

1 **SERVICE AND LICENSE AGREEMENT**

2 This Service and License Agreement (“Agreement”) is dated _____
3 and is between Levi, Ray & Shoup, Inc., an Illinois corporation (“Contractor” or “Licensor”), and
4 the County of Fresno, a political subdivision of the State of California (“County” or “Licensee”).
5 The Contractor and the County are referred to herein as “Party” or “Parties”.

6 **Recitals**

7 A. The County has a need for services, licensing and maintenance, and support of digital
8 report management software PageCenterX® and VPSX Enterprise® (“Software”) which is
9 provided by the Contractor.

10 B. The County desires to enter into an Agreement with the Contractor to purchase
11 Extended Engineering Services (“EE Services”), licensing and maintenance, and support of the
12 Software.

13 C. The County previously entered into a Purchasing Agreement, No. P-24-214 (“Purchasing
14 Agreement”) dated May 10, 2024 and the Consulting Services Agreement (“CSA”) dated August
15 5, 2024 (collectively, “Original Agreement”), through a Suspension of Competition for the
16 purchase of licensing, maintenance and support of the Software and EE Services with the
17 Contractor, for a total maximum compensation payable of \$179,202.00, effective February 1,
18 2024, through January 31, 2029.

19 D. The County and the Contractor now wish to replace the Original Agreement with this
20 Agreement, subject to approval by the County’s Board of Supervisors, which is necessary to
21 allow not only for additional service hours, as described in Exhibit A of this Agreement, but also
22 to increase the total maximum compensation payable to \$207,402. The term will remain a five-
23 year maximum and this Agreement will be retroactive to the Original Agreement’s effective date
24 of February 1, 2024. Finally, if there is conflict between this Agreement and the General Terms
25 and Conditions for Term License Agreement, attached as Exhibit G, as amended herein, then
26 the terms and conditions of Exhibit G shall prevail. Termination rights in Article 6 of this
27 Agreement control over Exhibit G.

28 E. The Parties therefore agree as follows:

1 **Article 1**

2 **Contractor's Services**

3 1.1 **Scope of Services.** The Contractor shall perform all of the services provided in
4 Exhibit A to this Agreement.

5 1.2 **Representation.** The Contractor represents that it is qualified, ready, willing, and
6 able to perform all of the services provided in this Agreement.

7 1.3 **Compliance with Laws.** The Contractor shall, at its own cost, comply with all
8 applicable federal, state, and local laws and regulations in the performance of its obligations
9 under this Agreement, including but not limited to workers compensation, labor, and
10 confidentiality laws and regulations.

11 1.4 **Data Security.** The Contractor shall be responsible for the privacy and security
12 safeguards as outlined in Exhibit E.

13 1.5 **HIPAA.** The Contractor will follow present practices as outlined in Exhibit F.

14 1.6 **License Term.** The term of the Software license (as defined in Exhibit A) is non-
15 perpetual. However, the County shall be entitled to Software updates, upgrades,
16 enhancements, new versions, bug fixes, other improvements to the Software, as and when
17 released by the Contractor to the Contractor's customers, and access to the Software, and to
18 technical assistance relating to the Software, for the Term described in this Agreement. The
19 Contractor hereby grants to the County, at no additional cost, a royalty-free, non-perpetual non-
20 transferable license to use the Contractor's Products and Services (as defined in Exhibit A) in
21 object code only for the County's internal business purposes (and not to process the data of any
22 other entity or agency, except to the extent the other entity or agency uses the County's public
23 facing site), as well as to support the number of County databases and the number of named
24 users of the Contractor.

25 1.7 **Patent Indemnity.** In the event of a claim of alleged infringement of patent rights,
26 copyright, trade secret rights, or intellectual property rights, to the fullest extent permitted by law,
27 the Contractor agrees to and shall indemnify, save, hold harmless, and at the County's request,
28 defend the County (including its officers, officials, agents, employees and volunteers) from and

1 against any and all demands, costs and expenses, penalties, attorney's fees and court costs,
2 damages of any nature whatsoever (including, without limitation, injury or damage to or loss or
3 destruction of property), judgments (including, without limitation, amounts paid in settlement and
4 amounts paid to discharge judgments), liabilities, claims and losses, suits, actions or
5 proceedings of every name, kind and description occurring or resulting to the County, out of or
6 in connection with any claim that is based on the infringement (or assertions of infringement) of
7 any of patent rights, copyright, trade secret rights, or intellectual property rights with respect to
8 the Contractor Products and/or Services, including, but not limited to, their materials, designs,
9 techniques, processes and information supplied or used by the Contractor performing or
10 providing any portion of the Contractor Products and/or Services. If, in any suit, action,
11 proceeding or claim relating to the foregoing, a temporary restraining order or preliminary
12 injunction is granted, the Contractor shall make every reasonable effort to secure the
13 suspension of the injunction or restraining order. If, in any such suit, action proceeding or claim,
14 the Contractor Products and/or Services or any part, combination or process thereof, is held to
15 constitute an infringement and its use is enjoined, the Contractor shall, at its own cost and
16 without impairing performance requirements of the Contractor Products and/or Services,
17 immediately (a) pay the reasonable direct out-of-pocket costs and expenses to secure for the
18 County a license, at no cost to the County, to use such infringing work, replace the infringing
19 work or modify the same so that it becomes non-infringing, (b) make every reasonable effort to
20 secure for the County a license, at no cost to County, authorizing the County's continued use of
21 the infringing work. If the Contractor is unable to secure such license within a reasonable time,
22 the Contractor, at its own cost and without impairing performance requirements of the
23 Contractor Products and/or Services, shall either replace the affected Contractor Products
24 and/or Services, or part, combination or process thereof, with non-infringing components or
25 parts or modify the same so that they become non-infringing or allow for termination by County
26 and refund on a pro rata basis any prepaid license fees for the remainder of the Term, if unable
27 to do so within a reasonable time. This section survives the termination of this Agreement.

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1 1.8 **Coordination of Work.** The Contractor shall coordinate all work with the County to
2 minimize any interruptions to the normal operation of County operations, through the appointee
3 as identified in section 2.1 of this Agreement.

4 1.9 **Infringement.** The Contractor further represents and warrants that it has the right to
5 grant the licenses granted to the County hereunder and that the services provided under this
6 Agreement do not infringe upon or violate the United States patent of rights of any third party
7 and do not infringe upon or violate the copyright, or trade secret right of any third party. This
8 section survives the termination of this agreement.

9 1.10 **Viruses & Disabling Mechanisms.** The Contractor shall use commercially
10 reasonable, diligent measures to screen the licensed programs provided under this Agreement
11 to avoid introducing, or coding of, any virus or other destructive programming designed to permit
12 unauthorized access or use by third parties to the Software installed on County's systems (as
13 defined in Exhibit A), or to disable or damage the County's systems (each, a "Virus"). Without
14 limiting the rights and remedies of the County, in the event any Virus is introduced into the
15 County's systems through any of the licensed programs provided under this Agreement,
16 whether or not such introduction is attributable to the Contractor (including the Contractor's
17 failure to perform its obligations under this Agreement), the Contractor shall, as soon as
18 practicable, use its diligent, commercially reasonable efforts to assist the County in eliminating
19 the effects of the Virus, and if the Virus causes a loss of operational efficiency or loss of data,
20 and upon the County's request, the Contractor will, diligently work as soon as and to the extent
21 practicable to contain and remedy the problem and to restore lost data resulting from the
22 introduction of such Virus. The Software may contain a mechanism that will cause the Software
23 to cease to operate on the date that is set by Licensor. Upon receipt of the License Schedule
24 properly signed by Licensee and the full payment of license fees for the Software, Licensor shall
25 provide Licensee license key(s) that will disable the date mechanism. Licensor has no remote
26 access to the Software.

