

1 **SERVICE AGREEMENT**

2 This Service Agreement (“Agreement”) is dated _____ and is between
3 Zetron, Inc., a Washington corporation (“Contractor”), and the County of Fresno, a political
4 subdivision of the State of California (“County”).

5 **Recitals**

6 A. The County has a need for public communication products, services, and solutions for
7 Zetron-brand dispatch and communication systems.

8 B. On January 1, 2022, the Contractor entered into a cooperative agreement No. 00318
9 (“Cooperative Agreement”) with the State of Washington Department of Enterprise Services to
10 offer public safety communication products, services, and solutions, specifically relating to
11 dispatch consoles and interoperability devise. This Cooperative Agreement is made available to
12 public entities, including federal, state, and local governments via the National Association of
13 State Procurement Officials (NASPO), as described at
14 [https://www.naspo.valuepoint.org/portfolio/public-safety-communications-products-services-and-](https://www.naspo.valuepoint.org/portfolio/public-safety-communications-products-services-and-solutions/zetron-inc/)
15 [solutions/zetron-inc/](https://www.naspo.valuepoint.org/portfolio/public-safety-communications-products-services-and-solutions/zetron-inc/).

16 C. The County desires to engage the Contractor through the competitively bid terms of the
17 Cooperative Agreement to receive public communication products, services, and solutions.

18 The parties therefore agree as follows:

19 **Article 1**

20 **Contractor’s Services**

21 1.1 **Scope of Services.** The Contractor shall perform all of the services provided in
22 Exhibit A to this Agreement, titled “Scope of Services.”

23 1.2 **Representation.** The Contractor represents that it is qualified, ready, willing, and
24 able to perform all of the services provided in this Agreement.

25 1.3 **Compliance with Laws.** The Contractor shall, at its own cost, comply with all
26 applicable federal, state, and local laws and regulations in the performance of its obligations
27 under this Agreement, including but not limited to workers compensation, labor, and
28 confidentiality laws and regulations.

1 1.4 **Data Security.** The Contractor shall comply with all data security measures as
2 detailed in Exhibit E.

3 **Article 2**

4 **County's Responsibilities**

5 2.1 The County shall comply with terms provided in Exhibit A.

6 2.2 **County Representative.** The County shall provide a County representative to
7 represent the County, who will work with the Contractor to carry out the Contractor's obligations
8 under this Agreement. The County representative will be the County's Information Technology
9 Division Manager, and/or their designees. The Contractor shall provide a contact person to the
10 County Representative upon execution of this Agreement.

11 **Article 3**

12 **Compensation, Invoices, and Payments**

13 3.1 The County agrees to pay, and the Contractor agrees to receive, compensation for
14 the performance of its services under this Agreement as described in Exhibit B to this
15 Agreement, titled "Compensation."

16 3.2 **Maximum Compensation.** The maximum compensation payable to the Contractor
17 under this Agreement is \$1,175,000.00 for the five-year term of this Agreement.

18 The Contractor acknowledges that the County is a local government entity, and does so
19 with notice that the County's powers are limited by the California Constitution and by State law,
20 and with notice that the Contractor may receive compensation under this Agreement only for
21 services performed according to the terms of this Agreement and while this Agreement is in
22 effect, and subject to the maximum amount payable under this section. The Contractor further
23 acknowledges that County employees have no authority to pay the Contractor except as
24 expressly provided in this Agreement.

25 3.3 **Invoices.** The Contractor shall submit monthly invoices referencing the provided
26 agreement number to the County of Fresno, Internal Services Department, Attention: Business
27 Office, 333 W. Pontiac Way, Clovis, CA 93612, isdbusinessoffice@fresnocountyca.gov. The
28 Contractor shall submit each invoice within 60 days after the month in which the Contractor

1 an overnight commercial courier service, or by Portable Document Format (PDF) document
2 attached to an email.

3 (A) A notice delivered by personal service is effective upon service to the recipient.

4 (B) A notice delivered by first-class United States mail is effective three County
5 business days after deposit in the United States mail, postage prepaid, addressed to the
6 recipient.

7 (C) A notice delivered by an overnight commercial courier service is effective one
8 County business day after deposit with the overnight commercial courier service,
9 delivery fees prepaid, with delivery instructions given for next day delivery, addressed to
10 the recipient.

11 (D) A notice delivered by PDF document attached to an email is effective when
12 transmission to the recipient is completed (but, if such transmission is completed outside
13 of County business hours, then such delivery is deemed to be effective at the next
14 beginning of a County business day), provided that the sender maintains a machine
15 record of the completed transmission.

16 5.4 **Claims Presentation.** For all claims arising from or related to this Agreement,
17 nothing in this Agreement establishes, waives, or modifies any claims presentation
18 requirements or procedures provided by law, including the Government Claims Act (Division 3.6
19 of Title 1 of the Government Code, beginning with section 810).

20 **Article 6**

21 **Termination and Suspension**

22 6.1 **Termination for Non-Allocation of Funds.** The terms of this Agreement are
23 contingent on the approval of funds by the appropriating government agency. If sufficient funds
24 are not allocated, then the County, upon at least 30 days' advance written notice to the
25 Contractor, may:

26 (A) Modify the services provided by the Contractor under this Agreement; or

27 (B) Terminate this Agreement.

28 6.2 **Termination for Breach.**

1 (A) Upon determining that a breach (as defined in paragraph (C) below) has
2 occurred, the County may give written notice of the breach to the Contractor. The written
3 notice may suspend performance under this Agreement, and must provide at least 30
4 days for the Contractor to cure the breach.

5 (B) If the Contractor fails to cure the breach to the County's satisfaction within the
6 time stated in the written notice, the County may terminate this Agreement immediately.

7 (C) For purposes of this section, a breach occurs when, in the determination of the
8 County, the Contractor has:

- 9 (1) Obtained or used funds illegally or improperly;
- 10 (2) Failed to comply with any part of this Agreement;
- 11 (3) Submitted a substantially incorrect or incomplete report to the County; or
- 12 (4) Improperly performed any of its obligations under this Agreement.

13 **6.3 Termination without Cause.** In circumstances other than those set forth above, the
14 County may terminate this Agreement by giving at least 30 days advance written notice to the
15 Contractor.

16 **6.4 No Penalty or Further Obligation.** . In the event of termination of this Agreement,
17 the Contractor shall be entitled to compensation for any work and services that have been
18 performed or substantially completed up to the date of termination, in accordance with the terms
19 and conditions of this Agreement.

20 **6.5 County's Rights upon Termination.** Upon termination for breach under this Article
21 6, the County may demand repayment by the Contractor of any monies disbursed to the
22 Contractor under this Agreement that were not expended in compliance with this Agreement.
23 The Contractor shall promptly refund all such monies within thirty (30) days. This section
24 survives the termination of this Agreement.

25 **Article 7**

26 **Independent Contractor**

27 **7.1 Status.** In performing under this Agreement, the Contractor, including its officers,
28 agents, employees, and volunteers, is at all times acting and performing as an independent

1 contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint
2 venturer, partner, or associate of the County.

3 7.2 **Verifying Performance.** The County has no right to control, supervise, or direct the
4 manner or method of the Contractor's performance under this Agreement, but the County may
5 verify that the Contractor is performing according to the terms of this Agreement.

