

Contract MA-060-20010875 **AMENDMENT ONE**
with
NicheVision Forensics, LLC
for
STRmix Probabilistic Software

This Contract MA-060-20010875 for STRmix Probabilistic Software (hereinafter referred to as “Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California (hereinafter referred to as “County”) and NicheVision Forensics, LLC, with a place of business at 526 S. Main St., Suite 714G, Akron, OH 44311 (hereinafter referred to as “Contractor”), with a County and Contractor sometimes referred to as “Party” or collectively as “Parties”.

ATTACHMENTS

This Contract is comprised of this documents and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work
Attachment B – Compensation and Pricing Provision
Attachment C – Software License Agreement

RECITALS

WHEREAS, Contractor and County are entering into this Contract for STRmix Probabilistic Software under a firm fixed fee Contract; and

WHEREAS, Contractor agrees to provide STRmix Probabilistic Software to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Compensation and Pricing Provision, attached hereto as Attachment B; and

NOW, THEREFORE, the 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 adjudication to another county.
- B. **Entire Contract:** This Contract 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.

- 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. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. Delivery: Time of delivery of goods or services is of the essence in this Contract. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. Acceptance Payment: Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in accordance with Attachment B Compensation and Pricing Provision. In the event the Contractor is terminated for cause, County shall immediately receive one-twelfth (1/12) of all prepaid goods and/or services (as listed in this contract) for each month or portion thereof remaining for the applicable Contract year as listed in this Contract.
- G. Warranty: Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used. 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 "Z" below, and as more fully described in paragraph "Z," 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 "Z" 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, costs and expenses but not including attorney's fees.
- I. Assignment: 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 by Contractor without the express written consent of County. Any attempt by Contractor to assign 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 penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **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.
- N. **Performance Warranty:** Contractor shall warrant 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 workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, 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. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. **Insurance Provisions:**

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

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to

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

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

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

Qualified Insurer

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

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Technology Errors & Omissions	\$1,000,000 per claims-made \$1,000,000 aggregate

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

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

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

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract which shall be mutually agreed upon. If Contractor cannot or does not wish to increase or decrease insurance as requested by County, Contractor may immediately terminate this Contract on notice to County. 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 either does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes or terminate this Contract in accordance with the preceding clause within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

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

- P. Changes: Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- Q. Change of Ownership/Name, Litigation Status, Conflict with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and Contractor obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's

status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. Force Majeure: Contractor shall not be assessed or be found in breach 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.
- S. Confidentiality: Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. 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 "Z" below, 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.
- U. Freight: Prior to the County's express acceptance of delivery of products. 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.
- V. 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.
- W. Attorney Fees: In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.

- X. **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 had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- Y. **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.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. **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,

provided that County shall endeavor to comply with subcontractor's notified confidentiality and security requirements to the extent consistent with public disclosure laws, and subcontractor shall not be required to disclose to County any commercially confidential information or trade secrets unrelated to the performance of services under this Contract. County shall comply with all copyright requirements stated on any materials provided by Contractor or subcontractors.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's project manager.

- BB. Contingency of Funds: Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. Expenditure Limit: The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent 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.

Additional Terms and Conditions

1. Scope of Contract: This Contract specifies the contractual terms and conditions by which County will procure and receive goods/services from Contractor as set forth in the Scope of Work, which is attached hereto as Attachment A and incorporated by this reference.
2. Term of Contract: This Contract shall commence on January 1, 2020 through and including December 31, 2022~~23~~. This Contract may be renewed as set forth in paragraph 3 below.
3. Renewal: This Contract may be renewed by mutual written agreement of both Parties for ~~two (2)~~ ~~additional~~ one (1) year ~~term~~~~s-term~~. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
4. Adjustments – Scope of Work: No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
5. 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) Terminate the Contract immediately, pursuant to Section K herein;
 - b) 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;
 - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

6. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
7. **Conflict of Interest – Contractor’s Personnel:** 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 subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
8. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
9. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This 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, which consent shall not be unreasonably withheld.