27 1.11 **ADA Compliance.** The Contractor's Products and Services shall be in Compliance
28 with the Americans with Disabilities Act of 1990 (ADA) and shall be the sole responsibility of the

1 Contractor. The Contractor shall indemnify, defend, and hold the County (including its officers,
2 agents, employees, and volunteers) harmless from liability of any nature or kind, including
3 damages, costs and expenses (including attorney's fees and costs) arising from the
4 Contractor's non-compliance therewith, including compliance with ADA Section 508 of the
5 Rehabilitation Act of 1973. This section survives the termination of this Agreement.

6 **Article 2**

7 **County's Responsibilities**

8 2.1 **County Contract Administrator.** The County shall provide a County representative
9 ("County Representative") to represent County, who will work with Contractor to carry out
10 Contractor's obligations under this Agreement. The County Representative will be the Director
11 of Information Technology/Chief Information Officer (CIO), or their designee.

12 **Article 3**

13 **Compensation, Invoices, and Payments**

14 3.1 **Compensation.** The County agrees to pay, and the Contractor agrees to receive,
15 compensation for the performance of its services and licensing of its Software under this
16 Agreement as described in Exhibit B, which is attached to and incorporated into this Agreement.

17 3.2 **Maximum Compensation.** The total maximum compensation payable to the
18 Contractor under this Agreement is \$207,402 for the five-year term of this Agreement.

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

26 3.3 **Contractor Products and Services.** The Contractor's Products and Services are
27 purchased by the County as subscriptions during an Order Term (as defined in Exhibit A)
28 specified in each Order, Scope of Work (SOW), or Exhibit. Additional Contractor Products and

1 Services, which may include but is not limited to, licenses, modules, features, may be added,
2 during an Order Term to the System Software as determined necessary by the Contract
3 Administrator.

4 3.4 **Invoices.** The Contractor shall submit annual invoices referencing the provided
5 agreement number to the County of Fresno, Information Technology Services Department,
6 Attention: Business Office, 333 W. Pontiac Way, Clovis, CA 93612,
7 itsdbusinessoffice@fresnocountyca.gov. The Contractor shall submit each invoice within 60
8 days after the month in which the Contractor performs services and in any case within 60 days
9 after the end of the term or termination of this Agreement.

10 3.5 **Payment.** The County shall pay each correctly completed and timely submitted
11 invoice within 45 days after receipt. The County shall remit any payment to the Contractor's
12 address specified in the invoice.

13 3.6 **Incidental Expenses.** The Contractor is solely responsible for all of its costs and
14 expenses that are not specified as payable by the County under this Agreement.

15 **Article 4**

16 **Term of Agreement**

17 4.1 **Term.** This Agreement is retroactive to February 1, 2024, and terminates on January
18 31, 2029, except as provided in Article 6, "Termination and Suspension," below.

19 **Article 5**

20 **Notices**

21 5.1 **Contact Information.** The persons and their addresses having authority to give and
22 receive notices provided for or permitted under this Agreement include the following:

23 **For the County:**

24 Director of Information Technology Services/Chief Information Officer
25 County of Fresno
26 333 W. Pontiac Way
27 Clovis, CA 93612
28 itsdadminoffice@fresnocountyca.gov

For the Contractor:

Jenni Manning
Levi, Ray & Shoup, Inc.
2401 West Monroe Street

1 Springfield, IL 62704
2 Jenni.Manning@lrs.com

3 5.2 **Change of Contact Information.** Either Party may change the information in section
4 5.1 by giving notice as provided in section 5.3.

5 5.3 **Method of Delivery.** Each notice between the County and the Contractor provided
6 for or permitted under this Agreement must be in writing, state that it is a notice provided under
7 this Agreement, and be delivered either by personal service, by first-class United States mail, by
8 an overnight commercial courier service, or by Portable Document Format (PDF) document
9 attached to an email.

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

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

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

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

23 5.4 **Claims Presentation.** For all claims arising from or related to this Agreement,
24 nothing in this Agreement establishes, waives, or modifies any claims presentation
25 requirements or procedures provided by law, including the Government Claims Act (Division 3.6
26 of Title 1 of the Government Code, beginning with section 810).
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1 **Article 6**

2 **Termination and Suspension**

3 6.1 **Termination for Non-Allocation of Funds.** The terms of this Agreement are
4 contingent on the approval of funds by the appropriating government agency. The County
5 agrees that it will use its best efforts to obtain approval of necessary funds to continue this
6 Agreement by taking the appropriate action to request adequate funds to continue the
7 Agreement in force. If sufficient funds are not allocated, then the County, upon at least 30 days'
8 advance written notice to the Contractor, may:

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

10 (B) Terminate this Agreement.

11 6.2 **Termination for Breach.**

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

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

18 (C) For purposes of this section, a breach occurs when the Contractor has:

19 (1) Obtained or used funds illegally or improperly;

20 (2) Failed to comply with any material part of this Agreement and/or Statement of
21 Work; or

22 (3) Improperly performed any of its material obligations under this Agreement.

23 6.3 **No Penalty or Further Obligation.** Any termination of this Agreement by the County
24 under this Article 6 is without penalty to or further obligation of the County.

25 6.4 **County's Rights upon Termination.** Upon termination for breach under this Article
26 6, the County may reasonably demand repayment by the Contractor of any monies disbursed to
27 the Contractor under this Agreement that were not expended in compliance with this
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1 **Article 8**

2 **Insurance**

3 8.1 The Contractor shall comply with all the insurance requirements in Exhibit D to this
4 Agreement.

5 **Article 9**

6 **Ownership of Data**

7 9.1 **Ownership of Data.** The Parties acknowledge and agree that all the County's data
8 (Data), is and shall remain the exclusive property of the County. The Contractor acknowledges
9 that in performing its obligations under the Agreement it may have access to the County's
10 networks and Data. The Contractor shall use and access such Data only as necessary for the
11 purpose of providing the services and supporting the Software as agreed.

12 9.2 **Ownership of System Software.** The Parties acknowledge and agree that, as
13 between the Contractor and the County, title and full ownership of all rights in and to the System
14 Software, System Documentation (as defined in Exhibit A), and all other materials provided to
15 the County by the Contractor under the terms of this Agreement shall remain with the
16 Contractor. The County will take reasonable steps to protect trade secrets (as defined in
17 Government Code Section 7924.510(f)) of the System Software and System Documentation,
18 and which are identified as such by the Contractor. The County may not disclose or make
19 available to third parties the System Software or System Documentation or any portion thereof,
20 unless otherwise required by court order. The Contractor shall own all right, title and interest in
21 and to all corrections, modifications, enhancements, programs, and work product conceived,
22 created or developed, alone or with the County or others, as a result of or related to the
23 performance of this Agreement, including all proprietary rights therein and based thereon.
24 Except and to the extent expressly provided herein, the Contractor does not grant to the County
25 any right or license, express or implied, in or to the System Software and System
26 Documentation or any of the foregoing. The Parties acknowledge and agree that, as between
27 the Contractor and the County, full ownership of all rights in and to all County data, whether in
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1 magnetic or paper form, including without limitation printed output from the System, are the
2 exclusive property of the County.

3 **9.3 Contractor Intellectual Property Rights.** The Contractor shall grant a non-
4 exclusive, non-transferrable, and non-perpetual license, at no additional cost, to the County to
5 use the Contractor Products and Services to the extent allowed in the relevant Order or SOW
6 (Permitted Use). All rights not licensed are reserved to the Contractor and no rights may be
7 implied. The Contractor retains all intellectual property rights in the Software, and the County
8 agrees to implement software protection measures designed to prevent unauthorized use and
9 copying of the Software.

10 **9.4 Data Sources.** Data uploaded into the Contractor Products and Services must be
11 brought in from County sources (interactions with end users and opt-in contact lists). The
12 County cannot upload purchased contact information into the Contractor Products and Services
13 without the Contractor's written permission, which shall not be unreasonably withheld or
14 delayed, and professional services support for list cleansing. The Contractor understands and
15 acknowledges, however, that the County is a government agency and intends to use the
16 Contractor for the purpose of publishing information required by law to be available to the public.

