

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 8th day of October, 2019, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, ("COUNTY"), and CompuTrust Software Corporation, a Delaware corporation, whose address is 18625 Sutter Blvd. Suite 500, Morgan Hill CA 95037, ("CONTRACTOR" or "CONTRACTOR").

RECITALS

WHEREAS, COUNTY previously purchased from CONTRACTOR a Computrust Case Management and Trust Accounting System ("CT") for the Department of Behavioral Health - Public Guardian's Office, which supports administering estates and managing Trust and Court accounts, and inventorying real and personal property;

WHEREAS, CONTRACTOR desires to continue to provide maintenance and support for CT; and

WHEREAS, COUNTY and CONTRACTOR desire to execute this Agreement for continued maintenance and support of CT, currently used by the Fresno County Department of Behavioral Health - Public Guardian's Office.

NOW, THEREFORE, the parties agree as follows:

WITNESSETH

I. DEFINITIONS:

Acceptance Criteria:

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

Acceptance Test:

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

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

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

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

The end-user documentation that explains the use and Installation of the Program in hard copy or electronic form.

Any reproducible failure of the Program to conform in material respect to its Documentation.

A modification or addition that brings the Program into material conformity with its Documentation. The Error Correction, when completed, may consist of a change to the code, a "patch," or a "workaround" to enable use of the Program.

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COUNTY may submit an Error Reports for reproducible errors to the CONTRACTOR, identifying circumstances and steps generating the error.

When it is determined by COUNTY that all necessary deliverables have been delivered, the data has been converted, CT has been successfully tested, and CT performs all functions required as specified in this Agreement.

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Date of first use of the system in a production environment.

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

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Any major modification that substantially improves the performance, utility or functionality of the Program, which CONTRACTOR offers as a Major Enhancement at an additional optional fee.

Any major modification that substantially improves the performance, utility or functionality of the Program, which CONTRACTOR offers as a Major Enhancement at an additional optional fee.

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

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The computer software application known as “CT,” in object code only and the documentation.

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Card Enhancements:

Supplier:

System:

System Documentation:

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

System Installation:

All software has been delivered, has been physically loaded on a computer, and COUNTY has successfully executed Program sessions.

System Software:

CT, that certain computer software described in this Agreement provided by CONTRACTOR, and all interfaces, coding, tapes, disks, modules and similar materials comprising such software or on which it is stored.

System Software shall not include operating system software, or any other Third-Party Software.

Third-Party Software:

Third-party software products purchased on COUNTY's behalf by CONTRACTOR. The third-party software is licensed directly to COUNTY as a one-time only purchase. This Usage License does not apply to third-party software, which is governed by the license terms and conditions of each third-party software product. COUNTY does not receive support or upgrades for third-party software as part of COUNTY's monthly usage fees.

Update:

New revisions of the Program containing Error Corrections, modifications, and Standard Enhancements, which are released by CONTRACTOR from time to time.

User:

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

II. OBLIGATIONS AND RIGHTS OF THE CONTRACTOR

A. SOFTWARE LICENSE

1. GRANT OF LICENSE

CONTRACTOR grants to COUNTY, and COUNTY accepts, a non-exclusive, nontransferable License to use CT, subject to the terms and conditions set forth in this Agreement.

2. SCOPE OF LICENSE

The License granted herein shall consist solely of the non-exclusive, nontransferable right of COUNTY to operate the System Software in support of COUNTY's Department of Behavioral Health – Public Guardian's Office.

3. OWNERSHIP

The parties acknowledge and agree that, as between CONTRACTOR and COUNTY, title and full ownership of all rights in and to the System Software, System Documentation, Program, and all other materials provided to COUNTY by CONTRACTOR under the terms of this Agreement shall remain with CONTRACTOR. COUNTY will take reasonable steps to protect trade secrets of the System Software and System Documentation. Ownership of all copies is retained by CONTRACTOR. COUNTY may not disclose or make available to third parties the System Software or System Documentation or any portion thereof. CONTRACTOR shall own all right, title, and interest in and to all corrections, modifications, enhancements, programs, and work product conceived, created or developed, alone or with COUNTY or others, updates (including ownership of all copyrights and other intellectual property rights

1 pertaining thereto), as a result of or related to the performance of this Agreement,
2 including all proprietary rights therein and based thereon. Except and to the
3 extent expressly provided herein, CONTRACTOR does not grant to COUNTY
4 any right or license, express or implied, in or to the System Software and System
5 Documentation or any of the foregoing. The parties acknowledge and agree that,
6 as between CONTRACTOR and COUNTY, full ownership of all rights in and to
7 all COUNTY data, whether in magnetic or paper form, including without limitation
8 printed output from the System, are the exclusive property of COUNTY.

9 This Agreement does not provide COUNTY with title or ownership of the
10 Program, but only a right of limited use.

11 4. LIMITATION OF WARRANTY

12 LIMITATION OF WARRANTY. EXCEPT AS EXPRESSLY SET FORTH
13 IN THIS PARAGRAPH, CONTRACTOR SHALL HAVE NO LIABILITY FOR THE
14 PROGRAM OR ANY SERVICES PROVIDED, INCLUDING ANY LIABILITY FOR
15 NEGLIGENCE; CONTRACTOR MAKES AND COUNTY RECEIVES NO
16 WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER
17 PROVISION OF THIS AGREEMENT OR ANY OTHER COMMUNICATION; AND
18 CONTRACTOR SPECIFICALLY DISCLAIMS ANY WARRANTY OF
19 MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

20 5. LIMITATION OF WARRANTY & EXCLUSION OF CONSEQUENTIAL
21 DAMAGES

22 The cumulative liability of CONTRACTOR to COUNTY for all claims
23 relating to the Program, and any services rendered under this Agreement, in
24 contract, tort, or otherwise, shall not exceed the total amount of all Usage Fees
25 paid to CONTRACTOR for the Program or services within the prior year. This
26 limitation shall not apply to the indemnification in Section XI., herein. In no event
27 shall either party be liable to the other for any consequential, indirect, special, or
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1 incidental damages, even if such party has been advised of the possibility of
2 such potential loss or damage. The foregoing limitation of liability and exclusion
3 of certain damages shall apply regardless of the success or effectiveness of
4 other remedies.

5 **6. POSSESSION, USE AND UPDATE OF SOFTWARE**

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

16 **7. TRANSFER OF SOFTWARE & RESTRICTIONS ON USE**

17 COUNTY shall not (i) license, sublicense, sell, resell, transfer, assign,
18 distribute or otherwise commercially exploit or make available to any third party
19 the System Software or the System Documentation, or any of the information
20 contained therein other than COUNTY data to any other person or entity; (ii)
21 modify or make derivative works based upon the System Software or the System
22 Documentation; (iii) create Internet "links" to the System Software or "frame" or
23 "mirror" any System Documentation on any other server or wireless or Internet-
24 based device; (iv) send spam or otherwise duplicative or unsolicited messages in
25 violation of applicable law; (v) send or store infringing, obscene, threatening,
26 libelous, or otherwise unlawful or tortious material, including material harmful to
27 children or violative of third party privacy rights; (iv) send or store material

1 containing software viruses, worms, Trojan horses or other harmful computer
2 code, files, scripts, agents or programs; (vii) interfere with or disrupt the integrity
3 or performance of the System Software or the data contained therein, including
4 but not limited to COUNTY Data; (viii) attempt to gain unauthorized access to the
5 System Software or its related systems or networks; (ix) reverse-engineer or
6 access the System Software in order to (a) build a competitive product or service,
7 (b) build a product using similar ideas, features, functions or graphics of the
8 System Software, or (c) copy any ideas, features, functions or graphics of the
9 System Software. Any of the actions listed above, occurring on a permanent or
10 temporary basis, or any attempt to do so, will constitute a breach of this
11 Agreement.

12 COUNTY may not install the Program anywhere but the approved
13 COUNTY site without CONTRACTOR's prior written consent (which will not be
14 unreasonably withheld), provided that COUNTY transfers the Program to an
15 approved, temporary location in the event of an interruption of computer
16 operations. If COUNTY uses, copies, or modifies the Licensed Program or
17 transfers possession of any copy, adaptation, transcription, or merged portion of
18 the Licensed Program to any other party in any way not expressly authorized by
19 CONTRACTOR, the COUNTY License is automatically terminated. COUNTY
20 acknowledges that, in the event of any breach, CONTRACTOR will not have an
21 adequate remedy in money or damages. CONTRACTOR shall therefore be
22 entitled to obtain an injunction against such breach from any court of competent
23 jurisdiction immediately upon request. CONTRACTOR's right to obtain injunctive
24 relief shall not limit its right to seek further remedies.

