

Contract # MA-060-14010556 for Data Center Services

This agreement, hereinafter referred to as "Contract" is made and entered into as of the date fully executed by and between, **Computer Deductions Inc.** with a place of business at 8680 Greenback Lane, Suite 210, Orangevale, CA 95662; hereinafter referred to as "Contractor," and the County of Orange, a political subdivision of the State of California, through its Sheriff-Coroner Department with a place of business at 320 N. Flower Street, 2nd Floor, Santa Ana, CA 92703, hereinafter referred to as "County," which may be referred individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, County's Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract for Data Center Services.

NOW, THEREFORE, the Parties mutually agree as follows:

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
- B. **Entire Contract:** This Contract, including Attachments A, B, Exhibit 1 (Blank Child Support Enforcement Certification Requirements Form), and Exhibit 2 (Blank EDD Reporting Requirement Compliance Form), which have been incorporated herein by reference, when accepted by Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental contracts by any County employee or agent, including but not limited to installers of equipment, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or his designee, hereinafter "Purchasing Agent".
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods, or services, have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, 2) payment shall be made monthly in arrears after satisfactory acceptance by the County and in accordance to Attachment B, Compensation and Pricing.
- G. **Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are 1) free of liens

or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees as identified in paragraph "P" below, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any Software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "P" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of anti-discrimination law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after thirty (30) days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
- N. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor, its employees nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion, and coordination of all documentation and other goods/services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies

necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

- P. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees"), harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

Insurance Provisions: Prior to the provision of services under this contract, Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with County Certificates of Insurance, including all endorsements required herein, necessary to satisfy County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If Contractor fails to maintain insurance acceptable to County for the full term of this Contract, County may terminate this Contract.

Qualified Insurer

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

The policy or policies of insurance maintained by Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

Contractor shall, with respect to all insurance policies required by this contract, give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- Q. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "P" above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

- R. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.
- S. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
- T. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within thirty-six (36) hours of the start of the delay and Contractor avails himself of any available remedies.
- U. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- V. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "P" above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- X. **Pricing:** The Contract price shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Scope of Work / Pricing attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **Severability:** If any term, covenant, condition, or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorney Fees:** In any action or proceeding to enforce or interpret any provisions of this Contract, or where any provisions hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

- EE. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.
- FF. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. **Employee Eligibility Verification:** Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Additional Terms and Conditions

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which County will procure and receive goods/services from Contractor as set forth in the Scope of Work / Pricing, which is attached hereto as Attachment A and incorporated by this reference.
2. **Term of Contract:** This Contract shall commence November 1, 2013 and upon execution of all necessary signatures and shall be effective for five (5) years from that date, unless otherwise terminated by County.
3. **Precedence:** The Contract documents will consist of this Contract including its Attachments, and Exhibits. In the event of a conflict between the Contract documents, the order of precedence shall be this Contract, then the Attachments and Exhibits.
4. **Fiscal Appropriations:** This Contract is subject to and contingent upon applicable budgetary appropriations being made by the County's Board of Supervisors for each year during the term of this Contract. If such appropriations are not forthcoming, the Contract will be terminated without penalty. Contractor acknowledges that funding or portions of funding for this Contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the state of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
5. **Conflict of Interest (Contractor):** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that result in a conflict with the best interest of County. This obligation shall apply to Contractor, Contractor's employees, agents, relatives, sub tier contractors and third parties associated with accomplishing the work hereunder.

Contractor's efforts shall include, but not be limited to, establishing precautions to prevent its employees or agents from making, receiving, providing, or offering gifts, entertainment, payments, loans, or other considerations which could be deemed to appear to influence individuals to act contrary to the best interest of County.

6. **Contractor Work Hours and Safety Standards:** Contractor shall ensure compliance with all safety and hourly requirements for employees, in accordance with federal, state, and County safety and health regulations and

laws.

7. **County and Contractor Project Manager:** County shall appoint a project manager to act as liaison between County and Contractor during the term of this Contract. County's project manager shall coordinate the activities of County staff assigned to work with Contractor.

Contractor shall appoint a project manager to direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. Contractor's project manager shall be subject to approval by County and shall not be changed without the written consent of County's project manager. County's project manager shall have the right to require the removal and replacement of Contractor's project manager from providing services to County under this Contract. County's project manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within fourteen (14) calendar days after written notice by County's project manager. County is not required to provide any reason, rationale or factual information in the event it elects to request the removal of Contractor's project manager from providing services to County under this Contract.