17 **Article 10**

18 **Inspections, Audits, and Public Records**

19 **10.1 Inspection of Documents.** The Contractor shall make available to the County, and
20 the County may examine at any time, provided there is a two week written notice, during
21 Business Hours and as reasonably often as the County deems necessary, all of the Contractor's
22 records and data with respect to the matters covered by this Agreement, excluding attorney-
23 Contractor privileged communications. The Contractor shall, upon request by the County, permit
24 the County to audit and inspect all of such records and data to ensure the Contractor's
25 compliance with the terms of this Agreement.

26 **10.2 State Audit Requirements.** If the compensation to be paid by the County under this
27 Agreement exceeds \$10,000, the Contractor is subject to the examination and audit of the
28 California State Auditor, as provided in Government Code section 8546.7, for a period of three

1 years after final payment under this Agreement. This section survives the termination of this
2 Agreement.

3 **10.3 Public Records.** The County is not limited in any manner with respect to its public
4 disclosure of this Agreement or any record or data that the Contractor may provide to the
5 County. The County’s public disclosure of this Agreement or any record or data that the
6 Contractor may provide to the County may include but is not limited to the following:

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

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

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

17 (D) This Agreement, and any record or data that the Contractor may provide to the
18 County, is subject to public disclosure as a public record under the California Public
19 Records Act (California Government Code, Title 1, Division 10, Chapter 3, beginning
20 with section 7920.200) (“CPRA”)

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

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

1 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,
2 publications, and understandings of any nature unless those things are expressly included in
3 this Agreement. If there is any inconsistency between the terms of this Agreement without its
4 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving
5 precedence first to the terms of the exhibits.

6 **12.8 No Third-Party Beneficiaries.** This Agreement does not and is not intended to
7 create any rights or obligations for any person or entity except for the Parties.

8 **12.9 Authorized Signature.** The Contractor represents and warrants to the County that:

9 (A) The Contractor is duly authorized and empowered to sign and perform its
10 obligations under this Agreement.

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

14 **12.10 Electronic Signatures.** The Parties agree that this Agreement may be executed by
15 electronic signature as provided in this section.

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

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

26 (C) The provisions of this section satisfy the requirements of Civil Code section
27 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,
28 Part 2, Title 2.5, beginning with section 1633.1).

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

5 (E) This Agreement is not conditioned upon the Parties conducting the transactions
6 under it by electronic means and either Party may sign this Agreement with an original
7 handwritten signature.

8 12.11 **Counterparts.** This Agreement may be signed in counterparts, each of which is an
9 original, and all of which together constitute this Agreement.

10 12.12 **Construction.** The final form of this Agreement is the result of the Parties' combined
11 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be
12 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement
13 against either Party.

14 12.13 **Days.** Unless otherwise specified, "days" means calendar days.

15 12.14 **Headings.** The headings and section titles in this Agreement are for convenience
16 only and are not part of this Agreement.

17 12.15 **Agent for Service of Process.** The Contractor represents to the County that the
18 Contractor's agent for service of process in California, and that such agent's address for
19 receiving such service of process in California, which information the Contractor shall maintain
20 with the office of the California Secretary of State, is as follows:

21 1505 Corporation
22 CSC Lawyers
23 2710 Gateway Oaks Drive
24 Sacramento, CA 95833

25 The Contractor further represents to the County that if the Contractor changes its agent for
26 service of process in California, or the Contractor's agent for service of process in California
27 changes its address for receiving such service of process in California, which changed
28 information the Contractor shall maintain with the office of the California Secretary of State, the

1 Contractor shall give the County written notice thereof within five calendar days thereof pursuant
2 to Article 5.

3 [SIGNATURE PAGE FOLLOWS]
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1 The Parties are signing this Agreement on the date stated in the introductory clause.

2 LEVI, RAY & SHOUP, INC.

COUNTY OF FRESNO

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4 

5 _____
6 Greg Matthews, Chief Operating Officer

_____ Garry Bredefeld, Chairman of the Board of
Supervisors of the County of Fresno

7 2401 W. Monroe Street
8 Springfield, IL 62704

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.: 7309
14 Fund No.: 1020
15 Subclass No.: 10000
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Exhibit A

License and Scope of Work

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2 1. **Definitions.** In addition to the terms defined elsewhere in this Agreement, the following
3 terms shall have the meanings specified:

4 Change Control Process is defined as the process used by the Information Technology
5 Division of the County's Internal Services Department to inform County staff of new or updated
6 production use systems.

7 Installation Location(s) is County's facility(ies) located at the address(es) listed on or
8 identified pursuant to the applicable License Schedule indicating where the Software may be
9 installed.

10 Products and Services is defined as the products and services made available to the
11 County pursuant to this Agreement, which may include the Contractor Products and Services
12 accessible for use by the County on a subscription basis ("Software-as-a-Service" or "SaaS"),
13 the Contractor professional services, content from any professional services or other required
14 equipment components or other required hardware, as specified in each Order or SOW.

15 License is defined as the license granted under this Agreement, and the rights and
16 obligations that it creates under the laws of the United States of America and the State of
17 California, including without limitation, copyright and intellectual property law.

18 Order or Statement of Work (SOW) is defined as a written order, proposal, or purchase
19 document in which the Contractor agrees to provide, and the County agrees to purchase
20 specific Contractor Products and Services. Statement of Work (SOW) means a written order,
21 proposal, or purchase document that is signed by both Parties and describes the Contractor
22 Products and Services to be provided and/or performed by the Contractor. Each Order or SOW
23 shall describe the Parties' performance obligations, and any assumptions or contingencies
24 associated with the implementations of the Contractor Products and Services, as specified in
25 each Order or SOW placed hereunder. Any inconsistency between the terms of an SOW and
26 this Exhibit A will be resolved in favor of the Agreement.

Exhibit A

1 Order Term is defined as the then-current duration of performance identified on each
2 Order or SOW, for which the Contractor has committed to provide, and the County has
3 committed to pay for the Contractor Products and Services.

4 Support is defined as the ongoing support and maintenance services performed by the
5 Contractor related to the Contractor Products and Services as specified in each Order or SOW
6 placed between the Parties.

7 System is defined as the System Software and System Documentation, collectively,
8 including all modifications and enhancements.

9 System Documentation is defined as the documentation relating to the System Software,
10 including all manuals, reports, brochures, sample runs, specifications, and other materials
11 provided by the Contractor in connection with the System Software.

12 System Software is defined as the Contractors Products and Services provided and
13 hosted by the Contractor. System Software does not include operating system software, or any
14 other third-party software.

15 System Software, Maintenance and Support, and Support is defined as software hosting
16 for System Software, regular software updates to System Software, and support provided for
17 System Software in case of errors, mistakes, or other technical difficulties.

18 2. **Grant of License.** The Contractor grants to the County and the County accepts a non-
19 exclusive, nontransferable license to use the Software, that is subject to the terms and
20 conditions set forth in the Agreement.

21 3. **Software.** The following Software products are licensed pursuant to Exhibit G subject to
22 the license restrictions set forth in Exhibit A Section 4: VPSX Enterprise® and PageCenterX®

23 4. **License Restrictions.** Unless specified otherwise herein, the Software may be installed
24 on an unlimited number of Designated Servers provided Licensor is notified of the host name
25 and operating system of each Designated Server upon which the Software is installed, and the
26 Designated Servers are located at a single Installation Location. The Software will be delivered
27 with a license key that will restrict usage to Designated Servers for the term of the Agreement

Exhibit A

1 and enforce other license restrictions set forth herein. Subject to the license restrictions below, if
2 the County opts to run the Software on a different Designated Server or on a different operating
3 system, upon the County's request which shall include the requisite information to generate a
4 license key, the Contractor will provide the County with a new license key that enables the
5 Software to operate on the newly designated server and/or operating system at no charge.