6 7.3 **Benefits.** Because of its status as an independent contractor, the Contractor has no
7 right to employment rights or benefits available to County employees. The Contractor is solely
8 responsible for providing to its own employees all employee benefits required by law. The
9 Contractor shall save the County harmless from all matters relating to the payment of the
10 Contractor's employees, including compliance with Social Security withholding and all related
11 regulations.

12 7.4 **Services to Others.** The parties acknowledge that, during the term of this
13 Agreement, the Contractor may provide services to others unrelated to the County.

14 **Article 8**

15 **Indemnity and Defense**

16 8.1 **Indemnity.** The Contractor shall indemnify and hold harmless and defend the
17 County (including its officers, agents, employees, and volunteers) against all claims, demands,
18 injuries, damages, costs, expenses (including attorney fees and costs), fines, penalties, and
19 liabilities of any kind to the County, the Contractor, or any third party that arise from or relate to
20 the performance or failure to perform by the Contractor (or any of its officers, agents,
21 subcontractors, or employees) under this Agreement. The County may conduct or participate in
22 its own defense without affecting the Contractor's obligation to indemnify and hold harmless or
23 defend the County.

24 8.2 **Survival.** This Article 8 survives the termination of this Agreement.

25 **Article 9**

26 **Insurance**

27 9.1 The Contractor shall comply with all the insurance requirements in Exhibit D to this
28 Agreement.

1 **Article 10**

2 **Inspections, Audits, and Public Records**

3 10.1 **Inspection of Documents.** The Contractor shall make available to the County, and
4 the County may examine at any time during business hours and at most once per fiscal quarter,
5 all of the Contractor's records and data directly related to the matters covered by this
6 Agreement, excluding attorney-client privileged communications. The Contractor shall, upon
7 request by the County, permit the County to audit and inspect all of such records and data to
8 ensure the Contractor's compliance with the terms of this Agreement.

9 10.2 **State Audit Requirements.** If the compensation to be paid by the County under this
10 Agreement exceeds \$10,000, the Contractor is subject to the examination and audit of the
11 California State Auditor, as provided in Government Code section 8546.7, for a period of three
12 years after final payment under this Agreement. This section survives the termination of this
13 Agreement.

14 10.3 **Public Records.** The County is not limited in any manner with respect to its public
15 disclosure of this Agreement or any record or data that the Contractor may provide to the
16 County. Any other, proprietary and confidential information of the Contractor, intellectual
17 property of the Contractor, and anything that may be reasonably interpreted to be personal
18 information of the Contractor, shall not be disclosed, shared, or made public without prior written
19 consent from the Contractor. The County's public disclosure of this Agreement or any record or
20 data that the Contractor may provide to the County may include the following:

21 (A) The County may voluntarily, or upon request by any member of the public or
22 governmental agency, disclose this Agreement to the public or such governmental
23 agency.

24 (B) The County may voluntarily, or upon request by any member of the public or
25 governmental agency, disclose to the public or such governmental agency any record or
26 data that the Contractor may provide to the County, unless such disclosure is prohibited
27 by court order.

1 (C) This Agreement, and any record or data that the Contractor may provide to the
2 County, is subject to public disclosure under the Ralph M. Brown Act (California
3 Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

4 (D) This Agreement, and any record or data that the Contractor may provide to the
5 County, is subject to public disclosure as a public record under the California Public
6 Records Act (California Government Code, Title 1, Division 10, Chapter 3, beginning
7 with section 7920.200) ("CPRA").

8 (E) This Agreement, and any record or data that the Contractor may provide to the
9 County, is subject to public disclosure as information concerning the conduct of the
10 people's business of the State of California under California Constitution, Article 1,
11 section 3, subdivision (b).

12 (F) Any marking of confidentiality or restricted access upon or otherwise made with
13 respect to any record or data that the Contractor may provide to the County shall be
14 disregarded and have no effect on the County's right or duty to disclose to the public or
15 governmental agency any such record or data.

16 **10.4 Public Records Act Requests.** If the County receives a written or oral request
17 under the CPRA to publicly disclose any record that is in the Contractor's possession or control,
18 and which the County has a right, under applicable law, to possess or control, then the County
19 may demand, in writing, that the Contractor deliver to the County, for purposes of public
20 disclosure, the requested records that may be in the possession or control of the Contractor.
21 Within five business days after the County's demand, the Contractor shall (a) deliver to the
22 County all of the requested records that are in the Contractor's possession or control, together
23 with a written statement that the Contractor, after conducting a diligent search, has produced all
24 requested records that are in the Contractor's possession or control, or (b) provide to the
25 County a written statement that the Contractor, after conducting a diligent search, does not
26 possess or control any of the requested records. The Contractor shall cooperate with the
27 County with respect to any County demand for such records. If the Contractor wishes to assert
28 that any specific record or data is exempt from disclosure under the CPRA or other applicable

1 law, it must deliver the record or data to the County and assert the exemption by citation to
2 specific legal authority within the written statement that it provides to the County under this
3 section. The Contractor's assertion of any exemption from disclosure is not binding on the
4 County, but the County will give at least 10 days' advance written notice to the Contractor
5 before disclosing any record subject to the Contractor's assertion of exemption from disclosure.
6 The Contractor shall indemnify the County for any court-ordered award of costs or attorney's
7 fees under the CPRA that results from the Contractor's delay, claim of exemption, failure to
8 produce any such records, or failure to cooperate with the County with respect to any County
9 demand for any such records.

10 **Article 11**

11 **Disclosure of Self-Dealing Transactions**

12 11.1 **Applicability.** This Article 11 applies if the Contractor is operating as a corporation,
13 or changes its status to operate as a corporation.

14 11.2 **Duty to Disclose.** If any member of the Contractor's board of directors is party to a
15 self-dealing transaction, he or she shall disclose the transaction by completing and signing a
16 "Self-Dealing Transaction Disclosure Form" (Exhibit C to this Agreement) and submitting it to
17 the County before commencing the transaction or immediately after.

18 11.3 **Definition.** "Self-dealing transaction" means a transaction to which the Contractor is
19 a party and in which one or more of its directors, as an individual, has a material financial
20 interest.

21 **Article 12**

22 **General Terms**

23 12.1 **Modification.** Except as provided in Article 6, "Termination and Suspension," this
24 Agreement may not be modified, and no waiver is effective, except by written agreement signed
25 by both parties. The Contractor acknowledges that County employees have no authority to
26 modify this Agreement except as expressly provided in this Agreement.

27 12.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations
28 under this Agreement without the prior written consent of the other party.

1 12.3 **Governing Law.** The laws of the State of California govern all matters arising from
2 or related to this Agreement.

3 12.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno
4 County, California. The Contractor consents to California jurisdiction for actions arising from or
5 related to this Agreement, and, subject to the Government Claims Act, all such actions must be
6 brought and maintained in Fresno County.

7 12.5 **Construction.** The final form of this Agreement is the result of the parties' combined
8 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be
9 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement
10 against either party.

11 12.6 **Days.** Unless otherwise specified, "days" means calendar days.

12 12.7 **Headings.** The headings and section titles in this Agreement are for convenience
13 only and are not part of this Agreement.

14 12.8 **Severability.** If anything in this Agreement is found by a court of competent
15 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in
16 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of
17 this Agreement with lawful and enforceable terms intended to accomplish the parties' original
18 intent.

19 12.9 **Nondiscrimination.** During the performance of this Agreement, the Contractor shall
20 not unlawfully discriminate against any employee or applicant for employment, or recipient of
21 services, because of race, religious creed, color, national origin, ancestry, physical disability,
22 mental disability, medical condition, genetic information, marital status, sex, gender, gender
23 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to
24 all applicable State of California and federal statutes and regulation.

