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## Compliance Office | Purchasing

Buyer: JPD

CONTRACT NUMBER: 006500

Event # NPC796

## CONTRACT between the COUNTY OF OAKLAND and CONTRACTOR

Not To Exceed Amount: \$1,500,000.00		Effective Date: 1/1/2022	Expiration Date: 1/1/2025
Contract Description:	IT Main Frame Hosting and Support - P		
Contractor Information:		Contract Administrator (If Different):	
COMPUTER TECHNOLOGIES USA LLC 2 Blue Hill Plaza PO Box 1614 Pearl River NY 10965 Vendor No: 20381			
Compliance Office Purchasing Information:		Contract Administrator Oakland County Using Department:	
Buyer: Joseph Dahl 2100 Pontiac Lake Rd Bldg. 41W Waterford MI 48328-0462 248-858-0511 <a href="mailto:purchasing@oakgov.com">purchasing@oakgov.com</a>		Michael Timm Director Information Technology 1200 N Telegraph Rd 49 West Pontiac MI 48341 <a href="mailto:timmmr@oakgov.com">timmmr@oakgov.com</a>	

The Parties agree to the attached terms and conditions:

**FOR THE CONTRACTOR:**SIGN: John Lalli  
John Lalli (Feb 14, 2022 12:53 EST)**FOR THE COUNTY:**SIGN: Michael R Timm  
Michael R Timm (Feb 15, 2022 08:18 EST)SIGN: Scott N. Guzy  
Scott N. Guzy (Feb 15, 2022 08:42 EST)Contract Administrator  
CLA

Scott N. Guzy, CPPO, MBA, Purchasing Admin

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This Contract is organized and divided into the following Sections for the convenience of the Parties.

- Section 1. Reserved
- Section 2. Contract Definitions
- Section 3. Contract Term and Renewal
- Section 4. Contract Administration and Amendments
- Section 5. Contract Termination
- Section 6. Scope of Deliverables and Financial/Payment Obligations
- Section 7. Contractor's Warranties and Assurances
- Section 8. Liability
- Section 9. Contractor Provided Insurance
- Section 10. Intellectual Property and Confidentiality
- Section 11. General Terms and Conditions

**§1. RESERVED.**

**§2. CONTRACT DEFINITIONS**

The following words when printed with the first letter capitalized shall be defined and interpreted as follows, whether used in the singular or plural, nominative or possessive case, and with or without quotation marks:

- 2.1. **"Amendment"** means any change, clarification, or modification to this Contract.
- 2.2. **"Business Day"** means Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding County designated holidays.
- 2.3. **"Claims"** means any loss; complaint; demand for relief or damages; lawsuit; cause of action; proceeding; judgment; penalty; costs or other liability of any kind which is imposed on, incurred by, or asserted against the County or for which the County may become legally or contractually obligated to pay or defend against, whether commenced or threatened, including, but not limited to, reimbursement for reasonable attorney fees, mediation, facilitation, arbitration fees, witness fees, court costs, investigation expenses, litigation expenses, or amounts paid in settlement.
- 2.4. **"Confidential Information"** means all information and data that the County is required or permitted by law to keep confidential and "Proprietary Information" as defined herein.

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- 2.5. **“Contract”** means this document and any other documents expressly incorporated herein.
- 2.6. **“Contractor”** means the entity or person listed under “Contractor” on the first page of this Contract.
- 2.7. **“Contractor Employee”** means any employee; officer; director; member; manager; trustee; volunteer; attorney; licensee; contractor; subcontractor; independent contractor; subsidiary; joint venturer; partner or agent of Contractor; and any persons acting by, through, under, or in concert with any of the above, whether acting in their personal, representative, or official capacities. Contractor Employee shall also include any person who was a Contractor Employee at any time during the term of this Contract but, for any reason, is no longer employed, appointed, or elected in that capacity.
- 2.8. **“Contract Documents”** mean the following documents, which this Contract includes and incorporates:

**Exhibits (Applicable if Checked)**

- 2.8.1. ☒ Exhibit I: Contractor Insurance Requirements
- 2.8.2. ☒ Exhibit II: Business Associate Agreement (Health Insurance Portability and Accountability Act Requirements)
- 2.8.3. ☐ Exhibit III: Federally Funded Contract Requirements
- 2.8.4. ☐ Exhibit IV: Selection of Scope of Contractor’s Services to Be Performed
- 2.8.5. ☒ Exhibit V: Scope of Contractor Services #1 – Mainframe Hosting and Support
- 2.8.6. ☐ Exhibit VI: Scope of Contractor Services #2
- 2.8.7. ☐ Exhibit VII: Software License(s)
- 2.8.8. ☐ Exhibit VIII: License for Use of County Servicemark
- 2.8.9. ☐ Exhibit IX: Acknowledgement of Independent Employment Status
- 2.8.10. ☒ Exhibit X: Requirements for Contractors with Access to County PII (Personally Identifiable Information)
- 2.9. **“County”** means the County of Oakland, a Municipal and Constitutional Corporation, its departments, divisions, authorities, boards, committees, and “County Agents” as defined below.
- 2.10. **“County Agent”** means any elected and appointed officials; directors; board members; council members; commissioners; employees; and volunteers of the County; whether acting in their personal, representative, or official capacities. “County Agent” shall also include any person who was a “County Agent” anytime during the term of this Contract but, for any reason, is no longer employed, appointed, or elected and in that capacity.

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- 2.11. **"County Data"** means information or data provided by County to Contractor in the performance of this Contract, including, but not limited to any personally identifiable information such as names, e-mail addresses, passwords, phone numbers, and home or business addresses. County Data includes Confidential Information as defined in this Contract.
- 2.12. **"Day"** means any calendar day, which shall begin at 12:00:00 a.m. and end at 11:59:59 p.m.
- 2.13. **"Deliverables"** means goods and/or services provided under this Contract, whether tangible or intangible, and may be more specifically described in the Exhibits.
- 2.14. **"Effective Date"** means midnight on the date listed on the first page of this Contract.
- 2.15. **"Expiration Date"** means 11:59.59 p.m. on the date listed on the first page of this Contract.
- 2.16. **"E-Verify"** means an Internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees. Information and the registration process are found at the E-Verify website: <https://e-verify.uscis.gov/enroll>.
- 2.17. **Reserved.**
- 2.18. **"Intellectual Property"** means any developments, improvements, designs, innovation, and materials that may be the subject of a trademark/service mark, copyright, patent, trade secret, or Proprietary Information.
- 2.19. **"Iran-Linked Business"** is defined in the Michigan Compiled Laws (MCL), specifically MCL 129.312, being Section 2 of Public Act 517 of 2012.
- 2.20. **"Not to Exceed Amount"** means the dollar amount listed on the first page of this Contract, unless amended. The "Not to Exceed Amount" is not the County's financial obligation under this Contract, but the maximum amount that can be paid to Contractor during the term of this Contract.
- 2.21. **Reserved.**
- 2.22. **"Proposal"** means Contractor's response or bid to the County's Request for Proposal, Request for Qualifications, or Request for Quotes.
- 2.23. **"Proprietary Information"** means ideas, concepts, inventions, and processes related to the development and operation of computer software and systems such as source code, object code, security procedures, and passwords.

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- 2.24. **“Purchase Order”** means the County’s written request to Contractor for Deliverables pursuant to this Contract. The Purchase Order may include terms regarding delivery schedule, payment, and transportation.
- 2.25. **“Purchasing”** means the Purchasing Unit of the Oakland County Compliance Office.

**§3. CONTRACT TERM AND RENEWAL**

- 3.1. **Contract Term.** This Contract shall begin on the Effective Date and shall end on the Expiration Date.
- 3.2. **Contract Renewal.** Unless otherwise provided herein, the Parties are under no obligation to renew or extend this Contract after the Expiration Date. This Contract may only be extended by an Amendment.
- 3.3. **Legal Effect.** This Contract shall be effective and binding when all of the following occur: (a) this Contract is signed by a Contractor Employee, legally authorized to bind Contractor; (b) this Contract is signed by an authorized County Agent; (c) all Contractor certificates of insurance, required by this Contract, are submitted and accepted by Purchasing; and (d) any other conditions precedent to this Contract have been met.

**§4. CONTRACT ADMINISTRATION AND AMENDMENTS**

- 4.1. **Contract and Purchase Order Issuance.** Purchasing shall issue this Contract and any Purchase Orders that may be required. Purchasing is the sole point of contact in the County regarding all procurement and contractual matters relating to this Contract and any Purchase Orders. Purchasing is the only County office/department authorized to make any Amendments to this Contract or Purchase Orders.
- 4.2. **Purchase Orders.** Purchase Orders issued under this Contract are governed by the terms and conditions of this Contract and are included and incorporated herein.
- 4.3. **Project Managers.** Each Party may designate an employee or agent to act as a Project Manager. If Project Managers are selected, they shall be listed in the Scope of Services Exhibit(s) as well as their duties. Unless otherwise stated in an Exhibit, the County’s Project Manager has no authority to amend this Contract.
- 4.4. **Contract Administrators.** The County shall designate an employee or agent to act as Contract Administrator(s). Contractor may designate its employee or agent to act as Contract Administrator(s). The Contract Administrators shall be listed on the first page of this Contract. The County’s Contract Administrator(s) shall be responsible for monitoring and coordinating day-to-day activities under this Contract, reviewing Deliverables and invoices, and submitting requests for Amendments to Purchasing. The County’s Contract Administrator(s) have no authority to amend this Contract.
- 4.5. **Contract Amendments.** All Amendments to this Contract must be in writing. This Contract shall not be amended by any packing slip, Purchase Order, invoice, click through license

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agreement, or Contractor policies or agreements published on Contractor's website or otherwise. Amendments to this Contract shall be issued only by Purchasing. The Amendment shall be effective when signed by an authorized Contractor Employee and an authorized County Agent.

- 4.6. **Unauthorized Changes.** Contract changes shall not be effective until an Amendment containing the change is executed according to the procedures described in this Contract. If the Contractor is directed to perform work that Contractor believes is a change in the Contract/Deliverables, then Contractor must notify Purchasing that it believes the requested work is a change to the Contract before performing the requested work. If Contractor fails to notify Purchasing before beginning the requested work, then Contractor waives any claims for additional compensation for performing the requested work. If Contractor begins work that is outside the scope of this Contract or begins work before an Amendment is executed and then stops performing that work, Contractor must, at the request of the County, undo any out-of-scope work that the County believes would adversely affect the County.
- 4.7. **Precedence of Contract Documents.** In the event of a conflict, the terms and conditions contained in Sections 1 through 11 of this Contract shall prevail and take precedence over any allegedly conflicting provisions in all Contract Documents, Exhibits, Purchase Orders, Amendments, and other documents expressly incorporated herein. Terms and conditions contained in Contractor invoices, packing slips, receipts, acknowledgments, click-through licenses, and similar documents shall not change the terms and conditions of this Contract.