6 Upon written request, the Contractor shall provide the County with a license key to allow
7 the County to operate the Software on failover and/or disaster recover server(s) provided that
8 the license key does not exceed the aggregate number of Definitions and/or users licensed
9 below and that the County shall not use the failover/disaster recovery server concurrently in
10 production with the Designated Server(s).

11 a. Software Licensed by Definitions

12 Software	Operating System	Definitions
13 VPSX Enterprise	Windows	Twenty-five (25)

14 "Definitions" as used above means the maximum number of definitions of a device as an
15 output destination in the Software.

16 b. Software Licensed by Users

17 Software	Operating System	Users Licensed
18 PageCenterX	Windows	Fifty (50)

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

23 5. **Installation Location.** 1020 S. 10th Street, Fresno, CA 93702. The County may change
24 the Installation Location within the country where the Software was originally licensed by
25 providing the Contractor with thirty days prior written notice. The Installation Location may not
26 be changed to a country other than the country where the Software was originally licensed
27

Exhibit A

1 without the prior written consent of the Contractor, which consent shall not be unreasonably
2 withheld.

3 **6. Extended Engineering Services.** For a period of six months, the Contractor will provide
4 up to a maximum of twenty hours of extended engineering (“EE”) services per month (“EE
5 Service Hours”).

6 a. Provision of the EE services begins after the Contractor software installation and
7 configuration services have been completed and may include the following tasks related to the
8 Contractor software:

- 9 • Installation/configuration of new Software instances (high availability, non-production).
- 10 • New feature education, configuration, testing and training.
- 11 • Assist with advanced security configurations and training.
- 12 • Assist with planning and building for advanced output delivery requirements, printer
13 estate rightsizing, driver management, and/or workflow automation.
- 14 • Assist with creation and maintenance of new and additional Contractor software HLD
15 and LLD.
- 16 • Assist with implementation of any new/updated architecture.
- 17 • Assist with design and creation of custom filter scripts, subject to an additional license
18 agreement.
- 19 • Assist in the creation of any change orders involving existing licensed Contractor
20 software which may include upgrades and/or change or removal of Contractor software.
21 New or changed requirements may be subject to additional costs.
- 22 • Collaborate with County IT staff including attending and participating in meetings.
- 23 • Troubleshoot configuration issues with print devices along with the printer vendor.
- 24 • Troubleshoot Contractor software print issues, involving the appropriate County group
25 and documents according to policy.
- 26 • Creation of test plans tailored to the County’s Software environment including testing of
27 high availability (“HA”) and disaster recovery (“DR”).
- 28

Exhibit A

- 1 • Assist with continuous improvement of the County's output management implementation
2 including additional digital transformation applications for the existing software
3 investment.
- 4 • Additional PageCenterX Administrator training or redo training due to change in the
5 County's technical resource(s).
- 6 • Additional VPSX Enterprise training or re-do training due to change in County technical
7 resource(s).
- 8 • Assistance in remediating reports/documents routed to the PageCenterX
9 !RemainderPages folder instead of matching a PageCenterX report definition.
- 10 • Assistance in remediating reports/documents routed to the PageCenterX
11 !RemainderPages folder when decollation of reports is taking place in PageCenterx.
- 12 • Assist with advanced security configurations and training.
- 13 • Assist with testing Contractor transform software and adjusting profile(s) when output is
14 not formatted correctly.
 - 15 ○ Identify missing Xerox or AFP resources that the County will need to locate and
16 copy to VPSX Enterprise server.
- 17 • With Modernization or Refactoring initiatives, assist the County's vendor partner with
18 resolving live load issues when output is routed to VPSX Enterprise and onto
19 PageCenterX.
- 20 • Troubleshooting assistance during Parallel Processing should reports/documents look
21 differently than when viewed in the County's Archive.
- 22 • Provide instructions on proper way to stop requeuing output to JES Spool when decision
23 has been made by the County to stop Parallel Processing.
- 24 • Assist in researching the cause of performance slowness with PageCenterX.
- 25 • Assist in recovery effort when PageCenterX database is corrupted due to improper shut
26 down practices by the County.

Exhibit A

- 1 • Adjust the PageCenterX folder structure based on feedback from the County's end user
- 2 base.
- 3 • Adjust the PageCenterX security definitions when the County wants more security
- 4 applied to reports/documents in PageCenterX than previously decided.
- 5 • Adjust the PageCenterX variable definitions in situations where text output was expected
- 6 but the County's data or JCL contains presence of Xerox DJDE or AFP
- 7 PageDef/FormDef. (This may result in the County needing to license additional
- 8 Contractor software or expand the number of units licensed.)
- 9 • Assist the County in expanding the use of PageCenterX SYSDOCATTR fields and
- 10 adjusting PageCenterX Views to include those fields on the screen.
- 11 • When applicable, assist in troubleshooting VPS/TCPIP job failures, including space
- 12 abends.
- 13 • Supplementary migration assistance with troubleshooting failed jobs.
- 14 • Assist in troubleshooting carriage control discrepancies between the County's Archive
- 15 history and reports/documents in PageCenterX.
- 16 • Assist in adjusting the Migration Utility Custom Configuration (CUSTCFG) file to alter
- 17 number of steps per job, number of reports per step, or start/end date range.
- 18 • Assist in migration job set-up should the County determine more Archive history should
- 19 be migrated to PageCenterX than originally planned.
- 20 • Assist in defining PageCenterX definitions should Audit identify new reports added to the
- 21 County's Archive that were not included in the conversion phase.
- 22 b. The Contractor will provide project management for the EE services ("EE Project
- 23 Management").
- 24 • Time accrued for EE Project Management will count as EE Service Hours.
- 25 • EE Project Management may include the following as deemed necessary by the
- 26 Contractor:
- 27 ○ Coordination of Contractor technical resources.
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Exhibit A

- 1 • Timely provide the Contractor resources and the appropriate access and permissions
2 necessary to accomplish the Services.
- 3 • Coordinate its resources (and the cooperation of its third parties to the extent required),
4 in a timely manner, to ensure that the Contractor has sufficient opportunity to perform
5 the applicable Services under the applicable SOW without delay.
- 6 • Timely furnish the Contractor all technical data and information as may be reasonably
7 determined necessary by the Contractor to provide the Services under the applicable
8 SOW, including but not limited to, reference and instructional materials about the
9 County's computing environment, standards, procedures, etc., and to any
10 documentation relating to relevant County applications.
- 11 • In the event non-Contractor hosted hardware is necessary to support the Contractor
12 solutions, be responsible for selecting the hardware size and configuration and for all
13 maintenance of the associated hardware and supporting software.
- 14 • Apply valid certificate authority (CA) signed certificate(s) to applicable non Contractor-
15 hosted servers.
- 16 • Retain responsibility for the security of its systems, environment, data, proprietary and
17 confidential information and comply with the requirements of General Data Protection
18 Regulation (GDPR), if applicable, and/or other relevant data protection legislation,
19 including implementing appropriate security measures and protocols to keep secure and
20 prevent unauthorized or unlawful access, disclosure, alteration, loss, or destruction of
21 the personal data for which it is responsible.
- 22 • Ensure all firewall ports necessary for the Contractor products and/or components are
23 opened and verified as requested by the Contractor in advance of any installation
24 activity.
- 25 • Ensure that any service and/or user accounts requested by the Contractor are created
26 and have the correct permissions to perform their intended function.
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Exhibit A

