addition to PageCenterX. The one change necessary is to get the Archive to read the other directory.
- 3.15 Customer is responsible for reviewing and approving the results of the four (4) historical reports migrated by LRS (see Scope of Work) ("Migration Approval"). The Migration Approval must occur within five (5) business days after LRS has informed Customer that the reports have been migrated. If no response is received from the Customer within five (5) business days, the results will be deemed approved. If the Customer rejects the historical reports, LRS shall make any necessary revisions to the LRS Proprietary Program, and Customer shall have an additional five (5) business days after receipt of the revised historical reports to either accept or reject the historical reports in writing.
- 3.16 Customer is responsible for migrating historical reports required by Customer and running the audit program supplied by LRS. Customer is responsible for reviewing and processing any exceptions found during the audit to ensure that all required historical reports are migrated without any duplication or omission.
- 3.17 Customer shall remove LRS Proprietary Programs from its environment upon the completion of the Migration of the Archive or twelve (12) months after providing the Migration Approval, whichever occurs earlier. At LRS's request, Customer shall notify LRS in writing when LRS Proprietary Programs have been removed.
- 3.18 In the event that the Customer adds new reports or users to the Archive system between the completion of the Conversion Planning Meetings and the PageCenterX production cut-over, it will be the Customer's responsibility to migrate any metadata and reports to PageCenterX.
- 3.19 If applicable, the Customer shall be responsible for ensuring the cooperation of any IT outsourcer engaged by Customer where required to enable LRS to perform the Conversion and Migration services described herein. LRS shall not be responsible for any delay in providing services to the extent caused by such outsourcer's failure to cooperate as reasonably required for the completion of the services.

- 3.20 The Customer shall be responsible for implementing Support for ActivePerl® on the VPSX® and PageCenterX® servers, if it is not already available. If necessary and requested by LRS, the Customer may need to upgrade or install ActivePerl® because the LRS Proprietary Programs include some that are written in ActivePerl®. Should Customer prefer not to install ActivePerl® in its environment, LRS can instead deliver ActivePerl® scripts as executables.
- 3.21 The Customer is responsible for all initial and ongoing configuration and maintenance of their Application Delivery Controllers and associated configurations for high availability and/or disaster recovery of the LRS solutions.
- 3.22 The Customer is ultimately responsible for selecting the hardware size and configuration and is responsible for all maintenance of the associated hardware and supporting software.
- 3.23 The Customer shall provide resources with the appropriate authority and access to all areas of the system necessary to accomplish the Integration Services.
- 3.24 The Customer shall coordinate its resources to ensure LRS has sufficient opportunity to perform the requested Integration Services under this Services Agreement.
- 3.25 The Customer shall furnish LRS all technical data and information as may be reasonably determined by LRS to be necessary to prove the Integration Services included under this Services Agreement, including but not limited to, reference and instructional materials about Customer's computing environment, standards, procedures, etc., and to any documentation relating to relevant Customer applications.

4. Key Assumptions

- 4.1 Report formats from Customer's Archive are consistent throughout the period to be back filled or the Customer can identify where to implement changes.
- 4.2 Decisions on how to handle the Migration of the Customer's data from the Archive will be determined jointly by LRS and Customer during the Conversion Planning Meeting.
- 4.3 Based on LRS' understanding of Customer's planned business usage of PageCenterX, LRS will recommend naming conventions to be used for the PageCenterX folder structure, as required. However, the Customer will make the final determination on the naming conventions that will be used for the migration.
- 4.4 Only reports from Customer's Archive will be migrated to PageCenterX. No other archives will be included in this scope of work.
- 4.5 If Customer uses external security or custom security code for accessing reports, the Customer is responsible for setting up the security surrounding users, user groups and permission in PageCenterX.
- 4.6 Historical reports that will be migrated will be processed from the Archive. PageCenterX definitions are set up to capture reports based on the source creation system. There will NOT be separate PageCenterX definitions for the historical reports.
- 4.7 If historical reports do not match the defined PageCenterX capture criteria, then Customer will need to decide the approach to handle historical reports to be migrated. Options will be discussed and presented to Customer before proceeding.
- 4.8 Any z/OS output must be routed through the JES spool in order to be captured by PageCenterX.
- 4.9 The Customer can identify reports requiring overlays.
- 4.10 Overlays have remained consistent throughout the period to be back filed or the Customer can identify where to implement changes.
- 4.11 PageCenterX cannot directly support AFP documents, and conversion software products to convert data from AFP or MMD to PDF may be required and can be licensed from LRS under a separate license agreement. These conversion software products support the transformation of most reports generated in production AFP

environments. However, during the process of a Conversation/Migration, it is occasionally possible to uncover reports that use non-standard AFP resources and/or constructs that may cause them to transform to PDF incorrectly. Handling unusual requirements of this nature may result in a change to the overall cost for the Conversion/Migration.

- 4.12 If Xerox reports or data stream need to be supported for either ongoing reporting or for historical reports in PageCenterX, this will be addressed when the full requirements are known. Depending on the requirements this may result in a change to the overall cost for the Conversion/Migration.
- 4.13 Any Existing Bundling of reports in the Archive will NOT be brought forward to PageCenterX.
- 4.14 No special exits or customizations appear to be in use in the Customer's Archive, so no equivalent special processing will be needed in PageCenterX.

