



MASTER AGREEMENT NO. MA-042-13010727

FOR

**SOFTWARE MAINTENANCE AND
SUPPORT SERVICES**

BETWEEN

**THE COUNTY OF ORANGE
HEALTH CARE AGENCY**

AND

INSIGHT ENTERPRISES INC

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**MASTER AGREEMENT NO. MA-042-13010727
SOFTWARE MAINTENANCE AND SUPPORT SERVICES**

This Master Agreement Number MA-042-13010727, (hereinafter "Contract") is made and entered into this 1ST day of January, 2013 or upon execution of all necessary signatures between Insight Enterprises Inc (hereinafter "Contractor"), with a place of business at 1407 Foothill Blvd. Suite 221, La Verne, CA 91750, and the County of Orange, Health Care Agency (hereinafter "County"), a political subdivision of the State of California, with a place of business at 200 W. Santa Ana Blvd., Suite #650, Santa Ana, CA 92701, which are sometimes individually referred to as "party", or collectively referred to as "parties".

RECITALS

WHEREAS, County desires to obtain software maintenance and support services; and

WHEREAS, Contractor is agreeable to provide such services on the terms and conditions hereinafter set forth; and

WHEREAS, County Board of Supervisors has authorized the Purchasing Agent or designee to enter into a Contract with Contractor for obtaining said services:

NOW, THEREFORE, parties mutually agree as follows:

ARTICLES

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, 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 software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or 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 Scope 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 services have actually been received or inspected to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees as identified in paragraph "O" below, and as more fully described in paragraph "O", 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 "O" below, it shall indemnify, defend and hold County and County indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of anti-discrimination law or regulation, including but not limited to Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, 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, or 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 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 the 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 therefor; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.
- P. **Indemnification and Insurance:**

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 indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Insurance Provisions

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including 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 insurance policies required by this Contract shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. Contractor shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.

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 licensed to do business in the State of California (California Admitted Carrier).

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 Best's Rating) and VIII (Financial Size Category).

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.

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 with broad form and contractual liability	\$1,000,000 combined property damage single limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit 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

All liability insurance, except Professional Liability, required by this Contract shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

The County of Orange shall be added as an additional insured on all insurance policies required by this Contract with respect to work done by the Contractor under the terms of this Contract (except Workers' Compensation/Employers' Liability and Professional Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.

All insurance policies required by this Contract shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the Contractor's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability.

All insurance policies required by this Contract shall give the County of Orange thirty (30) days' notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE

~~LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE.~~

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.

If contractor's Professional Liability policy is a "claims made" policy, contractor shall agree to maintain professional liability coverage for two (2) years following completion of contract.

The Commercial General Liability policy shall contain a severability of interests clause.

The Contractor is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The Contractor will comply with such provisions and shall furnish the County satisfactory evidence that the Contractor has secured, for the period of this Contract, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

Insurance certificates should be forwarded to the County address listed on this Contract.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by County, 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.

The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

- 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 "O" 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 the County's specific written approval.
- S. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.

- T. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within thirty six (36) hours of the start of the delay and Contractor avails itself of any available remedies.
- U. **Confidentiality:** Contractor and County agree to maintain the confidentiality of all Contractor 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, County and County staff, agents and employees to the extent permitted by law.
- 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 "O" above, Contractor agrees that it shall defend, indemnify and hold County and County indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- X. **Pricing:** The Contract 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 therefor, unless otherwise provided for in this Contract.
- Y. **Waiver of Jury Trial:** Each party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

- DD. **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 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 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 effect 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:** 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.

ADDITIONAL TERMS AND CONDITIONS

1. **Scope of Contract:** This Contract, together with its Attachments and Exhibits attached hereto and incorporated herein by reference, specifies the contractual terms and conditions by which County will procure and receive goods from Contractor.

