

# AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 18th day of June, 2019 ("Effective Date"), by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, ("COUNTY"), and Touch Legal, Inc. , a California corporation, whose address is 2630 Mendocino Avenue, Santa Rosa, CA 95403, ("CONTRACTOR").

## WITNESSETH:

WHEREAS, COUNTY desires to lease computer software (LexisNexis California Prison Solutions), as well as specific legal research materials, publications, and content for its law library in COUNTY's Adult Detention Facilities; and

WHEREAS, CONTRACTOR is the only vendor who provides an autonomous computer system with content meeting the requirements for legal research required to be maintained in COUNTY's Adult Detentions Law Library; and

WHEREAS, COUNTY and CONTRACTOR desire to enter into this Agreement so that CONTRACTOR may provide such services as needed by COUNTY.

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

### 1. OBLIGATIONS OF CONTRACTOR

- A. Install and maintain, at locations specified by COUNTY's Sheriff's Office ("SHERIFF"), ten (10) TST 17 Standalone Touchscreen Kiosks, equipped with a pre-installed searchable law library, including all mounting equipment and locks (the "Equipment"). Keys to the Equipment will be maintained by the Offender Programs Unit for the purpose of Maintenance and upgrades to the Equipment.
- B. Provide an onboard instructional tutorial and user guide.
- C. Provide legal content updates to COUNTY at least every 90 days, and no later than 120 days after commencement of this Agreement, or as said content updates are released by LexisNexis and described in Appendix A ("Prison

Solution Software”) (the “Legal Research Materials and Publications”). Exhibit B is attached and incorporated by this reference.

D. Install any other research materials on the internal computer system of the Equipment at SHERIFF's direction.

E. Maintain and repair or replace any defective or damaged Equipment (whether internal or external damage) at CONTRACTOR's sole cost and expense within five (5) days of receipt of the inoperative component at its offices. Equipment will be checked daily by an assigned staff member of the Offender Programs Unit. Any damaged Equipment, however and by whomever caused, shall be removed from service and shipped back to TST for repair or replacement at no cost to COUNTY.

F. Provide telephonic technical support to COUNTY from six a.m. to six p.m. (6 a.m. to 6 p.m.) Monday through Friday. CONTRACTOR'S Chief Operating Officer will be available twenty-four (24) hours a day, seven (7) days a week, 365 days a year to facilitate immediate issue resolution and support as required.

## 2. TERM

The term of this Agreement shall be for a period of three (3) years, commencing on April 1, 2019, through and including March 31, 2022. This Agreement may be extended for two (2) additional consecutive twelve (12) month periods upon written approval of both parties no later than thirty (30) days prior to the first day of the next twelve ( 12) month extension period. The Sheriff, or his or her designee, is authorized to execute such written approval on behalf of COUNTY based on CONTRACTOR'S satisfactory performance.

## 3. TERMINATION

A. Non-Allocation of Funds - The terms of this Agreement, and the services to be provided hereunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement

1 terminated, at any time without penalty by giving CONTRACTOR thirty (30) days advance written notice.

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

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

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

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

18 4. COMPENSATION/INVOICING: COUNTY agrees to pay CONTRACTOR, and  
19 CONTRACTOR agrees to receive, compensation as follows: The total monthly fee for both Equipment and  
20 Legal Research Materials and Publications (including CA sales taxes) shall be seven thousand one  
21 hundred seventy-five and 32/100 dollars (\$7,175.32). CONTRACTOR shall submit monthly invoices in  
22 triplicate to the County of Fresno Sheriff's Business Office, 2200 Fresno Street, Fresno, CA 93721.

23 In no event shall compensation paid by COUNTY for services performed under this Agreement  
24 exceed two hundred fifty-eight thousand, three hundred eleven and 52/100 dollars (\$258,311.52) for the  
25 initial three-year term of the Agreement. In the event the Agreement is extended for an additional fourth  
26 year, in no event shall compensation paid for the total four-year term exceed three hundred forty four  
27 thousand, four hundred fifteen and 36/100 dollars (\$344,415.36). In the event the Agreement is extended  
28 for an additional fifth year, in no event shall compensation paid by COUNTY exceed four hundred thirty

1 thousand five hundred nineteen and 20/100 dollars (\$430,519.20) during the total possible five-year term of  
2 this Agreement. It is understood that all expenses incidental to CONTRACTOR'S performance of services  
3 under this Agreement shall be borne solely by CONTRACTOR.

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

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

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

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

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

25 7. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold harmless, and at  
26 COUNTY'S request, defend COUNTY, its officers, agents, and employees from any and all costs and  
27 expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or  
28 resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its

1 officers, agents, or employees under this Agreement, and from any and all costs and expenses (including  
2 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm,  
3 or corporation who may be injured or damaged by the performance, or failure to perform, of  
4 CONTRACTOR, its officers, agents, or employees under this Agreement.