25 No right or license is granted under this Agreement for the use or other
26 utilization of the licensed programs, directly or indirectly, for the benefit of any
27 other person or entity, except as provided in this Agreement.

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

9. INTELLECTUAL PROPERTY, TRADEMARK, AND COPYRIGHT

CONTRACTOR retains ownership of the System Software, any portions or copies thereof, and all rights therein. CONTRACTOR reserves all rights not expressly granted to COUNTY. This License does not grant COUNTY any rights in connection with any trademarks or service marks of CONTRACTOR, its suppliers, or licensors. CONTRACTOR, its suppliers, or licensors own all right, title, interest, and copyrights in and to the System Software and the accompanying System Software Documentation, and any copies of the System Software. All title and intellectual property rights in, and to the content which may be accessed through use of the System Software are the property of the

1 respective content owner, and may be protected by applicable copyright or other
2 intellectual property laws and treaties. This License grants COUNTY no rights to
3 use such content.

4 B. SERVICES TO BE PROVIDED BY CONTRACTOR TO COUNTY

5 1. SYSTEM INSTALLATION

6 CONTRACTOR shall supply and install CT in accordance with this
7 Agreement. Such software installation shall include hardware/network review and
8 recommendations, consultation, software installation and remote technical
9 support.

10 2. TRAINING

11 CONTRACTOR will conduct “train-the-trainer” training of COUNTY staff
12 via WebEx, and at a time approved in writing by COUNTY.

13 3. DOCUMENTATION

14 CONTRACTOR shall provide to COUNTY CT System Documentation,
15 which shall consist of electronic media files. The electronic media files must be
16 printable using PC software normally available at COUNTY. CONTRACTOR
17 shall provide new System Documentation corresponding to all new Software
18 Upgrades. COUNTY may print additional copies of all documentation. COUNTY
19 shall only use System Documentation for the purposes identified within this
20 Agreement.

21 C. SYSTEM MAINTENANCE AND SUPPORT BY CONTRACTOR

22 System maintenance and support includes System Updates as they are
23 released by CONTRACTOR. COUNTY will identify the first day of production
24 use, and communicate that to CONTRACTOR. CONTRACTOR will support day-
25 to-day operation of the System, including the following services:

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The object of this support will be to answer specific questions related to the System Software and the application thereof. Support provided under this Agreement does not include training of new personnel (after initial staff is trained), operation of hardware, or solving other hardware/software problems unrelated to the System Software.

CONTRACTOR offers Remote Access. In order to use Remote Access, COUNTY must have the communications software set forth in Sections XIII and XIV. Remote Access includes: (1) diagnostic or corrective actions necessary to restore proper Program operation; (2) diagnostic analysis to assist in determining the cause of the reported problem; (3) correction of data file problems; and (4) downloading Error Corrections or Enhancements.

During the term of this Agreement, CONTRACTOR will (a) correct any error or malfunctions in the System as supplied by CONTRACTOR that prevent the System from operating in conformance with the specifications set forth in this Agreement, or (b) provide a commercially reasonable alternative that will conform to the specifications set forth in this Agreement.

If analysis by CONTRACTOR indicates a reported problem is caused by a reproducible error or malfunction in the then-current release of the System

1 Software, as supplied and maintained by CONTRACTOR, which significantly
2 impacts effective use of the System by COUNTY, CONTRACTOR will provide
3 continuous effort to correct the error or to resolve the problem by providing a
4 circumvention.

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

12 4. ERROR REPORTS

13 Error Reports to CONTRACTOR are not counted towards COUNTY
14 annual support hours. COUNTY agrees, if requested by CONTRACTOR, to
15 submit an Error Report which identifies the problem and describes the steps
16 needed to reproduce the Error ("Error Report"), in addition to a listing of output
17 and any other data that CONTRACTOR may require in order to reproduce any
18 Error, and the operating conditions under which the Error occurred or was
19 discovered.

20 5. MATTERS NOT COVERED BY SUPPORT

21 The following matters are not covered as part of the COUNTY Annual
22 Usage Fee Support, and if COUNTY requests any of the following services,
23 CONTRACTOR will charge at the prevailing per diem rate:

- 24 a) Any problem resulting from the misuse, improper use, alteration, or
25 damage of the Program;
- 26 b) Any problem caused by COUNTY modifications to any version of
27 the Program;

- 1 c) Any problem resulting from computer software other than the
2 Program;
- 3 d) Any problem relating to COUNTY computer hardware or
4 peripherals, which includes printers. Adding, modifying and deleting
5 printers to COUNTY network is expressly not covered.
- 6 e) Any problems relating to older unsupported versions.
- 7 f) Any support resulting from a system crash. This includes rebuilding
8 from a backup. Restoring after a system failure or reloading
9 software as a result of not having a reliable backup.
- 10 g) Reloading software other than CT as a result of a system upgrade.
11 Assistance with reloading CT after a system upgrade is available if
12 scheduled in advance. This support is limited to two hours, and
13 CONTRACTOR reserves the right invoice COUNTY for further
14 assistance in excess of two hours.
- 15 h) Assistance with backups of the data or the operating system.
- 16 i) Administration and any support/training of the operating system.
- 17 j) Initial or reinstallation of the operating system.
- 18 k) CT Support, as a result of users not reconciling their bank
19 account(s) in a timely manner.
- 20 l) CT support, as a result of users not running Database Backup and
21 Recovery and resolving balancing issues in a timely manner.
- 22 CONTRACTOR reserves the right to charge additional service fees if
23 COUNTY seeks assistance for matters that do not directly relate to
24 the operation of the Program. CONTRACTOR does not hold itself out
25 as a professional expert or adviser regarding COUNTY's computer
26 hardware, Third Party Software, computer peripherals or information
27 needs. In particular, CONTRACTOR does not support COUNTY's
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1 printers. CONTRACTOR is not responsible for obsolescence of the
2 Program that may result from changes in COUNTY's requirements.

3 6. REMOTE ACCESS ABILITY DIAGNOSTICS

4 Remote Access Ability Support includes:

- 5 a) Diagnostic or corrective actions necessary to restore proper
- 6 Product operation;
- 7 b) Diagnostic actions which attempt to identify the cause of system
- 8 problem;
- 9 c) Correction of data file problem; and
- 10 d) Product modifications

11 CONTRACTOR product specialists will provide diagnostics via an
12 approved COUNTY method. COUNTY will provide any required hardware and
13 equipment necessary at COUNTY for CONTRACTOR support.

14 7. ERROR CORRECTION PROCESS

15 If, during the term of this Agreement, COUNTY determines that software
16 error(s) exist, COUNTY will first follow the error procedures specified in the
17 System Documentation. If following the error procedures does not correct the
18 software error, COUNTY shall immediately notify CONTRACTOR, setting forth
19 the defects noted with specificity. Upon notification of a reported software error,
20 CONTRACTOR shall have five (5) days to determine if any actual software error
21 exists, and if so, endeavor to correct such software errors. At CONTRACTOR's
22 request, additional time to solve difficult problems will not be unreasonably
23 withheld. Within fifteen (15) days of correction, COUNTY shall retest the System
24 Software, and report any other software errors.

25 8. TECHNICAL INFORMATION

26 CONTRACTOR will provide technical information to COUNTY from time
27 to time. Such information may cover areas such as Product usage, third party

software, and other matters considered relevant to COUNTY by CONTRACTOR. CONTRACTOR will provide technical information at the discretion of CONTRACTOR, which will not be unreasonably withheld.

D. ADDITIONAL SYSTEM MAINTENANCE SERVICE REQUIREMENTS

CONTRACTOR may provide additional maintenance services ("Additional Maintenance and Support Services" or "Additional Maintenance Services") at an additional charge. Charges will be as identified in Section 6 of this Agreement; or, if not included in this Agreement, charges will be at current prices in effect at the time goods or services are provided. Any Additional Maintenance and Support Services requested by COUNTY and determined by CONTRACTOR to be billable by CONTRACTOR must be identified as a chargeable service prior to the service being performed, and must be approved in writing in advance by COUNTY's Contract Administrator. Additional Maintenance Services include, but are not limited to, the following:

1. ADDITIONAL TRAINING

CONTRACTOR shall provide a specific amount of training pursuant to this Agreement. Additional training at a COUNTY facility is available upon COUNTY'S request, at an additional charge, under the terms of this Agreement. CONTRACTOR will review requests for additional training, which must be requested in writing in advance by COUNTY's Contract Administrator. Charges will be at rates identified in this Agreement.

2. DATA AND SYSTEM CORRECTIONS

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

1 to source code is defined as any COUNTY access whatsoever to system source
2 code. Services provided by CONTRACTOR are not billable when they result from
3 errors caused by CT or instruction provided by CONTRACTOR.

