

**Contract #MA-060-17010218 For
Great Plains Software License Maintenance Services for the Commissary Operations System**

This agreement, hereinafter referred to as "Contract" is made and entered into as of the date fully executed by and between, **Premier Computing, Inc.** with a place of business at 6965 Union Park Center, Ste 400, Cottonwood Heights, UT 84047; 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, the County purchased a non-exclusive, perpetual and non-transferable license to Software (as defined herein) from Contractor on March 6, 2007 and as fully described in Section 1 of Attachment F to Amendment Number One to Commissary Operating Systems Contract N100008122; and,

WHEREAS, the County entered into Agreement MA-060-12010047 with Contractor for maintenance of the software license for the Commissary inventory system on September 13, 2011 for a two year period, renewable for three additional one year periods which were renewed.

WHEREAS, the County desires to continue receiving certain maintenance services for the Software, as further described herein; and

WHEREAS, County's Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract for **Great Plains Software License Maintenance Services for the Commissary Operations System**.

NOW, THEREFORE, the Parties mutually agree as follows:

Definitions:

1. **Commissary Operations Systems or System:** The term "*Commissary Operations System*" or "*System*" shall mean the entire Commissary Operations System currently used by County, built by Contractor, inclusive of perpetual enterprise Software Licenses, annual maintenance and support, technical support and help desk support.
2. **Software:** The term "*Software*" shall mean the computer program(s) in object code and the user manuals and documentation that are provided to the County for all software listed in Attachment A, Section I. The term "Software" shall also include any corrections, bug fixes, enhancements, updates, new releases or other modifications, including customer modifications to such computer program(s).
3. **Update:** The term "*Update*" shall mean any fixing of bugs, patches, and/or fixes, enhancements, and or improvements to the Software and any addition of new features pertaining only to the County's existing modules.
4. **Upgrade:** The term "*Upgrade*" shall mean platform changes, addition to new modules or new integration points of the creation of new versions.
5. **Documentation:** The term "*Documentation*" shall mean all written and electronic manuals, training material, or other associated printed materials and updated versions thereof, which are necessary or useful to the County in its use of the System or the Software provided hereunder.
6. **Annual Maintenance and Support:** The term "*Annual Maintenance and Support*" shall mean al services described herein as Annual Maintenance and Support for all Software listed in

Attachment A.

7. **Annual Maintenance Period:** The term “*Annual Maintenance Period*” shall mean a twelve (12) month contract period.

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, C, and Exhibit 1 (Blank Child Support Enforcement Certification Requirements Form), which have been incorporated, when accepted by the 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 system specifications, and 2) payment shall be made in advance by County and in accordance to Attachment C, Compensation and Pricing. If this Contract is terminated for any reason, Contractor shall immediately pay to County one-twelfth (1/12) of the Annual Fee for each month or portion thereof remaining in the Contract term.
- 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 indemnities 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 “HH” below, it shall indemnify, defend and hold County and County Indemnities 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 the 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. **INSURANCE PROVISIONS**

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the 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.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

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 upon review of Contractor's current audited financial report.

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

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the State of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the 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 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or 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 and agents as Additional Insured's.
- 2) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

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

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

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor's Professional Liability is a "Claims Made" policy, Contractor shall agree to maintain Professional Liability coverage for two (2) years following the completion of the Contract.

The Commercial General Liability policy shall contain a severability of interests' clause, also known as a "separation of insured's" clause (standard in the ISO CG 001 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 (7) 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 (30) 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 "HH" below, 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, and the County agrees to the assignment of the Contract to the new owners, 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 "HH" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnities 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 attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Intentionally left blank.**
- 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.

HH. **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 Indemnities"), 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 Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

II. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the 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 no limited to, the costs of administering the contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three 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 the County to audit records and interview staff of any subcontractor related to performance of this contract.

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

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, which is attached hereto as Attachment A and incorporated by this reference.

2. **Term of Contract:** This Contract shall commence upon execution of all necessary signatures, and shall be effective starting on September 26, 201~~86~~ for ~~onetwo~~ (1~~2~~) years from that date, unless otherwise terminated by County. Contract may be renewed for up to ~~two~~three (2~~3~~) additional one-year consecutive terms, upon mutual agreement of both Parties. Each renewal of this Contract may require approval by the County Board of Supervisors. The County does not have to give reason if it elects not to renew.
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:** After receipt of a termination notice from County, Contractor shall

submit to County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by County upon written request of Contractor. Upon termination County agrees to pay Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the Contract. 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:

Premier Computing, Inc.
6965 Union Park Center, Suite 400
Cottonwood Heights, UT 84047
Attn: Casey Lawrence and Vi Nguyen
Email: clawrence@premiercomputing.com; vi@premiercomputing.com
Ph: (801) 487-8400

For County:

PROJECT MANAGER:

County of Orange
Sheriff-Coroner Department/Commissary Operations
1530 S. State College Blvd.