8. **Contractor Personnel:** In addition to the rights set forth in paragraph 7, County's project manager shall have the right to require the removal and replacement of any of Contractor's personnel from providing services to County under this Contract. County's project manager shall notify Contractor's project manager in writing of such action. Contractor shall accomplish the removal of the specified personnel within one (1) calendar day after written notice by County's project manager. County is not required to provide any reason, rationale or factual information in the event it elects to request the removal of any of Contractor's personnel from providing services to County under this Contract.
9. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
10. **Reprocurement Costs:** In the case of default by Contractor, County may procure the service from other sources and, if the cost is higher, Contractor will be held responsible to pay County the difference between the Contract cost and the price paid. County may make reasonable efforts to obtain the prevailing market price at the time such goods and services are rendered. This is in addition to any other remedies available under law.
11. **County of Orange Child Support Enforcement (Exhibit 1 – Blank County of Orange Child Support Enforcement Certification Requirements Form):** In order to comply with the child support enforcement requirements of County, within ten (10) days of notification of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish the required Contractor data and certifications to the agency/department deputy purchasing agent.

Failure of Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from County shall constitute grounds for termination of the Contract.

12. **Authorization Warranty:** Contractor represents and warrants that the person executing this Contract on behalf of and for Contractor is an authorized agent who has actual authority to bind Contractor to each and every term, condition, and obligation of this Contract and that all requirements of Contractor have been fulfilled to provide such actual authority.
13. **Notices:** Any and all notices permitted or required to be given hereunder shall be deemed duly given (1) upon actual delivery, if delivery is by hand; or (2) upon delivery by the United States mail if delivery is by postage paid registered or certified return receipt requested mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time.

For Contractor:

Computer Deductions Inc.

8680 Greenback Lane
 Suite 210
 Orangevale, CA 95662
 Attn: Drew Brumbaugh
 Ph: 714-834-3651

For County:

County of Orange
 Sheriff-Coroner Department/Purchasing Services Bureau
 320 N. Flower Street, 2nd Floor
 Santa Ana, CA 92703
 Attn: Buyer
 Ph: 714-834-4700
 Fx: 714-834-6411

14. **Data – Title to:** All materials, documents, data or information obtained from County data files or any County medium furnished to Contractor in the performance of this Contract will at all times remain the property of County. Such data or information may not be used or copied for direct or indirect use by Contractor after completion or termination of this Contract without the express written consent of County. All materials, documents, data or information, including copies, must be returned to County at the end of this Contract.
15. **Usage:** No guarantee is given by County to Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. Contractor agrees to supply services and/or commodities requested, as needed by County, at prices listed in the Contract, regardless of quantity requested.
16. **Contractor's Records:** Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from County. Storage of records in another county will require written approval from County's assigned Deputy Purchasing Agent.
17. **Audits/Inspections:** Contractor agrees to permit County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. County will provide reasonable notice of such an audit or inspection. County reserves the right to audit and verify Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should Contractor cease to exist as a legal entity, Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to County's project manager.

18. **Disputes-Contract:** A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by Contractor's project manager and County's project manager, such matter shall be brought to the attention of the County's Purchasing Agent by way of the following process:
 - a. Contractor shall submit to the agency/department Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or

involving this Contract, unless County, on its own initiative, has already rendered such a final decision.

- b. Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes County is liable.

B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If County fails to render a decision within ninety (90) days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. County's final decision shall be conclusive and binding regarding the dispute unless Contractor commences action in a court of competent jurisdiction.

19. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
20. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.
21. **Contractor Personnel – Uniforms/Badges/Identification:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this Contract. All Contractor's employees shall be required to wear uniforms, badges or other means of identification which are to be furnished by the Contractor and must be worn at all times while working on County property. The assigned buyer must be notified in writing, within seven days of notification of award of Contract, of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven days prior to any changes in this procedure.
22. **Ownership of Documents:** The County has permanent ownership of all direct, connected, and derivative materials produced for this Contract by the Contractor. All documents, reports, and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports, and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.
23. **Security Requirements:**
- A. Contractor shall, with respect to all employees of Contractor performing services hereunder:
1. Perform background checks as to past employment history.
 2. Inquire as to past criminal felony convictions.