4 3. CUSTOMER SITE VISITS

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

16 4. CUSTOM PROGRAMMING

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

22 E. CONTRACTOR PROJECT COORDINATOR

23 Upon execution of this Agreement, CONTRACTOR shall appoint a
24 Project Coordinator, who will act as the primary contact person to interface with
25 COUNTY for implementation, maintenance and support of CT.

26 F. SYSTEM UPDATES AND NEW PRODUCTS

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2. NEW PRODUCTS

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

G. OPERATING SYSTEM UPDATES

The application must run on an operating system (O/S) that is consistently and currently supported by the operating system vendor. O/S applications are expected to be assessed for maintenance no less than once per year. An outdated or unsupported O/S will not be implemented on the production network.

COUNTY will notify CONTRACTOR when a critical security patch is released. CONTRACTOR will have thirty (30) days to ensure application can perform in the updated environment. With approval from CONTRACTOR, COUNTY will apply patches to both the operating system, and non-critical security subsystems as releases are available from operating system vendors. The application must perform in this environment. CONTRACTOR shall update

O/S applications no less than once per year from any given date. These patches include critical O/S updates and security patches.

H. ANTI-VIRUS MANAGEMENT

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

I. ADHERE TO CHANGE CONTROL PROCESS

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

J. OTHER

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

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

K. Protected Health Information

While providing the Services, it is not necessary for CONTRACTOR to receive, create, maintain or transmit personally identifiable data, including without limitation, Protected Health Information ("PHI"), as defined in the Health

1 Insurance Portability and Accountability Act of 1996 ("HIPAA"), on behalf of
2 COUNTY. COUNTY agrees not to: (i) permit CONTRACTOR to access, receive,
3 create, maintain, or transmit such personally identifiable data; or, (ii) to send
4 CONTRACTOR any personally identifiable data related to the Services.
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6 **III. OBLIGATIONS AND RIGHTS OF THE COUNTY**

7 **A. COUNTY RESPONSIBILITIES**

- 8 1. Install the Program in COUNTY's facility at the Site specified on the
9 front page of this Agreement.
- 10 2. Procure, install, and operate computers, printers and operating
11 systems required to run the Program.
- 12 3. Use and execute the Program on the computer(s) at COUNTY's Site
13 on a per user basis, for purposes of serving the internal needs of
14 COUNTY.
- 15 4. Provide a proper environment and proper utilities for the computers on
16 which the Program operates, including an uninterrupted power supply.
- 17 5. Select and train personnel to operate computers and the Program
18 effectively.
- 19 6. Appoint a qualified system administrator with sufficient computer
20 hardware and software experience to coordinate with CONTRACTOR
21 in diagnosing reported problems and errors.
- 22 7. Nominate a single contact person, to interface with CONTRACTOR
23 on all Support calls from COUNTY. Such nominated single contact
24 person shall either be the System Administrator, or someone who is
25 similarly technically qualified; and
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1 8. Establish adequate operational back-up provisions in the event of a
2 defect or malfunction that renders the Program or the computer
3 systems on which they run non-operational.

4 B. GRANT OF LICENSE

5 COUNTY is granted a non-exclusive, annually renewable right to use the
6 Program and any Updates provided to COUNTY by CONTRACTOR, in machine-
7 readable form, as well as related materials for the Initial Term, and for minimum
8 periods of one (1) year thereafter, subject to the terms of this Agreement.

9 This Program License is nonexclusive and nontransferable, and extends
10 only to COUNTY's installation, execution, and use of the Program on COUNTY
11 computers. COUNTY may not assign, transfer, or sublicense this License or
12 other rights under this Agreement, whether by operation of law or otherwise,
13 except with CONTRACTOR's prior written consent.

14 1. VERIFICATION

15 Upon thirty (30) days' written notice, CONTRACTOR, at its sole option,
16 may ask to verify in writing that COUNTY is not exceeding the scope of the
17 License, including the number of users authorized under this Agreement. In the
18 event the actual number of simultaneous users exceeds the number authorized
19 under this Agreement, COUNTY shall pay the additional Usage fees as they
20 apply.

21 C. SCOPE OF RIGHTS: THE COUNTY MAY:

- 22 1. Install the Program at chosen COUNTY site specified and
23 documented by CONTRACTOR.
- 24 2. Use and execute the Program on the computer(s) at COUNTY's Site
25 on a per user basis, for purposes of serving the internal needs of
26 COUNTY.

1 D. COUNTY CONTRACT ADMINISTRATOR

2 COUNTY appoints the Chief Information Officer (CIO) or his designee as
3 COUNTY's Contract Administrator, with full authority to deal with CONTRACTOR
4 in all matters concerning this Agreement.

5 COUNTY'S CIO is authorized to amend this Agreement, with consent of
6 the County Administrative Office, to adopt an undated pricing structure consistent
7 with an amended software solution and renewal dates, not to exceed maximum
8 expenditure limits as listed in section VI(A).

9 E. CONTRACTOR RESPONSE COMMITMENT

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

13 F. OBJECT CODE

14 The Program is provided in, and may be used in, machine-readable
15 object code form only.

16 G. NUMBER OF USERS

17 COUNTY is authorized to use the Program for up to the number of users
18 defined in Section VI.

- 19 1. Additional User Licenses. In the event the COUNTY desires to exceed
20 the authorized number of users, as specified in Section VI, COUNTY
21 will contact CONTRACTOR to determine the increase to the annual
22 usage fee.

23 H. SAFEGUARDING SYSTEM SOFTWARE

24 COUNTY will follow its present practices to safeguard System Software
25 delivered to COUNTY by CONTRACTOR. A copy of COUNTY'S "Information
26 Technology (IT) Standards and Preferred Practices" will be made available upon
27 request.

1. COUNTY utilizes a backup and recovery system written and maintained by Commvault Systems. This application requires a backup agent to run on the server.
2. COUNTY may make two (2) copies of the Program in machine-readable, object code form, for nonproductive backup purposes only, provided that COUNTY reproduces and includes CONTRACTOR's copyright notice and proprietary legend on each backup copy. Each backup copy must be stored in a safe and secure location.
3. System Operations: System shall operate as per CONTRACTOR's current Program user manual.
4. COUNTY will provide CONTRACTOR with an account with appropriate administrative rights to administer the application. The account password shall periodically expire.
5. In order for the application to run on COUNTY-supported servers, the application must not require the users to have administrative rights on the servers.
6. COUNTY, at all times, during and after the performance of the installation of the System Software, is responsible for maintaining adequate data backups to protect against loss of data.

I. COUNTY INSTALLATION AND TECHNICAL ASSISTANCE

1. Technical assistance from COUNTY's ISD-IT staff will be provided during the performance of the installation of the System Software. In particular, COUNTY will provide:
 - a) Network connectivity and troubleshooting assistance.
 - b) Ability to monitor network traffic and isolate bottlenecks.
 - c) Technical assistance concerning the integration with existing COUNTY systems (if applicable).

1 d) Expertise to handle issues with PCs, printers, and cabling before,
2 during, and after roll-out.

3 J. ACCEPTANCE TESTING

4 Following delivery and installation, CONTRACTOR shall test CT, along
5 with COUNTY personnel. COUNTY shall approve Final System Acceptance
6 when CT has been successfully tested and satisfactorily performs all functions
7 necessary pursuant to this Agreement, and COUNTY has received all
8 deliverables identified in this Agreement as required for acceptance.

9 K. FACILITIES AND PREPARATION

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

15 L. SYSTEM HARDWARE AND SYSTEM SOFTWARE

16 COUNTY will, at its own expense, provide and properly maintain and
17 update, on an ongoing basis, all necessary COUNTY System Software and
18 COUNTY System Hardware required to operate CT. Said COUNTY System
19 Software and COUNTY System Hardware shall meet CONTRACTOR's
20 recommendations.

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

25 M. COUNTY PROJECT MANAGER

26 Upon execution of this Agreement, COUNTY's Contract Administrator
27 shall designate one individual from the Internal Services Department Information
28

Technology division (ISD-IT), who will function as Project Manager, with responsibility for day-to-day management of the project for implementation of CT. The Project Manager and COUNTY personnel shall have the necessary and appropriate training and experience to implement the terms of this Agreement. COUNTY acknowledges CONTRACTOR'S reliance on same.

N. RESPONSIBILITY FOR PUBLIC HEALTH INFORMATION

The Software has no requirement for creation, receipt, maintenance or transmission of, nor does it provide for the creation, receipt, maintenance or transmission of any personally identifiable information ("PII") or protected health information ("PHI"). The only information comprising the Data or Output is information concerning COUNTY's HIPAA Compliance program, its information systems used to create, receive, maintain or transmit sensitive information, and/or its information risk management program.