**§5. CONTRACT TERMINATION**

- 5.1. **County Termination.** In addition to any other legal rights the County may have to terminate or cancel this Contract, the County may terminate the Contract as follows:
- 5.1.1. **Immediate Termination.** The County may terminate or cancel this Contract, in whole or in part, immediately, upon notice to Contractor, if any of the following occur: (a) Contractor, officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense; or (b) if any third-party funding for this Contract is reduced or terminated.
- 5.1.2. **Termination for Convenience.** Except as expressly provided below in section 5.1.3, County may terminate or cancel this Contract, in whole or part, at any time, upon ninety (90) Days' notice to Contractor, for any reason, including convenience without incurring obligation or penalty of any kind. The effective date for termination or cancellation shall be clearly stated in the notice.
- 5.1.3. **Early Termination for Convenience Fee.** If County terminates this Contract in whole for only convenience prior to the original Expiration Date of this Contract, County will pay Contractor twenty percent (20%) of the Base Monthly Fee for the full months between the termination date and the original Expiration Date. County will pay this fee within sixty (60) days after the termination date. The "original Expiration Date" means the Expiration Date on the cover page of this Contract at the time of the Effective Date of this Contract.

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- 5.2. **Contractor Termination.** Contractor may terminate or cancel this Contract, in whole or part, upon one hundred and eighty (180) Days' notice to the County, if the County breaches any duty or obligation contained herein and within such notice period has failed or has not attempted to cure the breach. The effective date of termination or cancellation and the specific alleged default shall be clearly stated in the notice to the County.
- 5.3. **County's Obligations Upon Termination.** The County's sole obligation in the event of termination or cancellation of this Contract is for payment of the actual Deliverables provided to the County before the effective date of termination. Under no circumstances shall the County be liable for any future loss of income, profits, any consequential damages, any loss of business opportunities, revenues, or any other economic benefit Contractor may have realized but for the termination or cancellation of this Contract. The County shall not be obligated to pay Contractor any cancellation or termination fee if this Contract is cancelled or terminated as provided herein. If the County chooses to terminate the Contract in part, then the charges payable under this Contract must be equitably adjusted to reflect those Deliverables that are terminated.
- 5.4. **Contractor's Obligations Upon Termination.** If the County terminates this Contract, for any reason, then Contractor must do the following: (a) cease providing all Deliverables as specified at the time stated in the notice of termination; (b) take any action necessary, or as the County may direct, to preserve and protect Deliverables or other property derived or resulting from the Contract that is in Contractor's possession; (c) return all materials, property, and County Data provided to Contractor by the County; (d) unless otherwise directed by the County, transfer title in and deliver to the County all Deliverables in the possession of Contractor or Contractor Employees (which Deliverables are transferred to the County "As-Is", except to the extent the amounts paid by the County for these Deliverables include warranties or warranty services and, in that situation, the Deliverables will be transferred with the warranty or warranty services and not "As-Is"); and (e) take any action to mitigate and limit any potential damages, including terminating or limiting, as applicable, those subcontracts and outstanding orders for materials and supplies connected with or related to this Contract.
- 5.5. **Assumption of Subcontracts.** If Contractor is in breach of this Contract and the County terminates this Contract, then the County may assume, at its option, any subcontracts and agreements for Deliverables provided under the Contract and may pursue completion of the Deliverables by replacement Contract or otherwise as the County, in its sole judgment, deems expedient.

**§6. SCOPE OF DELIVERABLES AND FINANCIAL/PAYMENT OBLIGATIONS**

- 6.1. **Performance of Deliverables.** Contractor shall provide all Deliverables identified in and as set forth in the Exhibits, any Purchase Orders, or any Amendments to this Contract. If less than all Scopes of Services are selected when the Contract is executed, an amendment to the Contract is required to add additional Exhibits (and their associated services).
- 6.2. **Software License(s).** If this Contract includes a Software License(s) as described in

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Exhibit VII, then the Parties shall follow the terms and conditions therein. Any applicable third party Software License(s) are also provided in Exhibit VII. Unless specifically agreed to by County, if County Agents are required to accept click through license terms to access any of the Deliverables in this Contract, the terms and conditions of those click through licenses are without force and effect.

- 6.3. **Financial Obligations.** Except as otherwise set forth in this Contract, the County's sole financial obligation under this Contract shall be set forth in the Exhibits. The amount and manner of payment of the financial obligation shall be set forth in the Scope of Services Exhibit(s) and may be in the Software License Exhibit VII, if applicable, or a Purchase Order.
- 6.4. **Payment Obligations.** Except as otherwise set forth in the Exhibits, Contractor shall submit an invoice to the County's Contract Administrator itemizing amounts due and owing under this Contract, as of the date of the invoice. Invoices shall contain the following information: (a) County Contract Number; (b) dates of Deliverables; (c) itemized list of Deliverables; (d) Contractor Tax ID Number (federal and State); (e) licenses; and (f) any other information requested by Purchasing. The County shall have no obligation to make a payment under this Contract until an invoice is submitted in the form set forth herein and shall have no obligation to pay for Deliverables, which have not been invoiced (as required herein) within sixty (60) Days of Contractor's performance. Unless otherwise set forth in the Exhibits, the County shall only pay Contractor for Deliverables under this Contract and not any subcontractors or assignees of Contractor.
- 6.5. **Not to Exceed Amount.** The amount due and owing to Contractor, under this Contract, shall not exceed the "Not to Exceed Amount." If Contractor can reasonably foresee that the total financial obligation for the Contract will exceed the "Not to Exceed Amount," then Contractor shall provide Purchasing with notice of this fact at least ten (10) Days before this event. .
- 6.6. **No Obligation for Penalties/Costs/Fines.** The County shall not be responsible, under any circumstances, for any cost; fee; fine; penalty; or direct, indirect, special, incidental, or consequential damages incurred or suffered by Contractor in connection with or resulting from the performance of this Contract.
- 6.7. **Set-Off of County Costs.** If the County incurs any costs associated with the duties or obligations of Contractor under this Contract, then the County has the right to set-off those costs from any amounts due and owing Contractor. This set-off includes withholding payment in an amount equal to the cost of any County-provided equipment, supplies, or badges that are not returned by Contractor upon completion, termination, or cancellation of this Contract.
- 6.8. **In-Kind Services.** Unless expressly provided herein, this Contract does not authorize any in-kind services by either Party.
- 6.9. **Reserved.**

**§7. CONTRACTOR'S WARRANTIES AND ASSURANCES**

- 7.1. **Full Knowledge of Contract Expectations.** Contractor warrants that before submitting its

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Proposal and/or entering into this Contract, it had a full opportunity to review all County requirements and/or expectations for this Contract. Contractor is responsible for being adequately and properly prepared to execute this Contract. Contractor has satisfied itself in all material respects that it will be able to perform the Contract as specified herein.

- 7.2. **Complete and Accurate Representations.** Contractor certifies that all statements, assurances, records, and materials submitted to the County in connection with seeking and obtaining this Contract have been truthful, complete, and accurate.
- 7.3. **Access to Contractor Policies.** If the Parties agree in this Contract to follow any Contractor policies, such as acceptable use or privacy policies, then Contractor shall retain each version of such policies and the effective dates and shall promptly provide such to the County, if requested.
- 7.4. **Grant Compliance.** If any part of this Contract is supported or paid for with any State, federal, or other third-party funds granted to the County, then Contractor shall comply with all applicable grant requirements. Upon request of Contractor, the County shall provide Contractor with a copy of the applicable grant requirements.
- 7.5. **Contractor Incidental Expenses.** Except as otherwise expressly provided in this Contract, Contractor shall be solely responsible and liable for all costs and expenses associated or needed to perform this Contract, including, but not limited to, any professional dues, association fees, license fees, fines, taxes, and penalties.
- 7.6. **Equipment and Supplies.** Contractor is responsible for providing all equipment and supplies to perform this Contract, which are not expressly required to be provided by the County.
- 7.7. **Contractor Employees.**
- 7.7.1. **Number and Qualifications of Contractor Employees.** Contractor shall employ and assign qualified Contractor Employees as necessary and appropriate to perform this Contract. Contractor shall ensure all Contractor Employees have the knowledge, skill, and qualifications to perform this Contract and possess any necessary licenses, permits, certificates, and governmental authorizations as may be required by law.
- 7.7.2. **Control and Supervision of Contractor Employees.** Contractor shall solely control, direct, and supervise all Contractor Employees with respect to all Contractor obligations under this Contract. Contractor will be solely responsible for and fully liable for the conduct and supervision of any Contractor Employees.
- 7.7.3. **Removal or Reassignment of Personnel at the County's Request.** Contractor shall remove a Contractor Employee performing work under this Contract at the County's request provided that the County's request is based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the removal of a Contractor Employee results in an unanticipated delay, which is attributable to the County, then this delay shall not be considered a breach of the Contract and the terms and conditions of this Contract effected by the removal will be adjusted accordingly.

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- 7.7.4. **Contractor Employee Identification.** If requested by the County, Contractor Employees shall wear and display appropriate County-provided identification at all times while working on County premises. Contractor shall return all County-provided identification upon completion of Contractor's obligations under this Contract.
- 7.7.5. **Background Checks.** At the County's request, Contractor Employees performing work under this Contract shall be subject to a background check by the County. The scope of the background check is at the discretion of the County and the results will be used to determine Contractor Employee's eligibility to perform work under this Contract. Any request for background checks will be initiated by the County and will be reasonably related to the type of work requested. Contractor and Contractor Employees shall provide all information or documents necessary to perform the background check.
- 7.7.6. **Compliance with County Security Policies and Use Policies.** Contractor shall require all Contractor Employees to comply with the County's security and acceptable use policies for County property (tangible and intangible), equipment, resources, facilities, and systems. Upon request, the County shall provide such policies to Contractor.
- 7.7.7. **Contractor Employee Expenses.** All Contractor Employees shall be employed at the Contractor's sole expense (including employment-related taxes and insurance). Contractor warrants that all Contractor Employees shall fully comply with and adhere to the terms of this Contract. Contractor shall be solely liable for all applicable Contractor Employees' federal, state, or local payment withholdings or contributions and/or all Contractor Employee related pension or welfare benefits plan contributions under federal or state law. Contractor shall indemnify and hold the County harmless for all Claims against the County by any Contractor Employee, arising out of any contract for hire or employer-employee relationship between Contractor and any Contractor Employee including, but not limited to, Worker's Compensation, disability pay, or other insurance of any kind.
- 7.7.8. **Contractor's Compliance with the Patient Protection and Affordable Care Act.** If Contractor is subject to the Patient Protection and Affordable Care Act ("ACA"), PL 111-148, 124 Stat 119, then Contractor shall ensure that all Contractor Employees, under assignment to the County, and their dependents, as defined by the ACA, are provided with or have access to insurance as required by the ACA. If Contractor is subject to the ACA, Contractor warrants it offers group health coverage to Contractor Employees and their dependents that is affordable, that provides minimum essential coverage and value, and that each offer of coverage meets the timing requirements of the ACA. Contractor warrants, whether or not it is subject to the ACA, that it will pay all applicable fees, taxes, or fines, as set forth in the employer mandates of the ACA under Tax Code §4980H and related regulations for any Contractor Employee, whether the fee, tax, or fine is assessed against the Contractor or the County.
- 7.8. **Acknowledgment of Independent Contractor Status.**
- 7.8.1. **Independent Contractor.** Nothing in this Contract is intended to establish an employer-employee relationship between the County and Contractor or any Contractor Employee. In no event, shall Contractor Employees be deemed employees, agents, volunteers, or subcontractors of the County. Contractor shall ensure that Contractor Employees are

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apprised of their status as independent contractors and the limitations of this status.