The Contractor’s Project Manager shall be assigned to this project for the duration of the 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 from 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 five (5) 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 The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

10. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor’s employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
11. **Contractor’s Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
12. **Contractor Personnel – Uniform/Badges/Identification:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

All Contractor's employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by the Contractor and must be worn at all times while working on County property. The assigned Deputy Purchasing Agent must be notified in writing, within seven (7) days of notification of award of Contract of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven (7) days prior to any changes in this procedure.

13. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned Deputy Purchasing Agent.
14. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
15. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities 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. Contractor shall be required to include in any Contract entered into with another agency or entity that is entered into as an extension of this Contract a Contract clause that 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. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. 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 Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

16. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
17. **Default – Reprourement Costs:** In case of Contract breach by Contractor, resulting in termination by the County, the County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the

County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

18. Drug-Free Workplace: The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:
1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
 2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
 3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
 2. The Contractor violates the certification by failing to carry out the requirements as noted above.
19. EDD Independent Contractor Reporting Requirements: Effective January 1, 2001, the County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California

Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as “an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a contract for services performed for that government entity either in or outside of California.”

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

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

20. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County’s needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor’s supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.
21. **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(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the 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 the County or others discover errors or omissions in the reports, files or other written documents submitted by the 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 the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
22. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, “Equal Employment Opportunity” as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to

prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

23. News/Information Release: The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
24. Notices: Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' 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 four (4) 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.

Contractor: NicheVision Forensics, LLC
526 S. Main St., Suite 714G
Akron, OH 44311
Attn: Tracy Bauer
Ph: 866-840-3758
Email: tacy@nichevision.com

County: Sheriff-Coroner Department / Crime Lab
320 N. Flower St.
Santa Ana, CA 92703
Attn: Maria Manriquez
Ph: 714-834-6301
Email: mnm@occl.ocgov.com

Assigned DPA: County of Orange
Sheriff-Coroner Department/Purchasing Services Unit
320 N. Flower Street, 2nd Floor
Santa Ana, CA 92703
Attn: Desiree Lopez
Ph: 714-834-2360
Email: djlopez@ocsd.org

25. Precedence: The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among 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, and then the exhibits and attachments.

26. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 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 combined with 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 performance of the Contract.
27. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.
28. **Usage Reports:** The Contractor shall submit usage reports on an annual basis to the assigned Deputy Purchasing Agent of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted 90 days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.
29. **Sub-Contracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor, and shall incorporate by reference the terms of this Contract, except where such terms are only intended to only apply to Contractor. In the event of conflict between the terms of this Contract and the Software Licence Agreement at Attachment C, the Software Licence Agreement at Attachment C shall prevail. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

30. **Substitutions:** The Contractor is required to meet all specifications and requirements contained herein. No substitutions will be accepted without prior County written approval.

-Signature Page to Follow-

Signature Page

The Parties hereto have executed this Contract MA-060-20010875 for the purchase of STRmix Probalistic Software on the dates shown opposite their respective signatures below

Contractor*: NicheVision Forensics, LLC

By: _____ Title: _____

Print Name: _____ Date: _____

Contractor*: NicheVision Forensics, LLC

By: _____ Title: _____

Print Name: _____ Date: _____

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

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

County Of Orange

A political subdivision of the State of California



Sheriff-Coroner Department

By: _____ Title: _____

Print Name: _____ Date: _____

Approved by the Board of Supervisors: _____

Approved as to Form

Office of the County Counsel
Orange County, California

By: _____
Deputy

ATTACHMENT A

Scope of Work

Contractor shall provide the County with STRmix Probabilistic Genotyping DNA Analysis System Software Update (“STRmix Software”) and provide support for the validation of the newly released STRmix Version 2.8. The licensor of the STRmix Software is STRmix Limited, a New Zealand company (“Licensor”).

STRmix Software shall include all new point and major version releases at no additional cost to County.