The detailed Scope of Work (SOW) is fully set forth and incorporated herein as Attachment A.
2. **Term of Contract:** This Contract shall be in effect from January 01, 2013, through and including ~~December 31, 2013~~ June 30, 2014, non-renewable. This Contract shall be in effect for the time period specified, unless this Contract is earlier terminated by the parties in accordance with Articles 5, 6, and 7.
3. **Precedence:** The Contract documents consist of this Contract, and its Attachments and Exhibits. In the event of a conflict between the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, the Attachments and then the Exhibits.
4. **Pricing Structure:** The Contractor agrees that no price/fee increases shall be passed along to the County during the term of this Contract. Contractor may discount said prices anytime during the term of the Contract.

5. **Subject to 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 fiscal year during the term of this Contract. If such appropriations are not approved, this Contract shall be terminated without penalty to the County.

6. **Contingency of Funds:** 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.

7. **Termination:**

A. Termination – Default: If Contractor is in default of any of its obligations under this Contract and has not commenced cure within ten (10) days after receipt of a written notice of default from County and cured such default within the time specified in the notice, the County shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this Contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this Contract, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this Contract. Upon termination of the Contract with Contractor, the County may begin negotiations with a third-party contractor to provide goods and/or services as specified in this Contract.

The right of either party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

B. Termination – Orderly: After receipt of a termination notice from the County, the Contractor shall submit to the 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 the County upon written request of the Contractor. Upon termination County agrees to pay the 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.

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

9. **Contractor Project Manager:** Contractor shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. The Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager.

The Contractor's Project Manager shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager or any other Contractor's staff providing services to the County under this Contract. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve

the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it elects to request the removal of Contractor's Project Manager providing services to the County under this Contract.

10. **Breach of Contract:** The failure of the 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 the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - c. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

11. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractors; and third parties associated with accomplishing work and services hereunder. The 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 the County.

12. **Child Support Enforcement Requirements (Exhibit 1):** In order to comply with child support enforcement requirements of the County of Orange, within ten (10) days of notification of selection of award of Contract, but prior to official award of Contract, the selected Contractor hereby agrees to furnish County with the required Contractor data and certifications, Child Support Enforcement Certification Requirements. Child Support Enforcement Certification Requirements, shall include the following information:
 - a. In the case of an individual contractor, his/her name, date of birth, social security number, and residence address;
 - b. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, social security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;
 - c. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
 - d. A certification that the contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of the Contractor to timely submit the data and/or certifications required may result in Contract being awarded to another contractor. In the event a Contract has been issued, failure of the 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 sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

13. **Disputes - Contract:** 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 the Contractor and the County's Project Manager, such matter shall be brought to the attention of the Purchasing Agent by way of the following process:

- a. The Contractor shall submit to the assigned buyer 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 the County, on its own initiative, has already rendered such a final decision.
- b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the 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 the Contractor believes the County is liable.

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

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the Purchasing Agent. If the County fails to render a decision within ninety (90) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within ninety (90) days following the date of the County's final decision or one (1) year following the accrual of the cause of action, whichever is later.

14. **Audit:** The County's duly authorized representative shall have access, at all reasonable times, to all reports, Contract records, documents, files, and personnel necessary to audit and verify the Contractor's charges to the County hereunder. The Contractor agrees to retain all reports, records, documents, and files related to charges hereunder, (collectively the "Records"), for a period of two (2) years following the date of final payment for the Contractor's services hereunder. The County reserves the right to audit and verify the Contractor's Records at any time during this retention period. The County's representatives shall have the right to reproduce any of the aforesaid documents.

Should the Contractor cease to exist as a legal entity, the 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 the County's Project Manager.

15. **Notices:** Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than five (5) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For Contractor:	Name:	Insight Enterprises Inc
	Attention:	Alan Wild
	Address:	2337 Foothill Blvd. Ste 127 La Verne, CA 94710
	Telephone:	(909) 593-7177

B. Redline Version to Attachment A

Facsimile: (909) 593-7177
E-mail: alwild@usa.net

For County: Name: County of Orange
Health Care Agency/Purchasing Division
Attention: ~~Michael Macias~~ Ana Figueroa, Deputy Purchasing Agent
Address: 200 W. Santa Ana Blvd., Suite 650
Santa Ana, CA 92701
Telephone: (714) 834-~~2429~~2170
Facsimile: (714) 834-2657
E-mail: afigueroa@ocha.com