COUNTY agrees to take reasonable steps to ensure that Authorized Users do not upload or otherwise enter any PHI or PII into the Software. In developing the Software, CONTRACTOR has made commercially reasonable efforts to interpret and apply the provisions and requirements of the HIPAA Security Rule, the HIPAA Privacy Rule, and the HIPAA Breach Notification Rule (the "Rules"), and recommended standards and best practices as set forth by the Office for Civil Rights ("OCR") under such Rules.

When used as designed, the Software provides a consistent approach to the performance of certain activities required or suggested by the Rules by guiding the User through a series of questions. The Software follows a proprietary decision flow to pose such series of questions, capture the User's responses and, based on those responses, allows the Software to calculate certain proprietary compliance and/or risk management rating(s), highlight additional controls COUNTY might consider implementing, and suggest tasks

1 that COUNTY might consider completing in managing identified risks or closing
2 compliance gaps. Although the Subscriptions to the Software shall support and
3 promote COUNTY's compliance with the Rules, COUNTY's purchase of
4 Subscription(s) to the Software, alone, does not assure COUNTY's compliance
5 with the Rules.

6 IV. **TERM**

7 The term of this Agreement shall be for a period of two years and nine
8 months years, commencing on October 7, 2019, through and including June 30,
9 2022. This Agreement shall automatically renew for two (2) additional
10 consecutive twelve (12) month periods, beginning on July 1, 2022, unless
11 terminated earlier according to the terms of this Agreement.

12 V. **TERMINATION**

13 A. **TERMINATION WITHOUT CAUSE.**

14 Either party may elect to terminate this Agreement upon ninety (90) days
15 written notice, prior to the renewal of any one (1) year term.

16 B. **NON-ALLOCATION OF FUNDS**

17 The terms of this Agreement, and the services to be provided thereunder,
18 are contingent on the approval of funds by the appropriating government agency.
19 Should sufficient funds not be allocated, the services provided may be modified,
20 or this Agreement terminated, at any time without penalty, by giving
21 CONTRACTOR ninety (90) days' advance written notice.

22 C. **BREACH OF CONTRACT**

- 23 1. Failure to pay any moneys due to CONTRACTOR under this
24 Agreement, within forty-five (45) days of receipt of written notice of
25 such failure from CONTRACTOR;
26 2. Any non-breaching party may terminate this Agreement for breach of
27 any material term, condition, or covenant in this Agreement if the

breaching party has failed to cure such breach within thirty (30) days receipt of written notice of such failure;

3. Either party may terminate this Agreement in the event the other party: (i) is or becomes insolvent, (ii) is or becomes a party to any bankruptcy or receivership proceeding or any similar action affecting the financial condition or property of that party, if such proceeding has not been dismissed within 30 days, or (iii) makes a general assignment for the benefit of creditors;

D. BREACH BY COUNTY

CONTRACTOR may immediately suspend or terminate this Agreement in whole or in part, where, in the determination of the CONTRACTOR, a breach of Section II-A-3 (proprietary rights) has occurred

E. BREACH BY CONTRACTOR

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

1. A failure to comply with any term of this Agreement;
2. Improperly performed service as defined by the expectations and deliverables outlined in this Agreement.

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

1 F. CONSEQUENCES OF TERMINATION.

2 Upon termination, COUNTY agrees to stop using the Program and
3 destroy all copies in COUNTY's possession, and shall certify COUNTY's
4 compliance in writing, signed by an authorized representative of COUNTY
5 organization, within five (5) days of the date of termination. COUNTY shall be
6 responsible for taking adequate precautions to prevent any loss of COUNTY's
7 own data. Upon termination, all payments due to CONTRACTOR up until the
8 date of termination shall immediately be due and payable.

9 G. RIGHT TO DISABLE SOFTWARE.

10 In the event that COUNTY fails to cure any material breach in the times
11 specified above, CONTRACTOR reserves the right to electronically disconnect
12 COUNTY's use of the Program, until such breach is cured.

13 H. WITHOUT CAUSE

14 Under circumstances other than those set forth above, COUNTY may
15 terminate this Agreement in full or in part by giving ninety (90) days advance
16 written notice of an intention to terminate to CONTRACTOR.

17 VI. COMPENSATION/INVOICING

18 A. TOTAL AGREEMENT AMOUNT

19 COUNTY agrees to pay CONTRACTOR, and CONTRACTOR agrees to
20 receive annual compensation, as displayed in the following rate tables,
21 regardless of whether COUNTY seeks reimbursement for such costs from
22 individual cases or clients. COUNTY agrees to pay annual fees for Third Party
23 Software support and maintenance in cases where solicited.

24 CONTRACTOR's current per diem rate is defined in section VI, and
25 applies to training either on site or via electronic interface, on site installation, on-
26 site consulting services, and custom programming. Usage fees do not include
27 travel expenses incurred while providing services to COUNTY under this

1 Agreement, shipping charges, or the costs of any recommended hardware.
2 COUNTY agrees to pay such fees and costs, when and as the services are
3 rendered and/or such expenses are incurred, upon receipt of invoice from
4 CONTRACTOR. CONTRACTOR reserves the right to require prepayment or
5 advance deposit for services and/or expenses.

6 In no event shall total compensation paid for all services performed under
7 this Agreement exceed \$323,735 during the entire potential four-year-nine-month
8 term of this Agreement: the total compensation paid for a partial (prorated) first
9 year, through the third year of web-based CTI-V3 **without** cloud-based hosting is
10 \$132,591, not to exceed \$235,931 if extended for a 4th and 5th year. The
11 expenditure maximum for conversion from DOS to the web-based CTI – V3
12 operating system is a one-time cost of \$27,550. The potential maximum 5-year
13 expenditure for support services is \$7,000. The potential, additional cost for
14 utilization of cloud-based data-hosting provided by CompuTrust for a partial
15 (prorated) first year, through the third year, is an additional \$29,829, not to
16 exceed \$53,254 if extended for a 4th and 5th year.

17 It is understood that all expenses incidental to CONTRACTOR'S
18 performance of services under this Agreement shall be borne by
19 CONTRACTOR.

20 CONTRACTOR may increase Annual Maintenance and Support fees, as
21 well as additional License/Services Fees, upon sixty (60) days' advance written
22 notice to COUNTY, provided that CONTRACTOR not increase such fees more
23 than once in any one year period, and provided that each increase will not
24 exceed the previous fees by the lesser of (i) three percent (3%) per year or (ii)
25 the cumulative percentage increase in the Consumer Price Index, All Urban
26 Consumers for the U.S., during the previous year.

All usage fees will be subject to a 3% COL increase annually. If COUNTY requires additional users, fees will be increased accordingly.

B. INVOICING

CONTRACTOR shall submit invoices, either electronically or via mail, to the County of Fresno ISD-IT, Accounts Payable, 333 W Pontiac Way, Clovis, CA 93612-5613 or Accounts Payable (isdbusinessoffice@fresnocountyca.gov).

COUNTY will pay CONTRACTOR within forty-five (45) days of receipt of a proper invoice, by mail addressed to CONTRACTOR's remittance address at 18625 Sutter Blvd, Ste 500, Morgan Hill CA 95037-2864.

C. LATE CHARGES

If any fee or cost is not paid within forty-five (45) days after it is due, CONTRACTOR may, at its option, charge interest at a rate of one and one-half percent (1½ %) per month (eighteen percent (18%) per annum) or, if less, the highest rate allowed by applicable law, from the date such fee or charge first became due.

D. CHARGEABLE SERVICES FOR CTI-V3 UPGRADE

CTI-V3 UPGRADE

Estimated Services to be Performed without customization	Milestone
Installation - allows for 2 server environments, 1 testing which becomes production upon go-live. If multiple installations are involved, services will be charged accordingly	1
Database Conversion - VB to Standard CTI-V3 version. (ONE DB)	2
Image conversion	2
System administration training via WebEx	1

Train the Trainer via WebEx	3
Meetings to review CTI-V3 and discuss customization requirements, to be documented in a Statement of Work (SOW) This can be done remotely via WebEx.	1
Customization of forms as outlined in SOW	2/3
Development of 2 new reports	2/3
Customization of ACH	2/3
Customization of Bank Recon	2/3
Customization of Check Printing	2/3
Support for acceptance testing, final conversion, moving the system into production	3
Estimated Services	\$32,550
Discount for prior upgrade costs paid in 2009 for cancelled CTI upgrade. This discount will be deducted upon invoice and acceptance of Milestone 3. This discount will be void with the expiration of this contract.	(\$5,000)

CompuTrust reserves the right to utilize funds from one service item to another if those funds are available; otherwise a change order will be required.

