



CONTRACT NO. MA-042-22011037

FOR

**ELECTRONIC RECORDS MANAGEMENT
SYSTEM**

BETWEEN

**COUNTY OF ORANGE
(HEALTH CARE AGENCY)**

AND

PANORAMIC SOFTWARE CORPORATION

CONTRACT NO. MA-042-22011037
FOR
ELECTRONIC RECORDS MANAGEMENT SYSTEM

This Contract Number MA-042-22011037 ("Contract") is made and entered into this 1ST day of July, 2022 ("Effective Date") between **Panoramic Software Corporation** ("Contractor"), with a place of business at 32932 Pacific Coast Highway #14-482, Dana Point, CA 92629, and County of Orange, a political subdivision of the State of California ("County"), through its Health Care Agency with a place of business at 200 W. Santa Ana Blvd., Suite 650, Santa Ana, CA 92701-7506. Contractor and County may sometimes be referred to hereinafter individually as "Party" or collectively as "Parties".

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are incorporated by reference into this Contract and constitute a part of this Contract:

Attachment A – Scope of Work
Attachment B – Compensation and Invoicing
Attachment C – OCHCA Security Requirements and Guidelines for Application Vendors and Application Service Providers

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Electronic Records Management System under a firm fixed fee Contract; and

WHEREAS, Contractor agrees to provide the Electronic Records Management System to 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 Invoicing, attached hereto as Attachment B; and

WHEREAS, County of Orange Board of Supervisors has authorized the County Procurement Officer or designee to enter into a contract with Contractor for obtaining said services; and

NOW, THEREFORE, the Parties, in consideration of the above recitals, and in consideration of the mutual covenants, benefits and promises contained herein, mutually agree as follows:

DEFINITIONS

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

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 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, agreements, or undertakings other than those set forth herein or referred to herein. All previous proposals, offers, discussions, preliminary understandings, and other communications relative to this Contract, oral or written, are hereby superseded, except to the extent that they have been incorporated into this Contract. Further, any other provision or other unilateral terms which may be issued by Contractor before or during the term of this Contract, irrespective of whether any such provisions or terms may be affixed to or accompany the goods and services being purchased, are hereby superseded and are not valid or binding on County unless authorized by County in writing in an amendment to this Contract.

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 authorized by County in writing in an amendment to this Contract. All automated end-user agreements (including, but not limited to, click-throughs, shrink-wrap, browse wrap and other non-negotiated terms and conditions provided with any of Contractor's services) and documentation provided with any of the services are specifically excluded and null and void. All terms and conditions in such agreements and documentation do not constitute a part or amendment of this Contract and shall have no force and effect and shall be non-binding on County, its employees, agents, and other authorized users, even if access to or use of such service or documentation requires affirmative acceptance of such terms and conditions.

- C. **Amendments:** Except as expressly provided herein, no changes, modifications, or amendments to the terms and conditions of this Contract are valid or binding on County unless made in writing and signed by the duly authorized representative of the parties. No other act, document, usage, or custom shall be deemed to change, modify, or amend this Contract. Nor shall any oral understanding or agreement not incorporated herein 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, the price stated in Attachment B 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 Contractor.
- 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 descriptions or services that do not conform to the 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 pursuant to Paragraph F.

- 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 arrears after County's satisfactory acceptance in accordance with the requirements of Attachment B.
- 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, and 3) fit for the particular purpose for which they are intended. All warranties in this Contract shall inure to County, its successors, assigns, customer agencies, and governmental users of the services. Contractor will indemnify, defend and hold County and County Indemnitees, as more fully described in Paragraph Y, 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 and by reason of 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 is solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any materials (e.g., software, documentation, specifications) or any part thereof, as modified through services provided under this Contract, will not infringe upon or misappropriate any patent, copyright, trademark, trade secret, or any other proprietary right, of any third party. Contractor agrees that, in accordance with the more specific requirement contained in Paragraph Y, 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 and attorney's fees.

In the event any materials or any part thereof, as modified through the services provided under this Contract, is or becomes the subject of a claim of infringement or misappropriation of a patent, copyright, trademark, trade secret, or any other proprietary right, or is enjoined, Contractor will with all reasonable speed and due diligence provide or otherwise secure for County, at Contractor's expense and election, subject to County approval not to be unreasonably withheld, one of the following: (a) the right to continue use of any such materials or any part thereof to the full extent contemplated by this Contract; (b) an equivalent system having the specifications as provided in this Contract; or (c) modification of the system or its component parts so that they become non-infringing while performing in a substantially similar manner to the original system and meeting the requirements of this Contract. If none of these options are available on commercially reasonable terms, County shall stop using the affected services provided under this Contract and Contractor shall refund to County any sums County paid to Contractor for the affected services, less a reasonable offset for use. County then has the option of immediately terminating the Contract, or applicable portions thereof, without penalty for cause pursuant to Paragraph 19, Termination.

- 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 prior written consent of County. Contractor shall provide County no less than sixty (60) calendar days' written notification of its intent to assign, sell, delegate or otherwise dispose of the rights and obligations of this Contract. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express prior written consent of County shall be void and invalid and shall constitute a material 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. **Consent to Breach Not Waiver:** Any action or inaction by County or failure of County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to enforce any right or provision contained herein shall not be construed as a waiver or relinquishment by County of its rights hereunder and shall not prevent County from enforcing such provision or right on any future occasion. Further, no term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent is 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.
- L. **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.
- M. **Performance Warranty:** Contractor warrants all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor is responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and 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; and, if permitted to subcontract, Contractor is fully responsible for all work performed by subcontractors.