CC: Name: County of Orange
Health Care Agency/
Correctional Medical Services
Attention: Doug Phan
Address: 550 N Flower Street
Santa Ana, CA 92703
Telephone: (714) 834-7401
Facsimile: (714) 834-3230
E-mail: dougphan@ochca.com

16. **News / Information Release:** The Contractor agrees that it will not issue any news releases or upload County logos or other information onto any website 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 from the County through the County's Project Manager. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both parties.
17. **Conflicts with Existing Law:** The Contractor and the County agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provisions shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the Contract, the Contract shall be terminated in a manner commensurate with interests of both parties to the maximum extent reasonable.
18. **Validity:** The invalidity in whole or in part of any article or provision of this Contract shall not void or affect validity of any other article or provision of this Contract.
19. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the 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, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the 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. **Contractor Bankruptcy/Insolvency:** If the Contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the Contractor's insolvency, the County may terminate this Contract.
21. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to

supply services and/or commodities requested, as needed by the County, at prices listed in the Contract, regardless of quantity requested.

22. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County
23. **Cooperative Agreement:** The provisions and pricing of this Contract shall be extended to other political sub-divisions and County of Orange agencies/departments. Political sub-divisions and County of Orange agencies/departments wishing to use this Contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. These entities will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this Contract. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract. The County of Orange may authorize the loading of this Contract into an electronic commerce system.

The Contractor shall be required to maintain a list of the cooperatively participating County agencies/departments and other political sub-divisions that have used this Contract. The list shall report dollar volumes spent quarterly and annually and shall be provided on a quarterly basis to the County.

24. **California Public Records Act:** Contractor and County agree and acknowledge that all information and documents related to the award and performance of this Contract are subject to disclosure pursuant to the California Public Records Act, California Government Code Section 6250 *et seq.*
25. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor will meet periodically on reasonable notice to discuss the Contractor's performance progress under this Contract. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
26. **Responsibility of Contractor:** Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Contractor under this Contract. Contractor shall perform such human services and fiscal agent services as may be necessary to accomplish the work required to be performed under this Contract and in accordance with this Contract.

Contractor shall provide services and other relevant documents necessary to complete the services and fulfill the requirements as set forth in Statement A, Statement of Work.

27. **Compliance:**
 - A. County's Health Care Agency (HCA) has established an Office of Compliance and associated Compliance Program for purposes of ensuring adherence to all rules and regulations related to the provision of services and expenditure of funds in federal and state health care programs. County shall provide Contractor with a copy of the relevant HCA Policies and Procedures relating to the Office of Compliance.

B. Code of Conduct - Under the direction of the HCA Office of Compliance, a Code of Conduct for

adherence by all HCA employees and contract providers has been developed. Contractor will be provided with a copy and shall be required to adhere to said HCA Code of Conduct.

C. Contractor shall comply with the United States Department of Health and Human Services, Office of Inspector General (OIG) requirements related to eligibility for participation in federal and state health care programs.

1. Contractor affirmatively asserts that its employees are not Ineligible Persons as defined hereunder.
2. Contractor further acknowledges that County shall review at least semi-annually all individual Contractors for eligibility against General Services Administration and OIG Parties Excluded from Federal Programs Lists and Cumulative Sanction Lists respectively to ensure that Ineligible Persons are not employed or retained to provide services related to this Contract.
3. Ineligible Persons may include both entities and individuals and are defined as any individual or entity who:
 - a. Is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal and state health care programs; or
 - b. Has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal and state health care programs after a period of exclusion, suspension, debarment, or ineligibility.
4. Contractor acknowledges that Ineligible Persons are precluded from providing federally and state funded health care services by contract with County in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. County shall terminate this Contract immediately in the event that Contractor is identified as an Ineligible Person during the term of this Contract.

D. Reimbursement Standards

1. Contractor shall submit no false, fraudulent, inaccurate or fictitious claims for payment or reimbursement of any kind.
2. Contractor shall bill only for those eligible services actually rendered which are also fully documented.
3. Contractor shall act promptly to investigate and correct any problems or errors in billing, if and when, any such problems or errors are identified by anyone.