- 1 • Be responsible for coordinating with printer hardware vendor(s) to upgrade printer
2 firmware, applying the required device configuration options per relevant documentation,
3 and ensure loading of the appropriate drivers, to the extent required.
- 4 • Ensure the necessary third party pull print solution software is removed from the devices
5 and printer settings are set to factory default settings, when applicable.
- 6 • Be responsible for prerequisites for third party solutions (Java, etc.) required to enable
7 the Contractor software features, when applicable.
- 8 • Be responsible for all initial and ongoing configuration and maintenance of its network
9 load balancers and associated configurations for high availability and/or disaster
10 recovery of the Contractor solutions.
- 11 • In the event the Contractor products and/or components are being installed in the cloud,
12 be responsible for selecting the cloud provider, gathering requirements, and setup,
13 configuration, and maintenance of the cloud environment.
- 14 • Ensure internet information services (“IIS”) for Windows® is installed and configured on
15 the application servers with all active server pages (“ASP”), .NET, common gateway
16 interface (“CGI”), and Internet server application programming interface (“ISAPI”)
17 components in accordance with the Contractor build documentation.
- 18 • Ensure a suitable web server (for the Contractor products graphical user interface
19 (“GUI”) purposes e.g., IIS, Apache®) is installed and configured on the application
20 servers in accordance with the Contractor build documentation.
- 21 • Be responsible for installation and ongoing configuration and maintenance of the
22 required Microsoft SQL components and security requirements required for the solution.
- 23 • Be responsible for executing backups of the Contractor software.

24 7. **Warranties & Disclaimers.** The Contractor warrants that all services performed under
25 this Agreement will conform in all aspects with the requirements of this Agreement and their
26 specifications. The Contractor warrants that it takes all precautions that are standard in the
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Exhibit A

1 industry, in California, to increase the likelihood of a successful performance for the Contractor
2 Products and Services.

3 Except as herein provided, each Party hereby disclaims any and all other warranties of
4 any nature whatsoever whether oral and written, express or implied, including, without limitation,
5 the implied warranties of merchantability, title, non-infringement, and fitness for a particular
6 purpose. The Contractor does not warrant that the Contractor Products and Services will meet
7 the County's requirements.

8 **8. Project Deadlines.** It is understood and agreed by both Parties to this Agreement that if
9 all the work specified or indicated in the Order or SOW is not completed within the specified
10 time frames set forth in the Order or SOW, or within such time limits as extended, the County
11 may elect to terminate due to breach as discussed in section 6.2, provided however, nothing in
12 this section limits any of the County's remedies under this Agreement for the Contractor's
13 breach of this Agreement.

14 **9. Contractor's Project Coordinator.** Upon execution of this Agreement, the Contractor
15 shall appoint a Project Coordinator who will act as the primary contact person to interface with
16 the County for the services discussed in this Agreement.

17 **10. Documentation.** The Contractor shall provide to the County System Documentation,
18 which shall consist of electronic media files. The electronic media files must be printable using
19 PC software normally available at the County. The Contractor shall provide new System
20 Documentation corresponding to all new Software Upgrades. The County may print additional
21 copies of all documentation. All System Documentation is to be used by the County only for the
22 purposes identified within this Agreement.

23 **11. Technical Information.** The Contractor will provide technical information to the County.
24 Such information may cover areas regarding the software discussed in this Agreement, third
25 party software, and other matters considered relevant to the County by the Contractor.
26 Technical information will be provided at the discretion of the Contractor but will not be
27 unreasonably withheld.

Exhibit A

1 12. **Operating System Updates.** The application must run on a County operating system
2 that is consistently and currently supported by the operating system vendor. Applications under
3 maintenance are expected to always be current in regards to the required Contractor operating
4 system. No outdated or unsupported County operating system will be implemented on the
5 production network. The Contractor shall keep their software current in order to operate in this
6 environment. Patches may include critical operating system updates and security patches.

7 13. **Adhere to Change Control Process.** The Contractor employs a procedure to
8 implement updates, upgrades, and version releases to a system that is in production use. This
9 forum allows the Contractor to inform the County of upcoming changes to a production system.
10 The Contractor must inform the County at a minimum of one week prior to any planned, non-
11 emergency changes so that the Change Control Process may be followed.

12 14. **Storage and Sending.** If any services specified in this Agreement are used to store
13 and/or send Confidential Information, the Contractor must be notified in writing, in advance of
14 the storage or sending. Should the County provide such notice, the County must ensure that
15 Confidential Information is stored behind a secure interface and that the Contractor Products
16 and Services be used only to notify people of updates to the information that can be accessed
17 after authentication against a secure interface managed by the County.

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Exhibit B

Compensation

The Contractor will be compensated for the Contractor's Products and 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.

1. **Fees.** The County agrees to pay all fees, costs, and other amounts as specified in this Exhibit and in each Order or SOW approved by the County. The license fees for the Software shall be set forth on the applicable License Schedule and shall include maintenance as described in Exhibit G, Section 5.0.

2. **Pricing Summary.** The total maximum compensation payable to the Contract during the five-year term of this Agreement is \$207,402. This includes \$149,335 for licensing and \$58,067 for additional services. The License Fees payable under this License Schedule shall be paid in the amounts on the dates set forth in the table below. The County shall not be entitled to a refund or a reduction in license fees should the usage of the Software be reduced during the term of the Agreement.

Time Period Covered	License Fee	Payment Due Date
February 1, 2024-January 31, 2025	\$28,128.00	*April 1, 2024
February 1, 2025-January 31, 2026	\$28,972.00	*February 1, 2025
February 1, 2026-January 31, 2027	\$29,841.00	*February 1, 2026
February 1, 2027-January 31, 2028	\$30,736.00	February 1, 2027
February 1, 2028-January 31,2029	\$31,658.00	February 1, 2028
Total License Fees		\$149,335.00
Additional Professional Services (optional)		\$58,067.00

*License Fees have been paid for the time period covered.

Subject to the maximum compensation amount, during the Term, the County may increase the license restriction limits set forth in Exhibit A by entering into a supplement and by paying the additional license fees based on the Contractor's then current price list for the Software. Upon receipt of the executed supplement, the Contractor shall invoice the County for the additional license fees on a pro rata basis for the remainder of any prepaid annual period. Thereafter, for the remainder of the Term, the annual license fee shall be increased to include such additional license fees. Upon receipt of payment for such additional license fees, the Contractor shall

Exhibit B

1 provide the County with the necessary key(s) to allow the Software to be used to support the
2 new license restrictions. Any license limit increase is subject to the approval of the CIO.

3 3. **Interest.** The Contractor reserves the right to charge interest at the rate of 1% per
4 month, or the maximum amount allowed by law, whichever is less, on such unpaid amounts for
5 each calendar month or fraction thereof that any payment to the County is more than forty-five
6 (45) days in arrears.

7 4. **Taxes.** All fees payable to the Contractor hereunder shall be exclusive of all applicable
8 taxes based or measured thereon, or on this transaction, and the County shall be responsible
9 for the payment of all such taxes, excluding taxes based on the County's income. The
10 Contractor's invoice shall not include any amount for taxes unless the same are listed apart
11 from the fees and the Contractor is authorized to collect the same.

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

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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).

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			

Exhibit C

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

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

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(5) Authorized Signature

Signature:

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Date:

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Exhibit D

Insurance Requirements

1. Required Policies

Without limiting the County's right to obtain indemnification from the Contractor or any third parties, 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) **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.
- (F) **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, 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 Article 11 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

Exhibit D

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.
 - (iv) 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.
 - (v) 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.

Exhibit D

- (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 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

Data Security (non-HIPAA)

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.

“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 available information that is lawfully made available to the general public from federal, state, or

Exhibit E

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 in 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 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.

(3) The Contractor agrees and covenants in favor of the County that the Contractor shall: (i)

Exhibit E

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 CIO'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 the Agreement does and shall at all times comply with all federal, state, and local, privacy and data protection laws, as well as all other applicable regulations

Exhibit E

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 CIO; (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 disruption and abuse; (c) having and maintaining network, device application, database and

Exhibit E

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 CIO; (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 CIO); (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; (viii) providing appropriate privacy and information security training to Authorized Employees; and (ix) Contractor shall enforce user access controls aligned with ISO 27001.