25 12.10 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation
26 of the Contractor under this Agreement on any one or more occasions is not a waiver of
27 performance of any continuing or other obligation of the Contractor and does not prohibit
28 enforcement by the County of any obligation on any other occasion.

1 12.11 **Agent for Service of Process.** The Contractor represents to County that the
2 Contractor's agent for service of process in California, and that such agent's address for
3 receiving such service of process in California, which information the Contractor shall maintain
4 with the office of the California Secretary of State, is as follows:

5 **California Registered Corporate Agent (1505)**

6 2710 Gateway Oaks Drive Suite 150N

7 Sacramento, CA 95833

8 Sacramento County

9 The Contractor further represents to the County that if the Contractor changes its agent for
10 service of process in California, or the Contractor's agent for service of process in California
11 changes its address for receiving such service of process in California, which changed
12 information the Contractor shall maintain with the office of the California Secretary of State, the
13 Contractor shall give the County written notice thereof within five (5) calendar days thereof
14 pursuant to Article 5 of this Agreement.

15 12.12 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement
16 between the Contractor and the County with respect to the subject matter of this Agreement,
17 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,
18 publications, and understandings of any nature unless those things are expressly included in
19 this Agreement. If there is any inconsistency between the terms of this Agreement without its
20 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving
21 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the
22 exhibits.

23 12.13 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to
24 create any rights or obligations for any person or entity except for the parties.

25 12.14 **Authorized Signature.** The Contractor represents and warrants to the County that:

26 (A) The Contractor is duly authorized and empowered to sign and perform its
27 obligations under this Agreement.
28

1 (B) The individual signing this Agreement on behalf of the Contractor is duly
2 authorized to do so and his or her signature on this Agreement legally binds the
3 Contractor to the terms of this Agreement.

4 12.15 **Electronic Signatures.** The parties agree that this Agreement may be executed by
5 electronic signature as provided in this section.

6 (A) An “electronic signature” means any symbol or process intended by an individual
7 signing this Agreement to represent their signature, including but not limited to (1) a
8 digital signature; (2) a faxed version of an original handwritten signature; or (3) an
9 electronically scanned and transmitted (for example by PDF document) version of an
10 original handwritten signature.

11 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed
12 equivalent to a valid original handwritten signature of the person signing this Agreement
13 for all purposes, including but not limited to evidentiary proof in any administrative or
14 judicial proceeding, and (2) has the same force and effect as the valid original
15 handwritten signature of that person.

16 (C) The provisions of this section satisfy the requirements of Civil Code section
17 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,
18 Part 2, Title 2.5, beginning with section 1633.1).

19 (D) Each party using a digital signature represents that it has undertaken and
20 satisfied the requirements of Government Code section 16.5, subdivision (a),
21 paragraphs (1) through (5), and agrees that each other party may rely upon that
22 representation.

23 (E) This Agreement is not conditioned upon the parties conducting the transactions
24 under it by electronic means and either party may sign this Agreement with an original
25 handwritten signature.

26 12.16 **Counterparts.** This Agreement may be signed in counterparts, each of which is an
27 original, and all of which together constitute this Agreement.

1 12.17 **Limitation of Liability.** CONTRACTOR SHALL NOT UNDER ANY
2 CIRCUMSTANCES BE LIABLE TO THE COUNTY OR ANY THIRD PARTY FOR ANY
3 INCIDENTAL, SPECIAL, CONSEQUENTIAL OR INDIRECT LOSS OR DAMAGE ARISING
4 OUT OF OR CONNECTED WITH THE COUNTY'S PURCHASE OR USE OF PRODUCTS OR
5 SERVICES, INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OR ALTERATION OF
6 DATA, DELAYS, LOST PROFITS OR SAVINGS, EVEN IF CONTRACTOR HAS BEEN
7 ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE LIMITED REMEDY
8 ABOVE IS FOUND TO FAIL OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL EITHER
9 PARTY'S LIABILITY (WHETHER FOR NEGLIGENCE OR OTHER TORT, IN CONTRACT OR
10 OTHERWISE) EXCEED THE PRICE PAID TO ZETRON FOR THE PRODUCTS IN THE
11 PREVIOUS TWELVE (12) MONTHS LEADING UP TO THE CAUSE THAT IMPLICATED SUCH
12 LIABILITY.

13 12.18 **Intellectual Property.** The County expressly acknowledges and agrees that the
14 Contractor is the sole proprietor and owner of all existing and future Intellectual Property Rights
15 associated with the Products (including all modifications and improvements), and that this
16 Agreement does not grant or transfer to it any rights to the Intellectual Property Rights
17 associated with the Products. The County must not copy, reverse engineer, improve, enhance,
18 develop, refine, modify, or otherwise alter any aspect of the Products or any Intellectual
19 Property Rights associated with the Products, or permit or assist a third party to undertake any
20 of these actions. The County shall defend, indemnify and hold harmless the Contractor and its
21 employees, agents, owners, and affiliates from and against all claims, damages, liabilities,
22 losses and costs (including without limitation, reasonable attorneys' fees) arising from or based
23 upon the use, sale or manufacture by the Contractor, the County, or any third party of any
24 portion of the Contractor Products produced, in whole or in part, to the County's specifications.
25 Notwithstanding anything to the contrary in this Agreement, the County acknowledges and
26 agrees that the Contractor will own all rights in any improvements, enhancements
27 developments, modifications or refinements to the Products or associated Intellectual Property
28 Rights developed or created by the County, and the County will have no claim to such materials.

[SIGNATURE PAGE FOLLOWS]

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1 The parties are signing this Agreement on the date stated in the introductory clause.

2 ZETRON, INC.

COUNTY OF FRESNO

3
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5 _____
6 Scott French, President

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

7 6812 185th Ave NE
8 Redmond, WA 98052

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

9
10 By: _____
Deputy

11 For accounting use only:

12 Org No.: 8905
13 Account No.: 7205
14 Fund No.: 1020
15 Subclass No.: 10000
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Exhibit A

Scope of Services

Zetron shall provided to the County products and services as described below.

1.0 Introduction. This maintenance service plan (“MSP”) describes the Gold-level support services Zetron shall provide for hardware and software for the duration of the service period as described in Section 2.1 of this Exhibit A. The support services are for “Zetron Products” and “Zetron Accessories”. “Zetron Products” means products manufactured by Zetron. “Zetron Accessories” means personal computers, monitors and computer components, computer and audio peripherals, networking equipment and power supplies, all such items as sold by Zetron to customer and integrated as components of a Zetron communication system, excluding any third-party software or firmware.

Existing project documentation and customer as-builts shall contain configuration-specific details of the Zetron system this MSP supports.

This MSP describes the capabilities of Zetron’s US office in support of any applicable North American Zetron equipment installation. Zetron may use one or more of Zetron’s qualified subcontractors to provide the services under this MSP.

2.0 Scope. This MSP does not encompass change requests/enhancements that affect architecture, functionality, or performance, so hardware or software capabilities subsequently added to the Zetron system are not automatically covered. Such changes must be requested in writing to Zetron’s Customer Fulfillment Project Management office. Upon approval by Zetron and implementation, these changes amend the established “as-built” system documentation and then fall under coverage of this MSP, at which point the monthly rate will be adjusted accordingly. Changes made to the Zetron system that are not reflected in Zetron’s as-built documentation are not covered by the system warranty or this MSP.