- 7.8.2. **Contractor/Contractor Employee Representations.** Contractor and/or Contractor Employees shall not represent themselves as County employees. Contractor shall ensure that Contractor Employees do not represent themselves as County employees.
- 7.8.3. **County Benefits and Plans.** Contractor and Contractor Employees shall not be entitled to participate in any County employee benefit plans and programs, including but not limited to, retirement, deferred compensation, insurance (including without limitation, health, disability, dental, and life), and vacation pay. This limitation includes access to benefit plans and programs that are not described by a written plan. However, Contractor Employees who are retired County Employees may receive vested post-employment benefits such as retiree health care and pension benefits from Oakland County.
- 7.8.4. **County Reliance.** The County entered into this Contract in reliance of the representations made by Contractor regarding its understanding of the role of independent contractors, its stated relationship to Contractor Employees, and other representations Contractor has made regarding the management and performance oversight of Contractor Employees.
- 7.8.5. **Independent Employment Status.** If Contractor places Contractor Employees on the County's premises to, provide staffing and/or leasing services to County, those Contractor Employees shall sign Exhibit IX, Independent Employment Status, within 4 weeks of the date on which Contractor executes this Contract. Any Contractor Employees placed at County after the effective date of this Contract shall also be required to sign Exhibit IX prior to receiving a County identification badge. Contractor will provide a signed copy of Exhibit IX to County's Purchasing Unit prior to the final execution of this Contract. Contractor Employees who begin an assignment at County after Contract execution are required to provide a signed copy of Exhibit IX prior to receiving a County identification badge.
- 7.9. **Permits and Licenses.** Contractor shall be responsible for obtaining and maintaining, throughout the term of this Contract, all licenses, permits, certificates, governmental authorizations, and business/professional licenses necessary to perform this Contract. Upon request by the County, Contractor shall furnish copies of any permit, license, certificate, or governmental authorization necessary to perform this Contract.
- 7.10. **E-Verify.** In accordance with Miscellaneous Resolution No.09116 (BOC Minutes, July 30, 2009, pp 37-38), unless otherwise exempted, all service contractors who wish to contract with the County to provide services must first certify they have registered with, will participate in, and continue to utilize, once registered, the E-Verify Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the Contractor. Breach of this term or condition is considered a material breach of this Contract. Contractor's execution of this Contract constitutes a certification that they are authorized to certify on behalf of Contractor and do hereby certify on behalf of Contractor that the Contractor has registered with, has and will participate in, and does and will continue to utilize once registered and throughout the term of this Contract and any permissible extension hereof, the E-Verify

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Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the Contractor.

- 7.11. **Iran-Linked Business Certification.** Contractor certifies that it is not an Iran-Linked Business. Contractor further certifies that it was not an Iran-Linked Business at the time it submitted its Proposal for this Contract. Contractor must promptly notify the County, if Contractor becomes an Iran-Linked Business at any time during this Contract.
- 7.12. **Taxes.**
- 7.12.1. **Contractor Taxes.** Contractor shall collect and pay its local, state, and federal taxes, including but not limited to, all employment taxes, sales taxes, personal property taxes, and real property taxes. The County shall not be liable to or required to reimburse Contractor for any local, state, or federal tax of any kind.
- 7.12.2. **County Tax-Exempt.** The County is exempt from state and local sales tax, personal property tax, and real property tax. Prices under this Contract shall not include taxes, unless the County is not tax-exempt for a specific Deliverable. Exemption certificates for sales tax will be furnished upon request.
- 7.13. **Warranty for Services.** Contractor warrants that all Deliverables that are services shall be performed in compliance with all applicable laws, statutes, regulations, ordinances, and professional standards.
- 7.14. **Warranty for Goods.** All Deliverables that are goods shall be subject to the following warranties:
- 7.14.1. **Warranty of Merchantability.** Goods provided by Contractor pursuant to this Contract shall: (a) be merchantable, (b) be of good quality, (c) be fit for their ordinary purpose, (d) be adequately contained and packaged, and (e) conform to the specifications and descriptions contained in the Contract.
- 7.14.2. **Warranty of Fitness for a Particular Purpose.** If Contractor knows or has reason to know that the goods will be used for a particular purpose and the County is relying on Contractor's skill or judgment to select or furnish the goods, then there is a warranty that the goods are fit for a particular purpose.
- 7.14.3. **Warranty of Title.** All goods conveyed to the County shall be conveyed and transferred: (a) with good title, (b) free from any security interest, lien, or encumbrance that the County did not have knowledge of when the Contract was executed, and (c) free of any rightful claim of infringement or similar claim by a third-party.
- 7.15. **Response to Legal Request for County Data.** If County receives a Court Order, a Freedom of Information Act (FOIA) request, or other legal request to provide County Data held by Contractor, then Contractor shall provide County Data to the County, in a format directed by the County, within the time frame required by law.

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7.16. **Section 508 Compliance.** If Contractor is providing a Deliverable that requires County Agents or the general public to access a website, Contractor warrants that end users will have the ability to access the website to register and provide information updates to receive Deliverables in accordance with the accessibility requirements of Section 508 Amendment to the Rehabilitation Act of 1973 (29 U.S.C. § 794(d)).

7.17. **Price Warranty.** Contractor warrants that it will provide County with the lowest and best price available for the same level of services and products offered to other similarly situated public bodies.

**§8. LIABILITY**

8.1. **Contractor Indemnification.** Contractor shall indemnify, defend, and hold the County harmless from all Claims, incurred by or asserted against the County by any person or entity, which are alleged to have been caused directly or indirectly from the acts or omissions of Contractor or Contractor's Employees. The County's right to indemnification is in excess and above any insurance rights/policies required by this Contract.

8.2. **No Indemnification from the County.** Contractor shall have no rights against the County for indemnification, contribution, subrogation, or any other right to be reimbursed by the County, except as expressly provided herein.

**§9. CONTRACTOR PROVIDED INSURANCE.** At all times during this Contract, Contractor shall obtain and maintain insurance according to the specifications listed in Exhibit I.

**§10. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

10.1. **Contractor Use of Confidential Information/County Data.** Contractor and/or Contractor Employees shall not reproduce, provide, disclose, or give access to Confidential Information or County Data to any Contractor Employee not having a legitimate need to know the Confidential Information or County Data or to any third-party. Contractor and Contractor Employees shall only use the Confidential Information and County Data for performance of this Contract. Notwithstanding the foregoing, Contractor may disclose the Confidential Information or County Data if required by law, statute, or other legal process; provided that Contractor: (a) gives the County prompt written notice of the impending disclosure, (b) provides reasonable assistance to the County in opposing or limiting the disclosure, and (c) makes only such disclosure as is compelled or required. This Contract imposes no obligation upon Contractor with respect to any Confidential Information or County Data which Contractor can establish by legally sufficient evidence: (a) was in possession of or was known by Contractor, prior to its receipt from the County, without any obligation to maintain its confidentiality; or (b) is obtained by Contractor from a third party having the right to disclose it, without an obligation to keep such information confidential.

10.2. **Contractor Use of County Licensed Software.** In order for Contractor to perform this Contract, the County may permit Contractor or Contractor Employees to access certain Software licensed to the County. Contractor or Contractor Employees shall not transfer,

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remove, use, copy, or otherwise provide or make available any such Software or documentation to any other person or entity, for any purpose, without the prior written consent of the County and/or the licensor. Furthermore, neither Contractor nor Contractor Employee shall produce a source listing, decompile, disassemble, or otherwise reverse engineer any copyrighted Software. Neither Contractor nor Contractor Employee shall use any Software contrary to the provisions of any applicable Software license agreement or state or federal law.

- 10.3. **Contractor License to Use County Servicemarks.** If this Contract involves the use of County servicemarks to perform this Contract, then Contractor is granted a license to use the servicemarks subject to the terms listed in Exhibit VIII. Contractor shall only use the servicemarks as directed by the County.
- 10.4. **Assignment of Rights.** In consideration for the performance of this Contract and the fees paid to Contractor, Contractor agrees to the following: (a) Contractor shall have no copyright, patent, trademark, or trade secret rights in County Intellectual Property; (b) any and all programs, inventions, and other work or authorship developed by Contractor while providing Deliverables to the County are works made for hire, created for, and owned exclusively by the County, unless otherwise specified in the Contract; (c) Contractor assigns to the County all rights and interest in County Intellectual Property, which Contractor has made or conceived or may make and conceive, either solely or jointly with others, either on or off County premises while performing this Contract or with the use of the time, material, or facilities of the County; and (d) Contractor and its applicable Contractor Employees shall sign any documents necessary for the County to register patents, copyrights, or trademarks with federal or state agencies. Contractor shall ensure its Contractor Employees assign their rights and interests in County Intellectual Property to the County.
- 10.5. **Use of County Data.** If Contractor uses or possesses County Data in the performance of this Contract, then the following provisions contained in this subsection apply:
- 10.5.1. **Implementation of Security Measures.** Contractor shall implement and maintain appropriate administrative, technical, and organizational security measures to safeguard against unauthorized access, disclosure, or theft of County Data. Such measures shall be in accordance with security industry best practice and not less stringent than the measures Contractor applies to its own confidential data of similar kind. Contractor warrants it follows security industry best practices.
- 10.5.2. **Unauthorized Access/Disclosure or Theft of County Data.** Contractor shall notify County immediately of becoming aware of an actual or suspected unauthorized access, disclosure, or theft of County Data. Contractor shall do the following: (1) take commercially reasonable measures to promptly cure the deficiencies relating to the security breach in order to secure County Data, and (2) comply with any applicable federal or state laws and regulations pertaining to unauthorized disclosures.
- 10.5.3. **Storage of County Data.** Contractor shall only store and process County Data at and from data centers located within the United States. Contractor shall not and shall not permit Contractor Employees to store County Data on portable devices, including personal

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computers, except for devices that are used and kept only at its U.S. data centers. Contractor shall permit its Contractor Employees to access County Data remotely only as required to provide technical support.

- 10.5.4. **Obligations upon Expiration, Termination or Cancellation of Contract.** At the County's sole discretion, upon expiration, termination, or cancellation of this Contract, Contractor shall return County Data in a mutually agreeable format in a prompt and orderly manner or provide for the secure disposal of County Data as directed by County.

