

**CONTRACT No. MA-012-14011932
 BETWEEN
 ORANGE COUNTY HOUSING AUTHORITY
 AND
 HAPPY SOFTWARE, INC.**

This Contract to provide Public Housing Authority Enterprise Application Software System, hereinafter referred to as "Contract", is made and entered into as of the date fully executed by all necessary parties or approved by the County Board of Supervisors, whichever occurs later, and the Orange County Housing Authority, hereinafter referred to as "County" or "OCHA" or "Agency" or "Licensee" and HAPPY Software, Inc., with a place of business at 11 Federal Street, Saratoga Springs, NY 12866, hereinafter referred to as "Contractor," with County and Contractor sometimes individually referred to as "Party" or collectively referred to as "Parties."

RECITALS

WHEREAS, Contractor will provide licensing and support for Public Housing Authority Enterprise Application Software System; and

WHEREAS, the County of Orange Board of Supervisors, acting as the governing board for OCHA, has authorized the Purchasing Agent or his designee to enter into a Contract to obtain Public Housing Authority Enterprise Application Software System;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

I. 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 D which have been incorporated, 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. Except for Software Updates, Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including, but not limited to, installers of software, 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. County is responsible for Sales or Use Tax, if any.
- 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 goods 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 complete until all goods and services have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by COUNTY, acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received and delivery meets the specifications outlined in published fact sheets. Payment shall be made in accordance with the Payment Schedule in Attachment B.
- G. **Warranty:** Contractor warrants that it is authorized to enter into this Contract and grant the licenses specified in this Contract.

Software Warranty: Contractor warrants that the Software will perform as made available substantially in conformance with the Attachments C and D. Contractor does not warrant that the Software is error-free or will operate without interruption. County's sole and exclusive remedy for any breach of this warranty is the repair or replacement of the particular non-conforming Software, but only if such error or defect is reported to Contractor within the Warranty Period and the repaired or replacement Software performs as made available substantially in conformance with the Documentation. Where Contractor is unable to repair or replace the Software concerned, Contractor will refund to County the license fees paid for each such Software.

Malicious Code: Contractor has used commercially reasonable efforts to ensure that Software made available to County by Contractor does not contain viruses, worms, Trojan horses or other unintended malicious or destructive code ("Malicious Code"). If Malicious Code is discovered, Contractor will use commercially reasonable efforts to supply a clean copy of the relevant Software within a reasonable period.

Limitation of Liability: If County should become entitled to claim damages from Contractor, Contractor shall be liable for all damages that arise from or are reasonably related to Contractor's negligence or intentional misconduct. In no event will Contractor or any person or entity involved in the creation, manufacture or distribution of any Software, Documentation, services or other materials provided under this Contract be liable for: (1) any damages caused by the failure of County or its affiliates or suppliers to perform their responsibilities; or (2) any lost profits, loss of business, loss of use, lost savings or other consequential, special, incidental, indirect, exemplary or punitive damages. Contractor will be liable only for the amount of County's actual direct damages, not to exceed (in the aggregate for all claims) the amount that the County paid Contractor during the contract term for the Software, items or services that are the subject of the claim.

- 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 requirements contained in paragraph P below, it shall indemnify, defend and hold County and its 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, attorneys' fees, costs and expenses.

- I. **Assignment or Subcontracting:** 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 subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or subcontract 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 not engage nor permit any sub-contractors 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, sexual preference, 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.
- K. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in the Contract, County has the right to terminate this Contract without penalty with 60 days written notice for cause, unless otherwise specified. Cause shall be defined as any breach of Contract or 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 obligations.
- 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 sub-contractors.
- P. **INSURANCE PROVISIONS**

Prior to the provision of services under this contract, the contractor agrees to purchase all required insurance at contractor's expense and to deposit with the County Certificates of Insurance, including

OC Community Resources
HAPPY Software Inc

MA-012-14011932

all endorsements required herein, necessary to satisfy the 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 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.

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 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 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

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 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 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 the 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.

All insurance policies required by this contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

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 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 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 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; Contractor's staff, agents and employees; and sub-contractors.
- 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 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. ~~**Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, sub-contractors, 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.~~ **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. **Attorneys’ Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys’ 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 its 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 it has 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 of 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 organizations or entities, enforceable in accordance with its terms.
- GG. **Employee Eligibility Verification:** The 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. The 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. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the 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 PROVISIONS:** 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 for 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 not 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.