1. The STRmix Software shall have the following capabilities:

- Fully continuous probabilistic approach for DNA profile interpretation
- Deconvolution of mixtures containing up to four (4) contributors
- Ability to condition mixtures on known reference samples
- Use of laboratory specific parameters such as analytical thresholds, allele frequency databases, theta values, probability of drop in, and peak variability to develop analysis methods
- Complete system transparency in all statistical methods by providing the formula used within peer reviewed publications
- Allow modeling of allele-specific or locus-specific stutter
- Ability to compare mixed DNA profiles directly against databases of known individuals to generate matches
- Engineered to allow for the addition of any new Forensic autosomal STR DNA typing kit types, allele frequency databases, and sub populations
- The ability to vary the number of contributors in H_p and H_d when calculating an LR from a varNOC run
- Report results in such a manner that OC Crime Lab (OCCL) Forensic Scientists will be able to testify in court regarding the mechanism to which results are produced by the Software.
- Compatibility with the latest Microsoft Windows Operating Systems

2. Upgrade Support Requirements

- 2.1. Contractor shall provide STRmix Version 2.8 Upgrade and Support to OCCL.
- 2.2. Support shall include assistance with the recommended performance checks for the migration from Version 2.5 to Version 2.8 for data generated using the Applied Biosystems™ Globalfiler PCR Amplification Kit/ThermoFisher Scientific 3500 Series Genetic Analyzer platform.
- 2.3. Subject to provision of required data by OCCL, Electronic Support shall include generation of STRmix-ready directory files such as:
- 2.3.1. Lab-specific typing kit files that incorporates OCCL analytical threshold, maximum stutter, degradation, drop-in, saturation, allele variance, and locus amplification variance settings.
- 2.3.2. Lab-specific stutter filter files that includes, but is not limited to back stutter regression, forward stutter regression, double back stutter regression, minus two base pair stutter regression and stutter exception files.

- 2.3.3. Typing kit specific size regression file
- 2.4. Support shall include data workbooks from OCCL validation samples.
- 2.5. Contractor shall run deconvolutions, database searches, and create excel workbooks to analyze and graphically represent the results.
- 2.6. All of these run folders and excel spreadsheets will be provided to the OCCL.
- 2.7. Written Validation Report:
- 2.7.1. Contractor shall write a validation report that specifically addresses each component of the Scientific Working Group on DNA Analysis Methods (SWGDM) validation guidelines for probabilistic genotyping.
- 2.7.2. This report shall be technically reviewed for accuracy before it is provided to OCCL.
3. STRmix Version Upgrade shall be a One Time Purchase only.
4. Training, Support, Maintenance, and Upgrades:
- Contractor shall provide a maintenance and upgrade plan that includes all new point and major version releases at no additional charge.
 - All technical support necessary to install and operate the new software versions and updates, including expert resolution of general STRmix Scientific Support questions for a 12 month period from 1/1/20~~20~~23 to 12/31/20~~21~~23.
 - Scientific support includes trouble shooting, case specific queries, general email queries and advice, but excludes validation, platform upgrade or version upgrade support.
5. Requirement:
- Once Contractor's software is installed by County's OCCL personnel, the software must be able to meet County's specifications listed above and shall perform to the specifications advertised by the manufacturer.
6. Delivery Locations:
- Update delivers electronically shall be sent to County at the following email address:
- shg@occl.ocgov.com
7. Software Licence Agreement:
- The STRmix Software shall be licensed to County on the terms of Licensor's standard end user agreement ("Software Licence Agreement") in Attachment C.

Intellectual property warranties and indemnities in relation to the STRmix Software are set out in the Software Licence Agreement at Attachment C.

8. Subcontracting:

County consents to Contractor subcontracting all or part of the performance of this Contract to Licensor and/or to Licensor's parent company Institute of Environmental Services and Research Limited.

ATTACHMENT B

Compensation and Pricing Provisions

1. Compensation: This is a firm-fixed fee Contract between the County and Contractor for STRmix Probalistic Software 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 payment 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 the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with Articles C. Amendments of the County Contract Terms and Conditions.