5. Fees and Payment

Customer shall pay LRS a total fixed fee of \$80,000.00 for Services performed under this Agreement, ("Total Service Fee"). The Total Service Fee represents \$60,000.00 for Migration and Conversion Services and \$20,000.00 for Integration Services. The fee for all Services provided hereunder shall not exceed \$80,000.00 without prior written approval from Customer and does not include any travel-related expenses incurred by the project team when performing these services.

LRS shall invoice Customer for the Services based on the milestones set forth in the table below. Customer shall pay all invoices within forty-five (45) days from receipt of the invoice.

Milestone	Amount to be Invoiced
1. Upon the execution of the Agreement by Customer	\$ 25,000.00
2. Upon completion of Integration Services as set forth in Section 1.13.1	\$ 20,000.00
3. Upon completion of Conversion Planning Meetings and Basic Administrative Training.	\$ 15,000.00
4. Delivery of PageCenterX Advanced Import Definitions.	\$ 15,000.00
5. Delivery of Migration utility and assistance with sample Migration of reports from Customer's Archive.	\$ 5,000.00

Any expenses for "reasonable and customary" travel by the project team (e.g. air fare, car rental, hotels, meals, etc.) to/from Customer's location for Services (collectively, "Expenses") will be billed and invoiced monthly as incurred.

LRS agrees that Expenses will not exceed \$7,500.00 without prior written approval from Customer.

In no event shall the compensation for services and related expenses, including taxes, exceed \$90,000 during the term of this Services Agreement.

6. Changes to Scope of Work

Changes to the Conversion Specifications Document will be managed as change requests signed by both parties and may result in modifications to the milestones, deliverable schedule, and/or fees. Change requests that result in delays or additional work as a result of those changes shall be billable at a rate of \$250.00 per hour, plus expenses, unless otherwise agreed by the parties. LRS shall not begin work on any change request or modification to the Conversion Specifications Document until the parties agree to such request in writing.

Exhibit B
LEVI, RAY & SHOUP, INC.
GENERAL TERMS AND CONDITIONS FOR TERM LICENSE AGREEMENT
Version X2.0

These General Terms and Conditions ("General Terms") will apply between Levi, Ray & Shoup, Inc., an Illinois Corporation ("Licensor") and Licensee. These General Terms will be effective as of the Effective Date. Agreements to license additional Software, or to re-license Software upon the expiration of a Term, may be accomplished by amending the Agreement and executing new License Schedules incorporating these General Terms.

1.0 Definitions.

- 1.1 **Affiliate** means in relation to the County of Fresno or any various County departments.
- 1.2 **Agreement** means a License Schedule signed by Licensor and Licensee that references and incorporates these General Terms pursuant to which Licensor licenses Software to Licensee.
- 1.3 **Company** means any natural person or any corporation, partnership, trust, association or any other type of legal entity.
- 1.4 **Critical Problem** means a problem caused by the Software resulting in a material interruption to the Licensee's business operations.
- 1.5 **Designated Server** means any server upon which the Software is installed and which is enabled by a license key provided by Licensor.
- 1.6 **Documentation** means the technical information and user manuals pertaining to the Software which are made available to Licensee pursuant to the Agreement.
- 1.7 **Effective Date** in reference to the Agreement is the earliest signature date on the Agreement between Licensor and Licensee.
- 1.8 **Enhancement** means generally available improvements, fixes, modifications, changes, filters or new releases or versions of the Software and any accompanying Documentation.
- 1.9 **Installation Location(s)** is Licensee's facility(ies) located at the address(es) listed on or identified pursuant to the applicable License Schedule indicating where the Software is or may be installed.
- 1.10 **License Schedule** means the Agreement signed by Licensor and Licensee that incorporates these General Terms and by which Licensor licenses Software to Licensee.
- 1.11 **Licensee** means the County of Fresno.
- 1.12 **Licensor** means Levi, Ray & Shoup, Inc.
- 1.13 **Software** means the software products listed on the License Schedule and such term shall also include the Documentation and Enhancements.
- 1.14 **Term** means the period designated as such in the applicable License Schedule.

2.0 Pricing and Payment Terms.

- 2.1 **Fees.** The license fees for the Software shall be set forth on the applicable License Schedule and shall include maintenance as described in Section 7.0.
- 2.2 **Interest.** Licensor reserves the right to charge interest at the rate of 1.5% per month, or the maximum amount allowed by law, whichever is less, on such unpaid amounts for each calendar month or fraction thereof that any payment to Licensor is more than forty-five (45) days in arrears.

2.3 **Taxes.** Licensee shall be responsible for the payment of all applicable taxes based or measured thereon, or on this transaction, and such taxes, excluding taxes based on Licensor's income. Licensor's invoice shall not include any amount for taxes unless the same are listed apart from the fees and Licensor is authorized to collect the same.

2.4 **Tax Exempt Licensee.** If Licensee is tax exempt, Licensee will not be responsible for, nor will it be invoiced for any tax, provided Licensor receives a copy of Licensee's tax exempt certificate prior to the issuance of the applicable invoice.