(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. Backup procedures must include daily integrity validation with County audit access on request.

Exhibit E

(6) The Contractor shall provide the County with the name and contact information for each 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 twenty-four (24) hours per day, seven (7) 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) Within 24 hours of breach confirmation, the Contractor shall (a) notify the CIO 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

Exhibit E

shall provide a written report of the investigation and reporting required to the CIO within thirty (30) days after the Contractor's discovery of the Security Breach.

(3) The County shall promptly notify the Contractor of the CIO'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 legally required costs of the County incurred in relation to any litigation or other action described in subsection D.

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 the County or, upon the County's election, 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

Exhibit E

technical environment in relation to all Personal Information that is Used by the Contractor pursuant to this Agreement. 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.

(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 CIO, 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 shall comply with all reasonable directions provided by the CIO 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

Exhibit E

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. Survival.

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

I. 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.

J. 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 the Agreement is or will be secure from unauthorized Use, or a Security Breach or Privacy Practices Complaint.

Exhibit F

Health Insurance Portability and Accountability Act (HIPAA)

1. The County is a “Covered Entity,” and the Contractor is a “Business Associate,” as these terms are defined by 45 CFR 160.103. In connection with providing services under the Agreement, the Parties anticipate that the Contractor will create and/or receive Protected Health Information (“PHI”) from or on behalf of the County. The Parties enter into this Business Associate Agreement (BAA) to comply with the Business Associate requirements of HIPAA, to govern the use and disclosures of PHI under this Agreement. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164. The Parties to this Agreement shall be in strict conformance with all applicable federal and State of California laws and regulations, including, but not limited to California Welfare and Institutions Code sections 5328, 10850, and 14100.2 *et seq.*; 42 CFR 2; 42 CFR 431; California Civil Code section 56 *et seq.*; the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”), including, but not limited to, 45 CFR Parts 160, 45 CFR 162, and 45 CFR 164; the Health Information Technology for Economic and Clinical Health Act (“HITECH”) regarding the confidentiality and security of patient information, including, but not limited to 42 USC 17901 *et seq.*; and the Genetic Information Nondiscrimination Act (“GINA”) of 2008 regarding the confidentiality of genetic information.

Except as otherwise provided in this Agreement, the Contractor, as a business associate of the County, may use or disclose Protected Health Information (“PHI”) to perform functions, activities or services for or on behalf of the County, as specified in this Agreement, provided that such use or disclosure shall not violate HIPAA Rules. The uses and disclosures of PHI may not be more expansive than those applicable to the County, as the “Covered Entity” under the HIPAA Rules, except as authorized for management, administrative or legal responsibilities of the Contractor.

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

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

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

5. For purposes of the above sections, genetic information shall include genetic tests of family members of an individual or individual(s), manifestation of disease or disorder of family members of an individual, or any request for or receipt of genetic services by individual or family

Exhibit F

members. Family member means a dependent or any person who is first, second, third, or fourth degree relative.

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

The Contractor shall make any amendment(s) to PHI in a designated record set at the request of the County or individual, and in the time and manner designated by the County in accordance with 45 CFR § 164.526.

The Contractor shall provide to the County or to an individual, in a time and manner designated by the County, information collected in accordance with 45 CFR § 164.528, to permit the County to respond to a request by the individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

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

This written investigation and description of any reporting necessary shall be postmarked within the thirty (30) working days of the discovery of the breach to the addresses below:

County of Fresno
Department of Public Health
HIPAA Representative
(559) 600-6439
P.O. Box 11867
Fresno, California 93775

County of Fresno
Department of Public Health
Privacy Officer
(559) 600-6405
P.O. Box 11867
Fresno, California 93775

County of Fresno
Department of Information
Technology Services -
Chief Information Security
Officer
(559) 600-5800
333 W. Pontiac Way
Clovis, California 93612

8. The Contractor shall make its internal practices, books, and records relating to

Exhibit F

the use and disclosure of PHI received from the County, or created or received by the Contractor on behalf of the County, in compliance with Parts the HIPAA Rules. The Contractor shall make its internal practices, books, and records relating to the use and disclosure of PHI received from the County, or created or received by the Contractor on behalf of the County, available to the Secretary upon demand.

The Contractor shall cooperate with the compliance and investigation reviews conducted by the Secretary. PHI access to the Secretary must be provided during the Contractor's normal business hours; however, upon exigent circumstances access at any time must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable to the Contractor and in possession of a subcontractor of the Contractor, the Contractor must certify to the Secretary its efforts to obtain the information from the subcontractor.

9. Safeguards

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

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

- A. Passwords must **not** be:
 - (1) Shared or written down where they are accessible or recognizable by anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;
 - (2) A dictionary word; or
 - (3) Stored in clear text
- B. Passwords must be:
 - (1) Eight (8) characters or more in length;
 - (2) Changed every ninety (90) days;
 - (3) Changed immediately if revealed or compromised; and
 - (4) Composed of characters from at least three (3) of the following four (4) groups from the standard keyboard:
 - a) Upper case letters (A-Z);
 - b) Lowercase letters (a-z);
 - c) Arabic numerals (0 through 9); and

Exhibit F

d) Non-alphanumeric characters (punctuation symbols).

The Contractor shall implement the following security controls on each workstation or portable computing device (e.g., laptop computer) containing confidential, personal, or sensitive data:

1. Network-based firewall and/or personal firewall;
2. Continuously updated anti-virus software; and
3. Patch management process including installation of all operating system/software vendor security patches.

The Contractor shall utilize a commercial encryption solution that has received FIPS 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, compact disks and thumb drives) and on portable computing devices (including, but not limited to, laptop and notebook computers).

The Contractor shall not transmit confidential, personal, or sensitive data via e-mail or other internet transport protocol unless the data is encrypted by a solution that has been validated by the National Institute of Standards and Technology (NIST) as conforming to the Advanced Encryption Standard (AES) Algorithm. The Contractor must apply appropriate sanctions against its employees who fail to comply with these safeguards. The Contractor must adopt procedures for terminating access to PHI when employment of employee ends.

10. **Mitigation of Harmful Effects**

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

11. **The Contractor's Subcontractors**

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

Nothing in this section 11 or this Exhibit F authorizes the Contractor to perform services under this Agreement using subcontractors.

12. **Employee Training and Discipline**

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

13. **Termination for Cause**

Upon the County's knowledge of a material breach of these provisions by the Contractor, the County will either:

- A. Provide an opportunity for the Contractor to cure the breach or end the violation, and the County may terminate this Agreement if the Contractor does not cure the

Exhibit F

breach or end the violation within the time specified by the County; or

B. Immediately terminate this Agreement if the Contractor has breached a material term of this Exhibit F and cure is not possible, as determined by the County.

C. If neither cure nor termination is feasible, the County's Privacy Officer will report the violation to the Secretary of the U.S. Department of Health and Human Services.

14. **Judicial or Administrative Proceedings**

The County may terminate this Agreement if: (1) the Contractor is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) there is a finding or stipulation in an administrative or civil proceeding in which the Contractor is a party that the Contractor has violated a privacy or security standard or requirement of the HITECH Act, HIPAA or other security or privacy laws.

15. **Effect of Termination**

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

16. **Compliance with Other Laws**

12.16 To the extent that other state and/or federal laws provide additional, stricter and/or more protective privacy and/or security protections to PHI or other confidential information covered under this BAA, the Contractor agrees to comply with the more protective of the privacy and security standards set forth in the applicable state or federal laws to the extent such standards provide a greater degree of protection and security than HIPAA Rules or are otherwise more favorable to the individual.