JJ. Confidentiality of Service Recipients

1. Protection from unauthorized disclosure. Contractor shall protect from unauthorized disclosure the names and other personal identifying information ("Personal Information") of service recipients receiving services pursuant to this Contract, and information about, or obtained from said service recipients, except for statistical information not identifying any service recipient.
2. Use of information. Contractor shall not use such Personal Information for any purpose other than carrying out Contractor's obligations under this Contract.
3. Transmittal of requests for disclosure. Contractor shall promptly transmit to County all requests for disclosure of Personal Identifying information not authorized by the subject of such information.
4. Nondisclosure by Contractor. Contractor shall not disclose, except as otherwise specifically permitted by this Contract or authorized by the service recipient, any such Personal Information to anyone other than County or the State of California without prior written authorization from County or the State, except when subpoenaed by a court.
5. Blanket authorizations or blank releases. Contractor may allow clients to authorize the release of Personal Information to specific entities, but shall not request or encourage any service recipient to give a blanket authorization or sign a blank release, nor shall the Contractor accept such from any service recipient.
6. Personal Information. For purposes of this Agreement, Personal Information shall include, but not be limited to, name, identifying number, symbol or other identifying characteristic assigned to the service recipient, such as finger or voice print or a photograph.
7. Furnishing information as required by government contracts. The provisions of this Section shall not restrict Contractor's obligation to provide information required under this or any of its other County, State or federal contracts.

II. 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 and Deliverables, which is attached hereto as, Attachment A and incorporated by this reference.
2. **Term of Contract:** ~~The term of this Contract shall be effective September 1, 2014, continuing for one year from that date, unless earlier terminated by County. This Contract may be renewed beyond the initial term for up to two (2) additional 1-year terms with the written approval of the Director of OC Community Resources, or designee. The COUNTY is not obligated to give a reason if it elects not to renew. Any contract renewals may require the approval of the County of Orange Board of Supervisors. This Contract term shall be in effect on September 1, 2015 and continue through August 31, 2016. This Contract may be renewed beyond the initial term by mutual agreement of both parties for up to three (3) additional 1-year periods.~~ **This Contract term shall be in effect on September 1, 2018 and continue through August 31, 2019.**
3. **Fiscal Appropriations:** This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange 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.
4. **Precedence:** The Contract documents consist of this Contract, including its Attachments. In the event of a conflict between the Contract documents, the order of precedence shall be this Contract, then the Attachments.
5. **Compensation:** Contractor agrees to accept the specified compensation as set forth in, Attachment B as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder.
6. **Project Managers – County and Contractor:** County shall appoint a Project Manager to act as liaison between County and Contractor during the term of this Contract.

Contractor shall appoint a Project Manager to direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. Contractor shall appoint an Alternate Project Manager to act in the absence of the Project Manager. Contractor's Project Manager, Alternate Project Manager and key management personnel 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 of Contractor's Project Manager and/or Alternate Project Manager and/or key management personnel from providing services to County under this Contract and the replacement of Contractor's Project Manager and/or Alternate Project Manager and/or key management personnel. County's Project Manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within 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 and/or Alternate Project Manager and/or key management personnel from providing services to County under this Contract.

7. **Contractor Personnel:** In addition to the rights set forth in paragraph 6, immediately above, 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 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.
8. **Reports/Meetings:** Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract, including, but not limited to, those specified in, Attachment A, Scope of Work. County's Project Manager and Contractor's Project Manager will meet on reasonable notice to discuss Contractor's performance and progress under this Contract. If requested, Contractor's Project Manager and other project personnel shall attend all meetings. Contractor shall provide such information that is requested by County for the purpose of monitoring progress under this Contract.
9. **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 Contractor's site for a period of four years after final payment is received from County. Storage of records in another county will require written approval from County's DPA.
10. **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 interests of County. This obligation shall apply to Contractor; Contractor's employees, agents, relatives, and sub-contractors, and third parties associated with accomplishing work and services 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 interests of County.
11. **Non-Disclosure:** All materials, documents, data or information obtained from County data files or any County medium furnished to Contractor or Contractor-provided staff or sub- in the performance of this Contract will at all times remain the property of County. Such data or information may not be disclosed, used or copied for direct or indirect use outside this Contract by Contractor during or 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 or destroyed at the end of this Contract. ~~Contractor agrees to sign a non-disclosure agreement prior to beginning work and an affidavit of data return and/or destruction at termination of this Contract.~~
12. **Breach of Contract:** The failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- a. Afford Contractor written notice of the breach and thirty (30) calendar days or such shorter time that may be specified in this Contract within which to cure the breach; and
 - b. Discontinue payment to the Contactor for and during the period in which Contractor is in breach; and
 - c. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the above; and

d. Terminate the Contract immediately without penalty.