**§11. GENERAL TERMS AND CONDITIONS**

- 11.1. **Access to County Property or Facilities.** As set forth in this Contract, Contractor has access to and the right to use County property and facilities necessary to perform this Contract. Unless otherwise provided in this Contract or Contractor receives prior written permission from the County's Director responsible for the department requiring access outside of Business Days, Contractor may only access and use County property and facilities for performance of this Contract on Business Days.
- 11.2. **Signs on County Property or Facilities.** Contractor shall not place any signs or advertisements on County property or facilities without the prior written permission of the County's Director of Facilities Management or successor.
- 11.3. **Use of County Property or Facilities.** While performing this Contract, Contractor shall keep County property or facilities and anything stored thereon in a clean, safe, and healthful condition and shall keep the property and facilities in a manner that will not prevent or interfere with the County's performance of its functions.
- 11.4. **Removal of Contractor Personal Property.** At the expiration or termination of this Contract, Contractor shall leave County property or facilities in the same condition that Contractor found them and clean of all rubbish. Contractor shall remove all of its personal property within thirty (30) Days of expiration or termination of this Contract. If Contractor does not remove its personal property within the thirty (30) Day period, then the County shall dispose of it and bill Contractor for any costs associated with the removal and disposal.
- 11.5. **Damage to County Property or Facilities.** Contractor shall be responsible for any damage to any County property or a facility that is caused by Contractor or Contractor Employees. If damage occurs, the County shall make the necessary repairs and/or replacements or cause a third party to make the necessary repairs or replacements, provided, however, that Contractor shall reimburse the County for all costs associated with repairing and/or replacing the damaged property or facilities.
- 11.6. **Damage to Contractor's Property.** Contractor shall be solely liable and responsible for any property loss or damage resulting from fire, theft, or other means to Contractor's personal property located, kept, or stored on or at County property or facilities during performance of this Contract.
- 11.7. **County's Right to Suspend Contract Performance.** Upon written notice, the County may

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require Contractor to suspend performance of this Contract if Contractor has failed to comply with federal, state, or local laws or any requirements contained in this Contract. The right to suspend performance of this Contract is in addition to the County's right to terminate and/or cancel this Contract. The County shall incur no penalty, expense, or liability to Contractor if the County suspends performance of this Contract under this Section.

- 11.8. **Discrimination.** Contractor shall not discriminate against any employee or applicant for employment in violation of state or federal law. Contractor shall promptly notify the County of any complaint or charge filed and/or of any determination by any court or administrative agency of illegal discrimination by Contractor.
- 11.9. **Conflict of Interest.** Pursuant to Public Act 317 and 318 of 1968, as amended (MCL 15.301, et seq. and MCL 15.321, et seq.), no contracts shall be entered into between the County and any County Agent. To avoid any real or perceived conflict of interest, Contractor shall identify any Contractor Employee or relative of Contractor's Employees who are presently employed by the County. Contractor shall give the County notice if there are any County Agents or relatives of County Agents who are presently employed by Contractor.
- 11.10. **Access and Records.** Contractor will maintain accurate books and records in connection with performance of this Contract for thirty-six (36) months after the end of this Contract and Contractor shall provide the County with reasonable access to such books and records, upon request.
- 11.11. **Audit.** The County or an independent auditor hired by the County may perform contract audits (in its sole discretion) and shall have the authority to access all pertinent records and data and to interview any Contractor Employee during the term of this Contract and for a period of three years after final payment. Contractor shall explain any audit findings, questioned costs, or other Contract compliance deficiencies to the County within thirty (30) Business Days of receiving the draft audit report. Contractor's written response shall include all necessary documents and information that refute the draft audit report and an action plan to resolve the audit findings. A copy of Contractor's response will be included in the final report. Failure by Contractor to respond in writing within thirty (30) Business Days shall be deemed acceptance of the draft audit report and will be noted in the final report.
- 11.12. **Assignments/Delegations/Subcontracts.**
- 11.12.1. **Prior Written Consent Required.** Except by operation of law, neither Party may assign, delegate, or subcontract any of its duties, obligations, or rights under this Contract without the prior written consent of the other Party; provided, however, Contractor may assign, delegate, or subcontract this Contract to an affiliate or subsidiary as long as the affiliate or subsidiary is adequately capitalized and can provide adequate written assurances to the County that the affiliate or subsidiary can perform this Contract. The County may withhold consent, if the County determines that the assignment, delegation, or subcontract would impair performance of this Contract or the County's ability to recover damages under this Contract. Contractor shall also provide the County with adequate information to allow the County to make a determination regarding the assignment, delegation, or subcontract.

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- 11.12.2. **Flow Down Clause Required.** Any assignment, delegation, or subcontract by Contractor must include a requirement that the assignee, delegee, or subcontractor will comply with the terms and conditions of this Contract. The assignment, delegation, or subcontract shall in no way diminish or impair performance of any term or condition of this Contract.
- 11.12.3. **Contractor Responsibility for Assigns/Delegates/Subcontractors.** If Contractor assigns, delegates, or subcontracts this Contract, in whole or in part, Contractor shall remain the sole point of contact regarding all matters under this Contract and shall remain liable for performance of this Contract. Contractor is solely responsible for the management of assignees, delegees, and subcontractors.
- 11.12.4. **Performance Required.** If an assignee, delegee, or subcontractor fails to perform as required under this Contract, Contractor shall contract with another entity for such performance. Any additional costs associated with securing another assignee, delegee, or subcontractor shall be the sole responsibility of Contractor.
- 11.13. **Non-Exclusive Contract.** This Contract is a non-exclusive agreement. No provision in this Contract limits or is intended to limit, in any way, Contractor's right to offer and provide its services to the general public, other business entities, municipalities, or governmental agencies during or after the term of this Contract. Similarly, the County may freely engage other persons to perform the same work that Contractor performs. Except as provided in this Contract, this Contract shall not be construed to guarantee Contractor or any Contractor Employee any fixed or certain number of Deliverables.
- 11.14. **No Third-Party Beneficiaries.** Except as provided for the benefit of the Parties, this Contract does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to be indemnified, right to be subrogated to the Parties' right in this Contract, or any other right in favor of any other person or entity.
- 11.14.1. **Survival of Terms and Conditions.** The following terms and conditions shall survive and continue in full force beyond the termination or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their nature: **Section 1.** Contract Purpose, **Section 2.** Contract Definitions, **Section 6.** Scope of Deliverables and Financial/Payment Obligations, **Section 7.** Contractor's Warranties and Assurances, **Section 8.** Liability, **Section 9.** Contractor Provided Insurance, **Section 10.** Intellectual Property and Confidentiality, and **Section 11.** General Terms and Conditions.
- 11.15. **Reservation of Rights.** This Contract does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, or other legal right, privilege, power, obligation, duty, or immunity of the County.
- 11.16. **Compliance with Laws.** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, regulations, insurance policy requirements, and requirements applicable to its activities under this Contract.
- 11.17. **Force Majeure.** Notwithstanding any other term or condition of this Contract, neither Party shall be liable for failure to perform contractual duties or obligations caused by events beyond

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their reasonable control, including but not limited to: (a) acts of public enemies; (b) natural disasters; (c) terrorism; (d) war; (e) insurrection or riot; (f) natural disasters; (g) strikes, lockouts, work stoppages, or other labor difficulties; or (h) compliance with law. Reasonable notice shall be given to the affected Party of such event. Contractor is expected, through insurance or alternative temporary or emergency service arrangements, to continue its contractual duties or obligations if a reasonably anticipated, insurable business risk, such as business interruption or any insurable casualty or loss occurs.

**11.18. Notices.**

**11.18.1. Written Notice.** All notices required under this Contract shall be in writing. Notices shall be effective: (a) the next Business Day, if personally delivered; (b) the third Business Day, if sent by U.S. mail, postage prepaid, return receipt requested; (c) the next Business Day, if sent by a nationally recognized overnight express courier with a reliable tracking system; or (d) the next Business Day with a receipt of confirmation, if sent by e-mail or fax.

**11.18.2. Notice to Contractor.** Unless otherwise specified, Notice to Contractor shall be addressed to the Contract Administrator listed on the first page of this Contract.

**11.18.3. Notice to County.** Unless otherwise specified herein, Notice to the County shall be addressed to Purchasing, the County Project Manager (if applicable), and the County Contract Administrator(s) listed on the first page of this Contract.

**11.19. Captions.** Section and subsection numbers, captions, and any index to sections or subsections contained in this Contract are intended for the convenience of the reader and are not intended to have any substantive meaning and shall not be interpreted to limit or modify any substantive provisions of this Contract. In this Contract, for any noun or pronoun, use of the singular or plural form, use of the nominative, possessive, or objective case, and any reference to gender (masculine, feminine, and neuter) shall mean the appropriate form, case, or gender as the context requires.

**11.20. Waiver.** Waiver of any term or condition under this Contract must be in writing and notice given pursuant to this Contract. No written waiver, in one or more instances, shall be deemed or construed as a continuing waiver of any term or condition of this Contract. No waiver by either Party shall subsequently affect its right to require strict performance of this Contract.

**11.21. Cumulative Remedies.** A Party's exercise of any remedy shall not preclude the exercise of any other remedies, all of which shall be cumulative. A Party shall have the right, in its sole discretion, to determine which remedies are to be exercised and in which order.

**11.22. Severability.** If a court of competent jurisdiction finds a term or condition of this Contract to be illegal or invalid, then the term or condition shall be deemed severed from this Contract. All other terms or conditions shall remain in full force and effect. Notwithstanding the above, if Contractor's promise to indemnify or hold the County harmless is found illegal or invalid, Contractor shall contribute the maximum it is permitted to pay by law toward the payment and satisfaction of any Claims against the County.

**11.23. Dispute Resolution.** All disputes arising under or relating to the execution, interpretation,

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performance, or nonperformance of this Contract involving or affecting the Parties may first be submitted to the respective Project Manager (if applicable) and Contract Administrators for possible resolution.

- 11.24. **Governing Laws/Consent to Jurisdiction and Venue.** This Contract shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Contract shall be brought in the Sixth Judicial Circuit Court of the State of Michigan, the 50<sup>th</sup> District of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above. The choice of forum set forth above shall not be deemed to preclude the enforcement of any judgment obtained in such forum or taking action under this Contract to enforce such judgment in any appropriate jurisdiction.
- 11.25. **Entire Contract.** This Contract represents the entire agreement and understanding between the Parties. This Contract supersedes all other prior oral or written understandings, communications, agreements, or contracts between the Parties. The language of this Contract shall be construed as a whole according to its fair meaning and not construed strictly for or against any Party.

**EXHIBIT I**

**CONTRACTOR INSURANCE REQUIREMENTS**

During this Contract, the Contractor shall provide and maintain, at their own expense, all insurance as set forth and marked below, protecting the County against any Claims, as defined in this Contract. The insurance shall be written for not less than any minimum coverage herein specified.

**Primary Coverages**

**Commercial General Liability Occurrence Form** including: (a) Premises and Operations; (b) Products and Completed Operations (including On and Off Premises Coverage); (c) Personal and Advertising Injury; (d) Broad Form Property Damage; (e) Independent Contractors; (f) Broad Form Contractual including coverage for obligations assumed in this Contract;

\$1,000,000 – Each Occurrence Limit

\$1,000,000 – Personal & Advertising Injury

\$2,000,000 – Products & Completed Operations Aggregate Limit

\$2,000,000 – General Aggregate Limit

\$ 100,000 – Damage to Premises Rented to You (formally known as Fire Legal Liability)

**Workers' Compensation Insurance** with limits statutorily required by any applicable Federal or State Law and Employers Liability insurance with limits of no less than \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit.

1. ☒ Fully Insured or State approved self-insurer.
2. ☐ Sole Proprietors must submit a signed Sole Proprietor form.
3. ☐ Exempt entities, Partnerships, LLC, etc., must submit a State of Michigan form WC-337 Certificate of Exemption.