2.1 Coverage Period. This MSP is valid for the time period described in Section 4.1 of the Agreement.. If the customer wishes to purchase a MSP after a lapse in the services has occurred, the coverage must be paid up retroactively, for a fee equal to the fees that would have been paid had the coverage not lapsed.

2.2 Third-Party Equipment or Software. Zetron’s standard System Terms and Conditions explain that third party manufacturers’ warranties for any items (excluding Zetron Accessories) Zetron purchases and supplies for the customer’s convenience shall transfer to the customer, subject to the limitations therein. Zetron’s warranty does not apply to third party hardware (excluding Zetron Accessories), or third party software or firmware. However, the Gold MSP provides increased levels of third-party support. Refer to Section 4.5 of this Exhibit A.

3.0 Limited Warranty. Zetron’s System Limited Warranty is stated in the current version of Zetron’s standard System Terms and Conditions, and is included during the term of the MSP. Certain specific services are included for the duration of the warranty period; refer to Section 4 of this Exhibit A. For Zetron Products and Zetron Accessories, Zetron’s standard warranty period is one year unless otherwise agreed in writing.

Warranties for Zetron Products under a MSP can be extended for a total warranty period of up to five (5) years, including the initial warranty period, and warranties for Zetron Accessories under a MSP can be extended for a total warranty period of up to three (3) years, including the initial warranty period.

Exhibit A

4.0 Services Descriptions. The following sections describe the services included in the MSP, unless otherwise noted. The applicable spares packages is a requirement for this MSP.

4.1 Technical Telephone Support. Zetron telephone technical support exists in the form of factory Technical Support Engineers. This support is intended for technicians and system administrators installing, configuring, and maintaining Zetron equipment and software applications. 24-hour/7 days/week phone support is provided in accordance with the response times established in the following sections.

4.1.1 Calls During Standard Zetron Business Hours. During regular business hours, 6:00am to 5:00pm PT, calls to Zetron at (425) 820-6363 are answered by Zetron personnel who will establish a call ticket number, collect detailed issue information from the caller, and enter the call into the call queue. Head of the queue and priority call back privileges are given to callers with Gold MSP above those with no agreements, Limited Warranty, and Silver MSPs. If the incoming call cannot be directed immediately to a Technical Support Engineer, 98% of the critical calls will be returned within 30 minutes, and 100% of the calls will be returned within 2 hours.

Zetron will work with the caller to make the determination whether calls involve critical or routine issues based both on system behavior and its affect on system operators.

Critical issues are those that have a major impact on the Zetron system operation as defined by

- loss of use of any redundant functions;
- loss of 10% of the positions; or
- loss of 10% of non-redundant channels or lines.

Routine issues are non-critical issues that have a minor impact on the Zetron system operation and range from routine maintenance operations to system behavioral inconsistencies to configuration issues.

Zetron observes the following holidays: New Year's, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and the day after, Christmas Eve, and Christmas. If a holiday falls on a Saturday, the holiday is observed on the preceding Friday and if a holiday falls on a Sunday, the holiday is observed on the following Monday.

4.1.2 After-Hours Critical Technical Telephoner Support. Calls for critical issues to Zetron before 6:00am or after 5:00pm PT on any regular business day, at any time on weekends, or during Zetron-recognized holidays are considered after-hours calls. A Zetron qualified technical person will return calls for critical issues within thirty (30) minutes.

Zetron reserves the right during calls for critical issues after regular business hours to determine after an initial diagnosis whether the issue being reported is critical or routine, and thus whether it is to be handled immediately or deferred to the following business day. Routine issues will be deferred to the next business day. Scheduled system maintenance does not qualify as a critical issue.

4.2 Hardware Services

Exhibit A

4.2.1. Advance Replacement: First 90 Days. For the first 90 days after initial purchase of original equipment under Zetron's standard System Terms and Conditions, Zetron will provide advance replacement for critical Zetron Products and Zetron Accessories found to be dead-on-arrival or that Technical Support approves for replacement. Zetron bears all shipping costs for advance replacements.

4.2.2. Repair Defects in Materials or Workmanship. For the duration of the warranty period and the service coverage periods, for Zetron Products and Zetron Accessories, Zetron will provide parts and factory labor free of charge to resolve any material defects in material or workmanship as described in Zetron's standard System Terms and Conditions. Upon receipt of the defective unit and in accordance with Zetron's standard System Terms and Conditions while under warranty, Zetron's Repair Department reserves the right to determine whether to replace or repair a defective part, or whether to replace a product or refund its purchase price. If replacing a product, Zetron's Repair Department determines whether to provide refurbished service stock or new equipment based on repair turn-around and equipment availability.

No returns are authorized unless a Returned Materials Authorization (RMA) is issued by Zetron.

4.2.3. Repair Turn-Around. Zetron measures turn-around time from the date of receipt to the date of shipment from Zetron. This time does not include shipping or customs delays. In the Gold MSP, repair turn-around is 2 business days. Products found to be not defective will be returned at the sender's expense, plus cost of a minimum of 1-hour testing and handling.

4.2.4. Refurbished Equipment. Refurbished equipment, to replace defective hardware, is available to be sold at 25% of product list price (75% discount).

Refurbished equipment will have guaranteed availability for selected, critical products for Gold MSP. The original defective hardware must be sent to Zetron and will not be returned to the customer upon repair. Refurbished equipment is previously returned equipment that has been repaired and fully tested. It is available only for replacement of failed equipment. Refurbished equipment is based on equipment availability but select critical products have guaranteed availability for Gold MSP holders. Refurbished equipment will be shipped the same day.

4.2.5. Outgoing Shipping. Zetron will match the incoming shipment method when returning products. If the customer wants to expedite the outgoing shipment beyond the Zetron provided match, the customer bears responsibility for full shipment charges.

Shipping is always FOB Origin unless otherwise agreed by Zetron. The customer must pay all shipping and insurance charges when returning equipment to Zetron.

4.3. Software Services.

4.3.1. Software Maintenance – Service Packs. For the duration of the MSP period, the customer is entitled to receive at no additional charge any patches or bug fixes contained in a service pack for Zetron feature group releases of the application or firmware version(s) sold as part of the original Zetron system. Patches/bug fixes in a service pack are specific corrections to defects found in previously released code (a.k.a. feature group) to ensure

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the code meets specification. Service packs add one-, two- or three-digit extensions on the previously released code number (for example, 2.11.12 indicates service pack 12 to version 2.11 software). All service packs will be incorporated in the next released software upgrade.

All Zetron software releases are subject to internal software release and design verification processes as well as standard configuration management practices. Service packs released may include patches/bug fixes and/or minor enhancements, but they should not affect system operation or performance.

Software maintenance for applications or code in certain systems will require customization and installation support (refer to Sections 4.4 and 4.6.6 of this Exhibit A). Note: For certain systems, the Software Installation/Upgrade Support service is required unless a preapproved agent is available to provide this level of support.

4.3.2. Software Upgrades. For the duration of the MSP period, the customer is entitled to receive any software upgrade for Zetron feature group releases of the application or firmware version(s) sold as part of the original Zetron system.

Software upgrades are released minor and/or major revisions to released software or firmware. Upgrades typically include minor enhancements as well as access to certain major new features. Upgrades also incorporate any previously released bug fixes/patches. Minor enhancements are functional performance improvements that do not require additional hardware or firmware or to be specifically enabled or disabled.