3.0 Grant of License. Subject to the terms and conditions of the Agreement, Licensor grants, and Licensee accepts, a non-exclusive, nontransferable license to use the Software for the Term.

4.0 Restrictions on Use and Audit Rights.

4.1 The Software may only be used in machine-readable form and only by the Licensee for the internal business purposes of the Licensee and its Affiliates. Notwithstanding anything to the contrary stated herein, Licensee may not use the Software for the benefit of unaffiliated third parties who pay, directly or indirectly, for its benefit.

4.2 Licensee may allow its contractors temporary access to the Software and Documentation, but only to the extent such access is necessary to allow the Licensee to directly use the Software or its computer systems effectively and provided that the contractors have signed a nondisclosure agreement which effectively prohibits those contractors from disclosing or disseminating to third parties, or using for their own benefit, all or part of the Software and Documentation. Such nondisclosure agreements do not have to specifically name the Software and Documentation in order to comply with this section.

4.3 Licensee may keep such copies of the Software as is customary and necessary as part of its automated back-up system. In addition, Licensee may keep one other copy of the Software for archival purposes.

4.4 No more than annually, upon written request by Licensor, Licensee shall provide Licensor with a certified statement which describes how and where the Software is being used and such certified statement must include any records, reports, or other information reasonably requested by Licensor to determine Licensee's compliance with the licensing restrictions in the Agreement. Further, no more than annually, upon prior written notice, Licensor may visit Licensee's places of business in order to determine compliance with this Agreement.

4.5 **Audits and Inspections.** Licensee shall at any time during Licensor's normal business hours, and upon prior written notice, no more than annually, make available to the Licensee for examination all of its records and data with respect to the matters covered by this Agreement. Licensor shall, upon request by Licensee, permit Licensee to audit and inspect all of such records and data necessary to ensure Licensor's compliance with the terms of this Agreement. Any such examinations or audits shall be at the Licensee's expense.

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

5.0 Protection of Software and Licensee's Confidential Information.

5.1 **Acknowledgment of Trade Secrets.** The Agreement does not transfer any ownership or title in the Software or the Documentation to Licensee and all ownership rights

will remain in Licensor or its suppliers. Licensee acknowledges Licensor's representation that the Software and its Documentation contain valuable trade secrets and are protected by United States and international copyright laws and treaties. Licensee may not disclose or make available to third parties the Software, its Documentation or any portion thereof without Licensor's prior written approval, except as specifically allowed under Section 4.0. Licensor has the exclusive right to modify and enhance the Software and its Documentation, and the Licensee agrees that it will make no effort to reverse engineer, reverse assemble, decompile or otherwise attempt to derive source code from the Software except as expressly authorized by applicable law for purposes of achieving interoperability. Licensee shall not make any attempt to circumvent the technological measure(s) that controls access to, or use of, the Software.

- 5.2 Delete Copies. Upon termination of the Agreement, or any Software license granted pursuant to the Agreement, that is not superseded by another Agreement, Licensee must immediately delete or otherwise destroy all copies of the applicable Software and Documentation other than copies which have been created pursuant to automatic archiving or back-up processes that cannot reasonably be deleted. Upon request, Licensee shall certify in writing to Licensor its compliance with this paragraph within five (5) days after such request.
- 5.3 Proprietary Notices. All copies of the Software, in whole or in part, shall contain all restrictive and proprietary notices as they appear on the copy of the Software provided by Licensor. In no event may Licensee copy in whole or in part the Software or the Documentation without the Licensor's prior written consent except as allowed in the applicable License Schedule.
- 5.4 Licensee's Confidential Information. All information, documents or records to which Licensor has access as a result of the Agreement shall be treated by Licensor as the Licensee's proprietary information and shall not be disseminated or disclosed to third parties without Licensee's prior written consent. Licensor agrees not to disclose Licensee's Confidential Information (defined below) other than to persons in its organization who have a need to know and who will be required to comply with this Section. Licensor will not use Licensee's Confidential Information for a purpose inconsistent with the terms of this Agreement. "Licensee's Confidential Information" means Licensee's Software, Licensee's documentation, all information and intellectual property related to Licensee as well as information related to the business of Licensee. Licensee's Confidential Information will not include: (i) information publicly known prior to disclosure; (ii) information coming into the lawful possession of the recipient without any confidentiality obligation; and (iii) information required to be disclosed pursuant to regulatory action or court order, provided adequate prior written notice of any request to disclose is given to Licensee. Licensor will exercise at least the same degree of care to safeguard Licensee's Confidential Information as it does to safeguard its own proprietary confidential information, but not less than a reasonable degree of care.
- 5.5 Injunctive Relief. Nothing contained in the Agreement shall prohibit either party from seeking injunctive relief or specific performance for violation or threatened violation of Section 5.0, as both parties agree that a material breach of Section 5.0 would give rise to irreparable harm not adequately compensable by money damages.

6.0 Warranty Against Infringement.

- 6.1 Warranty/Exclusive Remedy. Licensor warrants that the Software will be delivered free of the rightful claim of any third party by way of infringement or misappropriation of rights arising under the laws of the country in which the Software is licensed.

LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY IS SET FORTH IN SECTIONS 6.2 AND 6.3.

- 6.2 Licensor's Duty To Indemnify. If a claim is made by a third party against Licensee that alleges a breach of the warranty set forth in Section 6.1, then Licensor shall defend against such claim at its own expense and shall indemnify Licensee and hold it harmless against any demands, costs and expenses, penalties, attorney's fees, claims and losses, actions, settlement or any judgment, including an award of attorneys' fees, that may be awarded by a court of competent jurisdiction against Licensee as a result of the foregoing; provided that Licensee gives Licensor prompt written notice of such claim, allows Licensor to control the defense, and provides Licensor with all reasonable cooperation. Further, Licensor shall have no liability or duty to Licensee for any claim of infringement pursuant to this section if the claim is based on Licensee's, or third party's addition or modification to the Software when the claim of infringement is based on the addition or modification and the addition or modification was not authorized in writing by Licensor.
- 6.3 Licensor's Right To Correct. If a claim is made by a third party against Licensee that alleges a breach of the warranty set forth in Section 6.1, or if Licensor believes that a likelihood of such a claim exists, Licensor shall, in Licensor's sole discretion, procure for Licensee the right to continue using the Software, modify it to make it non-infringing but continue to meet the Software's functionality, or replace it with non-infringing software of like functionality; provided, however, if none of the foregoing is reasonably available to Licensor, either party may terminate the applicable Agreement, in which case the Licensee shall return the Software to Licensor pursuant to Section 5.2 and Licensee's obligation to pay license fees shall cease and Licensee will be refunded on a pro rata basis any prepaid license fees for the remainder of the Term.

7.0 Maintenance and Support. The maintenance and support services in this Section 7.0 shall only be provided in conjunction with the current release of the Software and the release immediately preceding the current release of the Software and only if no fees are owed under the Agreement. Licensor shall provide the following maintenance and support services to Licensee subject to the terms and conditions of the Agreement.

- 7.1 Telephone support by qualified personnel shall be available between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday current U.S. Central Time, excluding Licensor holidays (a list of which for any year shall be made available).
- 7.2 Emergency telephone support for Critical Problems by qualified personnel shall be available every day of the year, twenty-four hours a day, with a response time of two hours or less.
- 7.3 Licensor maintains a support section on its Web site for all of its Licensees. All software code and product documentation contained within and made available to Licensee via the support section shall be a part of the Software.
- 7.4 Licensor shall make available to the Licensee all Enhancements to the Software.
- 7.5 Licensor shall make available Enhancements to the Software if and as required to cause it to operate with new releases of the operating system so long as such updates are technically and commercially feasible.

8.0 Licensee Obligations. Licensee will: (a) Ensure that the Software is used only as set forth in the Agreement and operated and maintained in accordance with its Documentation; (b) Ensure that only adequately trained, competent and authorized persons are allowed to operate the Software; (c) In the event of an actual or apparent malfunction of the Software, take all reasonable actions to document or record the form, nature, apparent cause or

symptoms of the malfunction. Upon request, such documents or records must be supplied or provided to Licensor during the course of problem resolution.

9.0 Date Mechanism. The Software may contain a mechanism that will cause the Software to cease to operate on the date that is set by Licensor. The date mechanism shall never be fully disabled during a term license; however, if all payments are timely made, Licensee will be provided with the necessary license files and/or product keys which will prevent the Software from being disabled by the date mechanism. Licensor has no remote access to the Software.

10.0 Warranties, Disclaimers, Remedy.

10.1 Limited Warranty for Services.

- a. **Limited Warranty for Maintenance and Support Services.** Licensor warrants that it will perform the services detailed in Section 7.0 with reasonable care and skill and that, during the Term, the Software will function substantially in accordance with its Documentation. Licensor does not warrant that the Software will be error free.
- b. **Limited Warranty for Consulting Services:** Licensor shall perform consulting services under any applicable consulting services agreement governed by these Terms and Conditions, in a workmanlike manner using reasonable care and skill.

10.2 NO OTHER WARRANTIES FOR SOFTWARE AND CONSULTING SERVICES.

- a. **NO OTHER WARRANTIES FOR SOFTWARE:** EXCEPT FOR THE WARRANTIES CONTAINED IN SECTION 6.0 AND IN SECTION 10.1(a), LICENSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE SOFTWARE INCLUDING ANY WARRANTY OF MERCHANTABILITY, ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE.
- b. **NO OTHER WARRANTIES FOR CONSULTING SERVICES:** EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 10.1(b) ABOVE, LICENSOR MAKES NO OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