Contractor further warrants that: a) Contractor has and will continue to have the unconditional and irrevocable right, power, and authority, including all permits and licenses required, to provide the services and to grant all rights and licenses granted or required to be granted by it under this Contract; b) Contractor has not and will not assign or otherwise enter into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Contract; c) Contractor will and has the expertise to perform all services in a timely, professional and workmanlike manner with a level of care, skill, practice, and judgment

consistent with the highest professional standards and with generally recognized industry standards and practices for similar services, using personnel with the requisite skill, experience, and qualifications, and will devote adequate resources to meet Contractor's obligations under this Contract; d) Contractor will use its best efforts to ensure that no harmful code, malware, or similar items are introduced into County's computing and network environment by the services, and that, where such items are transferred to County through the services, Contractor shall reimburse County the actual cost incurred by County to remove or recover from such items, including the costs of persons employed by County; and e) Contractor will not knowingly use the services of any ineligible person or subcontractor for any purpose in the performance of the Services under this Contract.

N. Insurance Requirements:

Contractor must comply with the following insurance requirements if making the deliveries to the County of Orange. No insurance is required if a common carrier makes deliveries to the County of Orange.

Prior to the provision of services under this Contract, Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy 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 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 are 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 SIR in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by 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 County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agent's, employee's or subcontractor's performance of this Contract, Contractor shall defend 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 Contractor's SIR provision shall be interpreted as though Contractor was an insurer and County was the insured.

If Contractor fails to maintain insurance acceptable to County for the full term of this Contract, County may immediately terminate this Contract without penalty.

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 Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy* Liability	\$1,000,000 per claims-made
Technology Errors & Omissions*	\$1,000,000 per claims-made \$1,000,000 aggregate

Required Coverage Forms

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

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

Required Endorsements

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

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed***

officials, officers, agents and employees as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.

- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement naming the **County of Orange, its elected and appointed officials, officers, agents and employees** as Additional Insureds for its vicarious liability.
- 2) A primary and non-contributing endorsement evidencing that Contractor's insurance is primary and any insurance or self-insurance maintained by County shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, agents and employees** or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.

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

Contractor shall notify County in writing within thirty (30) calendar days of any policy cancellation and ten (10) calendar days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation constitutes a material breach of the Contract, upon which County may suspend or immediately terminate this Contract without penalty.

If Contractor's Technology Errors & Omissions and/or Network Security & Privacy Liability are "Claims-Made" policy(ies), Contractor shall maintain coverage for two (2) years following the completion of the Contract.

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

Insurance certificates should be forwarded to the department address listed in Paragraph 17, Notices.

If Contractor fails to provide the insurance certificates and endorsements within seven (7) calendar days of notification by CEO/Purchasing or the department purchasing division, County may immediately suspend or terminate this Contract for cause pursuant to Paragraph 19, Termination.

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) calendar 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.

- O. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's express prior written consent via an amendment.
- P. **Change of Ownership/Name, Litigation Status, Conflicts 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 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 obligations contained in this Contract, and complete them to the satisfaction of County.

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

In addition, Contractor must notify County in writing of any change in Contractor's status with respect to name changes that do not require an assignment of the Contract. Contractor also must notify County in writing if Contractor becomes a party to any litigation against County, or a party to litigation that may reasonably affect 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 must provide this information without prompting from County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to County of its status in these areas whenever requested by County.

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 Contractor, this obligation applies to Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. 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.

- Q. **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 to the extent such delay is caused by any act of God, war, civil disorder, employment strike or other similar cause, beyond Contractor's 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 to end the delay and minimize the effects of such delay. County may terminate this Contract by written notice to Contractor if the delay continues substantially uninterrupted for a period of five (5) business days or more. No Force Majeure event excuses Contractor's other obligations under this Contract.

Notwithstanding the foregoing or any provision of this Contract, in no event will the following be considered a Force Majeure event: (a) shutdowns, disruptions, or malfunctions of Contractor's systems or any of Contractor's telecommunication or internet services other than as a result of general and widespread internet or telecommunication failures that are not limited to Contractor's systems; and (b) the delay or failure of any Contractor personnel (including subcontractors) to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure event.

- R. **Confidentiality:** All County Data shall be deemed confidential. Contractor must hold County Data in strict confidence and maintain the confidentiality of County Data pursuant to all statutory laws relating to privacy and confidentiality that currently exist or may exist at any time during the term of this Contract. Contractor must protect County Data from unauthorized access, use, disclosure and loss through the observance of the same or more effective procedural requirements as used by County. In addition, Contractor must not use, modify, merge with other data, commercially exploit, make available or make any other use of County Data or take, or refrain from taking, any other action that might, in any manner or form, adversely affect or jeopardize the integrity, security, or confidentiality of County Data, except as expressly permitted herein or as expressly directed by County in writing. Contractor also must not copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose, such County Data to third parties other than employees, agents, or subcontractors who require the County Data for performance of this Contract. The obligation in this Paragraph R applies to Contractor's employees, agents and subcontractors.

Contractor must immediately report to County any and all unauthorized disclosures or uses of County Data or suspected or threatened unauthorized disclosures or uses of County Data of which Contractor or Contractor's employees, agents and/or subcontractors are aware or have knowledge or reasonable belief. Contractor acknowledges that any unauthorized publication or disclosure of County Data to others or unauthorized use of County Data may cause immediate and irreparable harm to County. If Contractor should publish, disclose, or use such County Data without authorization, or threaten such action, County is immediately entitled to injunctive relief and any other remedies to which it is entitled under law or equity, without requiring a cure period. Contractor must, in accordance with the more specific requirements contained in Paragraph Y, indemnify, defend, and hold County and County Indemnitees harmless from and against any and all damages, costs, liabilities, and expenses (including without limitation attorneys' fees) relating to or arising from Contractor's unauthorized publication, use, or disclosure of County Data.

- S. **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 Y, 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.

- T. **Freight:** Prior to 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.