17. **Disclaimer**

The County makes no warranty or representation that compliance by the Contractor with these provisions, the HITECH Act, or the HIPAA Rules, will be adequate or satisfactory for the Contractor's own purposes or that any information in the Contractor's possession or control, or transmitted or received by the Contractor, is or will be secure from unauthorized access, viewing, use, disclosure, or breach. The Contractor is solely responsible for all decisions made by the Contractor regarding the safeguarding of PHI.

18. **Amendment**

The Parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit F may be required to provide for procedures to ensure compliance with such developments. The Parties specifically agree to take such action as is necessary to amend this agreement in order to implement the standards and requirements of the HIPAA Rules, the HITECH Act and other applicable laws relating to the security or privacy of PHI. The County may terminate this Agreement upon thirty (30) days written notice in the event that the Contractor does not enter into an amendment providing assurances regarding the safeguarding of PHI that the County in its sole discretion,

Exhibit F

deems sufficient to satisfy the standards and requirements of the HIPAA Rules, and the HITECH Act.

19. **No Third-Party Beneficiaries**

Nothing expressed or implied in the provisions of this Exhibit F is intended to confer, and nothing in this Exhibit F does confer, upon any person other than the County or the Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

20. **Interpretation**

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

21. **Regulatory References**

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

22. **Survival**

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

Exhibit G

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

These General Terms and Conditions (“General Terms”) will apply between Levi, Ray & Shoup, Inc., an Illinois Corporation (“Licensor”) and Licensee. These General Terms will be effective as of the Effective Date. Finally, if there is conflict between this Exhibit and the Agreement, this Exhibit shall control and constitute the base agreement between the Parties.

1.0 Definitions.

- 1.1 **Affiliate** means in relation to a party, any Company controlling, controlled by or under common control with that party. Control means the power to direct the management and policies of an entity either directly or indirectly through ownership of fifty percent (50%) or more of the voting securities, contract, or otherwise.
- 1.2 **Agreement** means this License and Service Agreement.
- 1.3 **Company** means any natural person or any corporation, partnership, trust, association or any other type of legal entity.
- 1.4 **Critical Problem** means a problem caused by the Software resulting in a material interruption to the Licensee’s business operations.
- 1.5 **Designated Server** means any server upon which the Software is installed and which is enabled by a license key provided by Licensor.
- 1.6 **Documentation** means the technical information and user manuals pertaining to the Software which are made available to Licensee pursuant to the Agreement.
- 1.7 **Effective Date** in reference to an Agreement is the earliest signature date on the applicable License Schedule.
- 1.8 **Enhancement** means generally available improvements, fixes, modifications, changes, filters or new releases or versions of the Software and any accompanying Documentation.
- 1.9 **License Schedule** means a document signed by Licensor and Licensee that incorporates these General Terms and by which Licensor licenses Software to Licensee.
- 1.10 **Licensee** means the entity other than the Licensor who has signed a License Schedule. Licensee is equivalent to Contractor in the Agreement.
- 1.11 **Licensor** means Levi, Ray & Shoup, Inc. Licensor is equivalent to County in the Agreement.
- 1.12 **Software** means the software products listed on the License Schedule and such term shall also include the Documentation and Enhancements.
- 1.13 **Term** means the period designated as such in the applicable License Schedule.

2.0 Restrictions on Use and Audit Rights.

- 2.1 The Software may only be used in machine-readable form and only by the Licensee for the internal business purposes of the Licensee and its Affiliates. Notwithstanding anything to the contrary stated herein, Licensee may not use the Software for the benefit of unaffiliated third parties who pay, directly or indirectly, for its benefit.
- 2.2 Licensee may allow its contractors temporary access to the Software and Documentation, but only to the extent such access is necessary to allow the Licensee to directly use the Software or its computer systems effectively and provided that the contractors have signed a nondisclosure agreement which effectively prohibits those contractors from disclosing or disseminating to third

Exhibit G

parties, or using for their own benefit, all or part of the Software and Documentation. Such nondisclosure agreements do not have to specifically name the Software and Documentation in order to comply with this section.

- 2.3 Licensee may keep such copies of the Software as is customary and necessary as part of its automated back-up system. In addition, Licensee may keep one other copy of the Software for archival purposes.
- 2.4 No more than annually, upon written request by Licensor, Licensee shall provide Licensor with a certified statement which describes how and where the Software is being used and such certified statement must include any records, reports, or other information reasonably requested by Licensor to determine Licensee's compliance with the licensing restrictions in the Agreement. Further, no more than annually, upon prior written notice, Licensor may visit Licensee's places of business in order to determine compliance with this Agreement.

3.0 Protection of Software and Licensee's Confidential Information.

- 3.1 Acknowledgment of Trade Secrets. The Agreement does not transfer any ownership or title in the Software or the Documentation to Licensee and all ownership rights will remain in Licensor or its suppliers. Licensee acknowledges Licensor's representation that the Software and its Documentation contain valuable trade secrets and are protected by United States and international copyright laws and P-24-214 County of Fresno CA0329 Page 3 of 26 treaties. Licensee may not disclose or make available to third parties the Software, its Documentation or any portion thereof without Licensor's prior written approval, except as specifically allowed under Section 4.0, or unless as required to comply with applicable law and per the provisions of Section 12 of the Agreement. Licensor has the exclusive right to modify and enhance the Software and its Documentation, and the Licensee agrees that it will make no effort to reverse engineer, reverse assemble, decompile or otherwise attempt to derive source code from the Software except as expressly authorized by applicable law for purposes of achieving interoperability. Licensee shall not make any attempt to circumvent the technological measure(s) that controls access to, or use of, the Software.
- 3.2 Delete Copies. Upon termination of the Agreement, or any Software license granted pursuant to the Agreement, that is not superseded by another Agreement, Licensee must immediately delete or otherwise destroy all copies of the applicable Software and Documentation other than copies which have been created pursuant to automatic archiving or back-up processes that cannot reasonably be deleted. Upon request, Licensee shall certify in writing to Licensor its compliance with this paragraph within five (5) days after such request.
- 3.3 Proprietary Notices. All copies of the Software, in whole or in part, shall contain all restrictive and proprietary notices as they appear on the copy of the Software provided by Licensor. In no event may Licensee copy in whole or in part the Software or the Documentation without the Licensor's prior written consent except as allowed in the applicable License Schedule.

4.0 Warranty Against Infringement.

- 4.1 Warranty/Exclusive Remedy. Licensor warrants that the Software will be delivered free of the rightful claim of any third party by way of infringement or misappropriation of rights arising under the laws of the country in which the Software is licensed. LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY IS SET FORTH IN SECTIONS 4.2 AND 4.3.

Exhibit G

- 4.2 Licensor's Duty To Indemnify. If a claim is made by a third party against Licensee that alleges a breach of the warranty set forth in Section 4.1, then Licensor shall defend against such claim at its own expense and shall indemnify Licensee and hold it harmless against any settlement or any final judgment, including an award of attorneys' fees, that may be awarded by a court of competent jurisdiction against Licensee as a result of the foregoing; provided that Licensee gives Licensor prompt written notice of such claim, allows Licensor to control the defense, and provide Licensor with all reasonable cooperation. Provided Licensor assumes the defense of the infringement claim in a timely fashion, Licensor shall have no obligation to pay Licensee's attorneys' fees. Further, Licensor shall have no liability or duty to Licensee for any claim of infringement pursuant to this section if the claim is based on Licensee's, or third party's addition or modification to the Software when the claim of infringement is based on the addition or modification and the addition or modification was not authorized in writing by Licensor.
- 4.3 Licensor's Right To Correct. If a claim is made by a third party against Licensee that alleges a breach of the warranty set forth in Section 4.1, or if Licensor believes that a likelihood of such a claim exists, Licensor shall, in Licensor's sole discretion, procure for Licensee the right to continue using the Software, modify it to make it non-infringing but continue to meet the Software's functionality, or replace it with non-infringing software of like functionality; provided, however, if none of the foregoing is reasonably available to Licensor, either Party may terminate the applicable Agreement, in which case the Licensee shall return the Software to Licensor pursuant to Exhibit B and Licensee's obligation to pay license fees shall cease and Licensee will be refunded on a pro rata basis any prepaid license fees for the remainder of the Term.