Major new features alter the software's specifications and may significantly affect system operation and performance and/or the look and feel of the user interface. Major features will be individually enabled or disabled as options; some options may require the additional purchase of hardware, firmware, or licensing.

Software upgrades incrementally change the previously released software or firmware version number by either preceding or following the first decimal point depending on the breadth of the changes incorporated. For example, software release 2.11 could upgrade to 2.12 to indicate relatively minor enhancements, or to 3.0 to indicate significant new features. In either case, all patches/bug fixes released in support of 2.11 would be included in the new release.

All Zetron software revisions are subject to internal software release and design verification processes as well as standard configuration management practices.

4.4. Software Upgrade Customization Assessment. Due to the customization of certain deployed systems, software upgrade releases for these customized systems should be qualified prior to deployment. A factory-qualified engineer will complete an assessment of feature group upgrade releases against the functionality defined in a deployed system's factory acceptance test to ensure the new release will not adversely affect any deployed customer specific custom configuration. Based on that assessment, Zetron will provide a quote of outstanding engineering customization; refer to Section 5.2 of this Exhibit A. Assessments are available upon request and will be scheduled based on priority; emergencies will be given the highest priority of available resources.

Exhibit A

4.5. Third-Party Equipment Repair Facilitation. During the first three (3) years after original purchase of third party hardware (excluding Zetron Accessories) sold as part of the original Zetron system, and included in a specific customer agreement with Zetron, Zetron will facilitate resolution of issues on such equipment. To ensure the repaired unit's compatibility with its already-deployed Zetron system, as applicable, Zetron will reconfigure repaired units against last-known configuration files on record before returning the unit to the field.

It is anticipated that third-party products have a useful life of up to three years.

4.6. Factory Onsite Services. Zetron will waive hourly or daily rates for up to 3 days per year of factory onsite services and cover 1 trip to customer's facility. These hours may be applied to technical support, training, equipment installation and programming optimization, or hardware preventive maintenance support. The Zetron factory-qualified instructor's or technician's travel time is not included in the up to 3-day amount and will not be charged to the customer. In all cases, travel affected by severe weather or natural disaster will be rescheduled.

Additional days, at then-applicable rates, may be purchased to accommodate additional factory onsite services. Hours may not be accumulated beyond one 12-month period.

4.6.1. Technical Support. A Zetron factory-qualified technician will provide onsite technical support to trouble-shoot and resolve issues Zetron is unable to resolve via telephone support. This service is limited to supporting the Zetron Products and Zetron Accessories that Zetron provides as part of the original Zetron system, and does not extend to other equipment co-existent with the Zetron system. Onsite visits will be scheduled based on priority; emergencies will be given the highest priority of available resources.

4.6.2. Technical Training. Technical classes are available for any of Zetron's system-level product lines. Some classes are conducted regularly at Zetron's factory; refer to the published schedule on Zetron's public-facing web site. Most classes can be made available onsite. Technical classes include both operation and technical content, but focus on technical function, installation, configuration/programming, and maintenance of Zetron system and console equipment. Technical training is intended for electronic technicians and/or engineers and system administrators. Refer to each class course description for details.

4.6.3. Operation Training. Operation classes are available for any of Zetron's system-level product lines. These classes are not conducted at Zetron's factory independently of technical training, but rather are made available onsite.

Operation classes are geared for operators and dispatchers, the end-users of Zetron's systems. These classes cover basic system operation and communication. Refer to each class course description for details.

4.6.4. Operation Train-the-Trainer. Operation train-the-trainer classes are available for any of Zetron's system-level product lines. These classes are only available onsite. Operation train-the-trainer classes enable end-users to train their own team members on system operation.

Exhibit A

4.6.5. Preventive Hardware Maintenance. A Zetron factory-qualified technician will provide onsite assessment of installed, operational Zetron system equipment and recommend which items, if any, should be replaced. This applies to functioning equipment as well as spares. Components may include Zetron Products and Zetron Accessories. Through this service, recommended Zetron-manufactured replacement parts will be available at 50% of their published list price. This service does not apply to system expansion.

4.6.6. Software Installation/Upgrade Support. A Zetron factory-qualified technician will provide onsite software installation and configuration support for software maintenance or upgrade releases. This service is limited to supporting the applications Zetron provides, and does not extend to other system applications. This service is required for Acom software applications' maintenance and upgrade releases. This service is included in the Gold MSP and will be scheduled based on priority; emergencies will be given the highest priority of available resources.

5. Additional Services. The following services are available for an additional fee.

5.1. Local On-Site Response. Local onsite services are available on request and for an additional fee. After diagnosing an issue via telephone support, if necessary, as determined by Zetron, Zetron will dispatch a Zetron qualified technician to repair or replace equipment.

If a Zetron factory technician must be onsite to resolve the issue, Zetron will coordinate the site visit with the appropriate parties. Factory presence may not be immediate; travel arrangements will be made as resources are available.

Onsite support affected by severe weather or natural disaster will be rescheduled. In the event of severe weather or natural disaster that restricts the local support agency and/or a pre-scheduled Zetron factory technician from using a routine vehicle (airline, rental car, etc.) for travel to the site, both agencies will be relieved of any response time requirement. The onsite support will be rescheduled when conditions warrant use of a routine vehicle.

5.2. Software Upgrade Customization. Based on the assessment described in Section 4.4, Zetron will provide a quote of any outstanding engineering customization necessary to ensure software upgrades will function as expected on deployed custom systems. This service is available upon request and will be scheduled based on priority; emergencies will be given the highest priority of available resources.

6.0 Assumptions And Conditions. Zetron assumes, and the prices stated in this MSP are based on, the following:

- The customer has trained technicians on staff available for Zetron's Technical Support team to engage as a first resource for onsite support. If the customer does not provide first tier support themselves, Zetron can identify a subcontractor to act as first tier. This subcontractor may be contracted through Zetron or directly with the customer.
- The customer and/or customer's designated service provider, as applicable, will provide a centralized point-of-contact and an escalation path for Zetron's Technical Support team to obtain approval in a timely manner for any additional onsite support required by Zetron employees.

7.0 Summary of Services.

Exhibit A

The following table summarizes the services provided in this Gold MSP. If there is a conflict between this table and the other terms of this Gold MSP, the other terms of this Gold MSP control.

Phone support, business hours	X
After hours phone support for critical issues	30-minute callback for critical issues
Repair defects in material & work	X
Repair turnaround time	X
Refurbished equipment for repair	2 business days
Outgoing shipping costs for repair	X
Software maintenance	X
Software upgrades	X
Software customization assessment*	X
Software upgrade customization	X
Third-party equipment repair management	Quote
Onsite factory services	X
Technical support	X
Technical training	X
Operation training	X
Operation train-the-trainer	X
Preventative hardware maintenance	X
Software install/upgrade support*	X
Local onsite response	Quote

Exhibit B

Compensation

The Contractor will be compensated for performance of its services under this Agreement as provided in this Exhibit B. The Contractor is not entitled to any compensation except as expressly provided in this Exhibit B.