13. Contract Disputes: 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 County Purchasing Agent by way of the following process:

Contractor shall submit to the agency/department DPA 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.

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.

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 County Purchasing Agent or his designee. If County fails to render a decision within 90 days of receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions.

14. 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 assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

15. Notices: Any and all notices permitted or required to be given hereunder shall be deemed duly given upon actual delivery, if delivery is by hand or 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:

Name: Happy Software, Inc. MRI Software LLC
 Address: 11 Federal Street 28925 Fountain Parkway, Solon, OH 44139-4356
 City, State, Zip Code: Saratoga Springs, NY 12866 Solon, OH 44139-4356
 Attn: Jennifer Kelly TBD
 Title: Operations Manager TBD
 Phone: (888)484-2779 X114 TBD

Commented [GG1]: 6/26/18 Awaiting feedback from Ginny

For County:

County of Orange

OC Community Resources
HAPPY Software Inc

MA-012-14011932

OCCR Purchasing & Contract Services
Attn: Purchasing Buyer
1770 N. Broadway, 4th Floor
Santa Ana, CA 92706-2642

- 16. Incorporation:** Attachments A through D are attached hereto and incorporated herein by reference.
- 17. Audits/Inspections:** Contractor agrees to permit County's Auditor-Controller or County'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 payment is made.
- Contractor agrees to maintain such records for possible audit for a minimum of four 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 a similar right to County to audit records and interview staff of any sub-contractor 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. Contractor's Expense:** Contractor will be responsible for all costs related to photo copying, telephone communications, e-mail communications, fax communications, and parking while on County sites during the performance of work and services under this Contract unless otherwise specified. County will not provide free parking for any service in County Civic Center.
- 19. Gratuities:** Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by County in procuring on the open market any goods or services which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- 20. 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.
- 21. News/Information Release:** 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 County through County's Project Manager.

22. Department of The Treasury, Internal Revenue Service Form W-9 Requirements (Exhibit 2):

Effective June 3, 2006, all Contractors, entering into a contract with the County, who are not already established in the Countywide Accounting and Personnel System (CAPS) as an Auditor-Controller vendor, will be required to submit to the County a federal Form W-9. The County will inform the Contractor, at the time of award, if the Form W-9 will be required.

23. County of Orange Child Support Enforcement Certification Requirements (Exhibit 1): Failure of Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Respondent. In the event a Contract has been issued, failure of Contractor to comply with all federal, state, and local 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 10 calendar days of notice from County shall constitute grounds for termination of the Contract.

24. 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/direction of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by 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 County unless otherwise agreed to by both Parties.

25. Errors and Omissions: All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional identified by Contractor as Project Manager, prior to submission to County. Contractor agrees that County review is discretionary and Contractor shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

26. Software - Acceptance: The County shall be deemed to have accepted each software product unless the County, within 30 days from the installation date, gives contractor written notice to the effect that the software product fails to conform to the functional and performance specifications, which, if not attached, are incorporated by reference. The contractor will, upon receipt of such notice, investigate the reported deficiencies. The right of the parties shall be governed by the following:

If it is found that the software product fails to conform to the specifications and the contractor is unable to remedy the deficiency with 60 days, the County shall return all material furnished hereunder and this contract shall be terminated.

If it is found that the software product fails to conform to the specifications and the contractor, within 60 days of receipt of the above said notice, corrects the deficiencies in the software product, the County will provide the contractor with written acknowledgement of its acceptance of said software product.

If it is found that the software product does, in fact, conform to the specifications, the County shall reimburse the contractor for the time and material cost of the investigation at the rates specified in this contract.

The County's acceptance of the software product is contingent upon the software product conforming to Attachments C and D and providing access to Online Help System.

27. Software – Acceptance Testing: Acceptance testing may be required as specified 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 test is to ensure that the software operates in substantial accord with the contractor’s technical specifications and meets the County’s performance specifications. Any acceptance testing must be performed in conformance with the specifications outlined in the Contractor’s published fact sheets.

28. Software – Maintenance: Note: This T and C is applicable to software products with renewable or perpetual licenses where software maintenance is required by the County.

The correction of any residual substantial errors in any software products which may be discovered by the contractor or by the 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:

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.

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.

29. Software License: The contractor hereby grants to the County of Orange and the County accepts from the contractor, subject to the terms and conditions of this agreement, a non-exclusive, non-transferable license to use the software products listed in this agreement, as Attachment A, hereinafter referred to as “software products.” The license granted above authorizes the County to use the software products in machine-readable form on a single computer system, designed in writing by the County to the contractor, provided that if the designated CPU is inoperative due to malfunction, license herein granted shall be temporarily extended to authorize the County to use the software products in machine-readable form on any other County CPU until the designated CPU is returned to operation. By prior written notice to the contractor the County may redesignate the CPU in which the software products are to be used and must do so if the redesignation is permanent.