2. Fees and Charges: County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

Line No.	QTY.	Item No.	Description	Unit	Price	Extended Price
1	20 10	STR-AM	STRmix Annual Upgrade and Maintenance – Includes all new point and major version releases as well as expert resolution of general STRmix Scientific Support questions for a 24 12 month period from 1/1/20 2023 to 12/31/20 21 23. Scientific support includes trouble shooting, case specific queries, general email queries and advice, but excludes validation, platform upgrade or version upgrade support.	Each	\$3,843.75	\$76,875.00 \$38,437.50
2	1	STR-VUV	*STRmix Version Upgrade (including varNOC) with performance checks for migrating one platform to the latest STRmix version. Single consecutive version upgrade. Includes STRmix ready directory files, supporting workbooks and written report, one (1) kit, one (1) PCR protocol, one (1) Capillary Electrophoresis instrument model, and one (1) Capillary Electrophoresis data analysis protocol	Each	\$12,500.00	\$12,500.00
Subtotal						\$89,375.00
Sales Tax (electronically download)						\$0.00
Contract Shall Not Exceed						\$89,375.00

~~*STRmix Version Upgrade (Line Item No. 2) need only be purchased one time.~~ Contract shall not exceed \$38,437.50 for the term of 1/1/2023 through and including 12/31/2023.

3. Price Increase/Decreases: No price increases will be permitted during the first period of the price agreement. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
4. Pricing Structure: Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.
5. Contractor's Expense: The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
6. Payment Terms: Invoices for STRmix Version Upgrade (line item no. 2 above), and STRmix Annual Upgrade and Maintenance (line item no. 1 above) are to be submitted is after Contract execution. Invoices are to be submitted to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Vendor shall reference Contract 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 services 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 services do not meet the Contract requirements.

Payments 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 goods or services.

7. Taxpayer ID Number: The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.
8. Payment – Invoicing Instructions: The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:
 - a. Contractor's name and address
 - b. Contractor's remittance address, if different from 1 above
 - c. Contractor's Taxpayer ID Number

- d. Name of County Agency/Department
- e. Delivery/service address
- f. Master Agreement (MA) or Purchase Order (PO) number
- g. Agency/Department's Account Number
- h. Date of invoice
- i. Product/service description, quantity, and prices
- j. Sales tax, if applicable
- k. Freight/delivery charges, if applicable
- l. Total

Invoice and support documentation are to be forwarded to:

Sheriff-Coroner Department / Crime Lab Division
 Attn: Maria Manriquez
 320 N. Flower St.
 Santa Ana, CA 92703

9. **Payment (Electronic Funds Transfer (EFT))**
 The County of Orange offers Contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address will need to be provided to the County of Orange via an EFT Authorization Form. To request a form, please contact the assigned Deputy Purchasing Agent. Upon completion of the form, please mail, fax or email to the address or phone listed on the form.
10. **Year End and Final Invoices**
 At the end of each term of the Contract, and upon final termination, Contractor shall submit final invoices for services rendered or goods accepted by County under the Contract term (typically one year) within ninety (90) days. For example, if the term of a Contract ends, or the Contract expires without being renewed on June 30th, any and all invoices for services rendered or goods accepted by County during the preceding term of the Contract shall be submitted to County on or before September 28. In the event the ninetieth (90th) day falls on a weekend or County holiday, the deadline for submission of invoices shall be extended to the next business day. County holidays include New Year's Day, Martin Luther King Day, President Lincoln's Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.
 Contractor's failure to submit invoices pursuant to the deadlines established herein may be deemed a breach and shall be a basis for the County to refuse payment.