- U. **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.
- V. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear its own attorney's fees, costs and expenses.
- W. **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 its own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that it has not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule 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.
- X. **Employee Eligibility Verification:** Contractor warrants that it is and will remain in full compliance with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Y. **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.
- Z. **Audits/Inspections:** Contractor must permit County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection

and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. County will provide reasonable notice of such an audit or inspection.

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

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

Should Contractor cease to exist as a legal entity, Contractor's records pertaining to this Contract shall be forwarded to County's DPA.

AA. 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.

BB. Expenditure Limit: Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach seventy-five percent (75%) of the dollar limit on the Contract. County is not 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 Contractor shall provide Electronic Records Management System to County, as further detailed in Attachment A, Scope of Work.
2. **Term of Contract:** This Contract shall commence on July 1, 2022 through and including June 30, 2027. Contract shall be in effect for the time periods specified, unless this Contract is earlier terminated by the Parties.
3. **Breach of Contract:** The failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event, County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract, do any of the following:
 - a) Terminate the Contract immediately for cause pursuant to Paragraph 19, Termination;
 - b) Afford 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 Contractor for and during the period in which Contractor is in breach; and

- d) Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the breach.
4. **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.
 5. **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. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
 6. **Contractor’s Project Manager and Personnel:** Contractor shall appoint a Project Manager to direct Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by County and shall not be changed without the written consent of County’s Project Manager, which consent shall not be unreasonably withheld.

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. County’s Project Manager has the right to require the removal and replacement of Contractor’s Project Manager and Contractor personnel from providing services to County under this Contract. County’s Project Manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within five (5) business days after written notice by County’s Project Manager. County’s Project Manager shall review and approve the appointment of the replacement for Contractor’s Project Manager. County is not required to provide any information, reason or rationale in the event it requires the removal of Contractor’s Project Manager and/or Contractor personnel from providing further services under the Contract.

7. **Contractor’s Records:** Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from County. Storage of records in another county requires written consent from the DPA.
8. **Conditions Affecting Work:** Contractor is 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 Contractor to do so shall not relieve Contractor from responsibility for successfully performing the work without additional cost to County. 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 during or prior to the execution of this Contract, unless such understanding or representations by County are expressly stated in this Contract and the Contract expressly provides that County assumes the responsibility.
9. **County Data:** All materials, documents, data, reports, information, or other materials obtained from County data files or any County medium or furnished by or on behalf of County to Contractor in the performance of this Contract or created, generated or modified

by County or by Contractor through the performance of this Contract or use of Contractor's system, including all intellectual property rights in or pertaining to the same, ("County Data") is owned solely and exclusively by County and remains at all times the property of County. County Data also includes user identification information and metadata which may contain County Data or from which County Data may be ascertainable. To the extent there is any uncertainty as to whether data constitutes County Data, the data in question must be treated as County Data. As between the Parties, County owns all right, title, and interest in, and all intellectual property rights in and to, all County Data.

County Data may not be used or copied for direct or indirect use by Contractor, except as required in connection with performance of Contractor's duties under this Contract or as specifically directed by County in writing. Contractor must keep and maintain County Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss, and Contractor may not otherwise use, disclose, modify, merge with other data, commercially exploit, make available or make any other use of County Data or take, or refrain from taking, any other action that might, in any manner or form, adversely affect or jeopardize the integrity, security, or confidentiality of County Data, except as expressly permitted herein or as expressly directed by County in writing. All County Data, including copies, must be promptly returned or delivered to County upon expiration or earlier termination of this Contract pursuant to Paragraph 19, Termination. In addition, within forty-eight (48) hours of County's request, Contractor must provide County a copy of any County Data, reports and other documents or materials created by or obtained from County being held by Contractor under this Contract.

In the event of disaster or catastrophic failure that results in significant County Data loss or extended loss of access to County Data or services, Contractor must notify County by fastest means available and in writing, within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. Contractor must inform County of the scale and quantity of County Data loss, Contractor's intended actions to recover County Data from backups and mitigate any deleterious effect of County Data and services loss, and corrective action Contractor will take to prevent future loss. Contractor must conduct an investigation of the disaster or catastrophic failure and must share the report of the investigation with County. Contractor must cooperate fully with County, its agents and law enforcement related to this failure. During the performance of the Contract, Contractor is responsible for any loss or damage to this material and County Data while it is in Contractor's possession, and any such loss or damage must be restored at the expense of Contractor.

10. **Default – Reprocurement Costs:** In case of Contract breach by Contractor, resulting in termination by County, County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than this Contract, Contractor is responsible for paying County the difference between the Contract cost and the price paid, and County may deduct this cost from any unpaid balance due Contractor. The price paid by 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.

11. **Disputes – Contract:**

A. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by Contractor's Project Manager and County's Project Manager, such matter shall be brought to the attention of County Deputy Purchasing Agent by way of the following process:

1. Contractor shall submit to the DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless County, on its own initiative, has already rendered such a final decision.
 2. Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes County is liable.
- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor must diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by County Deputy Purchasing Agent or his designee. If County does not render a decision within ninety (90) calendar days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. Nothing in this Paragraph shall be construed as affecting County's right to terminate the Contract for cause or for convenience pursuant to Paragraph 19, Termination.

12. **Drug-Free Workplace:** Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. 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 Contractor may be ineligible

for award of any future County contracts if County determines that any of the following has occurred:

1. Contractor has made false certification, or
 2. Contractor violates the certification by failing to carry out the requirements as noted above.
13. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by County, state or federal government, this Contract may be subjected to unusual usage. Contractor shall service County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing in this Contract shall apply to serving County's needs regardless of the circumstances. If Contractor is unable to supply the goods/services under the terms of the Contract, then Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from 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 Contractor shall show both the emergency purchase order number and the Contract number.
14. **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, prior to submission to County. Contractor agrees that County review is discretionary and Contractor shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
15. **Equal Employment Opportunity:** 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. 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, 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. 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. 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.