**Commercial Automobile Liability Insurance** covering bodily injury or property damage arising out of the use of any owned, hired, or non-owned automobile with a combined single limit of \$1,000,000 each accident. This requirement is waived if there are no company owned, hired or non-owned automobiles utilized in the performance of this Contract.

**Commercial Umbrella/Excess Liability Insurance** with minimum limits of \$2,000,000 each occurrence. Umbrella or Excess Liability coverage shall be no less than following form of primary coverages or broader. This Umbrella/Excess requirement may be met by increasing the primary Commercial General Liability limits to meet the combined limit requirement.

**Supplemental Coverages (Required as Checked)**

1. ☒ **Professional Liability/Errors & Omissions Insurance** (Consultants, Technology Vendors, Architects, Engineers, Real Estate Agents, Insurance Agents, Attorneys, etc.) with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate.
2. ☐ **Commercial Property Insurance.** The Contractor shall be responsible for obtaining and maintaining insurance covering their equipment and personal property against all physical damage.
3. ☒ **Cyber Liability Insurance** with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate.
4. ☐ **Other Insurance Coverages** as may be dictated by the provided product/service and deemed appropriate by the County Risk Management Department.

**General Insurance Conditions**

The aforementioned insurance shall be endorsed, as applicable, and shall contain the following terms, conditions, and/or endorsements. All certificates of insurance shall provide evidence of compliance with all required terms, conditions and/or endorsements.

1. All policies of insurance shall be on a primary, non-contributory basis with any other insurance or self-insurance carried by the County;
2. The insurance company(s) issuing the policy(s) shall have no recourse against the County for subrogation (policy endorsed written waiver), premiums, deductibles, or assessments under any form. All policies shall be endorsed to provide a written waiver of subrogation in favor of the County;
3. Any and all deductibles or self-insured retentions shall be assumed by and be at the sole risk of the Contractor;
4. Contractors shall be responsible for their own property insurance for all equipment and personal property used and/or stored on County property;
5. The Commercial General Liability and Commercial Automobile Liability policies along with any required supplemental coverages shall be endorsed to name the County of Oakland and its officers, directors, employees, appointees and commissioners as additional insured where permitted by law and policy form;
6. The Contractor shall require its contractors or sub-contractors, not protected under the Contractor's insurance policies, to procure and maintain insurance with coverages, limits, provisions, and/or clauses equal to those required in this Contract;

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7. Certificates of insurance must be provided no less than ten (10) Business Days prior to the County's execution of the Contract and must bear evidence of all required terms, conditions and endorsements; and
8. All insurance carriers must be licensed and approved to do business in the State of Michigan and shall have and maintain a minimum A.M. Best's rating of A- unless otherwise approved by the County Risk Management Department.

**EXHIBIT II**  
**BUSINESS ASSOCIATE AGREEMENT**  
**(Health Insurance Portability and Accountability Act Requirements)**

Exhibit II is a Business Associate Agreement between Contractor ("Business Associate") and the County ("Covered Entity"). This Exhibit is incorporated into the Contract and shall be hereinafter referred to as "Agreement." The purpose of this Agreement is to facilitate compliance with the Privacy and Security Rules and to facilitate compliance with HIPAA and the HITECH Amendment to HIPAA.

- §1. DEFINITIONS.** The following terms have the meanings set forth below for purposes of the Agreement, unless the context clearly indicates another meaning. Terms used but not otherwise defined in this Agreement have the same meaning as those terms in the Privacy Rule.
- 1.1 Business Associate.** "Business Associate" means the Contractor.
- 1.2 CFR.** "CFR" means the Code of Federal Regulations.
- 1.3 Contract.** "Contract" means the document with the Purchasing Contract Number.
- 1.4 Contractor.** "Contractor" means the entity or individual defined in the Contract and listed on the first page of this Contract.
- 1.5 Covered Entity.** "Covered Entity" means the County of Oakland as defined in the Contract.
- 1.6 Designated Record Set.** "Designated Record Set" is defined in 45 CFR 164.501.
- 1.7 Electronic Health Record.** "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- 1.8 HIPAA.** "HIPAA" means the Health Insurance Portability and Accountability Act of 1996.
- 1.9 HITECH Amendment.** "HITECH Amendment" means the changes to HIPAA made by the Health Information Technology for Economic and Clinical Health Act.
- 1.10 Individual.** "Individual" is defined in 45 CFR 160.103 and includes a person who qualifies as a personal representative in 45 CFR 164.502(g).
- 1.11 Privacy Rule.** "Privacy Rule" means the privacy rule of HIPAA as set forth in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

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- 1.12 Protected Health Information.** “Protected Health Information” or “PHI” is defined in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.13 Required By Law.** “Required By Law” is defined in 45 CFR 164.103.
- 1.14 Secretary.** “Secretary” means the Secretary of the Department of Health and Human Services or his or her designee.
- 1.15 Security Incident.** “Security Incident” is defined in 45 CFR 164.304.
- 1.16 Security Rule.** “Security Rule” means the security standards and implementation specifications at 45 CFR part 160 and part 164, subpart C.
- §2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.** Business Associate agrees to perform the obligations and activities described in this Section.
- 2.1** Business Associate understands that pursuant to the HITECH Amendment, it is subject to the HIPAA Privacy and Security Rules in a similar manner as the rules apply to Covered Entity. As a result, Business Associate shall take all actions necessary to comply with the HIPAA Privacy and Security Rules for business associates as revised by the HITECH Amendment, including, but not limited to, the following: (a) Business Associate shall appoint a HIPAA privacy officer and a HIPAA security officer; (b) Business Associate shall establish policies and procedures to ensure compliance with the Privacy and Security Rules; (c) Business Associate shall train its workforce regarding the Privacy and Security Rules; (d) Business Associate shall enter into a privacy/security agreement with Covered Entity; (e) Business Associate shall enter into privacy/security agreements with its subcontractors that perform functions relating to Covered Entity involving PHI; and (f) Business Associate shall conduct a security risk analysis.
- 2.2** Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as required by law.
- 2.3** Business Associate shall use appropriate safeguards to prevent use or disclosure of the PHI. Business Associate shall implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule.
- 2.4** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of law or this Agreement.

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- 2.5** Business Associate shall report to Covered Entity any known Security Incident or any known use or disclosure of PHI not permitted by this Agreement.
- 2.6** Effective September 23, 2009 or the date this Agreement is signed, if later, Business Associate shall do the following in connection with the breach notification requirements of the HITECH Amendment:
- 2.6.1** If Business Associate discovers a breach of unsecured PHI, as those terms are defined by 45 CFR 164.402, Business Associate shall notify Covered Entity without unreasonable delay but no later than ten (10) calendar days after discovery. For this purpose, “discovery” means the first day on which the breach is known to Business Associate or should have been known by exercising reasonable diligence. Business Associate shall be deemed to have knowledge of a breach if the breach is known or should have been known by exercising reasonable diligence, to any person, other than the person committing the breach, who is an employee, officer, subcontractor, or other agent of Business Associate. The notification to Covered Entity shall include the following: (a) identification of each individual whose unsecured PHI has been breached or has reasonably believed to have been breached, and (b) any other available information in Business Associate’s possession that the Covered Entity is required to include in the individual notice contemplated by 45 CFR 164.404.
- 2.6.2** Notwithstanding the immediate preceding subsection, Business Associate shall assume the individual notice obligation specified in 45 CFR 164.404 on behalf of Covered Entity where a breach of unsecured PHI was committed by Business Associate or its employee, officer, subcontractor, or other agent of Business Associate or is within the unique knowledge of Business Associate as opposed to Covered Entity. In such case, Business Associate shall prepare the notice and shall provide it to Covered Entity for review and approval at least five (5) calendar days before it is required to be sent to the affected individual(s). Covered Entity shall promptly review the notice and shall not unreasonably withhold its approval.
- 2.6.3** Where a breach of unsecured PHI involves more than five hundred (500) individuals and was committed by the Business Associate or its employee, officer, subcontractor, or other agent or is within the unique knowledge of Business Associate as opposed to Covered Entity, Business Associate shall provide notice to the media pursuant to 45 CFR 164.406. Business Associate shall prepare the notice and shall provide it to Covered Entity for review and approval at least five (5) calendar days before it is required to be sent to the media. Covered Entity shall promptly review the notice and shall not unreasonably withhold its approval.
- 2.6.4** Business Associate shall maintain a log of breaches of unsecured PHI with respect to Covered Entity and shall submit the log to Covered Entity within thirty (30) calendar days following the end of each calendar year, so that the Covered Entity may report breaches to the Secretary in accordance with 45 CFR 164.408. This requirement shall take effect with respect to breaches occurring on or after September 23, 2009.

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- 2.7** Business Associate shall ensure that any agent or subcontractor to whom it provides PHI, received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions and conditions that apply to Business Associate with respect to such information. Business Associate shall ensure that any such agent or subcontractor implements reasonable and appropriate safeguards to protect Covered Entity's PHI.
- 2.8** Business Associate shall provide reasonable access, at the written request of Covered Entity, to PHI in a Designated Record Set to Covered Entity or, as directed in writing by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
- 2.9** Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs in writing or agrees to pursuant to 45 CFR 164.526.
- 2.10** Following receipt of a written request by Covered Entity, Business Associate shall make internal practices, books, and records reasonably available to the Secretary in order to determine Covered Entity's compliance with the Privacy Rule. The afore mentioned materials include policies and procedures and PHI relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity.
- 2.11** Business Associate shall document disclosures of PHI and information related to such disclosures, to permit Covered Entity to respond to a request by an Individual for: (a) an accounting of disclosures of PHI in accordance with 45 CFR 164.528 or (b) effective January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures PHI from an Electronic Health Record in accordance with the HITECH Amendment.
- 2.12** Following receipt of a written request by Covered Entity, Business Associate shall provide to Covered Entity or an Individual information collected in accordance with Section 2 to permit Covered Entity to respond to a request by an Individual for: (a) an accounting of disclosures of PHI in accordance with 45 CFR 164.528 or (b) effective as of January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures of Protected Health Information from an Electronic Health Record in accordance with the HITECH Amendment.
- §3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.** Business Associate may use and disclose PHI as set forth in this Section.
- 3.1** Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity as specified in the underlying service agreement between Covered Entity and Business Associate, provided that such use or disclosure shall not violate the Privacy Rule if done by Covered Entity or the

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minimum necessary policies and procedures of the Covered Entity. If no underlying service agreement exists between Covered Entity and Business Associate, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity for the purposes of payment, treatment, or health care operations as those terms are defined in the Privacy Rule, provided that such use or disclosure shall not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

- 3.2** Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.3** Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law or Business Associate obtains reasonable assurances in writing from the person to whom the information is disclosed that: (a) the disclosed PHI will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and (b) the person notifies the Business Associate of any known instances in which the confidentiality of the information has been breached.
- 3.4** Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- 3.5** Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

**§4. OBLIGATIONS OF COVERED ENTITY.**

- 4.1** Covered Entity shall notify Business Associate of any limitation(s) of Covered Entity in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.2** Covered Entity shall notify Business Associate of any changes in or revocation of permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 4.3** Covered Entity shall use appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to this Agreement, the Contract, and the Privacy Rule, until such PHI is received by Business Associate, pursuant to any specifications set forth in any attachment to the Contract.