ATTACHMENT C
Software License Agreement

SOFTWARE LICENSE AGREEMENT

IMPORTANT - READ CAREFULLY: This Software License Agreement ("License") is a legal agreement between you (either an individual or a single legal entity, who will be referred to in this License as ("the Licensee")), and STRmix Limited of New Zealand, New Zealand company number 6445312, ("the Licensor") for the STRmix™ software ("the Software") that accompanies this License, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation. The Software also includes any software updates, add-on components, templates, images, symbols, web services and/or supplementary documentation that the Licensor may provide or make available to the Licensee, or that the Licensee obtains from the use of features or functionality of the Software, after the date the Licensee obtains the initial copy of the Software (whether by delivery of a CD, permitted downloading from the Internet or a dedicated web site, or otherwise) to the extent that such items are not accompanied by a separate license agreement or terms of use. By installing, copying, downloading, accessing or otherwise using the Software, the Licensee agrees to be bound by the terms of this Agreement. The terms of this Agreement may be changed from time to time by the Licensor at the time it releases a new major version of the Software by notifying the Licensee.

RECITALS:

- A. The Licensor is the owner of and has the right to license the Software and the Materials.
- B. The Licensee wishes to use the Software and the Materials.
- C. The Licensor has agreed to license the Software and the Materials to the Licensee and the Licensee accepts the license on the following terms and conditions.

1. LICENSE

- 1.1. Subject to the provisions of this Agreement, the Licensor grants a non-exclusive, non-transferable, non-revocable Object Code license to the Licensee to Use the Software and Materials.
- 1.2. The Licensee may not assign the License.
- 1.3. The Licensee may not sublicense the License.
- 1.4. The Licensee is not permitted to modify the Object Code.

- 1.5. The Licensee is not permitted to reverse engineer, reverse assemble or reverse compile or otherwise endeavor to obtain the Source Code from the Object Code.
- 1.6. The Licensee is limited to Use of the Software on the number of computers for which the License Fee has been paid. The Licensee may either purchase Standalone Licenses or Concurrent Licenses. The type and number of licenses shall be agreed in writing by the Licensee and the Licensor or its Authorized Distributor. If the Licensee wishes to Use the Software over this limit, the Licensee agrees to purchase additional licenses from the Licensor or its Authorized Distributor.
- 1.7. The Licensee shall limit the use of the Software to its authorized employees or other authorized persons who have been appropriately trained.
- 1.8. The Licensor or its Authorized Distributor will make User Training available to Licensee pursuant to its standard training procedures. User Training is not included in the License Fee.
- 1.9. The Licensee acknowledges that Support and Annual Upgrade services for the Software are not included in the License Fee. However, even if Support and Annual Upgrade services have not been purchased, the Licensor may, at its discretion, provide bug fixes for the Software should any be identified.
- 1.10. The Licensor may assign this Agreement without the Licensee's consent. This Agreement shall be binding upon, and inure to the benefit of, any such assignee.

2. TERM OF LICENSE

- 2.1. The parties acknowledge that the License is perpetual unless terminated in accordance with clause 12.

3. LICENSE FEE

- 3.1. The Licensee must pay the License Fee to the Licensor or its Authorized Distributor prior to using the Software.
- 3.2. The Licensee is not obliged to pay any fee due unless it has received an Invoice from the Licensor or its Authorized Distributor.

- 3.3. The License Fee and any additional fees (dependent on what additional items are purchased) are exclusive of all taxes, duties and other charges that may be applied to the License, Annual Upgrade, Support or User Training. The Licensee must pay applicable Sales Tax and duties, except to the extent that the Licensee provides the Licensor with appropriate evidence of exemption. If the Licensee is required by law to make a withholding or deduction from any amount payable under this Agreement, the Licensee shall withhold or deduct such amount and shall then gross up the amount paid to the Licensor so that the amount actually received by the Licensor is equal to the full amount of the License, Annual Upgrade, Support or User Training fees (as appropriate).

4. INTELLECTUAL PROPERTY

- 4.1. The Licensee acknowledges and agrees that the Licensor is and will remain the owner of all Intellectual Property Rights in the Software and the Materials.
- 4.2. The Licensee must not alter, remove or obscure any trade mark or copyright symbol or legend or other proprietary mark on the Software and the Materials.