10.3 EXCLUSIVE REMEDY FOR SOFTWARE AND SERVICES.

- a. **EXCLUSVIE REMEDY FOR SOFTWARE:** LICENSEE'S EXCLUSIVE AND SOLE REMEDY FOR THE BREACH OF THE WARRANTIES CREATED IN SECTIONS 10.1(a) AND 10.2(a) IS LIMITED TO REPAIR OF DEFECTS, REPLACEMENT OF SOFTWARE, OR LICENSEE MAY TERMINATE THE LICENSE FOR THE APPLICABLE SOFTWARE AND RECEIVE A REFUND OF LICENSE FEES ACTUALLY PAID TO LICENSOR FOR THE APPLICABLE SOFTWARE UNDER THE AGREEMENT DURING THE FIRST THREE YEARS OF THE TERM OR, IF THE TERM IS LESS THAN THREE YEARS, THE LICENSE FEES ACTUALLY PAID UNDER THE AGREEMENT DURING THE TERM.
- b. **EXCLUSIVE REMEDY FOR CONSULTING SERVICES:** EXCEPT FOR A CLAIM FOR PERSONAL INJURY OR TANGIBLE PROPERTY DAMAGE, LICENSOR'S TOTAL LIABILITY FOR DAMAGES UNDER ANY APPLICABLE CONSULTING SERVICES AGREEMENT, REGARDLESS OF THE FORM OF

ACTION OR THEORY OF LIABILITY (INCLUDING CONTRACT, TORT, OR WARRANTY), SHALL BE LIMITED TO SERVICE FEES ACTUALLY PAID TO LICENSOR UNDER THIS AGREEMENT. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES OR DAMAGES FOR ECONOMIC LOSS OF ANY KIND (INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSS OF DATA, LOSS OF USE OR CLAIMS OF THIRD PARTIES) THAT MIGHT ARISE AS A RESULT OF THE PERFORMANCE OR BREACH OF CONSULTING SERVICES SET FORTH IN AN APPLICABLE CONSULTING SERVICES AGREEMENT GOVERNED BY THESE GENERAL TERMS OR IN ANY WAY ARISES OUT OF OR IN CONNECTION WITH ANY CONSULTING SERVICES AGREEMENT GOVERNED BY THESE GENERAL TERMS.

- 11.0 Exclusions.** Licensor's limited warranty in Section 10.1(a) will be void and its service obligations in Section 7.0 will not apply when: (a) A hardware failure or fault occurs and causes corruption or loss of the Software or data, although Licensor personnel will use reasonable efforts to assist if such problems arise; (b) Licensee or a third party interferes with or modifies the Software and the interference or modification causes corruption or loss of the Software or data, unless such modification is allowed in the Documentation or with Licensor's written permission; (c) Licensee fails to implement recommendations to correct faults previously advised by Licensor or fails to install Enhancements made available pursuant to the Agreement; or, (d) Licensee is in material breach of the Agreement.

12.0 LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES/INDEPENDENT CLAUSES.

- 12.1 EXCEPT FOR CLAIMS UNDER SECTIONS 2.0, 5.0, OR 6.0, EITHER PARTY'S TOTAL LIABILITY FOR CLAIMS IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING CONTRACT, TORT OR WARRANTY), IS LIMITED TO THE AGGREGATE AMOUNT OF (1) SERVICE FEES SET FORTH IN AN APPLICABLE SERVICES AGREEMENT, AND (2) LICENSE FEES SET FORTH IN THE LICENSE SCHEDULE FOR THE FIRST THREE YEARS OF THE TERM OR, IF THE TERM IS LESS THAN THREE YEARS, THE AGGREGATE AMOUNT OF LICENSE FEES SET FORTH IN THE LICENSE SCHEDULE FOR THE TERM. IN NO EVENT, EXCEPT FOR A CLAIM UNDER SECTIONS 5.0, AND 6.0, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF DATA, LOSS OF USE, OR CLAIMS OF THIRD PARTIES) THAT MIGHT OCCUR AS A RESULT OF THE PERFORMANCE OR BREACH OF THE AGREEMENT OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.
- 12.2 SECTION 12.1 IS INDEPENDENT OF SECTION 10.3 AND SHALL BE VALID AND ENFORCEABLE WHETHER OR NOT SECTION 10.3 FAILS OF ITS ESSENTIAL PURPOSE OR IS FOUND TO BE UNCONSCIONABLE.
- 12.3 No action, regardless of form, arising out of the Agreement may be brought by either party more than two (2) years after either party has become aware of the cause of action.

13.0 Assignment. A party may assign the Agreement without the prior written permission of the other only in the following circumstances: 1) to an Affiliate; 2) where all or substantially all of the assets of a party are sold to, or merged or consolidated with, another Company; or 3) only in the case of the Licensor, where all or substantially all of the Software licensed hereunder is sold to another Company. Any other attempted assignment shall be invalid and void. Notwithstanding anything to the contrary stated herein, no assignment allowed hereunder shall be valid until the other party receives a valid assignment signed by both the assignor and assignee transferring all rights and obligations hereunder to the assignee.

14.0 Termination/Remedies.

14.1 Termination. Each Agreement shall automatically terminate upon expiration of the Term. Either party may terminate the Agreement before the expiration of the Term if the other party is in breach of the Agreement and such party fails to remedy such breach within thirty (30) days after written notice thereof by the non-breaching party. Further, either party may terminate the Agreement immediately upon written notice of a breach of Section 5.0.

14.2 Force Majeure. Notwithstanding anything to the contrary stated herein, neither party shall be liable for any breach of its obligations resulting from causes beyond its reasonable control including but not limited to fire, earthquakes, tornadoes, nuclear disasters, acts of terrorism, insurrection or riots, wrecks or delays in transportation, or regulation of civil or military authority (an "Event of Force Majeure"). If a default due to an Event of Force Majeure continues for more than three (3) months then either party may terminate the Agreement without cause or liability, except that which may have accrued up to the Event of Force Majeure.