E. Compliance Training

1. County will provide and Contractor shall attend Compliance training when offered initially as well as any refresher training provided on an annual basis.
2. Unless otherwise specified in this Contract and in accordance with the Termination paragraph of this Contract, County may terminate this Contract upon five (5) days written notice if Contractor fails to perform any of the terms of this Compliance paragraph. At County's sole discretion, Contractor may be allowed up to thirty (30) days for corrective action.

28. **Software – License:** The Contractor hereby grants to the County 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 Contract, 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, designated 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 as a permanent code is assigned.

29. **Software – Future Releases:** If improvement, upgraded, or enhancement versions of any software product under this Contract are developed by the Contractor and are made available to other licensees, they will be made available to the County at the County's option, provided such versions are operable on the same computer hardware configuration. The charge for such upgrading to the later version of the software will be the difference between the price established by the Contractor for the later version and the price specified herein or the then prevailing prices of the currently installed version.
30. **Software - Maintenance:** The correction of any residual errors in any software products which may be discovered by Contractor or by County shall be considered maintenance. Such maintenance shall be performed by Contractor without additional charge for the duration of this Contract in accordance with Attachment A. Suspected errors discovered by County in the software products shall be handled by the following procedure:
1. A listing of the output and a copy of the evidential input data in machine-readable format shall be submitted to 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 Contractor, shall be corrected by providing a new copy of said software product or a new copy of the affected portions in machine-readable format.

Contractor shall be available to assist County in isolating and correcting error conditions caused by County's particular hardware or operating system at rates specified in this Contract. If Contractor is called upon by County to correct an error caused by County's negligence, modification by County, County-supplied data, machine or operator failure or any other cause not inherent in the original software products, Contractor reserves the right to charge County for such service, on a time and material basis at rates in accordance with this Contract.

31. **Software - Protection:** The County agrees that all material appropriately marked or identified as proprietary, whether oral or written, and furnished hereunder are provided for County's exclusive use for the purposes of this Contract only and will be held in confidence. All proprietary data shall remain the property of the Contractor. County agrees to take all reasonable steps to ensure that such data are not disclosed to others without prior written consent of the Contractor. The County will ensure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.

The County agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed programs and/or optional materials to satisfy its obligations under this agreement with respect to use, copying, modification and protection and security of licensed programs and optional materials.

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

**MASTER AGREEMENT NO. MA-042-13010727
SOFTWARE MAINTENANCE AND SUPPORT SERVICES**

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

INSIGHT ENTERPRISES INC

Print Name Title

Signature Date

Print Name Title

Signature Date

* If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; or 3) any Vice President.

The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; or 4) any Assistant Treasurer.

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

Leila Garcia Procurement Manager I

Print Name Title

Signature Date

APPROVED AS TO FORM
Office of the County Counsel
County of Orange, California

County Counsel Deputy Date

**MASTER AGREEMENT NO. MA-042-13010727
SOFTWARE MAINTENANCE SUPPORT SERVICES
ATTACHMENT A
SCOPE OF WORK**

Contractor shall provide continued software maintenance of the Inmate Medical Record System (CHART) for the Health Care Agency/Correctional Medical Services.

The following software maintenance services shall be provided:

1. InterSystems Caché for 32 concurrent user licenses (includes upgrades, bug fixes, bulletins and toll free hot line support).
2. CHART support for 24 concurrent users (includes upgrades, bug fixes, bulletins and toll free hot line support) for Insight CHART system.
3. System modifications/programming to be provided by Contractor, as necessary, outside the scope of regular maintenance Monday-Friday 8:00am – 5:00pm (excluding County holidays). Any work to be performed not included as regular maintenance shall be authorized in writing by County Project Manager, or designee before work shall commence.

**MASTER AGREEMENT NO. MA-042-13010727
SOFTWARE MAINTENANCE AND SUPPORT SERVICES
ATTACHMENT B
COMPENSATION AND INVOICING**

I. COMPENSATION

This is a fixed price Contract not to exceed sixty three thousand four hundred thirty two dollars (\$63,432) for the term of the Contract between the County and Contractor, renewable for two (2) additional one year periods with mutual concurrence of both parties.