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- 4.4** Covered Entity shall manage all users of the services including its qualified access, password restrictions, inactivity timeouts, downloads, and its ability to download and otherwise process PHI.
- 4.5** The Parties acknowledge that Covered Entity owns and controls its data.
- 4.6** Covered Entity shall provide Business Associate with a copy of its notice of privacy practices produced in accordance with 45 CFR Section 164.520, as well as any subsequent changes or limitation(s) to such notice, to the extent such changes or limitations may effect Business Associate's use or disclosure of PHI. Covered Entity shall provide Business Associate with any changes in or revocation of permission to use or disclose PHI, to the extent the changes or revocation may affect Business Associate's permitted or required uses or disclosures. To the extent that the changes or revocations may affect Business Associate's permitted use or disclosure of PHI, Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR Section 164.522. Covered Entity may effectuate any and all such notices of non-private information via posting on Covered Entity's web site.

**§5. EFFECT OF TERMINATION.**

- 5.1** Except as provided in Section 5, upon termination of this Agreement or the Contract, for any reason, Business Associate shall return or destroy (at Covered Entity's request) all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI.
- 5.2** If Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. Upon receipt of written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and shall limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI, which shall be for a period of at least six (6) years.

**§6 MISCELLANEOUS.**

- 6.1** This Agreement is effective when the Contract is executed or when Business Associate becomes a Business Associate of Covered Entity and both Parties sign this Agreement, if later. However, certain provisions have special effective dates, as set forth herein or as set forth in HIPAA or the HITECH Amendment.

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- 6.2** **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- 6.3** **Amendment.** The Parties agree to take action to amend this Agreement as necessary for Covered Entity to comply with the Privacy and Security requirements of HIPAA. If the Business Associate refuses to sign such an amendment, this Agreement shall automatically terminate.
- 6.4** **Survival.** The respective rights and obligations of Business Associate and Covered Entity under this Agreement shall survive the termination of this Agreement and/or the Contract.

**Exhibit V**  
**Scope of Contractor's Services**  
**Mainframe Hosting and Support**

**1. Introduction**

**1.1. Contractor shall:**

- 1.1.1. Maintain the required county mainframe processing environment (CPU, Tape and DASD/Storage) in its secure Type 2 SOC 1 (SSAE18) compliant data center in Pearl River, NY.
- 1.1.2. Support and manage the mainframe and all associated hardware and provide technical and operational support on a 24/365 basis.
- 1.1.3. Manage and execute all production job scheduling tasks, as listed in Section 3 Roles & Responsibilities.
- 1.1.4. Provide 24/365 help desk support.
- 1.1.5. Maintain a redundant VPN network connection between County and Contractor's sites.
- 1.1.6. Provide full Disaster Recovery and support services.
- 1.1.7. Provide a 48 MIPS mainframe processing environment with all required hardware, including CPU, tape, DASD, network connectivity and a secondary site for Disaster Recovery.
- 1.1.8. County hardware located at Contractor's facility will be dual corded.

**2. Services to be Provided**

**2.1. The Mainframe provided by Contractor for County shall contain the following minimum specifications:**

**2.1.1. Mainframe Configuration**

- 2.1.1.1. CPU performance shall be 48 MIPS and reside on an IBM z/Series platform.
- 2.1.1.2. Four (4) LPARs (Logical Partitions), three used for production and one used for quality assurance testing.
- 2.1.1.3. The total MIPS allocation for the four LPARs combined cannot exceed 48 MIPS.
- 2.1.1.4. The LPARs shall have a total of 8 Gigabytes of memory.

**2.1.2. DASD (Direct Access Storage Device)**

Five hundred-fifty (550) GB of DASD for the exclusive use of County. This allocation is for all County disk space purposes.

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**2.1.3. Tapes to be used for initial migration**

- 2.1.3.1. Physical Tape Mounts: As many tape mounts as required by County to support the mainframe.
- 2.1.3.2. Physical Tape Drives: Model 3490 tape drives to accommodate County processing requirements.
- 2.1.3.3. Physical Tape Slots on the Floor as needed to support County mainframe.
- 2.1.3.4. A backup storage facility and backup service for all required tapes, including a daily rotation of tapes from the backup site to the Pearl River site.
  - 2.1.3.4.1. If County requests a tape recall that is not within the daily tape rotation delivery schedule, additional shipping costs to obtain the tape will be billed to the County plus an addition 15% administration fee.
- 2.1.3.5. Contractor and County will amend the Contract to provide for a mutually agreed upon a virtual tape method for County's backups and restores. The change to a virtual tape method will not increase the base monthly fee, unless otherwise agreed to by the Parties.

**2.1.4. Network Connectivity**

- 2.1.4.1. Contractor manages the VPN connectivity and firewalls necessary for this Contract and shall be responsible for all costs for such VPN and equipment. The VPN shall be tested by Contractor on an annual basis as part of Disaster Recovery testing.
- 2.1.4.2. Network Facility:
  - 2.1.4.2.1. Contractor will provide six (6) Mbps bandwidth/VPN connectivity from Contractor's facilities to County's facility.
  - 2.1.4.2.2. Fully redundant internet access is provided through the use of border gateway protocol (BGP)
  - 2.1.4.2.3. Contractor will provide redundant firewalls at the Pearl River, NY location and a single firewall at the Branchburg, NJ location.

**2.2. SOFTWARE**

**Software Furnished By Contractor**

- 2.2.1.1. Contractor will be responsible for obtaining, supporting, maintaining and paying all relevant fees for the software listed below.

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**2.2.1.2. IBM Software to be Provided by Contractor**

Company	Product	Installed Version
SYSTEMS VIA IBM		
IBM	COBOL DOS/VS	3.0
	COBOL ESA	1.1
	COBOL L/E FOR VSE	4.0
	CICS	2.3
	DITTO	1.3.0
	DSF	1.17.0
	EREP	3.5.0
	NETVIEW	2.3.0
	POWER	7.1.0
	POWER RJE	7.1.0
	POWER SHARED SPOOL	7.1.0
	SSP	4.8.0
	VSAM	7.1.0
	VSAM BACKUP/RESTORE	7.1.0
	VTAM	4.2.0

**2.2.2. Software Furnished by County**

Company	Product	Installed Version
Computer Associates	CA EARL	6.0
	CA OPTIMIZER	5.1
	CA SCHEDULER	7.3
	COBOL/XE	3.0
	DYNAM/D/T/FI	7.0
	EASYTRIEVE	9.0D
	EASYTRIEVE PLUS	6.3
	EXPLORE	7.0
	EZ/IQ	3.0C
	EZ/ESP	1.1E
	FAQS	5.0
	LIBRARIAN	4.1
	SQL-Ease	
	CA-SYSADAPTER	6.1
	UFO/PAINT	3.0
	VOLLIE	5.0
CISCO	CISCO ROUTERS	12.1(19) E7

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MACRO 4/UNICOM	DUMPMaster	3.105T
SDS (ALSO IPCP)	MAXBACK	3.3.3
PRECISELY INC.	SYNCSORT	3.5.D
CONNECTIVITY	TCP/IP	1.5.E

All third party software listed above and any other required third party software shall be provided by County at County's expense. County will be responsible for obtaining all necessary licenses for this software. Support will be provided as described below.

**2.2.3. Software - Technical Support**

Technical support shall be provided based on the Responsibilities Matrix in this Exhibit.

**2.2.4. Semi-Annual Review of Software:** The Parties shall, no less than semi-annually, review the software to determine if updates or changes should be made. Any changes agreed upon will be formalized in a written amendment to the Contract.

**2.3. Mainframe Platform Services**

**2.3.1. Management of Resources**

Contractor shall operate County's mainframe subject to County's operational policies and procedures. Any updates to the policies and procedures will be provided to Contractor in a timely manner. Contractor will be responsible for management of the hardware, software and network resources defined herein.

**2.3.2. Account Administrators**

Contractor and the County shall each assign a designated account administrator through whom all requests and requirements shall be coordinated.

**2.3.3. System Access**

Except for any planned maintenance, Contractor shall provide County systems access 24 hours per day, 7 days per week. Contractor shall provide County with a minimum of seven (7) days advance written notice of any planned maintenance and shall take reasonable steps to avoid any disruption to County's business that might be caused by the maintenance. All maintenance, unless the result of an unavoidable emergency, shall take place during mutually agreed upon, non-peak hours only.

**2.3.4. Library, Shipping and Receiving**

Contractor shall provide a full tape library to maintain, store and retrieve all of County's incoming and out-bound tapes and associated documents on the mainframe. That includes tape receiving, identification, slotting, copying into

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tape management or to disk, and shipping services consistent with industry standard practice. If County requests a tape that is outside of the standard backup schedule, County will be charged tape shipping services as defined in the Payment section below.

**3. Roles and Responsibilities**

R-Primary Support Responsibility: Responsible for Task/Function

S-Secondary Support Responsibility: Provides Direction/Information to Primary Support A-

Approve Responsibility: Must provide approval prior to implementation

The Parties shall be responsible for the following tasks as designated below:

Service Description	County	Contractor
<b>1. Operations Support</b>		
1.1. Provide system and online monitoring		R
1.2. Conduct IPL setup, develop procedures, and execute platform		R
1.3. Monitor online and offline tape		R
1.4. Conduct online Partition startup and shutdown	A	R
1.5. Monitor data center environment		R
1.6. Perform initial problem determination (batch & system level)		R
1.7. Perform initial Diagnosis of ABENDs, Escalate to Applications support as appropriate		R
1.8. Implement operations automation	A	R
<b>2. Tape Operations</b>		
2.1 support tape management software (TMS)		R
2.2 Update and report TMS		R
2.3 Scratch tape lists and pulls		R
2.4 Initialize tape volumes		R
2.5 Mount tapes		R
2.6 Perform initial problem determination		R
2.7 Implement tape automation		R
<b>3. Production Control/Job Scheduling</b>		
3.1. Schedule production:		
3.1.1 Modify existing job streams		R
3.1.2 Manage production library		R
3.1.3 Run and implement reports	A	R
3.1.4 Request new reports or changes to existing reports	R	
3.1.5 Provide application problem resolution contacts		R
3.1.6 Monitor production process status		R
3.1.7 Verify JCL		R
3.1.8 Verify production process repair		R
3.1.9 Request changes to applications production process	R	