When encryption/CPU ID authorization codes are required to operate the software products, the contractor will provide all codes to the County with shipment of the software. In the case of an inoperative CPU, as defined above, contractor will provide a temporary encryption/CPU ID authorization code to the County for use on a temporarily authorized CPU until the designated CPU is returned to operation. When changes in designated CPUs occur, the contractor will issue to the County within 24 hours of notification a temporary encryption/ID authorization code for use on the newly designated CPU until such time a permanent code is assigned.

30. Expenditure Limit: The contractor shall notify the County of Orange assigned buyer in writing when the expenditures against the contract reach 75 percent of the dollar limit on the contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the contract unless a change order to cover those costs has been issued.

31. Security Breach Procedures

a. "Security Breach" means: (i) any act or omission that compromises either the security, confidentiality or integrity of Personal Information or the physical, technical, administrative or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality or integrity of Personal Information, or (ii) receipt of a complaint in relation to the privacy practices of Contractor or a breach or alleged breach of this Agreement relating to such privacy practices.

Contractor shall:

- i. provide County with the name and contact information for an employee of Contractor who shall serve as County's primary security contact and shall be available to assist County twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Breach;
 - ii. notify County of a Security Breach as soon as practicable, but no later than twenty-four (24) hours after Contractor becomes aware of it; and
 - iii. notify County of any Security Breaches by telephone, e-mailing County with a read receipt, and with a copy by e-mail to County's primary business contact within County.
- b. Immediately following Contractor's notification to County of a Security Breach the parties shall coordinate with each other to investigate the Security Breach. Contractor agrees to fully cooperate with County in County's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing County with physical access to the facilities and operations affected; (iii) facilitating interviews with Contractor's employees and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards or as otherwise reasonably required by County.
- c. Except as otherwise required by law, Contractor agrees that it shall not inform any third party of any Security Breach without first obtaining County's prior written consent, other than to inform a complainant that the matter has been forwarded to County's legal counsel. Further, Contractor agrees that County shall have the sole right to determine: (i) the parties will meet and confer in good faith before notifying individuals, regulators, law enforcement agencies, consumer reporting agencies or others as required by law or regulation. County shall have the sole right to determine the contents of any notice sent by Contractor on County's behalf relating to a Security Breach, including but not limited to the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation; and (ii) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation.
- d. Contractor agrees to fully cooperate, at its own expense, with County in any litigation or other formal action deemed reasonably necessary by County to protect its rights relating to the use, disclosure, protection and maintenance of Personal Information.
- e. In the event of any Security Breach, Contractor shall promptly use its best efforts to prevent a recurrence of any such Security Breach.

OC Community Resources
HAPPY Software Inc

MA-012-14011932

Contract Signature Page

IN WITNESS WHEREOF, the Parties hereto have executed this Contract the day and year first above written.

CONTRACTOR

Print Name Title

Signature Date

Print Name Title

Signature Date

* Pursuant to California Corporations Code Section 313, If the contracting party is a corporation, **(2) two signatures are required**: one (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 of any Assistant Treasurer. *In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.*

County of Orange, a political subdivision of the state of California

Print Name Title

Signature Date

SIGNED AND CERTIFIED THAT A COPY OF THIS AGREEMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD per G.C. SEC 25103, RESO 79-1535 ATTEST:

APPROVED AS TO FORM:
COUNTY COUNSEL

Date: _____

By _____
Deputy

ATTACHMENT A
Scope of Work

The County of Orange OC Community Resources Department OCHA Division is requesting support and maintenance services for the Housing Pro Software used to administer housing assistance programs. This support will include the following:

1. **Updates:** Whenever HAPPY Software Inc. develops updates to the Housing Pro software to correct a deficiency or enhance its operations; such updates will be provided within 90 days. In addition, whenever changes in Federal Regulations are published as "Final" in the Federal Register and such changes necessitate a change in the software, HAPPY Software Inc. will provide updates for the software to comply with such new requirements within 90 days. A listing of changes and instructions describing how to update the software will be included with the updates.
2. **Technical Support:** HAPPY Software Inc. will provide technical support for an unlimited number of incidences. This will include access to Technical Support representatives via phone, email, mail, fax and web-based systems. This will also include remote access to the Housing Pro Software as needed to efficiently resolve an issue. HAPPY Software Inc. will comply with industry standards and County protocols for security when using remote access.