16. **News/Information Release:** Contractor shall not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract. Contractor must first obtain review and written consent of said news releases from County through County's DPA.
17. **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 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.

For Contractor:

Name: Panoramic Software Corporation
Address: 32932 Pacific Coast Highway #14-482
Dana Point, CA 92629
Attn: Jeff von Waldburg
Phone: 877-558-8526
E-mail: jeff@panosoft.com

For County:

Name: County of Orange
Health Care Agency/Procurement and
Contract Services
Address: 200 W. Santa Ana Blvd., Suite 650
Santa Ana, CA 92701
Attn: Roland Tabangin
Title: Deputy Purchasing Agent
Phone: 714-834-3151
E-mail: rtabangin@ochca.com

CC:

Name: County of Orange
Address: Health Care Agency/IT
Attn: Adil Siddiqui
Title: County Project Manager
Phone: 714-834-6619
E-mail: asiddiqui@ochca.com

Name: County of Orange
Address: Office of the DA/Public Administrator
Attn: Victor Cumberland
Title: Purchasing Manager
Phone: 714-347-8427

E-mail: victor.cumberland@da.ocgove.com

18. **Precedence:** The Contract documents consist of this Contract and its 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, then the Attachments.
19. **Termination:** In addition to any other remedies or rights it may have by law and those set forth elsewhere in this Contract, County has the right to immediately terminate this Contract without penalty for cause or after thirty (30) calendar days' written notice without cause, unless otherwise specified. Cause includes, but is not limited to, any breach of contract, any misrepresentation or fraud on the part of Contractor, and any assignment, subcontracting or change of ownership without County's express prior written consent. County's decision to exercise its right to terminate the Contract shall relieve County of all further obligations. The Parties also may mutually terminate this Contract by written agreement at any time. The rights, obligations, and conditions that by their express terms or nature and context are intended to survive the termination or expiration of this Contract, survive any termination or expiration of this Contract.

If County terminates this Contract, Contractor may submit to County a termination claim, if applicable, after receipt of the termination notice. Contractor's claim must be submitted promptly, but in no event later than sixty (60) calendar days from the effective date of the termination, unless one or more extensions in writing are granted by County upon written request of Contractor. Upon termination and submission of a termination claim, County agrees to pay Contractor for all services satisfactorily performed prior to the effective date of the termination that meet the requirements of the Contract according to the compensation provisions contained in this Contract; provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in this Contract. Upon termination or other expiration of this Contract, each party must promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of execution and performance of this Contract and transfer all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each party. Contractor shall return all County Data to County in the file format specified by County within thirty (30) calendar days, as more fully described in Paragraph 31, Extraction of County Data.

In addition, Contractor at its own expense shall erase, destroy, and render unreadable all data in its entirety remaining in Contractor's (including any subcontractor's) possession and any system Contractor directly or indirectly uses or controls, and any copies thereof, but only after County Data has been returned to County. County Data must be rendered in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities. Certification in writing that these actions have been completed must be provided within thirty (30) calendar days of termination or expiration of this Contract or within seven (7) calendar days of a request of County, whichever shall come first. To the extent that any applicable law prevents Contractor from destroying or erasing County Data as set forth herein, Contractor shall retain, in its then current state, all such County Data then within its right of control or possession in accordance with the confidentiality, security and other requirements of this Contract, and perform its obligations under this Paragraph as soon as such law no longer prevents it from doing so.

20. **Usage:** No guarantee is given by County to Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. Contractor agrees to supply services

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

21. **Usage Reports:** Contractor shall submit usage reports on an annual basis to the DPA. The usage report shall be in a format specified by the DPA and shall be submitted ninety (90) calendar days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.
22. **Contractor Screening:** Throughout the term of this Contract, Contractor shall not be listed on any state or federal exclusionary rosters, listed below. County may screen Contractor on a monthly basis to ensure Contractor is not listed on the exclusionary rosters, listed below. If Contractor or its employee(s) are found to be included on any of the rosters indicated below, Contractor shall be deemed in default of its obligation under this Paragraph and shall constitute a cause for County to exercise its right to terminate this Contract immediately. County, in its sole discretion, may afford Contractor an opportunity to cure said default within a reasonable time.
 - a. United States Department of Health and Human Services, Office of Inspector General (OIG) List of Excluded Individuals & Entities (LEIE) (<http://exclusions.oig.hhs.gov>).
 - b. General Services Administration (GSA) System for Award Management (SAM) Excluded Parties List (<http://sam.gov>).
 - c. State of California Department of Health Care Services Medi-Cal Suspended and Ineligible Provider List (County Health Care Agency Internal Database).
23. **Debarment:** Contractor certifies that neither Contractor nor its employee(s) are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in a contractual transaction by any state or federal department or agency. County has the right to terminate this Contract for cause pursuant to Paragraph 19, Termination, if Contractor is or becomes the subject of any debarment, pending debarment, declared ineligible or voluntary exclusion from participation by any state or federal department or agency.
24. **Lobbying:** On the best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, Contractor to any person influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative contract.
25. **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.
26. **Ownership of Documents:** County has permanent ownership of all directly connected and derivative materials produced under this Contract by Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of County and may be used by County as it may require without additional cost to County. None of the documents, reports and other

incidental or derivative work or furnished materials shall be used by Contractor without the express prior written consent of County.

27. **Gratuities:** Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, County has the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by County in procuring on the open market any goods or services which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of County provided in this Paragraph are not exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
28. **Parking for Delivery Services:** County shall not provide free parking for delivery services.
29. **Compliance with County Information Technology Policies and Procedures:**

Policies and Procedures

Contractor and Contractor's subcontractors, personnel, and all other agents and representatives of Contractor, shall at all times comply with and abide by all policies and procedures of County as they now exist or may hereafter be created, changed, modified, amended, supplemented or replaced by County from time to time, in its sole discretion, that are provided or available to Contractor in connection with Contractor's performance under this Contract. Contractor shall cooperate with County in ensuring Contractor's compliance with County policies and procedures described in this Contract and as adopted by County from time-to-time, and any material violations or disregard of such policies or procedures shall, in addition to all other available rights and remedies of County, be cause for termination of this Contract.