		Payment Amount as
M Item #	Services Milestones	Outlined Below
01	Testing Environment set up on a Vendor supported server for system analysis and project meetings. Planning and analysis results and documentation in (SOW)	\$5,600

	System Administrator training	
02	Delivery of SOW and build of requirements as outlined, and Data Conversion – ½ of the cost,	\$14,875
03	Acceptance of delivered requirements - ½ of the cost Training – Train the Trainer via WebEx Final data conversion and deployment of updated application to Production environment on the Axure Hosted server for Go-Live	\$12,075
03	Discount for prior upgrade costs paid in 2009 for cancelled and expired CTI upgrade. This discount will be deducted upon invoice and acceptance of Milestone 3. This discount will be void with the expiration of this contract.	(\$5,000)
Totals:		\$27,550

ANNUAL MAINTENANCE/SUPPORT FEES

Year 1	
	Annual Usage Fees for current 20 users (prorated): \$32,226 Effective 10/07/2019 – 6/30/2020
	Annual Usage fees for 2 additional users: \$1,937

	Total Annual Fees:	\$34,163
Year 2		
	Annual Usage fees for 22 users: Effective 7/1/2020	\$47,985
Year 3		
	Annual Usage fees for 22 users: Effective 7/1/2021	\$49,425
Year 4		
	Annual Usage fees for 22 users: Effective 7/1/2022	\$50,905
Year 5		
	Annual Usage fees for 22 users: Effective 7/1/2023	\$52,435
	Total CTI Annual Maintenance Fees	\$234,931

The new mobile CTI-V3 system will consist of fully integrated modules for Case Management, Accounting, Asset Management, Reports, Banking functions, File Management. Upgrades to the System are to be included without additional cost. Payments for any services provided by CONTRACTOR shall be invoiced as outlined in the above Milestones.

E. ADDITIONAL SERVICE FEES AND CUSTOMIZATION.

1. On-site training/day; per-diem rate \$1,400.00
2. Billable support or Programming / hour \$175.00

Additional Services Fees shall only be paid to CONTRACTOR if any such services set forth herein are performed by CONTRACTOR upon COUNTY's written request.

Additional modifications requested by COUNTY will be completed by CT at the above-listed rates. Customization will require establishment of a Statement of Work (SOW) to be approved by both parties for both cost and content. Upon establishment of the SOW, development will be scheduled and the modifications

1 installed. CT will allow 30 days for COUNTY to review the modifications for sign-
2 off once they have been installed.

3 F. CLOUD HOSTED CTI – V3 PRICING

4 COUNTY'S Department of Behavioral Health – Public Guardian's Office
5 may elect to utilize Cloud-Hosted services at any time during this Agreement (a
6 sample pricing breakout for Cloud-Hosted services is provided in **Exhibit A**.

7 VII. **TRAINING**

8 A. ON-SITE TRAINING

9 All training can be provided via WebEx or other electronic program such
10 as Skype. At COUNTY's request, CONTRACTOR shall provide training at
11 COUNTY's site at a mutually agreed time. Such training is subject to the
12 CONTRACTOR per diem rates and travel expense, defined in Section VI.

13 B. HIPAA AND PRIVACY TRAINING.

14 Software Training will not include the provision training on general subjects not
15 directly related to the functionality of and administration of the Software and the
16 Subscriptions, such as, but not limited to, general HIPAA or state privacy or
17 security regulations and compliance, risk analysis and risk management
18 requirements or processes, National Institute of Standards and Technology
19 ("NIST") publications and requirements, and the like.

20 VIII. **INDEPENDENT CONTRACTOR:**

21 In performance of the work, duties and obligations assumed by
22 CONTRACTOR under this Agreement, it is mutually understood and agreed that
23 CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents,
24 and employees will at all times be acting and performing as an independent
25 contractor, and shall act in an independent capacity and not as an officer, agent,
26 servant, employee, joint venturer, partner, or associate of the COUNTY.
27 Furthermore, COUNTY shall have no right to control or supervise or direct the

1 manner or method by which CONTRACTOR shall perform its work and function.
2 However, COUNTY shall retain the right to administer this Agreement so as to
3 verify that CONTRACTOR is performing its obligations in accordance with the
4 terms and conditions thereof.

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

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

18 IX. **MODIFICATION**

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

21 X. **NON-ASSIGNMENT**

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

XI. INDEMNIFICATION/HOLD HARMLESS

A. INDEMNIFICATION.

If a third party claims that the Program infringes any U.S. patent, copyright, or trade secret, CONTRACTOR will (as long as COUNTY is not in default under this Agreement or any other agreement with CONTRACTOR) defend, indemnify, and hold COUNTY harmless against such claim, at CONTRACTOR's sole expense, and pay all damages, provided that COUNTY promptly notifies CONTRACTOR in writing of the claim, cooperates with CONTRACTOR, and allows CONTRACTOR to control the defense or any related settlement negotiations.

B. RIGHT TO CURE.

If such a claim is made or appears possible, CONTRACTOR may, at its option, secure for COUNTY the right to continue to use the Program, modify or replace the Program so they are non-infringing, or, if neither of the foregoing options is available in CONTRACTOR's judgment, require COUNTY to return the Program at CONTRACTOR's cost, or destroy the Program, for a refund equal to the portion of previously paid License fees allocable to the remaining term of COUNTY's License.

C. NO OBLIGATION.

CONTRACTOR has no obligation for any claim based on a modified version of the Program or their combination, operation, or use with any product, data, or apparatus not provided by CONTRACTOR.

CONTRACTOR agrees to indemnify, save, hold harmless, , defend the COUNTY, 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, occurring or resulting

1 to COUNTY in connection with the performance, or failure to perform, by
2 CONTRACTOR, its officers, agents, or employees under this Agreement, and
3 from any and all costs and expenses (including attorney's fees and costs),
4 damages, liabilities, claims, and losses, and any and all claims, damages, costs,
5 fees, regulatory fines and penalties, and forms of legal action involving Cyber
6 Risks, occurring or resulting to any person, firm, or corporation who may be
7 injured or damaged by the performance, or failure to perform, of CONTRACTOR,
8 its officers, agents, or employees under this Agreement.

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

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

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

1 The provisions of this Section XI shall survive termination of this
2 Agreement.

3 XII. **INSURANCE**

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

9 A. **COMMERCIAL GENERAL LIABILITY**

10 Commercial General Liability Insurance with limits of not less than One
11 Million Dollars (\$1,000,000.00) per occurrence and an annual aggregate of Two
12 Million Dollars (\$2,000,000.00). This policy shall be issued on a per occurrence
13 basis. COUNTY may require specific coverages including completed operations,
14 products liability, contractual liability, Explosion-Collapse-Underground, fire legal
15 liability or any other liability insurance deemed necessary because of the nature
16 of this contract.

17 B. **AUTOMOBILE LIABILITY**

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

22 C. **TECHNOLOGY PROFESSIONAL LIABILITY (ERRORS AND**
23 **OMISSIONS)**

24 Technology Professional Liability (Errors and Omissions) Insurance
25 appropriate to CONTRACTOR's profession, with limits not less than Two Million
26 Dollars (\$2,000,000) per occurrence or claim, three Million Dollars (\$3,000,000)
27 aggregate. Coverage shall be sufficiently broad to respond to the duties and
28

obligations as is undertaken by CONTRACTOR in this Agreement and may include, but not be limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy may provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

D. CYBER LIABILITY

CONTRACTOR shall obtain cyber liability insurance with limits not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage shall include, but not be limited to, claims involving Cyber Risks. The cyber liability policy shall be endorsed to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of the CONTRACTOR.

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 COUNTY, 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 CONTRACTOR'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)

1 damage to or destruction or alteration of electronic information; (vii)
2 extortion related to CONTRACTOR's obligations under this Agreement
3 regarding electronic information, including information provided by
4 COUNTY, information provided by or obtained from any inmate, or
5 personal-identifying information relating to any inmate; (viii) network
6 security; (ix) data breach response costs, including security breach
7 response costs; (x) regulatory fines and penalties related to
8 CONTRACTOR's obligations under this Agreement regarding electronic
9 information, including information provided by COUNTY, information
10 provided by or obtained from an inmate, or personal-identifying
11 information relating to any inmate; and (xi) credit monitoring expenses.