5 The provisions of this Section 7 shall survive termination of this Agreement.

6 8. INSURANCE

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

11 A. Commercial General Liability

12 Commercial General Liability Insurance with limits of not less than Two Million Dollars  
13 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This  
14 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including  
15 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal  
16 liability or any other liability insurance deemed necessary because of the nature of this contract.

17 B. Automobile Liability

18 Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars  
19 (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto  
20 used in connection with this Agreement.

21 C. Professional Liability

22 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in  
23 providing services, Professional Liability Insurance with limits of not less than One Million Dollars  
24 (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

25 D. Worker's Compensation

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

28 Additional Requirements Relating to Insurance

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

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

13 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,  
14 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the  
15 foregoing policies, as required herein, to the County of Fresno, (Name and Address of the official who will  
16 administer this contract), stating that such insurance coverage have been obtained and are in full force; that  
17 the County of Fresno, its officers, agents and employees will not be responsible for any premiums on the  
18 policies; that for such worker's compensation insurance CONTRACTOR has waived its right to recover  
19 from the COUNTY, its officers, agents, and employees any amounts paid under the insurance policy and  
20 that waiver does not invalidate the insurance policy; that such Commercial General Liability insurance  
21 names the County of Fresno, its officers, agents and employees, individually and collectively, as additional  
22 insured, but only insofar as the operations under this Agreement are concerned; that such coverage for  
23 additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained  
24 by COUNTY, its officers, agents and employees, shall be excess only and not contributing with insurance  
25 provided under CONTRACTOR's policies herein; and that this insurance shall not be cancelled or changed  
26 without a minimum of thirty (30) days advance, written notice given to COUNTY.

27 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein  
28 provided, COUNTY may, in addition to other remedies it may have, suspend or terminate this Agreement

upon the occurrence of such event.

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

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

If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR 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).

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

COUNTY

COUNTY OF FRESNO  
Attn: Sheriff's Business Manager  
2200 Fresno Street  
Fresno, CA 93721

CONTRACTOR

Touch Legal, Inc.  
Attn: David Weksel  
2630 Mendocino Avenue  
Santa Rosa, CA 95403

All notices between COUNTY and CONTRACTOR provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, or by an overnight commercial courier service. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

1           11.   GOVERNING LAW: Venue for any action arising out of or related to this Agreement shall  
2 only be in Fresno County, California.

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

5           12.   DISCLOSURE OF SELF-DEALING TRANSACTIONS

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

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

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

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

3  
4 **CONTRACTOR**

5 Mary Justin Valencia  
6 (Authorized Signature) CFD

7 Mary Justin Valencia  
8 Print Name & Title CFD

9 2630 Mendocino Ave  
10 Santa Rosa CA 95403

11 Mailing Address

**COUNTY OF FRESNO**

Nathan Magsig  
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

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14  
15 By: Susan Bishop  
Deputy

16 **FOR ACCOUNTING USE ONLY:**

17 Subclass: 10000

18 ORG: 31114008

19 Account: 7295  
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**Exhibit A**

**SELF-DEALING TRANSACTION DISCLOSURE FORM**

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

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

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

**INSTRUCTIONS**

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

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

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

a. The name of the agency/company with which the corporation has the transaction; and

b. The nature of the material financial interest in the Corporation's transaction that the board member has.

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

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

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

**Exhibit B**

CONTRACTOR shall provide to COUNTY the following legal Content on an electronic hard drive at least every 90 days, or as said content updates are released by LexisNexis, updated on a quarterly basis:

**Federal Primary Sources**

- U.S. Supreme Court Cases
- Federal Cases (all circuit and district court cases)
- United States Code Service, Annotated
- Federal Court Rules (includes the Federal Rules of Criminal and Civil Procedure)
- United States Constitution

**California Primary Sources**

- Deering's California Codes Annotated
- California Official Reports
- California Code of Regulations
- California Court Rules
- California Local Court Rules

**Analysis and Practice Guides**

- California Criminal Defense Practice Reporter
- Federal Habeas Corpus Practice and Procedure
- California Family Law Practice
- California family Law Litigation Guide
- California Judicial Council Criminal Jury Instructions

**Citations and References**

- *Shepard's*- Federal and U.S. Citations
- *Shepard's* - California Citations<sup>28</sup>
- Ballantine's Law Dictionary, 3rd Edition.
- California Criminal Discover
- Constitutional Rights of Prisoners
- California Evidence Courtroom Manual
- California Courtroom Evidence, by Cotchett
- California Juvenile Courts Practice and Procedure
- Moore's Federal Practice- Criminal
- Civil Rights Actions
- California Criminal Defense Practice