Security and Policies

All performance under this Contract shall be in accordance with County's security requirements, policies, and procedures as set forth in this Paragraph. Contractor shall at all times use industry best practices and methods with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to County Resources (which is defined as all applicable County systems, software, assets, hardware, equipment, and other resources owned by or leased or licensed to County or that are provided to County by third party service providers) and County Data accessed in the performance of Services in this Contract.

Information Access

Contractor must at all times use appropriate safeguard and security measures to ensure the confidentiality and security of all County Data and County Resources. All County Data and County Resources used and/or accessed by Contractor: (a) must be used and accessed by Contractor solely and exclusively in connection with, and in furtherance of, the performance of Contractor's obligations under this Contract; (b) must not be used or accessed except as expressly permitted in this Contract and must not be commercially exploited in any manner whatsoever by Contractor or Contractor's personnel and subcontractors; and (c) must not be shared with Contractor's parent company or other affiliate without County's express prior written consent.

County may require Contractor to issue any necessary information-access mechanisms, including access IDs and passwords, to Contractor personnel and subcontractors, only with such level of access as is required for the individual to perform the individual's assigned tasks and functions under this Contract. The issued mechanisms may not be shared and may only be used by the individual to whom the information-access mechanism is issued. In addition, the issued mechanisms must be promptly cancelled when the individual is terminated, transferred or on a leave of absence. Each calendar year of the Contract and any time upon request by County, Contractor must provide County with an accurate, up-to-date list of those Contractor personnel and subcontractors with access to County Data and/or County Resources and the respective security level or clearance assigned to each such individual.

Contractor, including Contractor personnel and subcontractors, must fully comply with all of County's policies and procedures regarding data access and security, including those prohibiting or restricting remote access to County Data and County Resources. County may require all Contractor personnel and subcontractors performing Services under this Contract to execute a confidentiality and non-disclosure agreement concerning County Data and County Resources in the form provided by County. Contractor's failure to comply with the provisions of this Paragraph is a breach of this Contract and entitles County to deny or restrict the rights of such non-complying Contractor personnel to access and use the County Resources and County Data, as County in its sole discretion deems appropriate.

Data Security Requirements

Without limiting Contractor's obligation of confidentiality as further described in this Contract, Contractor must establish, maintain, and enforce a data privacy program and an information security program, including safety, physical, and technical security policies and procedures, that comply with the requirements set forth in this Contract and, to the extent such programs are consistent with and not less protective than the requirements set forth in this Contract, are at least equal to applicable best industry practices and standards. These programs must provide physical and technical safeguards against accidental, unlawful, or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling, or processing of County Data. Contractor must take all necessary measures to secure and defend all locations, equipment, systems, and other materials and facilities employed in connection with the Services against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Contractor Resources (which is defined as all Services, software, assets, hardware, equipment, and other resources and materials provided by Contractor to County, otherwise utilized by Contractor, or approved by Contractor for utilization by County, in connection with this Contract) or the information found therein; and prevent County Data from being commingled with or contaminated by the data of other customers or their users. Contractor also must continuously monitor Contractor Resources for potential areas where security could be breached. Contractor must review the data privacy and information security programs regularly, but no less than annually, and update and maintain them to comply with applicable laws, regulations, technology changes, and best practices.

Without limiting County's audit rights in this Contract, County has the right to review Contractor's data privacy program and information security program prior to commencement of services and from time to time during the term of this Contract. Contractor must allow County reasonable access to Contractor's security logs, latency statistics, and other related security data that affect this Contract and County Data, at no cost to County. In addition, during the term of this Contract from time to time without

notice, County, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. Contractor must implement any required safeguards as identified by County or by any audit of Contractor's data privacy and information security program. County reserves the right, at its sole discretion, to immediately terminate this Contract or a part thereof for cause pursuant to Paragraph 19, Termination, if County reasonably determines Contractor fails or has failed to meet its obligations under this Paragraph.

Enhanced Security Measures

County may, in its discretion, designate certain areas, facilities, or County Resources as requiring an enhanced level of security and access control above that expressly required in this Contract. County will notify Contractor in writing reasonably in advance of any such designation becoming effective. The notice will set forth in reasonable detail the enhanced security or access-control procedures, measures, or requirements that Contractor must implement and enforce as well as the date on which such procedures and measures will take effect. If commercially reasonable, Contractor, including Contractor's personnel and subcontractors, must fully comply with and abide by all such enhanced security and access measures and procedures as of such date. If not commercially reasonable to fully comply as of such date, Contractor, including Contractor's personnel and subcontractors, must fully comply with and abide by all such enhanced security and access measures and procedures within a commercially reasonable time. County will be responsible for any additional cost required by the changes.