3. Ascertain that those employees who are required to drive in the course of performing services hereunder have valid California driver's licenses and no DUI convictions within two (2) years prior to commencement of services hereunder.
 4. Perform drug screening to determine that such employees are not users of illegal drugs or other substances.
 5. Have employee complete and sign Contractor Security Clearance and Orange County Jail Release of Liability documents, as required by Orange County Sheriff's Department.
- B. Contractor shall not assign to the County property any Contractor personnel as to whom the foregoing procedures indicate:
1. Inability or unwillingness to perform in a competent manner.
 2. Past criminal convictions for theft, burglary or conduct causing property damage or mental or physical harm to persons.
 3. Where such employee's duties include driving a vehicle, absence of a valid California driver's license or a DUI conviction within the prior two (2) years.
 4. Usage of illegal drugs or other substances.
- C. If any of the problems identified with respect to the Contractor's employees are discovered after assignment of an employee to County property, or if County otherwise reasonably deems an assigned employee unacceptable, Contractor shall remove and replace such employee at the County property.
- D. Nothing herein shall render any employee of Contractor an employee of County.
- E. THE CONTRACTOR'S PERSONNEL REQUIREMENTS:

All employees must pass the County's background check and meet all requirements as set forth below:

1. Contractor's Personnel-Background Checks:
2. All personnel to be employed in performance of the work under this Contract shall be subject to background checks ("Contractor Security Clearance" and "Orange County Jail Release of Liability"). Clearance must be updated and renewed every twelve (12) months from original date of clearance.
3. No person shall be employed on this work that has not received prior clearance from the Sheriff's Department.
4. Within 15 days of the effective date of this Contract, the Contractor shall prepare and submit a complete and accurate "Contractor Security Clearance" and "Orange County Jail Release of Liability" information form for all Contractor's employee who will be working on or who will need access to the Sheriff's facilities to perform work covered by this Contract. County project manager shall provide form(s) to Contractor's project manager.
5. Contractor must ensure that their employees submit "Contractor Security Clearance" and "Orange County Jail Release of Liability" information forms for renewal as specified in paragraph E. 2., and for new employees, at least ten (10) County business days prior to the expiration of an existing clearance or prior to the use of any person for work occurring at Sheriff's Facilities.
6. "Contractor Security Clearance" and "Orange County Jail Release of Liability" information forms must be submitted on the original Sheriff's printed form. Facsimile or photocopy forms will not be accepted.
7. "Contractor Security Clearance" and "Orange County Jail Release of Liability" information forms will be provided by the County Project Manager upon request and will be screened by the Sheriff's Department.
8. "Contract Security Clearance" and "Orange County Jail Release of Liability" information forms shall be thoroughly and accurately completed. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance.

9. The Orange County Sheriff Department will not give the reason an individual's clearance is denied.

F. GENERAL SECURITY REQUIREMENT-AT WORKSITE:

1. All work areas shall be secured prior to the end of each workday.
2. Workmen shall have no contact, either verbal or physical, with inmates in the facility. Specifically:
 - a. Do not give names or addresses to inmates.
 - b. Do not receive any names or addresses from inmates.
 - c. Do not disclose the identity of any inmate to anyone outside the facility.
 - d. Do not give any materials to inmates.
 - e. Do not receive any materials from inmates (including materials to be passed to another individual or inmate).
3. Contractor's personnel shall not smoke or use profanity or other inappropriate language while on site.
4. Contractor's personnel shall not enter the facility while under the influence of alcohol, drugs or other intoxicants and shall not have such materials in their possession.
5. Failure to comply with these requirements is a criminal act and can result in prosecution.
6. Contractor's personnel shall plan their activities to minimize the number of times they must enter and exit a facility, i.e., transport all tools, equipment, and materials needed for the day at the start of work and restrict all breaks to the absolute minimum.
7. Contractor's personnel shall follow any special security requirements issued by the on-site contact person or escort Deputy.
8. Contractor's personnel shall report either to the on-site contact person when leaving the facility, temporarily or at the end of the workday.
9. Contractor's personnel shall immediately report all accidents, spills, damage, unusual conditions and/or unusual activities to the on-site contact person or any Sheriff's Deputy.
10. Contractor's personnel shall securely close and check all gates and doors to ensure that they are tightly closed and locked.
11. Contractor's personnel shall restrict all activities to the immediate work site and adjacent assigned areas.
12. Contractor's personnel shall remain with the assigned escort at all times, unless otherwise directed by the on-site contact person.

G. POTENTIAL DELAYS/INTERRUPTIONS:

1. Contractor shall acknowledge that the primary purpose of the detention facilities is the safe and secure operation of those facilities; To that end:
 - a. Contractor's personnel who enter a Sheriff facility but have not passed the security screening, or who have falsified the security screening information, or who have outstanding warrants, may be detained.
 - b. Contractor's personnel shall immediately comply with all directions and orders issued by Sheriff's personnel, other than directions or orders regarding the quality or quantity of work, which will be controlled by the designated Authorized Service Requestor, County Project Manager, Contract Coordinator or the Contract Administrator.
 - c. Contractor's personnel may be delayed or denied access to the facility due to unforeseen events that may affect the availability of security escorts.
 - d. Contractor's personnel may be ordered to leave a facility prior to the completion of their work or the end of the workday based on unforeseen incidents occurring within secure environments.
 - e. Contractor's personnel may be detained within a facility until Sheriff's personnel resolve an incident.