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Service Description	County	Contractor
3.1.10 Ensure timely application support response		R
3.1.11 Run JCL requirements		R
3.1.12 Request JCL changes for applications jobs	R	
3.1.13 Migrate and promote production JCL		R
3.1.14 Set up, modify, and initiate job	A	R
3.1.15 Establish schedules		R
3.1.16 Establish procedures to handle schedule deviations	A	R
3.1.17 Review procedures to handle schedule deviations	A	
3.2 Support production:		
3.2.1 Diagnose applications Abends (unexpected failures)	R	
3.2.2 Resolve and support ABENDs per County instructions	S	R
3.2.3 Provide procedures on resolving Abends	R	R
3.2.4 Monitor production process status		R
3.2.5 Verify production process completion		R
3.2.6 Define production process back-out and restart procedures	A	R
3.2.7 Provide requirements on production process back-out and restart procedures	R	
3.2.8 Establish problem escalation	R	R
3.3 Manage production:		
3.3.1 Establish times online applications need to be available	A	R
3.3.2 Develop report distribution methodology	A	R
<b>4. Backup and Recovery</b>		
4.1 Design and document backup and recovery procedures	A	R
4.2 Set up backup and recovery jobs (mainframe system program)	A	R
4.3 Set up backup and recovery jobs (application)	R	
4.4 Perform and monitor backup procedures		R
4.5 Perform and monitor recovery procedures		R
4.6 Perform backup and recovery problem determination		R
4.7 Perform system recovery		R
4.8 Prepare and ship backups to off-site storage		R
4.9 Recover applications from backups	S	R
<b>5. Off-Site Storage</b>		
5.1 Define tapes to be shipped off site	R	
5.2 Identify tapes to be shipped offsite		R
5.3 Define off-site shipping schedule	A	R
5.4 Manage transfer process		R
5.5 Maintain records		R
5.6 Provide reporting		R

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Service Description	County	Contractor
<b>6. Security Administration</b>		
6.1 Determine security system design	R	R
6.2 Respond to County questions regarding security design		R
6.3 Determine rules and operational administration	R	S
6.4 Respond to County questions regarding rules and operational administration		R
6.5 Perform installation		R
6.6 Perform maintenance		R
6.7 Conduct system-level configuration		R
6.8 Conduct customer-level configuration		R
6.9 Perform troubleshooting diagnosis		R
6.10 Reset user IDs	R	R
6.11 Provide backup to County to reset user IDs		R
6.12 Monitor and report unauthorized access		R
<b>7. Technical Support</b>		
7.1 Monitor operating system:		R
7.1.1 Perform installation		R
7.1.2 Perform maintenance:		R
7.1.3 Patches		R
7.1.4 New releases		R
7.1.5 System and program product		R
7.1.6 System datasets (e.g., VTOC, page, cat)		R
7.1.7 System parameters (e.g., IPL and JCL Procs)		R
7.1.8 POWER startup		R
7.1.9 POWER spool management		R
7.1.10 Problem resolution		R
7.1.11 Monitor performance:		R
7.1.12 Resource utilization reporting		R
7.1.13 Throughput monitoring		R
7.1.14 Problem resolution (system level)		R
7.1.15 Problem resolution (application level)		R
7.2 Monitor storage management:		
7.2.1 Install software		R
7.2.2 Maintain software		R
7.2.3 Gather performance information		R
7.2.4 Perform tuning		R
7.2.5 Define space requirements	R	
7.2.6 Conduct space management	A	R
7.2.7 Setup backup		R
7.2.8 Execute backup		R
7.2.9 Determine parameters of individual jobs (e.g., days to archive)	R	

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Service Description	County	Contractor
7.2.10 Perform catalog management		R
7.3 Provide third-party software support:		R
7.3.1 Perform installation		R
7.3.2 Perform maintenance:		R
7.3.2 Patches		R
7.3.3 New releases		R
7.3.4 Upgrade planning and implementation	S	R
7.3.5 Provide requirements for upgrades	S	R
7.3.6 Provide trouble analysis assistance for applications	R	
7.3.7 Define requirements for CPU, DASD, and tape		R
7.3.8 Perform forecasting of mainframe utilization	S	R
7.3.9 Implement improvements	A	R
7.3.10 Define and implement reporting		R
7.3.11 Provide reporting requirements	R	
7.3.12 Conduct quarterly review and implementation of agreed upon improvements		R
<b>8. Problem Management/Change Management/Help Desk</b>		
8.1 Recognize problem:		
8.1.1 Receive and route Level 1 call (from end users)	R	
8.1.2 Receive and route Level 2 call (from County help desk and County IT)		R
8.1.3 Document Level 2 call receipts and routing information		R
8.1.4 Report and summarize problem status		R
8.1.5 Determine first-call problem resolution	R	A
8.1.6 Escalate problem to appropriate individual (s)		R
8.2 Diagnose problem:		
8.2.1 Gather information for Level 1 call	R	A
8.2.2 Gather information for Level 2 call		R
8.2.3 Support coordination of diagnostic activity	S	R
8.2.4 Respond to questions regarding diagnostic activity	R	
8.3 Resolve problem:		
8.3.1 Manage problem to resolution	S	R
8.3.2 Verify resolution with caller		R
8.3.3 Conduct prevention analysis		R
8.3.4 Provide input on problem prevention	R	A
8.4 Monitor change management:		
8.4.1 Schedule change	R	
8.4.2 Coordinate change schedule	R	
8.4.3 Determine go/no-go for change	R	
8.4.4 Implement change	R	R
8.4.5 Conduct back-out/recovery planning	S	R

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Service Description	County	Contractor
8.4.6 Conduct applications back-out/recovery planning	R	
8.4.7 Complete change	R	
<b>9. Network Management</b>		
9.1 Network monitoring		R
9.2 Performance and capacity monitoring		R
9.3 Hardware (router, switch, etc.) maintenance, monitoring		R
<b>10. Disaster Recovery(DR)</b>		
10.1 Conduct business impact analysis:		
10.1.1 Conduct survey of County needs and priorities		R
10.1.2 Classify and prioritize application	R	
10.1.3 Develop disaster recovery plan	R	R
10.1.4 Organize staff required to implement DR rules	R	R
10.1.5 Provide list of County staff responsible for implementing the recovery	R	
10.1.6 Conduct testing of applications	R	S
10.1.7 Provide County testing procedures	R	
10.1.8 Develop recovery procedures		R
10.2 Develop data center recovery plan:		R
10.2.1 Organize staff, hardware and applications at Contractor and County to develop DR plan	R	R
10.2.2 Develop documentation	R	R
10.2.3 Provide communications procedures for the disaster	R	
10.2.4 Develop communication procedures	S	R
10.3 Conduct recovery testing:		
10.3.1 Schedule test	R	
10.3.2 Confirm if requested dates are available		R
10.3.3 Assign staff	R	R
10.3.4 Coordinate Contractor's third party vendors		R
10.3.5 Execute test	R	R
10.4 Execute recovery plan in actual disaster:		
10.4.1 Load operating system		R
10.4.2 Establish communications	S	R
10.4.3 Load backups		R
10.4.4 Test applications and connectivity	R	
10.4.5 Test systems components		R
10.4.6 Activate		R
<b>11. Account Management</b>		
11.1 Manage reporting and meeting requirements:		
11.1.1 Define reporting requirements	R	

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Service Description	County	Contractor
11.1.2 Produce reports (e.g., SLA, utilization)		R
11.1.3 Conduct monthly management meetings	R	R
11.2 Manage billing requirements:		
11.2.1 Produce and deliver bill		R

**4. Dedicated Disaster Recovery (DR)**

**4.1.** Contractor will provide dedicated mainframe resources in its Branchburg, New Jersey facility, sufficient to recover County's application environment in the event of a declared disaster. Contractor shall ensure the Recovery Point Objective (RPO) is from the last stable backup and the Recovery Time Objective (RTO) is less than twenty four (24) hours. The following Disaster Recovery Services shall be provided:

- 4.1.1. Mainframe hardware sufficient to recover County's mainframe applications within timeframe specified above.
- 4.1.2. Contractor will work with County, at County's direction, to develop a mutually agreed upon Disaster Recovery Plan no later than completion of the Transition Plan unless otherwise agreed upon in writing by the Parties.
- 4.1.3. Contractor will execute with County, one (1) Disaster Recovery Test per year.

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- 4.1.4. In the event of a declared disaster, Contractor shall recover County systems as shall be defined in the Disaster Recovery Plan. There shall be no additional fees in the event Contractor declares a disaster.

**5. Monthly Pricing and Additional Resources Pricing****5.1. Monthly Fee**

\$24,900.00 per month

Any Contract renewals agreed to between the Parties shall be subject to an adjustment to reflect the percentage change in the Consumer Price Index (CPI-U, US City Average All Items) for the immediately preceding 12 month period. In addition, in the event a Contractor vendor increases the price paid by Contractor for services or products provided to the County under this Contract, during any agreed to renewal period, Contractor may pass-through to County such price increase upon prior written notice to County that includes verification of such increases.

**5.2. Additional Resources And Pricing For All Other Projects Outside Of This SOW**

Additional Resources	Pricing
Supplies, (e.g. tape media)	Supplies will be billed at cost plus 15%
Technical Services Rate during standard business hours (for out of scope services)	\$175.00 per hour
Software Version Upgrades	At cost
Shipping for Emergency Tape Recall	At cost plus 15%
Operating system management for Hosted Servers (that are connected to the mainframe)	\$250 per month, per server
Application Staff Augmentation/Remote Support	\$85 per hour

For additional or other software resources required and defined elsewhere in this SOW, the price shall be determined at the time that the need for the additional resources is determined.

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**5.3. Application Support Services: Staff**

If requested by County IT team. Contractor will provide the required onsite staffing to support the County's mainframe applications.

Exhibit A Applications Services contains a complete list of Contractor's capabilities for this service.

**5.4. Special Projects Pricing**

If the Parties amend the Contract to add technical support related to Services outside the scope of the Contract, such support shall be billed at the Technical Services rate, plus the cost of any agreed upon travel and out-of-town living expenses, including lodging and meals. Receipts or reasonable evidence thereof are required for commercial travel, car rental, parking, and lodging. Contractor shall submit monthly expense reports to County. When Contractor employees visit more than one client on the same trip, the expenses incurred will be apportioned in relation to time spent with each client. Contractor shall obtain County's prior written approval, which shall not be unreasonably withheld, before incurring any expenses exceeding, in the aggregate, One Thousand Dollars (\$1,000.00). All air travel shall be on generally scheduled commercial flights. Contractor shall use commercially reasonable efforts to make airline reservations for travel sufficiently in advance of the travel date so as to obtain the lowest airfare. Such technical support related to Services outside the scope of the Agreement shall only be performed pursuant to a separate written amendment to the Contract. Any work performed in the absence of such signed writing will be deemed gratuitous and County shall have no payment obligation therefore.

**6. Service Level Agreement ("SLAS")**

**6.1. Definitions.** The following terms, when used in this Service Level Agreement, shall have the following meanings:

- 6.1.1. **"Actual Uptime"** means the measurement of time that the Service (or any portion thereof) is actually available for use by County and its users as contemplated under the SOW during a calendar month. Such measurement will be calculated by subtracting Downtime from Scheduled Uptime.
- 6.1.2. **"Available" or "Availability"** means the Actual Uptime expressed as a percentage of the Scheduled Uptime for the Service (i.e.,  $\text{Availability \%} = ((\text{Actual Uptime})/(\text{Scheduled Uptime})) \times 100\%$ ). The Service shall not be considered Available (i) during an Outage or (ii) when it is not otherwise available for use by County and its users as contemplated under the SOW.
- 6.1.3. **"Customer Information Control System" or "CICS"** is the online environment where transactions are executed.