14.3 Effect of Termination. Sections 4.4, 5.0, 6.0, and 12.0 shall survive the termination of the Agreement and termination of the Agreement is without prejudice to the rights and obligations of the parties that have accrued up to and including the date of termination. No refund of fees paid under the Agreement shall be made in the event of termination unless caused by Licensor's breach.

14.4 Remedies. All rights and remedies of the parties shall be cumulative but shall always be limited by Sections 6.0, 10.2, 10.3, and 12.0.

15.0 General and Miscellaneous Clauses.

15.1 **Notice/Primary Escalation Contact Information.** All notices or demands relating to indemnification, warranty, or any breach, default, violation or dispute shall be in writing and shall be delivered personally or sent by certified mail with return receipt requested or a nationally recognized overnight courier service. Any such notice or demand shall be deemed to have been delivered on the date of delivery or refusal as set forth on the return receipt. Any other notice or demand required hereunder shall be sufficient if sent electronically and shall be deemed to have been delivered upon confirmation the e-mail was successfully sent by the Party. The Parties agree that any such electronic notice sent by either Party and received by the other Party shall be deemed an authentic original and any signature thereon will be deemed genuine.

All written notices shall be sent to the following either via certified mail or electronically to the physical addresses and/or e-mail addresses listed below.

Licensee

County of Fresno
Chief Information Officer
333 W. Pontiac Way
Clovis, CA 93612
IDSBusinessOffice@FresnoCountyCA.gov

Licensor

Levi, Ray & Shoup, Inc.
Jenni Manning
2401 W. Monroe Street
Springfield, IL 62704
Jenni.Manning@lrs.com

The persons and their contact information that the Licensee or Licensor can use to escalate problems or situations related to this Agreement are listed below and may be updated on an as-needed basis by either Party by notifying the other Party.

Licensee Primary Escalation Contacts

Licensor's Primary Escalation Contacts

Contact #1 Issues

Americo Papaleo
Information Technology Manager
Office Phone: (559) 600-5800
Email: apapaleo@FresnoCountyCA.gov

Contact #1/Business Related Issues

David Manning
Senior Account Representative
Office Phone: (217) 793-3800, ext 1628
Email: David.Manning@lrs.com

Contact #2 Issues

Sheri Walden
Information Technology Division Manager
Office Phone: (559) 600-5800
Email: swalden@FresnoCountyCA.gov

Contact #2/Contractual Related Issues

Chris Colliver
Sr. Contracts Manager, EOM NA
Office Phone: (217) 793-3800, ext. 1641
Email: Chris.Colliver@lrs.com

- 15.2 **Severability.** If any provision of the Agreement or the application of a provision to any Company or circumstance is held invalid, the remainder of the Agreement, or the application of the provision to Companies or circumstances, other than those as to which it is held invalid, will not be affected. But if a court rules that any part of Section 5.1 is not enforceable because it is invalid, then the Agreement in its entirety may terminate at Licensor's option and Licensee must immediately return all copies, in whole or in part, of the Software and Documentation. Under these circumstances, Licensee's obligation to pay future license fees will cease and any prepaid license fees will be refunded on a pro rata basis.
- 15.3 **Parties Bound.** The Agreement shall be binding upon the parties, their successors, permitted assigns, and legal representatives.
- 15.4 **No Intended Third Party Beneficiaries.** The Agreement is for the sole benefit of the parties and their successors and permitted assigns and the Agreement shall not be construed as conferring any rights or remedies on any other Company.
- 15.5 **Applicable Law.** The Agreement shall be governed by the laws of the State of California, without giving effect to its choice-of-law provisions. This Agreement shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods.
- 15.6 **Export Compliance.** Licensee agrees to comply with all applicable export laws and regulations of the United States, the EU, the UN and the country of the Installation Location (collectively, "Export Controls"). Licensee will not, directly or indirectly, export, re-export, divert, or transfer the Software to any locations, to any end-user,

or for any end-use, without complying with the Export Controls. Without limiting the foregoing, the Licensee specifically agrees that it will not export or re-export the Software (1) to any embargoed country, currently including Cuba, Iran, North Korea, Sudan and Syria or (2) to any person or Company listed on the denied or restricted party list, or (3) for any restricted end-use related to the development, design, production or use of nuclear, chemical or biological weapons or missiles.