Part Number	Description	Unit List Price	Discount Percentage	Net Price	Quantity	List Price	Net Total
802-5086	Computer, DELL Optiplex XEF SFF For New Systems: This PC replaces previous 802-5156, 802-5046, and 802-5146 (SSD) WIN7. Replaces 802-5065	\$2,756.00	10%	\$2,480.40	57 units	\$157,092.00	\$141,382.80
X63-1284	Gold Service Plan (1 Year), No Onsite Rapid Response Effective 11/01/24 through 10/31/2029	\$204,304.18	10%	\$183,873.76	5 years	\$1,021,520.90	\$919,368.81
Subtotal							\$1,060,751.61
Additional Products/Services*							\$114,248.39
Maximum Compensation							\$1,175,000.00

*Note: Approximately 10% additional compensation is included, and will be available during the 5-year term, for any additional products or services as needed. There is no minimum or maximum guarantee of additional products or services to be purchased during the 5-year term.

The Contractor will be compensated in the amount of \$183,873.76 annually for the Gold Service Plan. The Contractor will be compensated in the amount of \$141,382.80 as a one-time payment for the DELL Optiplex units.

Exhibit C

Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("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 used 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.

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

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

Exhibit D

Insurance Requirements

1. Required Policies

Without limiting the County's right to obtain indemnification from the Contractor or any third parties, the Contractor, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- (A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. The Contractor shall obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the Contractor's policy.
- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.
- (C) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **Employer's Liability.** Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.
- (E) **Professional Liability.** Professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000). If this is a claims-made policy, then (1) the retroactive date must be prior to the date on which services began under this Agreement; (2) the Contractor shall maintain the policy and provide to the County annual evidence of insurance for not less than five years after completion of services under this Agreement; and (3) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under this Agreement, then the Contractor shall purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under this Agreement.
- (F) **Technology Professional Liability (Errors and Omissions).** Technology professional liability (errors and omissions) insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and in the aggregate. Coverage must encompass all of the Contractor's obligations under this Agreement, including but not limited to claims involving Cyber Risks.
- (G) **Cyber Liability.** Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage must include claims involving Cyber Risks. The cyber liability policy must be endorsed to cover the full replacement value of damage to,

Exhibit D

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.

Definition of Cyber Risks. “Cyber Risks” include but are not limited to (i) Security Breach, which may include Disclosure of Personal Information to an Unauthorized Third Party; (ii) data breach; (iii) breach of any of the Contractor’s obligations under Exhibit E of this Agreement; (iv) system failure; (v) data recovery; (vi) failure to timely disclose data breach or Security Breach; (vii) failure to comply with privacy policy; (viii) payment card liabilities and costs; (ix) infringement of intellectual property, including but not limited to infringement of copyright, trademark, and trade dress; (x) invasion of privacy, including release of private information; (xi) information theft; (xii) damage to or destruction or alteration of electronic information; (xiii) cyber extortion; (xiv) extortion related to the Contractor’s obligations under this Agreement regarding electronic information, including Personal Information; (xv) fraudulent instruction; (xvi) funds transfer fraud; (xvii) telephone fraud; (xviii) network security; (xix) data breach response costs, including Security Breach response costs; (xx) regulatory fines and penalties related to the Contractor’s obligations under this Agreement regarding electronic information, including Personal Information; and (xxi) credit monitoring expenses.

2. Additional Requirements

- (A) **Verification of Coverage.** Within 30 days after the Contractor signs this Agreement, and at any time during the term of this Agreement as requested by the County’s Risk Manager or the County Administrative Office, the Contractor shall deliver, or cause its broker or producer to deliver, to the County Risk Manager, at 2220 Tulare Street, 16th Floor, Fresno, California 93721, or HRRiskManagement@fresnocountyca.gov, and by mail or email to the person identified to receive notices under this Agreement, certificates of insurance and endorsements for all of the coverages required under this Agreement.
- (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; (2) the County, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) the Contractor has waived its right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
 - (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County shall be excess only and not contributing with insurance provided under the Contractor’s policy.
 - (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.

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- (iv) The professional liability insurance certificate, if it is a claims-made policy, must also state the retroactive date of the policy, which must be prior to the date on which services began under this Agreement.
 - (v) The technology professional liability insurance certificate must also state that coverage encompasses all of the Contractor's obligations under this Agreement, including but not limited to claims involving Cyber Risks, as that term is defined in this Agreement.
 - (vi) The cyber liability insurance certificate must also state that it is endorsed, and include an endorsement, 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.
- (B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.
- (C) **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, the Contractor shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 30 days in advance of cancellation or change. The County in its sole discretion may determine that the failure of the Contractor or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.
- (D) **County's Entitlement to Greater Coverage.** If the Contractor has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, the Contractor shall deliver, or cause its broker or producer to deliver, to the County's Risk Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.
- (E) **Waiver of Subrogation.** The Contractor waives any right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. The Contractor is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the Contractor's waiver of subrogation under this paragraph is effective whether or not the Contractor obtains such an endorsement.
- (F) **County's Remedy for Contractor's Failure to Maintain.** If the Contractor fails to keep in effect at all times any insurance coverage required under this Agreement, the County

Exhibit D

may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Contractor. The County may offset such charges against any amounts owed by the County to the Contractor under this Agreement.

- (G) **Subcontractors.** The Contractor shall require and verify that all subcontractors used by the Contractor to provide services under this Agreement maintain insurance meeting all insurance requirements provided in this Agreement. This paragraph does not authorize the Contractor to provide services under this Agreement using subcontractors.

Exhibit E

A. Definitions.

Capitalized terms used in this Exhibit E have the meanings set forth in this section A.

“Authorized Employees” means the Contractor’s employees who have access to Personal Information.

“Authorized Persons” means: (i) any and all Authorized Employees; and (ii) any and all of the Contractor’s subcontractors, representatives, agents, outsourcers, and consultants, and providers of professional services to the Contractor, who have access to Personal Information and are bound by law or in writing by confidentiality obligations sufficient to protect Personal Information in accordance with the terms of this Exhibit E.

“Director” means the County’s Director of Internal Services/Chief Information Officer or his or her designee.

“Disclose” or any derivative of that word means to disclose, release, transfer, disseminate, or otherwise provide access to or communicate all or any part of any Personal Information orally, in writing, or by electronic or any other means to any person.

“Person” means any natural person, corporation, partnership, limited liability company, firm, or association.

“Personal Information” means any and all information, including any data provided, or to which access is provided, to the Contractor by or upon the authorization of the County, including but not limited to vital records, that: (i) identifies, describes, or relates to, or is associated with, or is capable of being used to identify, describe, or relate to, or associate with, a person (including, without limitation, names, physical descriptions, signatures, addresses, telephone numbers, e-mail addresses, education, financial matters, employment history, and other unique identifiers, as well as statements made by or attributable to the person); (ii) is used or is capable of being used to authenticate a person (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or personal identification numbers (PINs), financial account numbers, credit report information, answers to security questions, and other personal identifiers); or is personal information within the meaning of California Civil Code section 1798.3, subdivision (a), or 1798.80, subdivision (e). Personal Information does not include publicly

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available information that is lawfully made available to the general public from federal, state, or local government records.

“Privacy Practices Complaint” means a complaint received by the County relating to the Contractor’s (or any Authorized Person’s) privacy practices, or alleging a Security Breach. Such complaint shall have sufficient detail to enable the Contractor to promptly investigate and take remedial action under this Exhibit E.

“Security Safeguards” means physical, technical, administrative or organizational security procedures and practices put in place by the Contractor (or any Authorized Persons) that relate to the protection of the security, confidentiality, value, or integrity of Personal Information. Security Safeguards shall satisfy the minimal requirements set forth in subsection C.(5) of this Exhibit E.