5. CONFIDENTIAL INFORMATION

- 5.1. The Licensee acknowledges and agrees that the Software and the Materials contain Confidential Information belonging to the Licensor.
- 5.2. The Licensee agrees to disclose the Software and Materials only to its employees and contractors who need to access such information so that the Licensee can exercise its rights and obligations under this Agreement.
- 5.3. The Licensee undertakes to obtain signed deeds of confidentiality from any contractor who needs access to the Software and Materials.

6. LICENSOR REPRESENTATIONS AND WARRANTIES

- 6.1. The Licensor represents and warrants that it has the right to license the Software and the Materials to the Licensee.
- 6.2. The Licensor represents and warrants that the Licensee's Use of the Software and the Materials, in accordance with this Agreement, will not infringe the rights including Intellectual Property Rights of any third party.

- 6.3. To the fullest extent permitted by law, the Licensor expressly disclaims all implied warranties and conditions including without limitation implied warranties as to merchantability and fitness for purpose of the Software and Materials.
- 6.4. Notwithstanding the foregoing the Licensor has used its best endeavors to ensure the Software and Materials, when used correctly, will produce accurate, reliable results and measurements and generate consistent results accepted generally as reliable within the relevant scientific community.

7. LICENSEE OBLIGATIONS AND ACKNOWLEDGEMENTS

- 7.1. The Licensee acknowledges that it has not relied upon any representation made by the Licensor other than as set out in this Agreement.
- 7.2. The Licensee is not permitted to install the software or the licensing server for the Software on a device that is not physically within the Licensee's internal private local network. To avoid doubt, installation in a cloud computing or any other form of remotely hosted environment is not permitted.
- 7.3. The Licensee is not permitted to sell, charge, mortgage or otherwise encumber the Software and/or the Materials in any way.
- 7.4. The Licensee is solely responsible for the use, supervision, management and control of the Software and the Materials.
- 7.5. The Licensee acknowledges it is responsible for checking outputs from the Software and if any issue is identified, undertakes to notify the Licensor of the issue as soon as reasonably practicable.
- 7.6. The Licensee agrees to use the Software only in accordance with the terms set out in this Agreement.
- 7.7. The Licensee will ensure that the Software and Materials are at all times protected from access, use or misuse and damage and destruction by any person not authorized by either the Licensor or the Licensee, and the Licensee will notify the Licensor immediately if it becomes aware of any unauthorized use of the Software and/or Materials.

- 7.8. The Licensee acknowledges that it has no Intellectual Property Rights in the Software and/or the Materials.
- 7.9. Intentionally left blank.
- 7.10. The Licensee agrees to install updates to the Software as soon as reasonably practicable after they are made available by the Licensor.
- 7.11. The Licensee acknowledges that the Licensor is not contracted under this Agreement to install or provide acceptance testing of the Software.
- 7.12. The Licensee agrees that it will not use the Software on live casework unless it has on staff a minimum of one staff member from the Licensee that has completed User Training.

8. CONSENT TO USE DATA

If the Licensee purchases Support services, or the Licensor otherwise agrees to provide technical or other support for the Software, the Licensee agrees that the Licensor and its affiliates may collect and use technical information provided as a part of any such support services related to the Software. The Licensor agrees not to use this information in a form that personally identifies the Licensee.

9. LIMITATION OF LIABILITY

- 9.1. To the extent that under applicable law any liability of the Licensor cannot be excluded, the Licensor's liability is limited to the Technology Errors & Omissions insurance requirement of \$1,000,000 stated in the contract.
- 9.2. To the fullest extent permitted by law, the Licensor excludes all liability for (a) indirect and consequential loss; and (b) the loss or corruption of the Software or of data, loss of revenue, loss of profits, failure to realize expected profits or savings and any other commercial or economic loss of any kind arising from this Agreement.
- 9.3. This limitation of liability does not apply to any claims, actions, damages, liabilities or fines relating to or arising from Licensor's negligence or willful misconduct.