12 E. PROFESSIONAL LIABILITY

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

17 F. WORKER'S COMPENSATION

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

20 G. ADDITIONAL REQUIREMENTS RELATING TO INSURANCE

21 CONTRACTOR shall obtain endorsements to the Commercial
22 General Liability insurance naming the County of Fresno, its officers,
23 agents, and employees, individually and collectively, as additional insured,
24 but only insofar as the operations under this Agreement are concerned.
25 Such coverage for additional insured shall apply as primary insurance and
26 any other insurance, or self-insurance, maintained by COUNTY, its
27 officers, agents and employees shall be excess only and not contributing

1 with insurance provided under CONTRACTOR's policies herein. This
2 insurance shall not be cancelled or changed without a minimum of thirty
3 (30) days advance written notice given to COUNTY.

4 CONTRACTOR hereby waives its right to recover from COUNTY,
5 its officers, agents, and employees any amounts paid by the policy of
6 worker's compensation insurance required by this Agreement.

7 CONTRACTOR is solely responsible to obtain any endorsement to such
8 policy that may be necessary to accomplish such waiver of subrogation,
9 but CONTRACTOR's waiver of subrogation under this paragraph is
10 effective whether or not CONTRACTOR obtains such an endorsement.

11 Within Thirty (30) days from the date CONTRACTOR signs and
12 executes this Agreement, CONTRACTOR shall provide certificates of
13 insurance and endorsement as stated above for all of the foregoing
14 policies, as required herein, to the County of Fresno, Internal Services
15 Department, Attention: Director of Internal Services/Chief Information
16 Officer, 333 W. Pontiac Way, Clovis, CA 93612, stating that such
17 insurance coverage have been obtained and are in full force; that the
18 County of Fresno, its officers, agents and employees will not be
19 responsible for any premiums on the policies; that for such worker's
20 compensation insurance the CONTRACTOR has waived its right to
21 recover from the COUNTY, its officers, agents, and employees any
22 amounts paid under the insurance policy and that waiver does not
23 invalidate the insurance policy; that such Commercial General Liability
24 insurance names the County of Fresno, its officers, agents and
25 employees, individually and collectively, as additional insured, but only
26 insofar as the operations under this Agreement are concerned; that such
27 coverage for additional insured shall apply as primary insurance and any

1 other insurance, or self-insurance, maintained by COUNTY, its officers,
2 agents and employees, shall be excess only and not contributing with
3 insurance provided under CONTRACTOR's policies herein; and that this
4 insurance shall not be cancelled or changed without a minimum of thirty
5 (30) days advance, written notice given to COUNTY.

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

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

14 **XIII. ADDITIONAL SERVICES AND SYSTEM REQUIREMENTS**

15 **A. INSTALLATION**

16 Installation by CONTRACTOR cannot begin until COUNTY's IT
17 Department has a server in place with all of the minimal recommendations, as
18 supplied in our 'Hardware/Software Requirements' document. CONTRACTOR
19 will not install unless COUNTY's server is properly prepared. CONTRACTOR
20 can assist in helping COUNTY set up the server for an additional charge. This
21 includes, and is limited to, IIS configuration, SQL CONTRACTOR DB restores
22 and updates.

23 CONTRACTOR is able to perform the installation more effectively while
24 having VPN full access to the test server and database. If CONTRACTOR is
25 not provided with full VPN access we have found that there is additional time
26 needed to perform the install. This will constitute a chargeable expense. There
27 should be both a testing and production environment set up.

B. CONVERSION

CONTRACTOR will need to run the Daily Balance Report from the first transaction date, for each database prior to conversion. Any account(s) out of balance will need to be corrected before CONTRACTOR can begin the conversion process. If it takes CONTRACTOR more than 2 hours to resolve these issues, the additional time to resolve will be charged to the COUNTY.

CONTRACTOR will map the data elements from COUNTY's current CT system to the standard fields in the CTI-V3 database. If there is a field needed that does not exist in CTI-V3, it will require a modification, and will constitute additional costs. The data should be clean prior to submission to CTfor mapping. CONTRACTOR will perform a trial conversion of the existing data for Customer review in the CTI-V3 application. CONTRACTOR will allow 30 days for COUNTY to review the converted data once it has been installed. If COUNTY is non-responsive, it will be assumed COUNTY has approved the data conversion, and COUNTY will be invoiced for the services performed. CONTRACTOR will then perform a final conversion of the data.

Prior to the final conversion, COUNTY must sign off on the converted data and system changes.

C. CUSTOMIZATION

Additional modifications requested by COUNTY will be completed by CONTRACTOR at CONTRACTOR's per diem rate. Customization will require establishment of a Statement of Work (SOW), to be approved by both parties. Upon establishment of the SOW, development will be scheduled and the modifications installed. CONTRACTOR will allow 30 days for COUNTY to review the modifications for sign-off once they have been installed. If COUNTY is non-responsive, it will be assumed to be approved, and COUNTY will be invoiced for services performed.

1 D. REPORT DEVELOPMENT

2 CONTRACTOR and COUNTY support the use of Microsoft SQL
3 Reporting Services (SRS) for report development. SRS is a free report writing
4 tool with extensive functionality. Additionally, the search engine capabilities and
5 form grids can filter inquiries that can be saved to a report.

6 CTI-V3 includes a set of “canned” reports. Any additional reports deemed
7 necessary by COUNTY to be designed by CT or integrated with another report
8 service will be chargeable at CT’s per diem rate. Additional Reports have not
9 been quoted at this time.

10 Court Accounting reporting can be a variable to each individual agency.
11 CONTRACTOR has a standard Court Accounting report. Should COUNTY wish
12 CONTRACTOR to customize this report to fit COUNTY needs, this will
13 constitute a chargeable expense.

14 E. NAVIGATION

15 CONTRACTOR will provide WebEx training to show COUNTY users
16 how to navigate through the new application, in order for them to perform duties
17 associated with conversion and customization, should it be applicable.

18 F. SYSTEM ADMINISTRATOR TRAINING

19 1. COUNTY’s internal system administrator will need to learn how to
20 manage the new system. This will include:

- 21 • Change captions and tool tips, directly on each page or in a
- 22 central admin page.
- 23 • Create and edit Help contents from an admin page
- 24 • Create and edit users
- 25 • Create and edit list items
- 26 • Add and modify Organizations
- 27 • Add and modify Personnel

- Role administration
- Menu maintenance

G. END USER TRAINING

CT recommends the “train the trainer” approach to COUNTY training. This could include any number of people, however a minimum of 2 is recommended. Should end user training be required by COUNTY, either online or in person, this will constitute a chargeable expense at our per diem rate plus reasonable travel expenses.

There may be a need to provide additional services. These services will be quoted separately at the current per diem rate of \$1400 or \$175/hour.

XIV. HARDWARE/SOFTWARE REQUIREMENTS

A. SERVER REQUIREMENTS

1. Software:






- MS IIS 7.5 or newer - Web Deployment Tool
- MS .Net Framework 4.7.1
- MS SQL Server 2014 or newer, CLR enabled
- MS Analysis Server (optional)
- MS Reporting Server (optional)
- SMTP server access to send out emails

2. Hardware: (The Web App does not have a specific minimum requirement, these are dictated by the OS and the database server)

- Memory 16GB. Recommended 20GB
- Disk space should be adopted in accordance with the volume of documents and images to be stored.
- Minimum 4 CPU's, AMD Opteron, AMD Athlon 64, Intel Xeon with Intel EM64T support, Intel Pentium IV with EM64T support. Speed, 2.0 GHz or faster.

3. Workstations:

- The client workstation or device should have installed the appropriated software in order to display, edit and/or print these files (PDF, Word, images, audio, video, etc) that may be stored or generated in the server.
- Current Browser Support

Browser (*) \ OS	Windows	IOS	Android
 Edge	42.0+	-	-
 Firefox	62+	62+	62+
 Chrome	69+	69+	69+
 Opera	55+	-	-
 Safari	-	11+	-

- Browsers with no HTML 5 implemented are not supported
- Browsers must have JavaScript support enabled
- Browsers in Beta stage are not supported
- All Discontinued browsers are not supported for example: IE & Netscape

XV. **AUDITS AND INSPECTIONS**

CONTRACTOR shall at any time during CONTRACTOR'S normal business hours, and upon prior written notice, as often as the COUNTY may deem necessary, make available to the COUNTY for examination all of its records and data with respect to the matters covered by this Agreement.

CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement. Any such

1 examinations or audits shall be at the COUNTY'S expense, and at Contractor's
2 facility.