“Security Breach” means (i) any act or omission that compromises either the security, confidentiality, value, or integrity of any Personal Information or the Security Safeguards, or (ii) any unauthorized Use, Disclosure, or modification of, or any loss or destruction of, or any corruption of or damage to, any Personal Information.

“Use” or any derivative thereof means to receive, acquire, collect, apply, manipulate, employ, process, transmit, disseminate, access, store, disclose, or dispose of Personal Information.

B. Standard of Care.

(1) The Contractor acknowledges that, in the course of its engagement by the County under this Agreement, the Contractor, or any Authorized Persons, may Use Personal Information only as permitted by this Agreement.

(2) The Contractor acknowledges that Personal Information is deemed to be confidential information of, or owned by, the County (or persons from whom the County receives or has received Personal Information) and is not confidential information of, or owned or by, the Contractor, or any Authorized Persons. The Contractor further acknowledges that all right, title, and interest in or to the Personal Information remains in the County (or persons from whom the County receives or has received Personal Information) regardless of the Contractor’s, or any Authorized Person’s, Use of that Personal Information.

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(3) The Contractor agrees and covenants in favor of the County that the Contractor shall: (i) keep and maintain all Personal Information in strict confidence, using such degree of care under this Subsection B as is reasonable and appropriate to avoid a Security Breach; (ii) Use Personal Information exclusively for the purposes for which the Personal Information is made accessible to the Contractor pursuant to the terms of this Exhibit E; (iii) not Use, Disclose, sell, rent, license, or otherwise make available Personal Information for the Contractor's own purposes or for the benefit of anyone other than the County, without the County's express prior written consent, which the County may give or withhold in its sole and absolute discretion; and (iv) not, directly or indirectly, Disclose Personal Information to any person (an "Unauthorized Third Party") other than Authorized Persons pursuant to this Agreement, without the Director's express prior written consent.

Notwithstanding the foregoing paragraph, in any case in which the Contractor believes it, or any Authorized Person, is required to disclose Personal Information to government regulatory authorities, or pursuant to a legal proceeding, or otherwise as may be required by applicable law, the Contractor shall (a) immediately notify the County of the specific demand for, and legal authority for the disclosure, including providing the County with a copy of any notice, discovery demand, subpoena, or order, as applicable, received by the Contractor, or any Authorized Person, from any government regulatory authorities, or in relation to any legal proceeding, and (b) promptly notify the County before such Personal Information is offered by the Contractor for such disclosure so that the County may have sufficient time to obtain a court order or take any other action the County may deem necessary to protect the Personal Information from such disclosure, and the Contractor shall cooperate with the County to minimize the scope of such disclosure of such Personal Information.

The Contractor shall remain liable to the County for the actions and omissions of any Unauthorized Third Party concerning its Use of such Personal Information as if they were the Contractor's own actions and omissions.

C. Information Security.

(1) The Contractor covenants, represents and warrants to the County that the Contractor's Use of Personal Information under this Agreement does and shall at all times comply with all

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federal, state, and local, privacy and data protection laws, as well as all other applicable regulations and directives, including but not limited to California Civil Code, Division 3, Part 4, Title 1.81 (beginning with section 1798.80), and the Song-Beverly Credit Card Act of 1971 (California Civil Code, Division 3, Part 4, Title 1.3, beginning with section 1747). If the Contractor Uses credit, debit, or other payment cardholder information, the Contractor shall at all times remain in compliance with the Payment Card Industry Data Security Standard (“PCI DSS”) requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing and maintaining all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the Contractor’s sole cost and expense.

(2) The Contractor covenants, represents and warrants to the County that, as of the Effective Date, the Contractor has not received notice of any violation of any privacy or data protection laws, as well as any other applicable regulations or directives, and is not the subject of any pending legal action or investigation by, any government regulatory authority regarding same.

(3) Without limiting the Contractor’s obligations under subsection C.(1) of this Exhibit E, the Contractor’s (or Authorized Person’s) Security Safeguards shall be no less rigorous than accepted industry practices and, at a minimum, include the following: (i) limiting Use of Personal Information strictly to the Contractor’s and Authorized Persons’ technical and administrative personnel who are necessary for the Contractor’s, or Authorized Persons’, Use of the Personal Information pursuant to this Agreement; (ii) ensuring that all of the Contractor’s connectivity to the County computing systems will only be through the County’s security gateways and firewalls, and only through security procedures approved upon the express prior written consent of the Director; (iii) to the extent that they contain or provide access to Personal Information, (a) securing the Contractor’s business facilities, data centers, paper files, servers, back-up systems and computing equipment, operating systems, and software applications, including, but not limited to, all mobile devices and other equipment, operating systems, and software applications with information storage capability; (b) employing adequate controls and data security measures with respect to the Contractor Facilities and Equipment), both internally and externally, to protect (1) the Personal Information from potential loss or misappropriation, or unauthorized Use, and (2) the County’s operations from

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disruption and abuse; (c) having and maintaining network, device application, database and platform security; (d) maintaining authentication and access controls within media, computing equipment, operating systems, and software applications; and (e) installing and maintaining in all mobile, wireless, or handheld devices a secure internet connection, having continuously updated anti-virus software protection and a remote wipe feature always enabled, all of which is subject to express prior written consent of the Director; (iv) encrypting all Personal Information at advance encryption standards of Advanced Encryption Standards (AES) of 128 bit or higher (a) stored on any mobile devices, including but not limited to hard disks, portable storage devices, or remote installation, or (b) transmitted over public or wireless networks (the encrypted Personal Information must be subject to password or pass phrase, and be stored on a secure server and transferred by means of a Virtual Private Network (VPN) connection, or another type of secure connection, all of which is subject to express prior written consent of the Director); (v) strictly segregating Personal Information from all other information of the Contractor, including any Authorized Person, or anyone with whom the Contractor or any Authorized Person deals so that Personal Information is not commingled with any other types of information; (vi) having a patch management process including installation of all operating system/software vendor security patches; (vii) maintaining appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks of Authorized Employees consistent with applicable law; and (viii) providing appropriate privacy and information security training to Authorized Employees.

(4) During the term of each Authorized Employee's employment by the Contractor, the Contractor shall cause such Authorized Employees to abide strictly by the Contractor's obligations under this Exhibit E. The Contractor further agrees that it shall maintain a disciplinary process to address any unauthorized Use of Personal Information by any Authorized Employees.

(5) The Contractor shall, in a secure manner, backup daily, or more frequently if it is the Contractor's practice to do so more frequently, Personal Information received from the County, and the County shall have immediate, real time access, at all times, to such backups via a secure, remote access connection provided by the Contractor, through the Internet.

(6) The Contractor shall provide the County with the name and contact information for each

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Authorized Employee (including such Authorized Employee's work shift, and at least one alternate Authorized Employee for each Authorized Employee during such work shift) who shall serve as the County's primary security contact with the Contractor and shall be available to assist the County 24 hours per day, seven days per week as a contact in resolving the Contractor's and any Authorized Persons' obligations associated with a Security Breach or a Privacy Practices Complaint.

D. Security Breach Procedures.

(1) Promptly, and without undue delay, upon the Contractor's confirmation of a Security Breach, the Contractor shall (a) notify the Director of the Security Breach, such notice to be given first by telephone at the following telephone number, followed promptly by email at the following email address: (559) 600-5900 / incidents@fresnocountyca.gov (which telephone number and email address the County may update by providing notice to the Contractor), and (b) preserve all relevant evidence (and cause any affected Authorized Person to preserve all relevant evidence) relating to the Security Breach. The notification shall include, to the extent reasonably possible, the identification of each type and the extent of Personal Information that has been, or is reasonably believed to have been, breached, including but not limited to, compromised, or subjected to unauthorized Use, Disclosure, or modification, or any loss or destruction, corruption, or damage.