General Security Standards

Contractor is solely responsible for the Contractor Resources used by or for Contractor to access County Resources, County Data or otherwise in connection with the services and must prevent unauthorized access to County Resources or County Data through the Contractor Resources. At all times during the term, Contractor must maintain a level of security with regard to the Contractor Resources, that in all events is at least as secure as the levels of security that are common and prevalent in the industry and in accordance with industry best practices. Contractor must maintain all appropriate administrative, physical, technical, and procedural safeguards and controls to secure County Data from data breach, protect County Data and the services from loss, corruption, unauthorized disclosure, and from hacks, and the introduction of viruses, Disabling Devices, malware, and other forms of malicious and inadvertent acts that can disrupt County's access and use of County Data and the services. Such measures must include at a minimum: (a) access controls on information systems, including controls to authenticate and permit access to County Data only to authorized individuals and controls to prevent Contractor employees from providing County Data to unauthorized individuals who may seek to obtain this information; (b) industry-standard firewall protection; (c) encryption of electronic County Data while in transit from Contractor networks to external networks; (d) measures to store in a secure fashion all County Data which must include but not be limited to, encryption at rest and multiple levels of authentication; (e) dual control procedures, segregation of duties, and pre-employment criminal background checks from employees with responsibilities for or access to County Data; (f) measures to ensure that County Data is not altered or corrupted without the prior written consent of County; (g) measures to protect against destruction, loss or damage of County Data due to potential environmental hazards, such as fire and water damage; (h) staff training to implement the information security measures; and (i) monitoring of the security of any portions of Contractor Resources that are used in the provision of the services against intrusion on a twenty-four hour a day basis.

Security Failures

County has the right to immediately terminate this Contract with cause pursuant to Paragraph 19, Termination, and the right to receive Contractor’s payment of any pre-paid fees prorated to the date of termination if County in its sole discretion determines there is a Security Failure. A “Security Failure” means Contractor or its subcontractors, or the employees or agents of the foregoing, do not meet the security requirements of this Contract, including any backup, disaster recovery, or other policies, practices, or procedures related to security of County Data and County Resources. The remedy provided in this Paragraph is not exclusive and is in addition to any other rights and remedies provided by law or under this Contract.

Security Breach Notification

In the event Contractor becomes aware of any act, error or omission, negligence, misconduct, or security incident including unsecure or improper data disposal, theft, loss, unauthorized use and disclosure or access, that compromises or is suspected to compromise the security, confidentiality, or integrity of County Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the security, confidentiality, or integrity of County Data, Contractor shall, at its own expense, (1) immediately notify the County’s Chief Information Security Officer and County Privacy Officer of such occurrence and perform a root cause analysis thereon, (2) investigate such occurrence, (3) provide a remediation plan, acceptable to County, to address the occurrence and prevent any further incidents, (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event, and (5) cooperate with County and any law enforcement or regulatory officials investigating such occurrence, including but not limited to making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by County and/or any law enforcement or regulatory officials, and (6) perform or take any other actions required to comply with applicable law as a result of the occurrence (at the direction of County). County shall make the final decision on notifying County persons, entities, employees, service providers, and/or the general public of such occurrence, and the implementation of the remediation plan. If notification to particular persons is required under any law or pursuant to any of County’s privacy or security policies, then notifications to all persons and entities who are affected by the same event shall be considered legally required. Contractor shall reimburse County for all notification related costs incurred by County arising out of or in connection with any such occurrence due to Contractor’s acts, errors or omissions, negligence, and/or misconduct resulting in a requirement for legally required notifications.

In the case of personally identifiable information, Contractor shall provide third-party credit and identity monitoring services to each of the affected individuals for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals.

In addition to indemnity obligations set forth elsewhere in this Contract, Contractor shall indemnify, defend and hold County and County Indemnitees harmless from and against any and all claims, including reasonable attorneys fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from County in connection with the occurrence.

Rafael Linares	Linda Le, CHPC, CHC, CHP
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<p>Chief Information Security Officer 1055 N. Main St, 6th Floor Santa Ana, CA 92701 Office: (714) 567-7611 E-mail: Rafael.linares@ocit.ocgov.com</p>	<p>County Privacy Officer 1055 N. Main St, 6th Floor Santa Ana, CA 92701 Office: (714) 834-4082 Email: linda.le@ocit.ocgov.com securityadmin@ocit.ocgov.com</p>
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Conduct on County Premises

Contractor shall, at all times, comply with and abide by all reasonable policies and procedures of County (or that may be established thereby, from time to time) that pertain to conduct on County's premises, possession or distribution of contraband, or the access to, and security of, the Party's real property or facilities, to the extent that Contractor has been provided with a copy of or has access to each such policy or procedure. Contractor shall exercise due care and diligence to prevent any injury to persons or damage to property while on the other Party's premises. The operation of vehicles by either Party's personnel on the other Party's property shall conform to posted and other applicable regulations and safe-driving practices. Vehicular accidents occurring on a Party's property and involving either Party's personnel shall be reported promptly to the appropriate Party's personnel. Each Party covenants that at all times during the Term, it, and its employees, agents, and subcontractors shall comply with, and take no action that results in the other Party being in violation of, any applicable federal, state, and local laws, ordinances, regulations, and rules. Each Party's personnel shall clearly identify themselves as the appropriate Party's personnel and not as employees of the other Party. When on the other Party's premises, each Party's personnel shall wear and clearly display identification badges or tags, as approved by the other Party.

Security Audits

Contractor shall maintain complete and accurate records relating to its SOC Type II or equivalent's data protection practices and the security of any of County Data, including any backup, disaster recovery, or other policies, practices or procedures. Further, Contractor shall inform County of any security audit or assessment performed on Contractor's operations, information security program, or disaster recovery plan that includes County Data, within sixty (60) calendar days of such audit or assessment. Contractor will provide a copy of the audit report to County within thirty (30) calendar days after Contractor's receipt of request for such report. If Contractor does not perform a SOC Type II or equivalent audit at least once per calendar year, County may perform or have performed by an independent security expert its own such security audits, which may include penetration and security tests of Contractor Systems and operating environments. All such testing shall ensure all pertinent County security standards as well as any HCA requirements (e.g., such as federal tax requirements or HIPAA) are in place. Contractor shall reasonably cooperate with all County security reviews and testing, including but not limited to, penetration testing. Contractor shall implement any required safeguards as identified by County or by any audit of Contractor's data privacy and information security program. In addition, Contractor will provide to County upon request the most recent third-party SOC 2 Type II report. County may also have the right to review Plans of Actions and Milestones (POA&M) for any outstanding items identified by the SOC 2 Type II report requiring remediation as it pertains to the confidentiality, integrity, and availability of County Data. County reserves the right, at its sole discretion, to immediately terminate

this Contract or a part thereof without limitation and without liability if County reasonably determines Contractor fails or has failed to meet its obligations under this paragraph.