10. INDEMNITY

- 10.1. The Licensor indemnifies the Licensee against any claim or proceeding brought against the Licensee to the extent that claim or proceeding alleges that the Licensee's

use of the Software or Materials in accordance with this Agreement constitutes an infringement of a third party's Intellectual Property Rights ("**IP Claim**"). The indemnity is subject to the Licensee:

- 10.1.1. promptly notifying the Licensor in writing of any IP Claim;
 - 10.1.2. making no admission of liability and not otherwise prejudicing or settling the IP Claim, without the Licensor's prior written consent; and
 - 10.1.3. giving the Licensor complete authority and information required for the Licensor to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for the Licensor's account. Any settlement reached by Licensor must be approved by the Licensee's Board of Supervisors if the settlement (a) has a finding that the Licensee is liable or at fault in any way for the alleged infringement and/or (b) includes any financial obligation or a monetary award that the Licensee would be liable to pay.
- 10.2. The indemnity in clause 10.1 does not apply to the extent that an IP Claim arises from or in connection with:
- 10.2.1. the Licensee's breach of this Agreement;
 - 10.2.2. the use of the Software or Materials in a manner or for a purpose not reasonably contemplated by this Agreement or otherwise not authorized in writing by the Licensor; or
 - 10.2.3. . modification or alteration of the Software by a person other than the Licensor.
- 10.3. If at any time an IP Claim is made, or in the Licensor's reasonable opinion is likely to be made, then in defense or settlement of the IP Claim, the Licensor may (at the Licensor's option):
- 10.3.1. obtain for the Licensee the right to continue using the items that are the subject of the IP Claim; or
 - 10.3.2. modify, re-perform or replace the items that are the subject of the IP Claim so they become non-infringing.
- 10.4. The Licensee indemnifies and holds harmless the Licensor and promises to keep the Licensor indemnified against any loss, claim, action, settlement, award, judgment,

expense or damage of whatsoever kind or nature and howsoever arising that the Licensor might suffer as a result of any inaccurate use of the Software and/or the Materials including any unauthorized use of the Software and/or Materials by the Licensee.

11. SOURCE CODE IN ESCROW

11.1. The parties agree that source code is not required to be placed in escrow.

12. TERMINATION

12.1. Where the Licensee fails to perform any of its obligations set out in this Agreement, the Licensor reserves the right to immediately terminate the License with Notice to the Licensee.

12.2. Subject to the following clause, on termination the parties agree that all rights granted to the Licensee under this Agreement will cease immediately and the Licensee will return all Software and Materials provided under this Agreement. If requested by the Licensor, the Licensee will provide Notice to the Licensor stating that the Confidential Information, Software and Materials have been returned, destroyed or otherwise dealt with as the case may be as directed by the Licensor.

12.3. Following termination, the parties agree that the relevant provisions set out in clauses 5 (Confidential Information), 6 (Licensor Representations and Warranties), 7 (Licensee Obligations and Acknowledgements), 9 (Limitation of Liability) and 10 (Indemnity) will continue to be binding.

13. NOTICES

13.1. Any notice given pursuant to this Agreement must be in writing in English, signed by an officer of the sender, addressed to the recipient's place of business or email address.

14. DISPUTE ARBITRATION AND RESOLUTION

14.1. If any dispute or difference arises in connection with this Agreement ("**Dispute**"), then each party will negotiate in good faith, using their best endeavors to resolve the Dispute.

- 14.2. If a Dispute is unable to be resolved under clause 14.1 within 14 days or a longer period agreed by the parties, the Dispute shall be governed by clause 16.1, 16.2, and 16.3.
- 14.3. Each party must, to the extent practicable, continue to perform its obligations under this Agreement even if there is a dispute.
- 14.4. This clause 14 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

15. FORCE MAJEURE

No failure or omission by either party to carry out or observe any of the terms and conditions of this License (other than payment obligations) shall give rise to any claim against such party or be deemed a breach of this License if such failure or omission arises from an event that is beyond the reasonable control of the affected party.