5.0 Maintenance and Support. The maintenance and support services in this Section 5.0 shall only be provided in conjunction with the current release of the Software and the release immediately preceding the current release of the Software and only if no fees are owed under the Agreement. Licensor shall provide the following maintenance and support services to Licensee subject to the terms and conditions of the Agreement.

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

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

Exhibit G

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

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

8.0 Warranties, Disclaimers, Remedy.

8.1 Limited Warranty. Licensor warrants that it will perform the services detailed in Section 4.0 with reasonable care and skill and that, during the Term, the Software will function substantially in accordance with its Documentation. Licensor does not warrant that the Software will be error free.

8.2 NO OTHER WARRANTIES. EXCEPT FOR THE WARRANTIES CONTAINED IN SECTION 4.0 AND IN THIS SECTION 8.0, LICENSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE SOFTWARE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE.

8.3 EXCLUSIVE REMEDY. LICENSEE'S EXCLUSIVE AND SOLE REMEDY FOR THE BREACH OF THE WARRANTIES CREATED IN THIS SECTION 10.0 IS LIMITED TO REPAIR OF DEFECTS, REPLACEMENT OF SOFTWARE, OR LICENSEE MAY TERMINATE THE LICENSE FOR THE APPLICABLE SOFTWARE AND RECEIVE A REFUND OF LICENSE FEES ACTUALLY PAID TO LICENSOR FOR THE APPLICABLE SOFTWARE UNDER THE AGREEMENT DURING THE FIRST THREE YEARS OF THE TERM OR, IF THE TERM IS LESS THAN THREE YEARS, THE LICENSE FEES ACTUALLY PAID UNDER THE AGREEMENT DURING THE TERM.

9.0 Exclusions. Licensor's limited warranty in Section 8.1 will be void and its service obligations in Section 4.0 will not apply when: (a) A hardware failure or fault occurs and causes corruption or loss of the Software or data, although Licensor personnel will use reasonable efforts to assist if such problems arise; (b) Licensee or a third party interferes with or modifies the Software and the interference or modification causes corruption or loss of the Software or data, unless such modification is allowed in the Documentation or with Licensor's written permission; (c) Licensee fails to implement recommendations to correct faults previously advised by Licensor or fails to install Enhancements made available pursuant to the Agreement; or, (d) Licensee is in material breach of the Agreement, and has failed to remedy the breach pursuant to Section 12.1 hereof.

10.0 LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES/INDEPENDENT CLAUSES.

10.1 EXCEPT FOR CLAIMS UNDER, EXHIBIT B, SECTIONS 3.0, 4.0, OR 12.6, EITHER PARTY'S TOTAL LIABILITY FOR CLAIMS IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING CONTRACT, TORT OR WARRANTY), IS LIMITED TO THE AGGREGATE AMOUNT OF LICENSE FEES SET FORTH IN THE LICENSE SCHEDULE FOR THE FIRST THREE YEARS OF THE TERM OR, IF THE TERM IS LESS THAN THREE YEARS, THE AGGREGATE

Exhibit G

AMOUNT OF LICENSE FEES SET FORTH IN THE LICENSE SCHEDULE FOR THE TERM. IN NO EVENT, EXCEPT FOR A CLAIM UNDER SECTIONS 5.0, 6.0, AND 15.7, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF DATA, LOSS OF USE, OR CLAIMS OF THIRD PARTIES) THAT MIGHT OCCUR AS A RESULT OF THE PERFORMANCE OR BREACH OF THE AGREEMENT OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.

10.2 SECTION 10.1 IS INDEPENDENT OF SECTION 8.3 AND SHALL BE VALID AND ENFORCEABLE WHETHER OR NOT SECTION 8.3 FAILS OF ITS ESSENTIAL PURPOSE OR IS FOUND TO BE UNCONSCIONABLE.

10.3 No action, regardless of form, arising out of the Agreement may be brought by either Party more than two (2) years after the cause of action has arisen.

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

12.0 General and Miscellaneous Clauses.

12.1 Notice. All notices or demands relating to indemnification, warranty, or any breach, default, violation or dispute shall be in writing and shall be delivered personally or sent by certified mail with return receipt requested or a nationally recognized overnight courier service. Any such notice or demand shall be deemed to have been delivered on the date of delivery or refusal as set forth on the return receipt. Any other notice or demand required hereunder shall be sufficient if sent via facsimile and shall be deemed to have been delivered on transmittal with documented facsimile transmission confirmation. The Parties agree that any such faxed notice sent by the Licensee and received by Licensor shall be deemed an authentic original and any signature thereon will be deemed genuine.

12.2 Severability. If any provision of the Agreement or the application of a provision to any Company or circumstance is held invalid, the remainder of the Agreement, or the application of the provision to Companies or circumstances, other than those as to which it is held invalid, will not be affected. But if a court rules that any part of Section 5.1 is not enforceable because it is invalid, then the Agreement in its entirety may terminate at Licensor's option and Licensee must immediately return all copies, in whole or in part, of the Software and Documentation. Under these circumstances, Licensee's obligation to pay future license fees will cease and any prepaid license fees will be refunded on a pro rata basis.

12.3 Parties Bound. The Agreement shall be binding upon the Parties, their successors, permitted assigns, and legal representatives.

12.4 No Intended Third Party Beneficiaries. The Agreement is for the sole benefit of the Parties and their successors and permitted assigns and the Agreement shall not be construed as conferring any rights or remedies on any other Company.

12.5 Export Compliance. Licensee agrees to comply with all applicable export laws and regulations of the United States, the EU, the UN and the country of the Installation

Exhibit G

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

- 12.6 Headings, Gender. All section headings contained in the Agreement are for convenience of reference only, do not form a part of the Agreement and shall not affect in any way the meaning or interpretation of the Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires. Further, reference to a single section number ending in a zero, e.g., 5.0, is a reference to all of the sections starting with the same number. For example, a reference to Section 5.0 is a reference to Sections 5.1, 5.2, 5.3, 5.4, and 5.5 as well.
- 12.7 Waiver. A waiver of a breach of any term of the Agreement shall not be construed as a waiver of any later breach or as a waiver of the provision itself. A Party's performance after the other Party's breach shall not be construed as a waiver of that breach.
- 12.8 Final Agreement/Conflicts. The Agreement constitutes the complete, final and exclusive expression of the Parties' agreement, and supersedes all proposals and other communications made between the Parties concerning the subject matter hereof. The Agreement cannot be modified except by a written agreement signed by the Parties except as may be set forth in the applicable License Schedule. If there is a conflict between these General Terms and Conditions and any License Schedule, the terms of the License Schedule shall control and prevail. All capitalized terms in any License Schedule shall have the same meaning as set forth in these General Terms and Conditions, unless otherwise defined therein.
- 12.9 Electronic Delivery. The Software and Documentation (and any previously licensed software products and documentation) will be made available to Licensee only by electronic or another mode of intangible delivery. Licensor reserves the right to change the mode of delivery if the change is generally applicable to all of its licensees. Certain states under certain circumstances do not assess sales or use tax on software licenses and software maintenance where the software, maintenance and documentation are delivered electronically. For all such electronic transactions Licensor will not assess sales or use tax in applicable states. Notwithstanding Exhibit B, Licensee hereby agrees to reimburse Licensor for any and all use or sales tax and attendant interest and penalties, if any, that may be assessed against Licensor by the local taxing authority for such electronic transactions should Licensor be required to pay the local taxing authority on Licensee's behalf.
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- 12.12 No Credit Card. The License fees and all other amounts due under this Agreement cannot be paid by credit card.