30. **Data Location:** Except where Contractor obtains County's express prior written consent, the physical location of Contractor's data center where County Data is stored must be within the United States. Any time County Data is relocated within the United States, Contractor must securely dispose of such copies from the former data location and certify in writing to County that such County Data has been disposed of securely. Contractor must comply with all reasonable directions provided by County with respect to the disposal of County Data. Further, should it become necessary in the course of normal operations for Contractor to copy or move County Data to another storage destination on its online system and delete County Data found in the original location, Contractor must preserve and maintain the content and integrity of County Data.
31. **Extraction of County Data:** During the term of this Contract, County is able to extract County Data from Contractor's system without cost at any time. For up to thirty (30) calendar days after termination or expiration of this Contract, cessation of business by Contractor, or any other event preventing Contractor from continuing to perform under this Contract, Contractor must provide County an extract of County Data in the format specified by County within five (5) business days of County's request.

The extraction of County Data by Contractor is without cost and not subject to any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor). Contractor cannot withhold County Data or refuse for any reason to promptly return to County all County Data (including copies thereof) requested by County, even if County is then or is alleged to be in breach of the Contract. As part of Contractor's obligation to provide County Data, Contractor also must provide County any data maps, documentation, software, or other materials necessary for County to use, translate, interpret, extract and convert County Data.

32. **Trans-Border Data Flow:** Contractor must not transfer any County Data across a country border. Furthermore, Contractor must perform all services required under this Contract within the United States and must not access County Data from outside the United States.
33. **Documentation:** Contractor must provide to County, at no charge, all documentation, and updated versions thereof, including but not limited to manuals and other printed materials, necessary or useful to County in its use or access of Contractor's system. Contractor agrees that County may reproduce such documentation for its own use. County agrees to include Contractor's copyright notice on any such documentation reproduced in accordance with any copyright instructions provided by Contractor.
34. **Discovery:** Contractor shall promptly notify County upon receipt of any requests which in any way might reasonably require access to County Data to which Contractor or any third party hosting service of Contractor may have access or to County's use of Contractor's services. Contractor shall notify County by the fastest means available and also in writing, with additional notification provided to County's Project Manager or designee, unless prohibited by law from providing such notification. Contractor shall provide such notification within forty-eight (48) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying County, unless prohibited by law from providing such notification. Contractor must provide its intended responses to County with adequate time for County to review, revise, and, if necessary, seek a protective order in a court of competent jurisdiction.

Contractor shall not respond to legal requests directed at County unless authorized in writing to do so by County.

35. **Right to Access and Use:** Contractor grants County a non-transferable and nonexclusive right to use and access Contractor's system, including all functionalities and services provided, furnished or accessible under this Contract. This includes the right of County to, and access to, all system maintenance and warranty updates, upgrades, new releases, patches, corrections, modifications, enhancements, fixes and support without Contractor requiring a separate maintenance or support agreement. County may use the system with any computer, computer system, server or desktop workstation owned or utilized by County or other authorized users. Contractor must not reduce or eliminate functionality in the system during the term of this Contract. Where Contractor reduces or eliminates functionality in the system, at County's sole election and in County's sole determination, County: (a) has, in addition to any other rights and remedies under this Contract or at law, the right to immediately terminate this Contract for cause pursuant to Paragraph 19, Termination, and be entitled to a return of any prepaid fees; or (b) may determine the value of the reduced or eliminated functionality and Contractor must immediately adjust the fees accordingly on a prospective basis. Where Contractor has introduced like functionality in other services, County has a right to use and access the new services, at no additional charge, with the same rights, obligations and limitations as for the services.
36. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to subcontract any performance of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract. In the event that Contractor is authorized by 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. County shall look to 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.
37. **Promotional/Advertisement:** County owns all rights to the name, trademarks, logos and symbols of County and all internet uniform resource locators, County username or names, internet addresses and email addresses. The use and/or reproduction of County's name, trademark, logo and/or symbols for any purpose, including commercial advertisement, promotional purposes, announcements, displays or press releases, without County's express prior written consent is expressly prohibited. No use or reproduction may state or imply that County endorses Contractor's products or services.
38. **Publication:** No copies of sketches, schedules, written documents, computer-based data, photographs, maps or graphs, including graphic artwork, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without County's express prior written consent, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered by County or only after County approval.

(SIGNATURE PAGE FOLLOWS)

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract No. MA-042-22011037 the date set forth opposite their signatures. If Contractor is a corporation, Contractor shall provide two signatures as follows: 1) the first signature must be either the Chairman of the Board, the President, or any Vice President; 2) the second signature must be that of the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution or by-laws demonstrating the legal authority of the signature to bind the company.

Contractor: Panoramic Software Corporation

Jeff von waldburg _____ CEO/Secretary
Print Name Title

Signature  _____ 2/17/2022
Date

Art von waldburg _____ Chairman of the Board
Print Name Title

Signature  _____ 2/16/2022
Date

County of Orange, a political subdivision of the State of California
Purchasing Agent/Designee Authorized Signature:

_____ Deputy Purchasing Agent
Print Name Title

_____ Date

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

 _____ 02/18/2022
Signature Date

ATTACHMENT A

SCOPE OF WORK

A. BACKGROUND

County of Orange Health Care Agency-Public Guardian (HCA-PG) provides investigative and fiduciary services to adults in the community who are unable to provide their own basic personal needs due to a severe mental disorder or disabling physical condition. HCA-PG deputies and staff ensure that individualized personal treatment, supervision and financial oversight is provided so that conservatees achieve their highest level of self-determination, autonomy and independence.