Contractor shall provide and maintain support for the following Housing Pro services:

- 1099's & Payment History
- Custom Forms
- Data Check Support Data Storage and Recovery Assistance
- Direct Deposit
- FileMTCS
- FSS Pro
- HQS Mobile Inspections (iPad)
- iDIA
- Inspections
- Occupancy
- Payments
- Remote Screen Sharing
- Reporter Writer
- Tenant Accounts Receivables
- Waiting List

Contractor shall provide and maintain support for the following Housing Pro services, in a prorated fashion between September 1, 2015 and August 31, 2016, dependent upon the installation training and Go Live for Assistance Check.

- Assistance Check
- Upgrade to Housing Pro Version 9

ATTACHMENT B-34
COMPENSATION AND PAYMENT TERMS

- I. COMPENSATION:** This is an all-inclusive, firm fixed price Contract between the County and Contractor for Professional Services, as set forth in Attachment “A” Scope of Work.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor and materials required, insurance requirements, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of total Contract amount specified herein unless authorized by amendment in accordance with Articles “21” and “36” of the County Contract’s Terms and Conditions.

- II. FEES AND CHARGES:** County will pay invoices submitted and shall be paid in accordance with the provisions of this Contract.

Item #	Description	Unit Price	Quantity	Total Price
1	Waiting List Renewal for 1 Year – HP	\$3,173,395.00	1	\$3,173,395.00
2	Occupancy Renewal for 1 Year – HP	\$7,798,343.00	1	\$7,798,343.00
3	FileMTCS Renewal for 1 Year – HP	\$3,173,395.00	1	\$3,173,395.00
4	Payments Renewal for 1 Year – HP	\$3,173,395.00	1	\$3,173,395.00
5	1099s & Payment History Renewal for 1 Year – HP	\$3,173,395.00	1	\$3,173,395.00
6	Tenant Accounts Receivable Renewal for 1 Year – HP	\$3,173,395.00	1	\$3,173,395.00
7	Direct Deposit Renewal for 1 Year – HP	\$2,405,573.00	1	\$2,405,573.00
8	FSS Pro Renewal for 1 Year – HP	\$5,147,507.00	1	\$5,147,507.00
9	Inspections Renewal for 1 Year – HP	\$4,232,528.00	1	\$4,232,528.00
10	Custom Forms Renewal for 1 Year – HP	\$2,405,573.00	1	\$2,405,573.00
11	iDIA System Renewal for 1 Year – HP	\$4,800,136.00	1	\$4,800,136.00
12	Report Writer Renewal for 1 Year – HP	\$2,979,187.00	1	\$2,979,187.00
13	Remote Screen Sharing Renewal for 1 Year – HP	\$525,561.00	1	\$525,561.00
14	DataCheck Support, Data Storage and Recovery Assistance Renewal for 1 Year – HP	No Charge \$1,597.00	1	\$0.00 \$1,597.00
15	HQS Mobile Inspections (iPad) Renewal for 1 Year – HP	\$1,059,133.00	1	\$1,059,133.00
16	AssistanceCheck - Online Assistance Portal Support, Web Hosting, and Licensing Renewal for 1 Year – HP	\$10,700,11,449.00	1	\$10,700,11,449.00
17	9.1 Server Database License Support Renewal for 1 Year (per server)	\$1,000,1,070.00	2	\$2,000,1,070.00
18	9.1 User Database License Support Renewal for 1 Year (per user)	\$149,159.00	120	\$17,880,159.00
19	9.1 Custom Check Layout Support Renewal for 1 Year	\$400,428.00	1	\$400,428.00

OC Community Resources
HAPPY Software Inc

MA-012-14011932

20	9.1 Custom Report Support Renewal for 1 Year (per report)	\$5053.00	9	\$45053.00
21	9.1 Custom Positive Pay File Support Renewal for 1 Year	\$400428.00	1	\$400428.00
Sub Total:				\$79,04586,115.00
Discount:				\$15,000.00
Total:				\$64,04571,115.00

III. Payment Terms – Payment in Advance: Invoices are payable 30 days in advance, unless otherwise directed in this contract. Invoices are to be submitted to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Vendor shall reference price agreement number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the contractor.

Billing shall cover service and/or goods not previously invoiced. The contractor shall reimburse the County of Orange for any monies paid to the contractor for goods or services not provided or when goods or service do not meet the contract requirements.

IV. INVOICING: The County's Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction. The Contractor will provide an invoice on Contractor's letterhead for services rendered.

Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address, if different from 1, above
3. Contractor's Tax ID Number (TIN) or Employer's ID Number (EIN)
4. Name of County agency/department
5. Delivery/service address
6. Contract Agreement Number **MA-012-14011932**
7. Date of order/service
8. Product/Service description, quantity, and prices
9. Sales Tax, if applicable
10. Freight/delivery charges, if applicable
11. Total

Invoices and support documentation (if applicable) are to be forwarded to:

OC Community Resources
Attn: Accounts Payable
1770 N Broadway, 4th floor
Santa Ana, CA 92706

ATTACHMENT C

Definition of Support

Definitions

(i) “Incident” means a single issue, problem, or product usage question a Licensee requests HAPPY Software, Inc. (HAPPY) to analyze or resolve.

(ii) “Software” means the current version of the listed modules of software of proprietary HAPPY product(s) designated on the Purchase Agreement or one single version immediately prior to the current version.

(iii) “Support” means the assistance provided to Agency by HAPPY for the then-current version of the Software.

(iv) “Update” means bug fixes and changes to maintain compliance with regulations. Updates are identified by a change in the number to the right of the decimal point in the product version number (e.g., Housing Pro 7.1).

(v) “Upgrade” means a significant improvement to an existing product through added functionality and/or enhanced performance. Upgrades are identified by a change in the number to the left of the decimal point in the product version number (e.g., an upgrade from Housing Pro 7.0 to 8.0).

General

By installing, accessing, or otherwise using the Software, Licensee agrees to be bound by these Support terms.

The Software is sold with Support. Support is sold at the time of the purchase and must be renewed at the end of each term to allow continued use of the licensed Software. Support begins upon the implementation “Go Live” date, or your Support renewal date, indicated on your Purchase Agreement and will continue until the end of the term period, unless terminated earlier for cause. Support must be paid in advance of renewal date and is non-refundable. Support shall automatically renew for successive one-year periods unless either party delivers written notice to the other party of its intention not to renew. Termination by the Licensee requires sixty (60) days prior written notice. Support is non-transferable and is valid only for the County. HAPPY may limit or terminate Support, or may elect not to renew Support to any County who uses the services in an irregular, excessive, abusive, or fraudulent manner, as determined by HAPPY and upon notice and consultation with County.

Description of Support and Maintenance Services

If County has paid all the applicable license and support fees to HAPPY Software, Inc. (HAPPY), the following terms apply.

1. Updates

The Software is updated from time to time and whenever changes in Federal Regulations published as “Final” in the Federal Register are made and when such changes necessitate a change to the software. Changes to the Software will be made within 90 days of the effective date of the Final rule. Updates may require additional inputting or re-inputting of data by your agency and such inputting of data is not the responsibility of HAPPY. The only warranty we make is that the updated software will be fit for use and conform to the new regulations. Updates will be mailed to you, made available for download via the Internet or installed by HAPPY, at HAPPY’s option. Instructions describing how to update the Software and a listing of changes to the Software will be included with Updates. Training and installation are not

ATTACHMENT C

included. New versions of the Software will not include any customization for your agency except in modules specifically designed to survive Updates. Updates may require you to change or replace your existing hardware or system software. A new version of FileMaker® Pro, the operating environment for

the Software, may be required for new versions of the Software and is not included with Updates. We reserve the right to update or change the Software at any time. Updates must be installed in a timely manner to ensure compliance with changed regulations and to avoid interruptions in use of the Software.

2. Technical Support

Incidents

County will receive Support for an unlimited number of incidents. HAPPY will answer your questions and help you to resolve your problems with the Software to the best of our ability. HAPPY reserves the right to limit each support contact to one hour or one incident.

Availability

Support includes access to Technical Support representatives via phone, mail, email, fax, and web-based systems during regular business hours. Regular business hours are from 9:00 am to 5:00 pm Eastern Time, Monday through Friday. Support availability may occasionally deviate from published hours due to downtime for systems and server maintenance, company events, observed U.S. holidays, and events beyond HAPPY's control. Phone and other communication charges for contacts with HAPPY are the responsibility of the County.

Response Time

HAPPY will attempt to respond to County within published response times. This shall not be deemed a representation or warranty on HAPPY's behalf regarding the time within which a resolution, if any, may be available for any particular Incident. No remedy is available for HAPPY's failure to meet the published response time goal.

Remote Assistance

In certain cases, remote access to your system may be required to most efficiently resolve an issue. HAPPY uses an industry standard remote assistance tool to provide this Support and reserves the right to refuse service or charge for Support should remote assistance via our standard tool be denied.