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- 6.1.4. **"Downtime"** means the aggregate duration of Outages for the Service during the applicable Scheduled Uptime during a calendar month.
- 6.1.5. **"Level 1 Support"** means the identification of incidents, first point of contact; diagnosis, escalation and resolution based on documented processes and procedures.
- 6.1.6. **"Level 2 Support"** means first point of escalation, provides guidance and instructions to Level 1 support to diagnose and resolve. Take ownership of incidents where subject matter expertise and experience is required for diagnosis. Will make any changes to components required to resolve (i.e. code change, hardware replacement, vendor support, etc.).
- 6.1.7. **"Excused Unscheduled Downtime"** means the loss of a critical system or function when it is scheduled to be available that is not (i) attributable to an equipment or software failure beyond the reasonable control of Contractor or (ii) as a result of any of the following:
  - 7.1.7.1. Force Majeure Events;
  - 7.1.7.2. Inability to access third party software required for operation of the mainframe;
  - 7.1.7.3. Law enforcement action requiring Contractor to shut-down mainframe;
  - 7.1.7.4. Material deficiencies in County applications provided to Contractor;
  - 7.1.7.5. Material deficiencies in third party software that Contractor where Contract was unable to correct the deficiency or replace the software;
  - 7.1.7.6. Service reduction requested or approved by County and agreed by Contractor that causes unscheduled downtime;
  - 7.1.7.7. County's failure to implement changes in systems, hardware or software reasonably recommended by County in writing as essential to maintain Service Levels; or
  - 7.1.7.8. Failures to meet Service Levels while operating under a declared disaster.
- 6.1.8. **"Incident"** means any event that is not part of the standard operation of the Service (or any portion thereof) and that causes an interruption to, or a reduction in, the quality or Availability of the Service or any portion thereof.
- 6.1.9. **"Outage"** means any time during which the Service (or any portion thereof) is not Available or is otherwise materially degraded, measured from the earliest point in time that such Outage is or reasonably should be detected by Contractor, but in any event no later than the time the Outage actually occurred. An Outage is an Incident.
- 6.1.10. **"Resolve or Resolution"** means, with respect to an Incident, that a workaround or fix with respect to such Incident has been implemented by Contractor and accepted by County.
- 6.1.11. **"Response Time"** shall be calculated as the total minutes commencing from the time when Contractor becomes aware of an Incident, whether by automated alarm or

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otherwise, until Contractor notifies County of such Incident and commences steps to Resolve such Incident.

6.1.12. **“Service”** means mainframe hosting, management and network connectivity to and from Contractor’s main site, the Contractor’s DR site and the County.

6.1.13. **“Scheduled Uptime”** means time that the Service (or any portion thereof) is planned to be available for use by County and its users as contemplated under the SOW during a calendar month. Contractor shall ensure that the Services remain Available to the extent reasonably practicable. For purposes of calculating Availability, Scheduled Uptime shall not include any period of downtime that is the result of scheduled time required to perform routine system maintenance (for example, preventive maintenance, system upgrades, etc.), provided that such time has been mutually agreed between the Parties and is scheduled so as to minimize the impact to County’s business (“Excusable Downtime”). Contractor shall be entitled to, at a minimum, Excusable Downtime at least once per year.

6.1.14. **“Service Level Performance Adjustment”** means a reduction of fees calculated in accordance with Contractor’s failure to meet a Service Level standard. A Service Level Performance Adjustment shall be applied and limited in accordance with the Service Level Failure section below.

## **6.2. Service Level Failures**

### **6.2.1. Service Level Failures**

Failure to achieve any of the Service Levels described herein and as set forth in the Service Level Agreement section below in any two consecutive 30 day periods shall constitute a “Service Level Failure”, if the failure is not due to an Excused Unscheduled Downtime or Scheduled Downtime or cause not attributable to Contractor. Contractor shall not be responsible for any Service Level Failure caused by County or its agents or by any general failures of the Internet (i.e., Internet slow-downs or failures impacting substantial numbers of disparate users and geographic areas). Notwithstanding any other provision of this SOW, Contractor shall not be liable for Service Level Failures resulting from the actions or inactions of County or its agents (excluding Contractor). Contractor shall promptly notify County of any Service Level Failure.

Contractor shall not be liable for any Service Level Failures, if and to the extent Contractor’s failure to meet such Service Level(s) is directly caused by any one or more of the following (collectively, the “Service Level Exclusion Events”): (i) with respect to any equipment or software component of the County Systems for which Contractor does not bear operational responsibility, any failure of County to secure the necessary access rights or maintenance and support services from the vendor of such equipment or software component; (ii) any problems arising from the County systems, including facility and user controlled problems, that are not required to be supported or addressed by Contractor pursuant to the performance of the Services; (iii) the failure

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of County's personnel to perform or act in accordance with this SOW or (iv) the occurrence of a Force Majeure Event. Upon the occurrence of any event that Contractor reasonably believes to be a Service Level Exclusion Event, Contractor shall promptly escalate the issue to County in writing. The Parties agree to cooperate to minimize the adverse impact of such Service Level Exclusion Events on County's business.

**6.2.2. Service Level Review**

On an annual basis during the Term or such other times as the Parties may agree upon, the Parties will meet and confer regarding the adequacy of the then current Service Levels and any adjustments or new Service Levels that may be appropriate. Any changes to the Service Levels must be agreed upon in a written amendment to the Contract.

**6.3. Service Outages****6.3.1. Scheduled**

Contractor shall notify County of scheduled Outages at least twenty-four (24) hours in advance.

**6.3.2. Corrective Action**

Immediately upon notice of an Outage, Contractor personnel shall:

- 7.3.2.1. Confirm (or disconfirm) the Outage by a direct check of the facility;
- 7.3.2.2. If confirmed, take such action as may restore the Service in one hour or less, or, if determined to be a telecommunications company problem, open a trouble ticket with the telecommunications company carrier;
- 7.3.2.3. Notify the person designated by County by telephone or voicemail according to predefined procedures that an Outage has occurred, providing such details as may be available, including the trouble ticket number if appropriate and time of Outage;
- 7.3.2.4. Work the Incident until Resolution, escalating to management or to engineering as required;
- 7.3.2.5. Promptly notify County of final Resolution, along with any pertinent findings or action taken.

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**6.4. Service Level Agreement**

Description	Service Level
Availability	99.9% monthly average
TSO response times, exclusive of network latency	TSO Response Time is: 90% of all TSO Period 1 transactions will complete in less than 1 second
CICS response times, exclusive of network latency	CICS Response Time is: 95% of all Trivial Transactions will complete in less than 1 seconds
Return of tapes from off-site tape storage location	Response Time within 4 hours
Audit Report	Deliver annual SOC1 Type 2 SSAE18 examination findings report to County within 30 days of receiving final report from 3 <sup>rd</sup> Party Auditor

**6.5. Service Level Performance Adjustments**

**6.5.1. Minimum service level**

Contractor shall ensure that the County's mainframe environment shall be running and available 99.9% of any calendar month.

**6.5.2. Measuring service levels**

Mainframe down time shall be measured and recorded by Contractor through its mainframe system logs. County may independently document mainframe down time to challenge records kept by Contractor. All disputes regarding monthly mainframe downtime shall be taken to the executive committee.

**6.5.3. Adjustments**

The monthly adjustment in any month the service levels are not met shall be an adjustment of 3% of monthly fee for the 1<sup>st</sup> month. If the failure occurs in consecutive months, the adjustment will be 5% for each subsequent month.

**6.5.4. Service Level Reporting Requirements**

County will be responsible for reporting problems and requests for service level credits by contacting Contractor directly. Both County and Contractor will investigate to determine if the problem was within Contractor's control. Both Parties will then determine the level of downtime that occurred and if adjustments apply.

County must report service level adjustments within the calendar month following the calendar month with the service level in question for the adjustment to apply

**EXHIBIT X**  
**REQUIREMENTS FOR CONTRACTORS WITH ACCESS TO COUNTY PII**  
**(Personally Identifiable Information)**

This exhibit governs the requirements for Contractors with Access to Personally Identifiable Information (PII).

**1. DEFINITIONS**

- 1.1 **Security Breach** means the unauthorized access, acquisition, theft, or disclosure of PII by or from Contractor, including but not limited to, Contractor's networks, systems, environments, Employees, infrastructure, databases, files, facilities, property, hardware, equipment, and all other sources in Contractor's control.
- 1.2 **PII (Personally Identifiable Information)** means information that can be used to identify an individual, either alone or when combined with other personal or identifying information. PII includes, but is not limited to, a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including, but not limited to, a person's name, address, telephone number, driver's license or state personal identification card number, social security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother's maiden name, demand deposit account number, savings account number, financial transaction device account number or the person's account password, any other account password in combination with sufficient information to identify and access the account, automated or electronic signature, biometrics, stock or other security certificate or account number, credit card number, vital record, or medical records or information as well as the first name or first initial and last name linked to a social security number, driver's license or state personal identification card or financial account number in combination with a code or password that would permit access to a person's financial account(s) and as otherwise may be defined by state or federal laws governing the unauthorized access to personal information, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts.

**2. OBLIGATIONS**

- 2.1 Contractor shall not use or disclose PII other than as permitted or required by this Contract or as required by law.
- 2.2 Contractor shall implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of PII that it creates, receives, maintains or transmits on behalf of the County.
- 2.3 Contractor shall mitigate, to the extent practicable, any harmful effect known to Contractor of the use or disclosure of PII in violation of law or this Contract.
- 2.4 If Contractor or Contractor Employees discover a Security Breach, Contractor shall notify the County without unreasonable delay, but no later than within forty-eight (48) hours of discovery. For this purpose, "discovery" means the first day on which the Security Breach is known to Contractor or

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Contractor Employees. The notification to the County shall include the following: (a) describe the Security Breach in general terms; (b) describe the type of personal information that is the subject of the Security Breach; (c) identify each individual whose PII has been breached or has reasonably believed to have been breached; (d) describe in general terms, what Contractor has done to prevent additional Security Breaches; and (e) provide any other available information in Contractor or subcontractor's possession that may be necessary to comply with Security Breach notification laws.

- 2.5 If the County determines it will provide the notice of the Security Breach to the affected individuals and/or to governmental authorities, Contractor shall reimburse the County for: (a) its costs in notifying the affected individuals; (b) the cost of third-party credit and identify monitoring services to each of the affected individuals with compromised PII for no less than twenty-four (24) months following the date of notification to each individual; and (c) costs associated with the Security Breach, including but not limited to any costs incurred by the County in investigating and resolving the Security Breach, including reasonable fees associated with such investigation and resolution. Without limiting Contractor's obligations of indemnification as described in the Contract, Contractor shall indemnify, defend, and hold harmless the County for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the County in connection with the Security Breach. Contractor shall reimburse County for the applicable costs described above within thirty (30) days of receipt of an itemization of costs incurred by the County because of the Security Breach.
- 2.6 Within ten (10) calendar days of its discovery of the Security Breach, Contractor shall provide the County with a detailed plan describing the measures Contractor will undertake to prevent a future Security Breach. The County shall have the right to audit, inspect and test Contractor's new safeguards put in place because of the Security Breach. Contractor shall be responsible for recreating lost County Data in the manner and on the schedule set by the County without charge to the County.