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

7 XVI. **NOTICES:**

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

10 A. **AUTHORITY TO GIVE AND RECEIVE NOTICES**

11 COUNTY OF FRESNO	CONTRACTOR
12 Robert Bash	Anthony Kessel
13 Chief Information Officer	CEO
14 333 W Pontiac Way	CompuTrust Software LLC
15 Clovis, CA 93612-5613	18625 Sutter Blvd. Suite 500
16	Morgan Hill CA 95037-7522
17	

18 All notices between the COUNTY and CONTRACTOR provided for or
19 permitted under this Agreement must be in writing and delivered either by
20 personal service, by first-class United States mail, by an overnight commercial
21 courier service, or by telephonic facsimile transmission. A notice delivered by
22 personal service is effective upon service to the recipient. A notice delivered by
23 first-class United States mail is effective three COUNTY business days after
24 deposit in the United States mail, postage prepaid, addressed to the recipient. A
25 notice delivered by an overnight commercial courier service is effective one
26 COUNTY business day after deposit with the overnight commercial courier
27 service, delivery fees prepaid, with delivery instructions given for next day

1 delivery, addressed to the recipient. A notice delivered by telephonic facsimile is
2 effective when transmission to the recipient is completed (but, if such
3 transmission is completed outside of COUNTY business hours, then such
4 delivery shall be deemed to be effective at the next beginning of a COUNTY
5 business day), provided that the sender maintains a machine record of the
6 completed transmission. For all claims arising out of or related to this Agreement,
7 nothing in this section establishes, waives, or modifies any claims presentation
8 requirements or procedures provided by law, including but not limited to the
9 Government Claims Act (Division 3.6 of Title 1 of the Government Code,
10 beginning with section 810).

11 B. PRIMARY ESCALATION CONTACT INFORMATION

12 The persons and their contact information that the COUNTY or
13 CONTRACTOR can use to escalate problems or situations are as follows:

COUNTY OF FRESNO	CONTRACTOR
(1)	
Contact #1	Contact #1
Applications Information	Lily Yee, Technical Support
Technology Manager	Manager
Office Phone: (559) 600-5800	CTSupport@computrustcorp.com
Email:	
helpdesk@fresnocountyca.gov	Office Phone: (408) 782-7470

1 (2)

2 COUNTY OF FRESNO

CONTRACTOR

3 Contact #2

Contact #2

4 Information Technology Division

Kristie Garcia

5 Manager

Technical Support

6 Email:

CTSupport@computrustcorp.com

7 swalden@fresnocountyca.gov

8
9 **XVII. GOVERNING LAW**

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

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

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

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

19 Members of the CONTRACTOR's Board of Directors shall disclose any
20 self-dealing transactions that they are a party to while CONTRACTOR is
21 providing goods or performing services under this agreement. A self-dealing
22 transaction shall mean a transaction to which the CONTRACTOR is a party and
23 in which one or more of its directors has a material financial interest. Members of
24 the Board of Directors shall disclose any self-dealing transactions that they are a
25 party to by completing and signing a Self-Dealing Transaction Disclosure Form
26 (Exhibit 1) and submitting it to the COUNTY prior to commencing with the self-
27 dealing transaction or immediately thereafter.

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

3 **CONTRACTOR**

4 
5 _____

6 (Authorized Signature)

8 Anthony Kessel, CEO

9 CompuTrust Software Corporation
10 _____

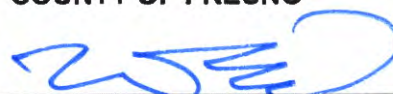
11 Print Name & Title

12 18625 Sutter Blvd. Suite 500

13 Morgan Hill, CA 95037-7522
14 _____

15 Mailing Address

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

23 By:



Deputy

25 FOR ACCOUNTING USE ONLY:

26 Org. No.: 56300010

27 Account No./Fund: 7309/0001/10000

Exhibit A

COMPUTRUST CTI-V3 QUOTE FOR FRESNO COUNTY DEPARTMENT OF BEHAVIORAL HEALTH – PUBLIC GUARDIAN OFFICE CLOUD-HOSTED CASE MANAGEMENT DATABASE

Purpose – The below schedule reflects a proposed pricing schedule for the County's implementation of cloud-hosted services effective October 7, 2019. Should the County elect to implement cloud-hosted services at a later date, a revised pricing structure shall be appended to the Agreement with the authorization of the County CIO (Section VI-E).

This project would upgrade and migrate Fresno County Department of Behavioral Health – Public Guardian data to the CompuTrust CTI-V3 cloud-hosted server environment. This version is a completely new architecture for a mobile-based application.

Terms – Customer and Computrust would agree to mutually determined terms in chronological alignment with the existing Agreement, in an appended pricing structure document.

All Hosted fees will be subject to a 3% COL increase annually. Should COUNTY require additional users, fees will be increased accordingly or if projected data storage limits are exceeded, additional storage costs will incur.

Exhibit A

CLOUD-HOSTED CASE MANAGEMENT DATABASE

Year 1	Annual Usage Fees for current 20 users (prorated):	\$32,226
	Annual Hosted Fees for current 20 users (prorated):	\$7044
	Annual Usage Fees for 2 additional users (prorated):	\$1,937
	Annual Hosted Fees for 2 additional users (prorated):	\$705
	Effective 10/07/2019 – 6/30/2020	
	Total Annual Fees:	\$41,930
Year 2	Annual Hosted fees for 22 users: Effective 7/1/2020	\$58,860
Year 3	Annual Hosted fees for 22 users: Effective 7/1/2021	\$60,630
Year 4	Annual Hosted fees for 22 users: Effective 7/1/2022	\$62,445
Year 5	Annual Hosted fees for 22 users: Effective 7/1/2023	\$64,320
TOTAL		\$288,185

“User(s)” is defined as Customer employees, representatives, consultants, contractors, or agents who are authorized to use the Software and have been supplied user identifications and passwords by Customer (or by Vendor at Customer’s request), each of which must be individual and not shared.

Data Storage Fees – The CTI-V3 Annual Fee provides for unlimited storage of the database. Documents and images, however, will have a separate storage fee for the term of the Agreement. This fee is subject to change depending on the amount of legacy and projected storage that is anticipated at the time of Agreement. COUNTY will be notified if COUNTY is getting close to its limit. We will work with COUNTY to determine COUNTY’s expected storage over the remainder of the year, and bill accordingly at \$.18/Gb/Mo.

Exhibit A

	Annual Fees
Legacy Documents/Images Storage Fees estimated __ Gb @ \$.18/Gb/Mo	\$ TBD
Projected 1st annual growth increase estimated __ Gb @ 18/Gb/Mo	<u>\$ TBD</u>
1st year Total <u>Annual</u> Document/Image Storage Fees	\$ TBD

The new mobile CTI-V3 system includes fully integrated modules for Case Management, Accounting, Asset Management, Reports, Banking functions, and File Management. Upgrades to the system are included at no additional cost.

Installation: Installation by CompuTrust cannot begin until COUNTY's IT Department has a server in place with all of the minimal recommendations, as supplied in our 'Hardware/Software Requirements' document. CompuTrust will not install unless COUNTY's server is properly prepared. CompuTrust can assist in helping COUNTY set up the server for an additional charge. This includes and is limited to IIS configuration, SQL CompuTrust DB restores, and updates.

CompuTrust is able to perform the installation more effectively while having VPN full access to the test server and database. If CompuTrust is not provided with full VPN access we have found that there is additional time needed to perform the install. This will constitute a chargeable expense. There should be both a testing and production environment set up.

Exhibit A

Additional Agreement Terms specific to Cloud-Hosted applications

Vendor is in the business of providing case management software for public guardians, fiduciaries, and administrators. The parties desire that Vendor make such software available to Customer under the terms and conditions of this Agreement, and Customer's access to and use of the software shall conform to these terms and conditions.

In consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions

The following terms shall have the following meaning:

"CTI-V3 Hosted" means the case management software for public guardians, fiduciaries, administrators. offered via Software as a Service (SaaS), the "Service" provided under the terms of this Agreement, designed as an alternative to a customized CTI-V3 residing locally on a customer's server.

"Content" means the audio and visual information, documents, software, products, and services contained or made available to Customer in the course of using the Service.

"Customer Data" means any data, information, or material provided or submitted by Customer to the Service in the course of using the Service.

"Initial Term" means the initial period during which Customer is obligated to pay for the Service as defined above attached to this Agreement.

"Intellectual Property Rights" means any unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of

Exhibit A

protection of a similar nature anywhere in the world.

“License Administrator(s)” means those Users designated by Customer who are authorized to purchase licenses and to create User accounts and otherwise administer Customer’s use of the Service.

“License Term(s)” means the period(s) during which a specified number of Users are licensed to use the Service pursuant to this Agreement.

“Vendor Technology” means all of Vendor’s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information) made available to Customer by Vendor in providing the Service.

“Service(s)” means access under the terms of this Agreement to Vendor’s case management software, which is developed, operated, and maintained by Vendor, accessible via <http://www.CompuTrustcorp.com> or another designated website or IP address, or ancillary online or offline products and services provided to Customer by Vendor, to which Customer is being granted access under this Agreement, including the Vendor Technology and the Content.