16. GENERAL PROVISIONS

- 16.1. **Law and Jurisdiction:** This Agreement will be governed in all respects, by and construed in accordance with the laws of the State of California, USA. Subject to clause 14, the Licensor and the Licensee agree that any action arising out of or related to this License must be brought exclusively in an Orange County court.
- 16.2. If the laws of the State of California are expressly determined not to be applicable to this Agreement by a court of competent jurisdiction, then the applicable law will be the law of the jurisdiction of where the Licensee purchased the license and the jurisdiction of such court shall be non-exclusive.
- 16.3. Notwithstanding the above, either party shall, subject to clause 14, have the right to commence and prosecute any legal or equitable action or proceeding before any court of competent jurisdiction to obtain injunctive or other relief against the other party in the event that such action is necessary or desirable.
- 16.4. **Relationship:** Nothing in this Agreement will constitute or be deemed to constitute a partnership, joint venture or agency between the parties.
- 16.5. **Entire Agreement:** The terms of this Agreement constitute the entire terms of this Agreement and all understandings, prior representations, arrangements or

commitments that are not contained in this Agreement have no effect whatsoever and do not bind the parties.

16.6. **Waiver:** No waiver of any right or remedy will be effective unless in writing and shall not operate as a waiver of that right or remedy or any other right or remedy on a future occasion.

16.7. **Implied Terms:** Any implied term under law that can be excluded is hereby expressly excluded and no term is to be implied as being a term of this Agreement unless by law it cannot be excluded.

17. INTERPRETATION

17.1. Definitions

"Agreement" means this software license agreement and any amendments notified by the Licensor as set out in the introductory section of this Agreement or agreed by both parties in writing.

"Annual Upgrade" means provision of all new point and major version releases of the Software as they are released for a 12 month period.

"Authorized Distributor" means an organization or person appointed by the Licensor to market, sell, distribute, install and provide technical support for the Software.

"Concurrent License" means the Software maybe installed on multiple computers that communicate with a licensing server and can therefore be used on more than one computer provided that it may only be Used by one user at any time.

"Confidential Information" means all information in whatsoever form that:

- a) is marked or identified as "Confidential", "Secret", "Not to be Disclosed" or "Private";
- b) is designated, described or referred to by the discloser in any document or correspondence as confidential, secret or private or not to be disclosed; or
- c) the receiving party knows or ought to know is confidential;

but does not include any information which prior to the date of this Agreement was lawfully in the public domain or which the discloser has published, circulated or announced publicly.

"Invoice" means an invoice that is compliant with the laws of the jurisdiction in which it is issued and includes all goods and services, sales and other taxes, federal, state, or otherwise, however designated.

"Intellectual Property Rights" means all rights in copyright, circuit layout, designs, trademarks, patents and all other rights in intellectual property as defined in Article 2 of the World Intellectual Property Organization (WIPO) Convention whether registrable, registered, patentable or not.

"License" means the software license granted by the Licensor to the Licensee in Clause 1.

"License Fee" means the fee payable for Standalone Licenses or Concurrent Licenses under Clause 3.1.

"Materials" means the documentation provided by the Licensor to the Licensee including the operating manuals and other material relating to the Software and includes updates to those materials.

"Object Code" means the code produced by a compiler from the Source Code in machine readable form that a computer can execute directly.

"Sales Tax" includes sales, use, value-added, goods and services and similar taxes.

"Software" means the computer program/s provided by the Licensor or its Authorized Distributor and includes any updates provided by the Licensor during the term of this Agreement.

"Source Code" means the collection of computer instructions written using a human-readable computer language that is subsequently converted into Object Code.

"Standalone License" means the Software will be installed on one device for Use.

"Support" means remotely delivered assistance with technical troubleshooting, validation and implementation of the software, case specific queries, report wording, preparing quality manuals as required, for the number of hours purchased, which must be used in a 12 month period.

"Use" means use/load, run.

"User Training" means a full STRmix™ user training program (generally comprising a three or four day workshop and any other training reasonably considered necessary by the Licensor) provided by the Licensor or its Authorized Distributor.