Limitations

Support shall not include or be responsible for Incidents resulting from the following:

- Third-party services, products, or service providers
- Hardware, network or system connections or configurations
- Migration of Software to a new server or host computer
- Improper use, operation or neglect of the Software
- Alteration or modification to the Software
- Failure to implement recommendations in respect to solutions
- Use of the software for a purpose for which it was not designed
- Use that is inconsistent with published regulations and official guidance

Incidents not included in the standard Support contract will be billed at standard hourly rates. HAPPY will notify the County in advance if a fee will be charged for services outside the scope of "Support".

ATTACHMENT C

Upgrades

Upgrades to the software are not included in the Support contract. Availability, pricing and information about Upgrades, including required database engine changes, will be provided in advance.

Terms and Conditions

HAPPY shall have the right to change or add to the terms of Support at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of Support (including but not limited to pricing, technical support options, and other support-related policies) upon notice by any means HAPPY determines in its discretion to be reasonable.

ATTACHMENT D

Software Use License

Definitions

- (i) "Activation Code" means the code provided or reissued by HAPPY Software, Inc. (HAPPY) that permits Use of the Software and for which the Agency has paid the appropriate fees.
- (ii) "Agency" means a Housing Authority as defined by the U.S. Department of Housing and Urban Development or HUD.
- (iii) "Content" means all data, text, images, documents, and any other information or materials uploaded by or on behalf of you in connection with your use of the Software.
- (iv) "Purchase Agreement" means the HAPPY document that specifies the Software licensed to the Agency.
- (v) "Information" means personally identifiable information.
- (vi) "Installed User" means the number of active users registered in the software. An Agency's permitted number of Installed Users is set forth on the Purchase Agreement.
- (vii) "County" collectively refers to the Agency and the Installed Users using the Software.
- (vii) "Service Term" means the period of time for which you have elected to pay for and/or use a Service.
- (ix) "Software" means proprietary HAPPY product(s) or services, associated documentation, any updates, additional modules, or additional software provided by HAPPY Software in connection therewith.
- (x) "Use" means that the Software is either loaded in the temporary memory of a computer or installed in the permanent memory of a computer.

Using the Software binds you to the terms of this Software Use License. If Licensee does not agree to the terms of this License, County must not install, copy, download, access or Use the Software, and County must promptly notify HAPPY in writing. HAPPY reserves the right to modify, alter or otherwise update this License at anytime.

Ownership

The Software is licensed, not sold, to you by HAPPY for Use only under the terms of this License, and HAPPY reserves any rights not expressly granted to you. HAPPY shall, at all times, retain title to and ownership of all Software, regardless of its form, including without limitation, any and all revisions, custom development, updates, upgrades, modifications, bug fixes and enhancements to the Software. The County specifically acknowledges and agrees that it shall not acquire any ownership interest or proprietary right to any Software by virtue of this Use License.

Restrictions

The Software contains trade secrets in its human perceivable form and, to protect them, you may not reverse engineer, decompile, disassemble or otherwise reduce the Software to any human perceivable form. You may not modify, adapt, translate, rent, lease, loan or create derivative works based upon the

ATTACHMENT D

Software or any part thereof. The Software produces copyrighted forms and other proprietary materials during normal Use. Your Agency is allowed full Use of these materials within your Agency only, and is barred from distributing these materials for Use by any other party. You may not distribute, integrate, transmit, or provide access to the Software to any software provider that is generally competitive with HAPPY Software product offerings.

Limited Warranty

HAPPY warrants for that the entire Contract term that the Software will substantially conform to the published specifications. In no event does HAPPY warrant that the Software is error free, that the Agency will be able to operate the Software without problems or interruptions, or that the Software will operate without conflict with other systems or software programs. HAPPY does not warrant that HAPPY's servers and software are free of viruses or other harmful components, or that HAPPY's security procedures and mechanisms will prevent the loss or alteration of or improper access to information or content by third parties. HAPPY's entire liability and your sole and exclusive remedy for any breach of the foregoing limited warranty will be, at HAPPY's option, a refund of the purchase price or repair or replacement of the Software. This limited warranty is the only warranty provided.

Limitation of Liability

In no event will HAPPY, its parent, subsidiaries or any of the licensors, directors, officers, employees or affiliates of any of the foregoing be liable to you for any consequential, incidental, indirect or special damages whatsoever including without limitation, damages for loss of business profits, business interruption, loss of business information and the like, whether foreseeable or unforeseeable, arising out of the Use of or inability to Use the Software or accompanying material unless as specified in Section G of this Contract.