(Signature Page Follows)

Signature Page

The Parties hereto have executed this Contract # MA-060-14010556 for Data Center Services on the dates shown opposite their respective signatures below.

Contractor*: Computer Deductions Inc.

By: _____ Title: _____

Print Name: _____ Date: _____

Contractor*: Computer Deductions Inc.

By: _____ Title: _____

Print Name: _____ Date: _____

*If a corporation, the document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the secretary, an assistant secretary, the Chief Financial Officer, or any assistant treasurers. **In the alternative, a single corporate signature is acceptable when accompanied by a corporate document demonstrating the legal authority of the signature to bind the company.**

County Of Orange

A political subdivision of the State of California



Sheriff-Coroner Department

By: _____ Title: _____

Print Name: _____ Date: _____

Approved by Board of Supervisors on: _____

Approved as to Form
Office of the County Counsel

By _____
Deputy

ATTACHMENT A

Scope of Work / Pricing

I. Requirements

The Contractor shall provide professional services to manage, supervise, maintain, and operate County owned Unisys mainframe computer equipment. Contractor shall be responsible for staffing first level help desk support services for both client server and mainframe applications. All mainframe operations and help desk services must be provided on a 24x7x365 basis.

All work to be provided includes Unisys mainframe computer operations, help desk support, and system support functions. Contractor shall possess cross discipline skill sets encompassing both Unisys mainframe operations functions and first level help desk support. Contractor shall possess knowledge of both a Unisys mainframe environment and Windows (NT/XP/2003) platforms. Contractor shall also perform facility monitoring, including power and air conditioning systems, fire alarm systems, and security systems. Other areas of responsibility for the Contractor shall be Data Center management, operations management, and performance planning. Contractor specific duties for various functions and support shall be as follows:

A. Operations Functions

1. Perform Initial Program Load (IPL) of the Unisys Mainframe.
2. Ensure all system background jobs are functioning correctly.
3. Start daily production runs.
4. Monitor the system console and respond to system requests for service.
5. Mount tapes.
6. Monitor print services via DEPCON.
7. Monitor system performance levels.
8. Perform system backups.
9. Maintain an accurate and complete log of all system and user problems.
10. Follow the Orange County Sheriff Department Information System's Standard Operations Procedures manual.
11. Interface with support personnel to rectify problems.
12. Facility monitoring including air conditioning, power, fire alarm and security systems.
13. Be familiar with disaster recovery procedures.
14. Supervise the operations of the Help Desk to ensure consistent function and customer service.

B. Help Desk Functions

1. Respond to user problems with level 1 help desk support.
2. Log user problems into the REMEDY system.
3. Perform Windows troubleshooting (XP/NT/2003).
4. Monitor Network Support Console for proper network operation.
5. Troubleshoot MDC (Mobile Data Computer) issues.
6. Troubleshoot Web based and client/server Sheriff applications.
7. Troubleshoot Inter/Intranet problems.
8. Daily check the power and air conditioning systems.

C. System Support

1. Configure, maintain, and install all Unisys system software, including but not limited to:
 - a. Operating systems.
 - b. Communications software.
 - c. Language compilers.
 - d. System support utilities.

- e. Database drivers and schemas.
- 2. Periodic upgrades to system software.
- 3. Debug system software problems.
- 4. Review and apply Unisys fixes as needed.
- 5. Monitor system performance.
- 6. Manage "Smart Console" to automate system start up.
- 7. Assist application developers in developing procedures for operations.
- 8. Assist application developers with system software configuration as needed.
- 9. Ensure that procedures are in place for operations personnel.
- 10. Train and monitor operations personnel.
- 11. Develop, maintain, and test disaster recovery plans and procedures.

II. Location

Contractor shall perform all duties at the location, but shall not be limited to, as follows:

County of Orange
 Sheriff-Coroner's Department/Information Systems
 320 N. Flower Street
 Santa Ana, CA 92703
 Attn: Project Manager

III. Pricing *

Monthly Rate: ~~\$54,166.66~~ \$84,533.33

Contract not to exceed: ~~\$3,250,000.00~~ \$3,978,800.00

- * No other amounts, fees, or costs other than what is listed under this Contract shall be paid by County.

ATTACHMENT B

Compensation and Pricing Provisions

This is a fixed fee Contract between County and Contractor for goods and services provided in Attachment A, Scope of Work / Pricing. Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for services.