“User(s)” means Customer employees, representatives, consultants, contractors, or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by Vendor at Customer’s request).

3. Customer Responsibilities

Customer is responsible for all activity occurring under Customer’s User accounts, including activity initiated by third parties, whether such parties are known or unknown to Customer, with the *sole exception* of activities which are specifically initiated by Vendor or caused by the negligence of Vendor and shall abide by all applicable local, state, and federal laws and regulations in connection with Customer’s use of the Service, including those related to data privacy, and

Exhibit A

1 the transmission of technical or personal data, except to the extent such activity is
2 outside of Customer's reasonable control. Customer shall: (i) notify Vendor
3 immediately of any unauthorized use of any password or account or any other
4 known or suspected breach of security; (ii) report to Vendor immediately and use
5 reasonable efforts to stop immediately any copying or distribution of Content that
6 is known or suspected by Customer or Customer Users; and (iii) not impersonate
7 another Vendor user or provide false identity information to gain access to or use
8 the Service.

9 **4. Account Information and Data**

10 Vendor does not own any Customer Data. Customer, not Vendor, shall have
11 sole responsibility for the accuracy, quality, integrity, legality, reliability,
12 appropriateness, and intellectual property ownership or right to use of all Customer
13 Data, and Vendor shall not be responsible or liable for the deletion, correction,
14 destruction, damage, loss, or failure to store any Customer Data, except to the
15 extent that any such deletion, correction, destruction, damage, loss, or failure to
16 store such Customer Data is the result of Vendor's negligence in performing
17 services pertaining to Customer Data pursuant to this Agreement. In the event this
18 Agreement is terminated, Vendor will make available to Customer a quality,
19 industry standard, and useable file of the Customer Data within 10 days of
20 termination. Upon termination for cause, Customer's right to the Services shall
21 cease, but Vendor will make available to Customer a file of the Customer Data
22 within 10 days of termination.

23 **5. Intellectual Property Ownership**

24 Vendor (and its licensors, where applicable) shall exclusively own all right, title,
25 and interest, including all related Intellectual Property Rights, in and to the Vendor
26 Technology, the Content, other than Customer's data, and the Service and any
27 suggestions, ideas, enhancement requests, feedback, recommendations, or other
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Exhibit A

1 information provided by Customer or any other party relating to the Service. This
2 Agreement is not a sale and does not convey to Customer any rights of ownership
3 in or related to the Service, the Vendor Technology, or the Intellectual Property
4 Rights owned by Vendor. Vendor's name, Vendor's logo, and the product names
5 associated with the Service are trademarks of Vendor or third parties, and no right
6 or license is granted to use them as outlined in the COMPUTRUST SOFTWARE
7 CORPORATION, END-USER LICENSE AGREEMENT.

8 **6. Charges and Payment of Fees**

9 Customer shall pay all fees or charges to Customer's account in accordance
10 with the terms and conditions set forth herein. The initial charges will be equal to
11 the current number of total User licenses requested times the User license fee
12 currently in effect. Payments must be made annually in advance unless otherwise
13 mutually agreed upon. Customer is responsible for paying for all User licenses
14 ordered for the year, whether or not such User licenses are actively used. An
15 authorized License Administrator may add licenses by initiating an amendment to
16 this Agreement. Added licenses will be subject to the following: (i) added licenses
17 will be coterminous with the preexisting License Term (either Initial Term or
18 renewal term); (ii) the license fee for the added licenses will be the then current,
19 generally applicable license fee; and licenses added in the middle of a billing month
20 will be charged on a pro-rated basis for that billing month. Vendor reserves the
21 right to modify its fees and charges and to introduce new charges at any time.

22 **7. Excess Data Storage Fees**

23 Customer will be charged the then-current storage fees for additional storage
24 as outlined above. Vendor will use reasonable efforts to notify Customer when the
25 average storage used reaches approximately 90 percent of the maximum
26 designated; however, any failure by Vendor to so notify Customer shall not affect
27 Customer's responsibility for such additional storage charges. Said notice shall be
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Exhibit A

1 in addition to a monthly usage report to Customer, which shall provide Customer
2 with its current storage usage and the remaining storage space remaining. Vendor
3 reserves the right to establish or modify its general practices and limits relating to
4 the storage of Customer Data. Vendor shall notify Customer of any changes,
5 limitations, or additions to its general practices and limits relating to the storage of
6 Customer's Data 30 days prior to the effective date of said changes.

7 **8. Billing and Renewal**

8 Payment for each year of the initial term is as set forth in this document.
9 Vendor will automatically issue an invoice to Customer each year on the
10 subsequent anniversary or as otherwise mutually agreed upon. Renewal fees will
11 be equal to the then current number of total User licenses times the current license
12 fees at the time of renewal. Other services will be charged on an as-quoted basis.
13 Vendor's fees are exclusive of all taxes, levies, or duties imposed by taxing
14 authorities, and Customer shall be responsible for payment of all such taxes,
15 levies, or duties, excluding only U.S. (federal or state) taxes based solely on
16 Vendor's income. The parties understand and agree that the transaction resulting
17 from this Agreement shall not be subject to sales taxes in California, as further
18 provided in Section 6010.9, 6011, and 6012 of the California Revenue and
19 Taxation Code. If Customer believes its bill is incorrect, Customer must contact
20 Vendor in writing within 60 days of the invoice date of the invoice containing the
21 amount in question to be eligible to receive an adjustment or credit.

22 **Nonpayment and Suspension**

23 In addition to any other rights granted to Vendor herein, Vendor reserves the
24 right to suspend or terminate this Agreement and Customer's access to the Service
25 if Customer's account becomes delinquent by more than 60 days. Delinquent
26 invoices and accounts are subject to interest of 1.0 percent per month on any
27 outstanding balance, or the maximum permitted by law, whichever is less, plus all
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Exhibit A

1 expenses of collection. Customer will continue to be charged for User fees during
2 any period of suspension. If Customer or Vendor initiates termination of this
3 Agreement, Customer will be obligated to pay the balance due on Customer's
4 account computed in accordance with Section 8 above. Customer agrees that
5 Vendor may bill Customer for such unpaid fees.

6 Vendor reserves the right to impose a reconnection fee in the event Customer
7 is suspended and thereafter requests access to the Service. Customer agrees and
8 acknowledges that in the event of suspension or termination, Vendor will provide
9 Customer with a file of the Customer Data upon Customer's request or before 10
10 days of account delinquency, as Vendor has no obligation to retain Customer Data
11 after this time period, and Customer hereby specifically acknowledges that such
12 Customer Data may be irretrievably deleted by Vendor if Customer's account is
13 120 days or more past due.

14 **10. Termination upon Expiration/Reduction in Number of Licenses**

15 This Agreement commences on the Effective Date. The Term is described in
16 Section IV of the Agreement. Either party may terminate this Agreement or reduce
17 the number of licenses, effective only upon the expiration of the then current
18 License Term, by notifying the other party in writing at least thirty (30) days prior
19 to the expiration of the term. Customer shall be entitled to a pro-rata refund of all
20 payments tendered for any period in excess of the remaining year in which
21 termination notice was served. In the case of free trials, notifications provided
22 through the Service indicating the remaining number of days in the free trial shall
23 constitute notice of termination. In the event this Agreement is terminated, Vendor
24 will make available to Customer a quality, industry standard and useable file of the
25 Customer Data within 10 days of termination if Customer so requests at the time
26 of termination. Customer agrees and acknowledges that Vendor has no obligation
27 to retain the Customer Data, and may delete such Customer Data, more than 120
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Exhibit A

1 days after termination.

2 **11. Termination for Cause**

3 Any breach of Customer's payment obligations or unauthorized use of the
4 Vendor Technology or Service will be deemed a material breach of this Agreement.
5 Vendor, in its sole discretion, may terminate Customer's password, account, or
6 use of the Service if Customer breaches or otherwise fails to comply with this
7 Agreement, provided that Customer fails to cure or otherwise resolve a verified
8 breach within 60 days of receipt of Vendor's notice. Customer agrees and
9 acknowledges that Vendor has no obligation to retain the Customer Data, and may
10 delete such Customer Data, if Customer has not cured within 120 days of notice
11 of such breach; however, in this instance, Vendor agrees to provide Customer with
12 a file of the Customer Data upon Customer's request or within 10 days of such
13 termination.
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Exhibit B

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).

Exhibit B

(1) Company Board Member Information:

	Date:	

(2) Company/Agency Name and Address:

--

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

--

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

--

(5) Authorized Signature

Signature		Date:	
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