- 15.7 Headings, Gender. All section headings contained in the Agreement are for convenience of reference only, do not form a part of the Agreement and shall not affect in any way the meaning or interpretation of the Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires. Further, reference to a single section number ending in a zero, e.g., 5.0, is a reference to all of the sections starting with the same number. For example, a reference to Section 5.0 is a reference to Sections 5.1, 5.2, 5.3, 5.4, and 5.5 as well.
- 15.8 Waiver. A waiver of a breach of any term of the Agreement shall not be construed as a waiver of any later breach or as a waiver of the provision itself. A party's performance after the other party's breach shall not be construed as a waiver of that breach.
- 15.9 Final Agreement/Conflicts. The Agreement constitutes the complete, final and exclusive expression of the parties' agreement, and supersedes all proposals and other communications made between the parties concerning the subject matter hereof. The Agreement cannot be modified except by a written agreement signed by the parties except as may be set forth in the applicable License Schedule. If there is a conflict between these General Terms and any License Schedule, the terms of the License Schedule shall control and prevail. If there is a conflict between these General Terms and any consulting services agreement, the terms of the consulting services agreement shall control and prevail. All capitalized terms in any License Schedule shall have the same meaning as set forth in these General Terms, unless otherwise defined therein.
- 15.10 Electronic Delivery. The Software and Documentation (and any previously licensed software products and documentation) will be made available to Licensee only by electronic or another mode of intangible delivery. Licensor reserves the right to change the mode of delivery if the change is generally applicable to all of its licensees. Certain states under certain circumstances do not assess sales or use tax on software licenses and software maintenance where the software, maintenance and documentation are delivered electronically. For all such electronic transactions Licensor will not assess sales or use tax in applicable states. Notwithstanding Section 2.3, Licensee hereby agrees to reimburse Licensor for any and all use or sales tax and attendant interest, if any, that may be assessed against Licensor by the local taxing authority for such electronic transactions should Licensor be required to pay the local taxing authority on Licensee's behalf.
- 15.11 Infrastructure and No Charge Code. Any client-based code of the Software may be installed on the applicable client whether inside or outside of the Installation Location. All infrastructure and other no-charge code that is shipped or bundled with the Software is automatically licensed for the Term as Software pursuant to this Agreement. To the extent that the Documentation specifies usage rights for the infrastructure and other no-charge code that are broader than the usage rights specified in this Agreement, such broader usage rights shall become part of this Agreement as it applies to such code. Similarly, all fonts that are bundled as a part of the Software product without charge are licensed for the Term and as set forth in the Documentation. All supported scripts, utilities or other software code that are

provided to Licensee pursuant to a trial, evaluation or proof of concept agreement signed by the parties are automatically licensed for the Term as Software pursuant to this Agreement unless agreed otherwise in a services agreement or statement of work signed by the parties.

- 15.12 Third Party Software. The software programs listed in the License Schedule may include software programs under the licenses from third parties ("Third Party Software" and "Third Party License"). Any Third Party Software is licensed to Licensee subject to the terms and conditions of the corresponding Third Party License. The Third Party Licenses are located in the Documentation. If the Third Party Licenses include licenses that provide for the availability of source code (such as the GNU General Public License) and the corresponding source code is not included with the Software, then contact Licensor support to learn how to obtain such source code.
- 15.13 No Credit Card. The License fees and all other amounts due under this Agreement cannot be paid by credit card.
- 15.14 Independent Contractor. In performance of the work, duties and obligations assumed by Licensor under this Agreement, it is mutually understood and agreed that Licensor, including any and all of the Licensor'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 Licensee. Furthermore, Licensee shall have no right to control or supervise or direct the manner or method by which Licensor shall perform its work and function. However, Licensee shall retain the right to administer this Agreement so as to verify that Licensor is performing its obligations in accordance with the terms and conditions thereof.

Licensor and Licensee 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, Licensor shall have absolutely no right to employment rights and benefits available to Licensee's employees. Licensor shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Licensor shall be solely responsible and save Licensee harmless from all matters relating to payment of Licensor'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, Licensor may be providing services to others unrelated to Licensee or to this Agreement.

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

15.15.1 Commercial General Liability

Commercial General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000.00). This policy shall be issued on a per occurrence basis.

15.15.2 Automobile Liability

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

15.15.3 Professional Liability

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

15.15.4 Worker's Compensation

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

15.15.5 Technology Professional Liability ((Errors and Omissions)

Technology professional liability (errors and omissions) insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence. Coverage shall encompass all of the Licensor's duties and obligations that are the subject of this Agreement. Coverage shall include, but not be limited to, any and all claims, damages, costs, fees, regulatory fines and penalties, or forms of legal action involving Cyber Risks.

15.15.6 Cyber Liability

Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence. Coverage shall include, but not be limited to, any and all claims, damages, costs, fees, regulatory fines and penalties, or forms of legal action involving Cyber Risks. The cyber liability policy shall be endorsed to cover the full replacement value of, damage to, alteration of, loss of, theft of, ransom of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of Licensor.

For purposes of the technology professional liability insurance and the cyber liability insurance required under this Agreement, Cyber Risks include, but are not limited to, (i) security breaches, which include disclosure of, whether intentional or unintentional, information provided by Licensee, information provided by or obtained from any inmate, or personal-identifying information relating to any inmate, to an unauthorized third party; (ii) breach of any of Licensor's obligations under this Agreement relating to data security, protection, preservation, usage, storage, transmission, and the like; (iii) infringement of intellectual property including, but not limited to, infringement of copyright, trademark, and trade dress; (iv) invasion of privacy, including any release of private information; (v) information theft by any person or entity, whatsoever; (vi) damage to or destruction or alteration of electronic information; (vii) extortion related to Licensor's obligations under this Agreement regarding electronic information, including information provided by Licensee, information provided by or obtained from any inmate, or personal-identifying information relating to any inmate; (viii) network security; (ix) data breach response costs, including security breach response costs; (x) regulatory fines and penalties related to Licensor's obligations under this Agreement regarding electronic information, including information provided by Licensee, information provided by or obtained from an inmate, or personal-

identifying information relating to any inmate; and (xi) credit monitoring expenses.