Anaheim, CA 92806
Attn: Teresa Gaulin
Ph: (714) 939-4850

PURCHASING

County of Orange
Sheriff-Coroner Department/Purchasing Services Bureau
320 N. Flower Street, 2nd Floor
Santa Ana, CA 92703
Attn: Monica Rodriguez, Buyer
Ph: 714-834-6318
Fx: 714-834-6697

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 an accurate record of time expended by Contractor in the performance of this Contract. Such record shall be available for periodic inspection by County at reasonable times. Such records will be retained for three (3) years after the expiration or termination of this Contract.
17. **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 the that 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.

18. **Substitutions:** Contractor is required to meet all specifications and requirements contained herein. No substitutions will be accepted without prior County written approval.
19. **Correspondence to Buyer – Contract:** Any correspondence related to terms, prices and conditions of this contract must be directed to the agency/department purchasing division to the attention of the assigned buyer. Correspondence not directed through the buyer for resolution will not be regarded as valid.
20. **Software-Future Releases (Updates and Upgrades):** Contractor periodically distributes Updates and other changes to the Software standard releases. If improved, updated or enhanced versions of the Software are developed and made available to other licensees, they will be made available to the County at no additional charge and as part of maintenance. County shall also be entitled to Updates as part of the Annual Maintenance and Support Services provided by Contractor. Updates and Service Packs shall be automatically sent to County if it is current on its Annual Maintenance and Support Fee for that Annual Maintenance and Support period.
21. **Software – Maintenance:** The correction of any residual errors in any software products developed by Premier Computing, Inc. and/or sub-contractors, which may be discovered by Contractor or by County, will be considered maintenance. Such maintenance will be performed by the contractor without additional charge for the duration of this Contract. Suspected errors discovered by the County in the software products will be handled by the following procedure:
 1. A listing of the output and a copy of the evidential input data in machine readable format will be submitted to the contractor along with a completed copy of the appropriate contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error was noted.
 2. Errors in the software product as verified by the contractor will be corrected by providing a new copy of said software product or a new copy of the affected portions in machine-readable format.

The contractor will be available to assist the County in isolating and correcting error conditions caused by the County's particular hardware or operation system at rates specified in this contract. If the contractor is called upon by the County to correct an error caused by the County's negligence, modification by the County, County-supplied data, or machine or operator failure or due to any other cause not inherent in the original software products, the contractor reserves the right to charge the County for such service on a time and material basis at a rate of \$195 per hour.

22. **Software – Documentation:** The Contractor agrees to provide the county copies of all GP 2013 Software manuals and necessary or useful documentation in printed or electronic form, including Microsoft Dynamics GP2013 user manuals and reference materials, and software installation procedures for 3rd party software including Premier Computing, Inc. and ADC/X10 customizations. The County may make as many copies of the documentation as desired for County use.
23. **Software – Acceptance Testing:** Acceptance testing may be required for all contractor-supplied software as specified and listed in the contract or order, including all software initially installed. Included in this clause are improved versions, including new releases, of this software, any such software which has been modified by the contractor to satisfy the County requirements, and any substitute software provided by the contractor in lieu thereof, unless the contract or order provides otherwise. The purpose of the acceptance testing is to ensure that the software operates in substantial accord with the contractor's technical specifications and meets the County's performance specifications.

Signature Page

The Parties hereto have executed this Contract# MA-060-17010218 for Great Plains Software License Maintenance Services for the Commissary Operations System on the dates shown opposite their respective signatures below.

Contractor*: Premier Computing, Inc.

By: _____ Title: _____

Print Name: _____ Date: _____

Contractor*: Premier Computing, Inc.

By: _____ Title: _____

Print Name: _____ Date: _____

**If the contracting party is a corporation, (2) two signatures are required: (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision.*

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution 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 the Board of Supervisors: _____

Approved as to Form
Office of the County Counsel
Orange County, California

by _____
Deputy

ATTACHMENT A**Scope of Work**

Contractor shall provide Great Plains Software License Maintenance Services for the Commissary Operations System to be used by Sheriff-Coroner Department Commissary Facilities.