Software maintenance to be provided on the following:

	<u>Monthly</u>	<u>Annual</u>
1. InterSystems Caché for 32 concurrent user license (includes upgrades, bug fixes, bulletins and toll free hot line support).	\$700.00	\$8,400.00
2. CHART support for 32 concurrent users (includes upgrades, bug fixes, bulletins and toll free hot line support).	\$5,800.00	\$69,600.00
3. System modifications/programming to be provided by Contractor, as necessary, outside the scope of regular maintenance Monday-Friday 8:00am to 5:00pm (excluding County holidays). Hourly rate shall be paid at a rate of \$250.00/hour for items #3, 4, 5 and 6.		Not to exceed \$10,000/annually (Optional)
4. New Interface for CIPS Pharmacy System		Not to exceed \$10,000.00
5. New Interface for OCSD Automated Jail System (AJS)		Not to exceed \$10,000.00
6. New Interfaces to the Electronic Health Record		Not to exceed \$30,000.00

The Contractor agrees to accept the specified compensation as full remuneration for performing all services and furnishing all staffing and materials called for; for any reasonably foreseen difficulties under the responsibility of the Contractor which may arise or be encountered in the execution of the services until their acceptance; for risks connected with the services; and for performance by the Contractor of all of its duties and obligations hereunder. The fixed price shall include the fee and all expenses related to the performance of work and services required to meet the tasks and deliverables in the Scope of Work, set forth more fully in Attachment A of this Contract.

II. PAYMENT TERMS

A. Terms

Payment shall be payable within thirty (30) days after the Auditor-Controller's receipt of an approved invoice for services and/or goods submitted in accordance with the terms set forth herein. The invoice must be verified and approved by the County's Project Manager or designee and is subject to routine processing requirements of the County.

Billing shall cover only those services and/or goods not previously invoiced. The Contractor shall immediately reimburse the County for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payment made by the County shall not preclude the right of the 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 services.

B. Invoicing Instructions

1. Invoices and all supporting documentation shall be submitted to the following address:

County of Orange
HCA/ Accounts Payable
PO Box 689
Santa Ana, CA 92702

2. Acceptable Invoicing Format: Contractor may bill on any standard invoice form, but the following references must be made:

- a. County Contract Number (MA-042-13010727)
- b. Contractor's Federal I.D. Number and California Board of Equalization Permit Number
- c. Description of Services
- d. Date(s) of Performance of Services
- e. Total Amount of Payment Requested
- f. Remittance Address

The responsibility for providing acceptable invoice(s) to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned.

MASTER AGREEMENT NO. MA-042-13010727
SOFTWARE MAINTENANCE AND SUPPORT SERVICES
REVISED
ATTACHMENT C
HIPAA BUSINESS ASSOCIATES CONTRACT

A. General Provisions

- ~~1. The Parties agree that the terms used in this Contract shall have the same meaning as those terms in the Standards for Privacy of Individually Identifiable Health Information, 45 Code of Federal Regulations (CFR), Parts 160 and 164, otherwise known as the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, as it may exist now or be hereafter amended.~~
- ~~2. It is agreed by both Parties that Contractor is a Business Associate of the County for the purposes of this Contract.~~
- ~~3. It is understood by both Parties that Contractor is not a Covered Entity, as defined by HIPAA, and is not responsible for complying with said regulations for purposes of safeguarding any Protected Health Information (PHI) generated by Contractor for its own purposes.~~
- ~~4. It is understood by both Parties that the Privacy Rule does not pre-empt any State and/or Federal laws, rules or regulations that impose more stringent requirements with respect to confidentiality of client information.~~

B. Obligations and Activities of Contractor as Business Associate

- ~~1. Contractor agrees not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Contract or as required by law.~~
- ~~2. Contractor agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Contract.~~
- ~~3. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this Contract.~~
- ~~4. Contractor agrees to report to County within ten (10) calendar days any use or disclosure of PHI not provided for by this Contract of which Contractor becomes aware.~~
- ~~5. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from County, or PHI created or received by Contractor on behalf of County, agree to the same restrictions and conditions set forth in the business associate provisions of the Privacy Rule that apply throughout this Contract.~~
- ~~6. Contractor agrees to provide access, within fifteen (15) days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an individual client in order to meet the requirements under 45 CFR Section 164.524.~~
- ~~7. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR Section 164.526 at the request of County or an individual client, within thirty (30) days of receipt of said request by County.~~
- ~~8. Contractor agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary of the Department of Health and Human Services, in a time and manner as determined by County, or as designated by the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.~~