(2) Immediately following the Contractor's notification to the County of a Security Breach, as provided pursuant to subsection D.(1) of this Exhibit E, the Parties shall coordinate with each other to investigate the Security Breach. The Contractor agrees to fully cooperate with the County, including, without limitation: (i) assisting the County in conducting any investigation; (ii) providing the County with physical access to the facilities and operations affected; (iii) facilitating interviews with Authorized Persons and any of the Contractor's other employees knowledgeable of the matter; and (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards, or as otherwise reasonably required by the County. To that end, the Contractor shall, with respect to a Security Breach, be solely responsible, at its cost, for all notifications required by law and regulation, and the Contractor shall provide a written report of the investigation and reporting required to the Director within 30 days after the Contractor's discovery of the Security Breach.

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(3) The County shall promptly notify the Contractor of the Director's knowledge, or reasonable belief, of any Privacy Practices Complaint, and upon the Contractor's receipt of notification thereof, the Contractor shall promptly address such Privacy Practices Complaint, including taking any corrective action under this Exhibit E, all at the Contractor's sole expense, in accordance with applicable privacy rights, laws, regulations and standards. In the event the Contractor discovers a Security Breach, the Contractor shall treat the Privacy Practices Complaint as a Security Breach. Within 24 hours of the Contractor's receipt of notification of such Privacy Practices Complaint, the Contractor shall notify the County whether the matter is a Security Breach, or otherwise has been corrected and the manner of correction, or determined not to require corrective action and the reason therefor.

(4) The Contractor shall take prompt corrective action to respond to and remedy any Security Breach and take reasonable mitigating actions, including but not limiting to, preventing any reoccurrence of the Security Breach and correcting any deficiency in Security Safeguards as a result of such incident, all at the Contractor's sole expense, in accordance with applicable privacy rights, laws, regulations and standards. The Contractor shall reimburse the County for all reasonable costs incurred by the County in responding to, and mitigating damages caused by, any Security Breach, including all costs of the County incurred in relation to any litigation or other action described in subsection D.(5) of this Exhibit E to the extent applicable: (1) the cost of providing affected individuals with credit monitoring services for a specific period not to exceed 12 months, to the extent the incident could lead to a compromise of the data subject's credit or credit standing; (2) call center support for such affected individuals for a specific period not to exceed 30 days; and (3) the cost of any measures required under applicable laws.

E. Oversight of Security Compliance.

(1) The Contractor shall have and maintain a written information security policy that specifies Security Safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities.

(2) Upon the County's written request, to confirm the Contractor's compliance with this Exhibit E, as well as any applicable laws, regulations and industry standards, the Contractor grants

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the County or, upon the mutual agreement of the Parties, a third party on the County's behalf, permission to perform an assessment, audit, examination or review of all controls in the Contractor's physical and technical environment in relation to all Personal Information that is Used by the Contractor pursuant to this Agreement. Such assessment, audit, or review shall be limited to one (1) time per fiscal quarter. The Contractor shall fully cooperate with such assessment, audit or examination, as applicable, by providing the County or the third party on the County's behalf, access to all Authorized Employees and other knowledgeable personnel, physical premises, documentation, infrastructure and application software that is Used by the Contractor for Personal Information pursuant to this Agreement. In addition, the Contractor shall provide the County with the results of any audit by or on behalf of the Contractor that assesses the effectiveness of the Contractor's information security program as relevant to the security and confidentiality of Personal Information Used by the Contractor or Authorized Persons during the course of this Agreement under this Exhibit E. The results of such audit shall be kept strictly confidential.

(3) The Contractor shall ensure that all Authorized Persons who Use Personal Information agree to the same restrictions and conditions in this Exhibit E that apply to the Contractor with respect to such Personal Information by incorporating the relevant provisions of these provisions into a valid and binding written agreement between the Contractor and such Authorized Persons or amending any written agreements to provide same.

F. Return or Destruction of Personal Information.

Upon the termination of this Agreement, the Contractor shall, and shall instruct all Authorized Persons to, promptly return to the County all Personal Information, whether in written, electronic or other form or media, in its possession or the possession of such Authorized Persons, in a machine readable form used by the County at the time of such return, or upon the express prior written consent of the Director, securely destroy all such Personal Information, and certify in writing to the County that such Personal Information have been returned to the County or disposed of securely, as applicable. If the Contractor is authorized to dispose of any such Personal Information, as provided in this Exhibit E, such certification shall state the date, time, and manner (including standard) of disposal and by whom, specifying the title of the individual. The Contractor

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shall comply with all reasonable directions provided by the Director with respect to the return or disposal of Personal Information and copies thereof. If return or disposal of such Personal Information or copies of Personal Information is not feasible, the Contractor shall notify the County accordingly, specifying the reason, and continue to extend the protections of this Exhibit E to all such Personal Information and copies of Personal Information. The Contractor shall not retain any copy of any Personal Information after returning or disposing of Personal Information as required by this section F. The Contractor's obligations under this section F survive the termination of this Agreement and apply to all Personal Information that the Contractor retains if return or disposal is not feasible and to all Personal Information that the Contractor may later discover.

G. Equitable Relief.

The Contractor acknowledges that any breach of its covenants or obligations set forth in this Exhibit E may cause the County irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the County is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the County may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available to the County at law or in equity or under this Agreement.

H. Indemnification.

The Contractor shall defend, indemnify and hold harmless the County, its officers, employees, and agents, (each, a "**County Indemnitee**") from and against any and all infringement of intellectual property including, but not limited to infringement of copyright, trademark, and trade dress, invasion of privacy, information theft, and extortion, unauthorized Use, Disclosure, or modification of, or any loss or destruction of, or any corruption of or damage to, Personal Information, Security Breach response and remedy costs, credit monitoring expenses, forfeitures, losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, fines, and penalties (including regulatory fines and penalties), costs or expenses of whatever kind, including attorney's fees and costs, the cost of enforcing any right to indemnification or defense under the Agreement

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and the cost of pursuing any insurance providers, arising out of or resulting from any third party claim or action against any County Indemnitee in relation to the Contractor's, its officers, employees, or agents, or any Authorized Employee's or Authorized Person's, performance or failure to perform under this Exhibit E or arising out of or resulting from the Contractor's failure to comply with any of its obligations under this section H. The provisions of this section H do not apply to the acts or omissions of the County. The provisions of this section H are cumulative to any other obligation of the Contractor to, defend, indemnify, or hold harmless any County Indemnity under this Agreement. The provisions of this section H shall survive the termination of this Agreement.

I. Survival.

The respective rights and obligations of the Contractor and the County as stated in this Exhibit E shall survive the termination of this Agreement.

J. No Third Party Beneficiary.

Nothing express or implied in the provisions of in this Exhibit E is intended to confer, nor shall anything herein confer, upon any person other than the County or the Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

L. No County Warranty.

The County does not make any warranty or representation whether any Personal Information in the Contractor's (or any Authorized Person's) possession or control, or Use by the Contractor (or any Authorized Person), pursuant to the terms of this Agreement is or will be secure from unauthorized Use, or a Security Breach or Privacy Practices Complaint.