I. SCOPE OF SERVICES:

Great Plains Software License Maintenance Services: Contractor shall provide all Software updates and online training benefits as part of the Annual Maintenance & Support Fee. County shall have access to the CustomerSource web site, which shall be available 24/7 and shall have technical self-help information which County users or IT personnel can research. County shall also receive two (2) support incidents from Contractor.

Great Plains Software License Maintenance Services for the Commissary Operations System shall include services for the following:

Item No.	Item Description	Users
1	Dynamics – * GG System Mgr Business Intelligence Foundation	1 Professional User
	*GG System Mgr Business Intelligence Foundation License includes: a) Dynamics – GP Smart List b) Dynamics – GP Smart List Building c) Dynamics – GP Report Writer d) Dynamics – GP Business Portal/25 Users included (Current Version) e) Dynamics – GP Printer Re-Director f) Dynamics – GP Enhanced Locator Series g) Crystal Reports Professional V 10.0	---
2	Dynamics – GP User Licenses	25 Users
3	Dynamics – GP General Ledger (GL) includes: a) Advanced Financial Analysis (Columnar Reporting) b) FRx Extended Financial Reports – 4 Designer & Drilldown Licenses c) Dynamics – GP Excel Budgeting Wizard	4 Users
4	Dynamics – GP Interfund/IC Module (IF/IC)	---
5	Dynamics – GP Analytical Account (AA)	---
6	Dynamics – GP Audit Trails (AT)	---
7	Dynamics – GP Payables Management (PM)	---
8	Dynamics – GP Receivables Management (RM)	---
9	Dynamics – GP Grant Management (GM) Requires Analytical Accounting (AA)	---
10	Dynamics – GP Sales Ordering Processing w/Advanced Invoicing (SOP)	---
11	Dynamics – GP Inventory Management (IV)	---
12	Dynamics – GP Bill of Materials (BOM)	---

Item No.	Item Description	Users
13	Dynamics – GP Purchase Order Processing w/Receiving (POP)	---
14	Dynamics – GP Modifier with Visual Basic Application Software (VBA)	---
15	Dynamics – GP Purchase Order Processing Auto Purchase Order Generator (AutoPO)	---
16	Dynamics – GP Extender Enterprise Version	---
17	Dynamics – GP Developer Tool Kit (Visual Studio.net, Web Services, eConnect)	---
18	Microsoft Run Time SQL2005 Unlimited Database License Per Processor License (No SA Plan)	2 Users

Item No.	Item Description	Users
1	Maximum Data or ADC System Manager Devise	6 POS Workstations 2 Warehouses 14 Users
2	Order fulfillment for Sales Order Processing	---
3	Returns Management for Sales Order Processing	---
4	Receiving for Purchase Order Processing	---
5	Annual Enhancement and Support	---

A. ANNUAL GREAT PLAINS SOFTWARE LICENSE MAINTENANCE SERVICES:

- 1) **All Software Updates:** Receive all updates for the software listed in Section II, to keep software current.
- 2) **Transformation Assurance:** Enables County to move to the next-generation, Microsoft.NET – connected solution to the Software without having to re-purchase the functionality that the County already has a license for. Microsoft.NET – connected solution refers to any code revisions to the Software. Any functionality equivalents between current products and the new software programs are provided at no extra cost. This protects County in the event of a major code revision to the Software, so County will receive new technology and software programs at no charge on County designated time frame.
- 3) **CustomerSource:** Premier secure, password-protected website for Microsoft Business Solutions customers, CustomerSource provides access to a searchable technical database, discussion boards, news, a subscription service and more.
- 4) **Ability to Purchase Additional Products:** County reserves the right to purchase add-on products in the future if needed at a competitive price. It is understood and agreed upon that a purchase of additional software shall include Annual Maintenance.
- 5) **County Feedback:** Ability to make suggestions for future products and new features through the annual product advisory board survey and global suggestion database. Many product improvements and new features come directly from suggestions that customers make. Contractor agrees to send a Product Advisory Board Survey to County project manager

enrolled in the Enhancement Program. Suggestions may also be entered directly to the Global Suggestions Database throughout the year via CustomerSource.