9. ~~Contractor agrees to document any disclosures of PHI and information related to such disclosures as would be required for County to respond to a request by an individual client for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.~~
10. ~~Contractor agrees to provide County or an individual client, as directed by County, in a time and manner to be determined by County, in order to permit County to respond to a request by an individual client for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.~~

C. ~~Security Rule~~

1. ~~Security. Contractor shall establish and maintain appropriate administrative, physical and technical safeguards that reasonably and appropriately protected the confidentiality, integrity and availability of electronic protected health information. Contractor shall follow generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.~~
2. ~~Agents and Subcontractors. Contractor shall ensure that any agent, including a subcontractor, to whom it provides electronic protected health information agrees to implement reasonable and appropriate safeguards to protect that information.~~
3. ~~Security Incidents. Contractor shall report any security incident of which it becomes aware to Client. For purposes of this agreement, a "security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.~~

D. ~~Permitted Uses and Disclosures by Contractor~~

~~Except as otherwise limited in this Contract, Contractor may use or disclose PHI to perform functions, activities, or services for, or on behalf of, County as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by County.~~

E. ~~Obligations of County~~

1. ~~County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR Section 164.520, to the extent that such limitation may affect Contractor's use or disclosure of PHI.~~
2. ~~County shall notify Contractor of any changes in, or revocation of, permission by an individual client to use or disclose PHI, to the extent that such changes may affect Contractor's use or disclosure of PHI.~~
3. ~~County shall notify Contractor of any restriction to the use or disclosure of PHI that County has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect Contractor's use or disclosure of PHI.~~
4. ~~County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County.~~

F. ~~Business Associate Termination~~

1. ~~In addition to the rights and remedies provided in the Termination paragraph of this Contract, upon County's knowledge of any material breach by Contractor of the requirements of this attachment C to the Contract, County shall:
 - a. ~~Provide an opportunity for Contractor to cure the breach or end the violation and terminate~~~~

- ~~this Contract if Contractor does not cure the breach or end the violation within thirty (30) days; or~~
- ~~b. Immediately terminate this Contract if Contractor has breached a material term of this Contract and cure is not possible; or~~
- ~~c. If neither termination nor cure is feasible, County shall report the violation to the Secretary of the Department of Health and Human Services.~~

~~Upon termination of this Contract, all PHI provided by County to Contractor, or created or received by Contractor on behalf of County, shall either be destroyed or returned to County at County's sole discretion, and in conformity with the Privacy Rule. This provision shall apply to PHI that is in the possession of subcontractors or agents of Contractor. If it is infeasible to return or destroy PHI, Contractor shall extend the protections of this Contract to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such PHI.~~

A. GENERAL PROVISIONS AND RECITALS

1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they may exist now or be hereafter amended.

2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract MA-042-13010727 that are described in the definition of "Business Associate" in 45 CFR § 160.103.

3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract MA-042-13010727, some of which may constitute Protected Health Information ("PHI"), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Contract MA-042-13010727.

4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-042-13010727 in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.

5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with

respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-042-13010727.

B. DEFINITIONS

1. "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor's workforce in relation to the protection of that information.

2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

a. Breach excludes:

i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.

ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

ii. The unauthorized person who used the PHI or to whom the disclosure was made;

iii. Whether the PHI was actually acquired or viewed; and

iv. The extent to which the risk to the PHI has been mitigated.

3. "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

4. "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.

5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

6. "Health Care Operations" shall have the meaning given to such term under the HIPAA

Privacy Rule in 45 CFR § 164.501.

7. "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

8. "Physical Safeguards" are physical measures, policies, and procedures to protect Contractor's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

9. "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

10. "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

11. "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.

12. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

13. "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.

14. "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

15. "Subcontractor" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

16. "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.

18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.

2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-042-13010727, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other

than as provided for by this Business Associate Contract.

3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.

4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.

5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.

7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.

8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.

9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County's compliance with the HIPAA Privacy Rule.

10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract MA-042-13010727, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

12. Contractor agrees that to the extent Contractor carries out County's obligation under the HIPAA Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to

properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

D. SECURITY RULE

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.

3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

E. BREACH DISCOVERY AND NOTIFICATION

1. Following the discovery of a Breach of Unsecured PHI , Contractor shall notify County of such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.

a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.

b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.

2. Contractor shall provide the notification of the Breach immediately to the County Privacy Officer at

<p>Thea Bullock, County Privacy Officer 405 W. 5th Street Santa Ana, CA 92701 (714) 834-3154 tbullock@ochca.com privacyofficer@ocgov.com</p>	<p>Or Linda Le, Deputy County Privacy Officer 405 W. 5th Street Santa Ana, CA 92701 (714) 834-4082 lile@ochca.com HIPAA@ochca.com</p>
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a. Contractor’s notification may be oral, but shall be followed by written notification within twenty-four (24) hours of the oral notification.

3. Contractor’s notification shall include, to the extent possible:

- a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;
- b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:
- (1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - (2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - (3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - (4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
 - (5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.
5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.
6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.
7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor's initial report of the Breach to County pursuant to Subparagraph E.2 above.
8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.
9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof,

including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-042-13010727, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by County except for the specific Uses and Disclosures set forth below.

a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.

b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:

i. The Disclosure is required by law; or

ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.

c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.

3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.

4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

G. OBLIGATIONS OF COUNTY

1. County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor's Use or Disclosure of PHI.

2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor's Use or Disclosure of PHI.

3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's Use or Disclosure of PHI.

4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

H. BUSINESS ASSOCIATE TERMINATION

1. Upon County's knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:

a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or

b. Immediately terminate the Contract MA-042-13010727, if Contractor is unwilling or unable to cure the material breach or end the violation within thirty (30) days, provided termination of the Contract MA-042-13010727 is feasible.

2. Upon termination of the Contract MA-042-13010727, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.

a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.

b. Contractor shall retain no copies of the PHI.

c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.

3. The obligations of this Business Associate Contract shall survive the termination of the Contract MA-042-13010727.

**EXHIBIT 1
COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT CERTIFICATION
REQUIREMENTS**

In order to enhance the child support collection efforts of the County of Orange Family Support Enforcement, all Contractors are required to provide the following information as listed on the attached form:

- If the Contractor is an individual contractor: Name, date of birth, social security number, and residence address.
- If Contractor is doing business in a form other than as an individual: Name, date of birth, social security number, and residence address of *each* individual who owns an interest of ten (10) percent or more in the contracting entity.

In addition, all Contractors must provide:

- A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees, and
- A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

In order to comply with child support enforcement requirements of the County of Orange, within thirty (30) days of award of Contract, the Contractor agrees to furnish the required contractor data and certifications to the Deputy Purchasing Agent.

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 sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

**EXHIBIT 1 (cont.)
COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT CERTIFICATION
REQUIREMENTS**

A. In the case of an individual contractor, his/her name, date of birth, social security number, and residence address:

Name: _____

DOB: _____

Social Security No.: _____

Residence Address: _____

B. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, social security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity:

Name: _____

DOB: _____

Social Security No.: _____

Residence Address: _____

Name: _____

DOB: _____

Social Security No.: _____

Residence Address: _____

(Additional sheets may be used if necessary)

**BID ITEMS
EXHIBIT 1 (cont.)
COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT CERTIFICATION
REQUIREMENTS**

"I certify that Insight Enterprises 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 Master Agreement No. 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 sixty (60) calendar days of notice from County shall constitute grounds for termination of the Contract."

*Signature** *Name (Please Print)*

Title *Date*

Company Name

Master Agreement Number

*Signature** *Name (Please Print)*

Title *Date*

Company Name

Master Agreement Number

***Two signatures required if a corporation.**