1. Pricing

Pricing set forth in Attachment A shall be firm for the term of the Contract.

2. Payment Terms

Invoices are to be submitted in accordance with Paragraph F, Acceptance/Payment.

Contractor shall reference Contract number on invoice. Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to County and verified and approved by the Sheriff-Coroner Department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with Contractor.

Billing shall cover services and/or goods not previously invoiced. Contractor shall reimburse County for any monies paid to Contractor for goods or services not provided or when goods or services do not meet the Contract requirements. Payments made by County shall not preclude the right of County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

3. Invoicing Instructions

Payments and/or invoices are to be sent to:

Sheriff-Coroner Department / Information Systems
320 N. Flower Street
Santa Ana, CA 92703
Attn: Melissa Iglesias

Contractor will provide an invoice for services rendered, not more frequently than monthly. Each invoice will have a number and shall include the following information:

1. Contractor's name and address
2. Contractor's remittance address
3. County Contract number
4. Contractor's Federal I.D. number
5. Date of Order
6. Product description, quantity, prices
7. Sales tax, if applicable
8. Brief description of services

EXHIBIT 1**CHILD SUPPORT ENFORCEMENT REQUIREMENTS**

In order to comply with child support enforcement requirements of the County the required Contractor data and certifications must be submitted within 10 days of notification of award.

Failure of a bidder to submit the data and/or certifications required above shall result in the bid being deemed non-responsive and the bidder may be disqualified from being considered for Contract award. Subsequent to issuance of the Contract, failure to comply with all federal and state reporting requirements for Child Support Enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

The certifications will be stated as follows:

*"I certify that **Computer Deductions Inc.** is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of **Contract # MA-060-14010556** with the County of Orange. I understand that failure to comply shall constitute a material breach of the Contract and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.*

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and for no other purposes and will be held confidential by those agencies.

Failure of Contractor to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

County of Orange Child Support Enforcement

Contract Certification

INSTRUCTIONS:

UPON NOTIFICATION OF SELECTION FOR CONTRACT AWARD/REQUEST FOR RENEWAL, **COMPLETE PART I AND PART II.**
RETURN COMPLETED FORM TO: SHERIFF-CORONER DEPARTMENT/PURCHASING SERVICES BUREAU, 320 N. FLOWER ST., SANTA ANA, CA 92703.

PART I

A. In case of an individual contractor, provide:

His/her name, date of birth, Social Security number, and residence address:

B. In the case of contractor doing business in a form other than as an individual, provide:

The name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity; OR

C. *If your firm is a non-profit entity please indicate: "N/A, Non-Profit Organization" OR If no single person owns an interest of 10 percent or more please state this fact below.

(Please note: Part II "Certification" must also be signed and returned)

1. Name:

____ D.O.B.

____ SSN No:

Residence Address:

2. Name:

____ D.O.B.

____ SSN No:

Residence Address:

PART II

CERTIFICATION (PART I MUST ALSO BE COMPLETED)

I certify that **Computer Deductions Inc.** is in full compliance with all applicable Federal and State reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of **Contract Number: MA-060-14010556** with the County of Orange.

I understand that failure to comply shall constitute a material breach of the contract and the failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.

AUTHORIZED SIGNATURE _____

PRINTED NAME _____

TITLE _____

EXHIBIT 2**EDD-INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS**

Effective January 1, 2001 the County of Orange is required to file federal Form 1099-Misc for services received from a “service provider” to whom the COUNTY pays \$600 or more or with whom the COUNTY enters into an AGREEMENT for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term “service provider” is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as “an individual who is not an employee of the service recipient for California purposes and who received compensation or executes an AGREEMENT for services performed for that service recipient within or without the state.” The term is further defined by the California Employment Development Department to refer specifically to independent CONTRACTORS. An independent CONTRACTOR is defined as “as an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes an AGREEMENT for services performed for that ... government entity either in or outside of California.”

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.

To comply with the reporting requirements of, County procedures for contracting with independent CONTRACTORS mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

First Name, Middle Initial, and Last Name
 Social Security Number
 Address
 Start and expiration dates of contract
 Amount of contract

PART I

First Name	Middle Initial	Last Name
SSN# _____		Date of
Birth _____		
Address _____		
Contract No. _____		
Start Date _____		Expiration Date _____
Dollar value of contract _____		

PART II

CERTIFICATION (PART I must also be completed)

I certify that _____ is in full compliance with all applicable Federal and State reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract Number: _____ with the County of Orange.

I understand that failure to comply shall constitute a material breach of the contract and the failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.

AUTHORIZED SIGNATURE _____

PRINTED NAME _____

TITLE _____