- 6) **Technical Support:** Two (2) technical support incidents with a 3-hour guaranteed response time.
- 7) **Managed Newsgroups:** Online forums where customers can collaborate with other customers to learn about their solution and solve technical issues. If questions aren't answered by other customers within two (2) business days, a Microsoft Business Solutions support engineer will respond with answers to questions.
- 8) **Online Training Benefits:** County may access electronic training courses (eCourses) of Microsoft Business Solutions Online Training. This eLearning option helps County learn the ins and outs of their solution through self-directed tutorials, available via any PC with Internet access.
- 9) **Customer Source Web:** County shall have access to the Customer Source Website which shall be available 24/7 and has technical self-help information with County users or IT personnel can research.
- 10) **Support:** Contractor shall provide two (2) support incidents from Contractor.

II. **CONTRACTOR'S EXPENSE:**

Contractor shall be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County shall not provide free parking for any service in the County Civic Area.

III. **DELIVERY LOCATIONS FOR SERVICES:**

No County holidays or weekend Services/Deliveries shall be accepted, unless prior arrangements are made with County Project Manager.

County holidays are as follows:

New Year's Day	Martin Luther King's Birthday	Lincoln's Birthday
President's Day	Memorial Day	July 4 th -Independence Day
Labor Day	Columbus Day	Veteran's Day
Thanksgiving & Friday	Christmas Day	-----

County of Orange
 Sheriff – Coroner Department
Commissary Operations
 1530 S. State College Blvd
 Anaheim, CA 92806
 Attn: Teresa Gaulin
 (714) 939-4850

ATTACHMENT B**Pricing**

- Contractor shall provide Great Plains Software License Maintenance Services for the Commissary Operations System at the rates set below:

SERVICES – GREAT PLAINS SOFTWARE LICENSE MAINTENACE SERVICES

Item No	U/M	Item Description	Cost
1	Annual Rate	Great Plains – Enhancement Maintenance/Services	\$16,048.00
2	Annual Rate	ADC Annual Maintenance/Services	\$1,345.00
3	*Hourly Rate	During Normal Business Hours Monday – Friday, 8:00 a.m. to 5:00 p.m. (Pacific Time) No Holidays or Weekends Not to exceed 40 hours per annual contract period	\$175.00

*** Contractor must receive written approval from County Project Manager to charge hourly rates for services not covered under this Maintenance Service Agreement.**

- The amount of this Contract for Great Plains Software License Maintenance Services for the Commissary Operations System shall not exceed \$50,000.00 for the two-year term starting on September 26, 2016 and ending on September 26, 2018. If County elects to renew the Contract, the annual amount of the Contract shall not exceed \$25,000.00 per year.

NOTE:

Contractor understands and acknowledges that County requires additional approval and authorization for services that would cause the total of this Contract to exceed \$25,000.00 per year. **Contractor shall not stop performance of any work under this Contract unless the County would incur costs that exceed the total amount for the Contract period.**

ATTACHMENT C

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. Contractor agrees to accept the specified compensation as set forth in Attachment B of this Contract as full remuneration for services.

1. Pricing

Pricing set forth in Attachment B shall be firm except for any price decreases which will automatically be extended to the County of Orange. County will accept decreases only.

2. Payment Terms

Contractor shall submit a yearly invoice at the beginning of every contract year for the annual rate amount of \$17,393.00 as described in Attachment B of this Contract. Contractor shall then invoice County for other services as described in Attachment A of this Contract as they are performed and in accordance with the rate described in Attachment B of this Contract. 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.

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.

3. Invoicing Instructions:

- a) Payments and/or invoices are to be sent according to ordering division:

County of Orange
Sheriff-Coroner Department
Commissary Operations
1530 S. State College Blvd,
Anaheim, CA 92806
Attn: Accounts Payable

- b) 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 Tax I.D. number
5. Date of Order
6. Product description, quantity, prices
7. Sales tax, if applicable
8. Brief description of services

4. Year End and Final Invoices

At the end of each term of the Contract, and upon final termination, Contractor shall submit final invoices for services rendered or goods accepted by County under the Contract term (typically one year) within ninety (90) days. For example, if the term of a Contract ends, or the Contract expires without being renewed on June 30th, any and all invoices for services rendered or goods accepted by County during the preceding term of the Contract shall be submitted to County on or before September 28. In the event the ninetieth (90th) day falls on a weekend or County holiday, the deadline for submission of invoices shall be extended to the next business day. County holidays include New Year's Day, Martin Luther King Day, President Lincoln's Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

Contractor's failure to submit invoices pursuant to the deadlines established herein may be deemed a breach and shall be a basis for the County to refuse payment.

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 **Premier Computing, 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-060-17010218** 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 the 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 **Premier Computing, 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-060-17010218** 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