15.15.7 Additional Requirements Relating to Insurance

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

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

Within Thirty (30) days from the date Licensor executes this Agreement, Licensor shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required herein, to the County of Fresno, Chief Information Officer, 333 W Pontiac Way, Clovis CA 93612, stating that such insurance coverages have been obtained and are in full force; that Licensor, its officers, agents and employees will not be responsible for any premiums on the policies; that for such worker's compensation insurance Licensor has waived its right to recover from the Licensee, its officers, agents, and employees any amounts paid under the insurance policy and that waiver does not invalidate the insurance policy; that such Commercial General Liability insurance names the Licensee, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by the Licensee, its officers, agents and employees, shall be excess only and not contributing with insurance provided under Licensor's policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to Licensee.

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

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

15.16 Disclosure of Self-Dealing Transactions

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

Members of Licensor's Board of Directors shall disclose any self-dealing transactions that they are a party to while Licensor is providing goods or performing services under this Agreement. A self-dealing transaction shall mean a transaction to which Licensor is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a *Self-Dealing Transaction Disclosure Form* (Exhibit D) and submitting it to Licensee prior to commencing with the self-dealing transaction or immediately thereafter.

Exhibit C HIPAA & HITECH Acts

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.

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

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

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

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

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

F. Licensors shall provide access, at the request of Licensee, and in the time and manner designated by Licensee, to PHI in a designated record set (as defined in 45 CFR Section 164.501), to Licensee in order to meet the requirements of 45 CFR Section 164.524 regarding access to individual's PHI. With respect to Licensee requesting PHI for an individual, access shall be provided to Licensee within thirty (30) days from request. Access may be extended if Licensors cannot provide access and provides Licensee with the reasons for the delay and the date when access may be granted. PHI shall be provided in the form and format requested by the Licensee.

Licensors shall make any amendment(s) to PHI in a designated record set at the request of Licensee, and in the time and manner designated by Licensee in accordance with 45 CFR Section 164.526.

Licensors shall provide to Licensee, in a time and manner designated by Licensee, information collected in accordance with 45 CFR Section 164.528, to permit Licensee to respond to a request by the individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

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

County of Fresno
Information Technology Services
(559) 600-5800
333 W. Pontiac Way
Clovis, CA 93612

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

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

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

I. Safeguards

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

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

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 one hundred (100) 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).

Licensors 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.

Licensors 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).

Licensors 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. Licensor must apply appropriate sanctions against its employees who fail to comply with these safeguards. Licensor must adopt procedures for terminating access to PHI when employment of employee ends.

J. Mitigation of Harmful Effects

Licensor shall mitigate, to the extent practicable, any harmful effect that is suspected or known to Licensor of an unauthorized access, viewing, use, disclosure, or breach of PHI by Licensor or its subcontractors in violation of the requirements of these provisions. Licensor must document suspected or known harmful effects and the outcome.

K. Licensor's Subcontractors

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

L. Employee Training and Discipline

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

M. Termination for Cause

Upon Licensee's knowledge of a material breach of these provisions by Licensor, Licensee shall either:

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

N. Judicial or Administrative Proceedings

Licensee may terminate this Agreement in accordance with the terms and conditions of this Agreement as written hereinabove, if: (1) Licensor 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 Licensor 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 Licensor is a party.

O. Effect of Termination

Upon termination or expiration of this Agreement for any reason, Licensor shall return or destroy all PHI received from Licensee (or created or received by Licensor on behalf of Licensee) that Licensor 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 Licensor. If Licensor destroys the PHI data, a certification of date and time of destruction shall be provided to the Licensee by Licensor.

P. Disclaimer

Licensee makes no warranty or representation that compliance by Licensor with these

provisions, the HITECH Act, HIPAA or the HIPAA regulations will be adequate or satisfactory for Licensor's own purposes or that any information in Licensor's possession or control, or transmitted or received by Licensor, is or will be secure from unauthorized access, viewing, use, disclosure, or breach. Licensor is solely responsible for all decisions made by Licensor 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 required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to amend this agreement in order to implement the standards and requirements of HIPAA, the HIPAA regulations, the HITECH Act and other applicable laws relating to the security or privacy of PHI. Licensee may terminate this Agreement upon thirty (30) days written notice in the event that Licensor does not enter into an amendment providing assurances regarding the safeguarding of PHI that Licensee in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA regulations and the HITECH Act.

R. No Third-Party Beneficiaries

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

S. Interpretation

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

T. Regulatory References

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

U. Survival

The respective rights and obligations of Licensor as stated in this Exhibit shall survive the termination or expiration of this Agreement.

V. No Waiver of Obligations

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

Exhibit D

SELF-DEALING TRANSACTION DISCLOSURE FORM

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

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

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

INSTRUCTIONS

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

(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:	