Termination

This License is effective until terminated. This License will terminate immediately without notice from HAPPY if you fail to comply with any provision of this License. Upon such termination you must immediately cease using and destroy the Software, all accompanying written materials and all copies thereof. Outdated versions of the Software automatically terminate if not updated to ensure compliance with Federal Regulations. County may terminate this license by providing sixty (60) days prior written notice to HAPPY. In the event of any termination of this license, County shall promptly return to HAPPY all copies of the Software and verify in writing that all copies of the Software have been destroyed within sixty (60) days. HAPPY reserves the right to delete any data files associated with Content, Information, or Use upon termination.

The following terms and conditions apply to the HAPPY and Housing Pro database products only.

Grant of Rights

You may Use the Software at one Agency only and only for the number of Installed Users specified in your Purchase Agreement(s). You may be required to enter or re-enter an Activation Code provided by HAPPY to Use the Software. You may install the Software on a common storage device which is accessible by multiple computers at your site as long as each computer that accesses the Software is an Installed User. You may make one copy of the Software in machine readable form solely for backup purposes. You may not transfer your rights under this License to another party under any circumstances. HAPPY or its independent accountants reserve the right to examine Agency's books, records and accounts during Agency's normal business hours or to electronically transmit and collect information

ATTACHMENT D

solely for the purpose of verifying compliance with the above provisions. In the event such audit discloses that the number of Installed Users is exceeded, Agency will promptly pay to HAPPY the appropriate license fee for the additional computers or users. At HAPPY's option, HAPPY may terminate this license for failure to pay the required license fee.

Third-Party Beneficiary

County is notified that FileMaker®, Inc. is a third-party beneficiary to this License to the extent that this License contains provisions that relate to County Use of the bundled software. In no event shall Bundle Redistributor or its suppliers be liable in any way for consequential, incidental, indirect or special damages whatsoever arising out of use of or inability to use the software.

The following terms and conditions apply to all HAPPY hosted web service applications only.

Privacy Policy

Use of HAPPY web services are subject to the HAPPY Software, Inc. Online Privacy Policy. A copy of this policy is available online at <http://www.waitlistcheck.com/policy.php>.

Access to Services

Your ability to access the services may require the payment of third party fees (such as telephone toll charges, ISP, or airtime charges) and that you are responsible for paying such fees. HAPPY is not responsible for any equipment you may need to be able to access the services.

To gain access to and use the services, you may be required to create a login ID and password ("Log-In Information"). You are responsible for all activity occurring under your Log-In Information, and you must keep your Log-In Information confidential and not share your Log-In Information with third parties. HAPPY has no obligation or responsibility with regard to your use, distribution, disclosure, or management of Log-In Information. Notwithstanding the foregoing, HAPPY may require you to change your Log-In Information if such Log-In Information is inconsistent with the terms of this agreement.

Content

You may upload Content to the service in connection with your use of the service. HAPPY does not verify, endorse, or claim ownership of any Content, and you retain all right, title, and interest in and to the Content. HAPPY does not store Content except as necessary for HAPPY to perform the service. HAPPY shall make commercially reasonable efforts to block the uploading of Content to the service that contains viruses detected by using industry standard virus detection software. Notwithstanding anything to the contrary herein, HAPPY has no responsibility or liability for the deletion or accuracy of Content, the failure to store, transmit or receive transmission of Content (whether or not processed by the service), or the security, privacy, storage, or transmission of other communications originating with or involving use of the service. Certain features of the service enable you to specify the level at which such service restrict access to your Content. You are solely responsible for applying the appropriate level of access to your Content.

Use Restrictions

Access to and use of the service is subject to all applicable international, federal, state and local laws and regulations. You agree not to use this service in any way that violates such laws or regulations. In connection with your access or use of the service, you agree not to:

ATTACHMENT D

- (i) introduce a virus, worm, Trojan horse or other harmful software code or similar files that may damage the operation of a third party's computer or property or information;
- (ii) use the service in any manner that could damage, disable, overburden, or impair any HAPPY server, or the network(s) connected to any HAPPY server or interfere with any other party's use of the Service;
- (iii) attempt to gain unauthorized access to service, materials, other accounts, computer systems or networks connected to any HAPPY server or to the service, through hacking, password mining, or any other means;
- (iv) obtain or attempt to obtain any materials or information through any means not intentionally made available through the service;
- (v) sell, lease, or rent access to or use of the service, or otherwise transfer any rights to use the service under this Agreement;

If HAPPY becomes aware of any possible violations, HAPPY reserves the right to investigate such violations, and HAPPY may, at its sole discretion, terminate immediately your license to use of the service or change, alter or remove Content, in whole or in part, without prior notice to you.

Use of the service is subject to your payment of HAPPY's charges for the services, which may vary according to the service, features, or service term to which you have subscribed (the "Service Fees"). You are responsible for paying all taxes levied in connection with your use of the services.