County of Orange Office of the District Attorney-Public Administrator (DA-PA), as mandated by the California Probate Code sections 7601-7604, protects, assists, manages and administers the affairs of resident decedent estates when there are no other viable persons or entities to administer the estates. This includes a statutory duty to investigate whether family members can be located and if a will or other testamentary documents can be found, to arrange for indigent burials where there is no family who can act, and when appointed by the court, to step in and administer other business matters including the sale of assets.

B. OBJECTIVE

The objective of this Contract is for support and maintenance of the existing hosted solution with moderate modifications for both HCA-PG and DA-PA. Contractor shall continue support of two independent systems and provide minor modifications of off the shelf (COTS) version of current Public Administrator and Public Guardian systems to meet the needs of the County.

Contractor shall maintain two independent systems; one for HCA-PG and one for DA-PA. Both systems will be hosted by Contractor in the Amazon Web Services (AWS) cloud, but will consist of two separate code bases, databases, and document repositories.

The customized systems shall enable HCA-PG and DA-PA users to manage each case from inception to closure. Users will have the ability to enter case demographics data into the systems, perform all accounting functions, and manage assets and trusts for each case throughout the many different case types and life cycles. The systems will also allow users to generate various reports related to each case.

C. SYSTEM COMPONENTS

Public Administrator System (PAPro):

Contractor's Public Administrator system (PAPro) for DA-PA will track decedent information, allowing DA-PA deputies to efficiently manage multiple cases, and ensure that funeral and burial arrangements are made. PAPro's base functionality will help DA-PA to protect the property belonging to decedent estates, allowing for efficient marshalling of estate assets, storage of these items, tracking of initial and appraised values, and reporting total estate value to the courts. PAPro will help DA-PA staff to ensure that benefits are applied for and received, and that bills are paid as required by applicable law. PAPro allows for the documenting of entities entitled to inherit from the estate, ensure the entities receive their

inheritance, and maintain a documented trail that each asset is accounted for and distributed properly.

Public Guardian System (PGPro):

Contractor's Public Guardian System (PGPro) for HCA-PG will ensure that county residents under HCA-PG's care are less susceptible to being taken advantage of financially, and that conservatee's assets are managed to provide long term health and wellness for the clients. PGPro logs assets owned by the client at the time of appointment as well as assets acquired during the conservatorship. PGPro allows for the entry of both estimated and appraised values of each asset, and will also manage changes to conservatee's asset, their locations and values over time. PGPro can also manage bank account information. PGPro makes processing of recurring deposits easy to track on a large scale, tracks payments and makes communication to request and process payments between case managers and accountants easy and auditable. PGPro tracks individual client balances, and aggregate client balances agency wide to assist HCA-PG with bank reconciliation. PGPro tracks financial and asset information, and can produce court accounting reports.

D. SCOPE OF WORK

Contractor will maintain existing customized PG and PA systems to meet the needs of HCA-PG and DA-PA. Contractor shall meet with each agency to work through any modifications needed, document the required changes, and develop those changes.

1. Development and Testing Environment Deployment

Contractor will continue to use a HCA-PG and DA-PA development environment for testing of functionality, and demonstration of modifications as they are made throughout the process prior to implementation. This environment will be used to run preliminary data conversions, as well as during UAT and for user training.

2. Security

Contractor will continue to work with County to configure user access roles and application security to meet both HCA-PG and DA-PA requirements, such as HIPAA compliance and general security.

3. User Roles

Base system user roles such as Case Manager, Case Manager Supervisor, Accountant, Accounting Supervisor, and Administrator will be implemented along with development of additional user roles identified by HCA-PG and DA-PA.

4. Penetration Testing

Contractor will work with County and perform and pass penetration testing.

E. CLIENT MANAGEMENT

Contractor shall continue to provide maintenance to the following functionality and will allow for modification and customizations, but not limited to the following, as identified by County HCA-PG and DA-PA.

1. Companion Cases
2. High Profile Cases
3. Ticklers and Alerts
4. Face Sheet
5. Address History
6. Benefit Tracking
7. Contacts
8. Court Accounting
9. Court Calendaring
10. Creditor's Claims
11. Pre-Needs
12. Special Needs Trusts
13. Events
14. Inventory
15. I&A History and Versioning
16. Client Reports

F. ACCOUNTING MODULE

Contractor base accounting module will include, but not limited to, the following functionality and will allow for modification and customizations as identified by County HCA-PG and DA-PA.

1. Payment Batches
2. CAPS+
3. Revolving Fund Reimbursement
4. Bank Import
5. ACH Processing
6. Investments
7. Bank Reconciliation
8. Vendors Management
9. Interest Distribution
10. Data Conversion

G. APPLICATION CUSTOMIZATION

Contractor shall meet with County Agencies and key users from both HCA-PG and DA-PA to refine and enhance/modify changes as necessary and detail additional required changes to meet the needs of the County.

CHANGE CONTROL POLICY

If change requests are needed, Contractor will work with County Agency key users from HCA-PG and DA-PA to identify or define the change, assess the importance and impact of the change and obtain approval from HCA-PG or DA-PA before proceeding.

Note: County reserves right to reduce quantity or cancel order for items not already in transit.

No material adjustments made to the Scope of Work will be authorized without County's express prior written approval. Non-material adjustments may be made with the written approval of County DPA.

ATTACHMENT B

COMPENSATION AND INVOICING

1. **Compensation:** This is a fixed price Contract not to exceed the amount of **\$843,000** for the Term of Contract.

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 Contractor of all its duties and obligations hereunder. Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work.

2. **Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract.

Date/Coverage	Description	HCA-PA	DA-PA
Year 1 July 1, 2022 - June 30, 2023	Monthly Hosting/Support	\$6,300	\$5,250
	Annual Hosting/Support	\$75,600	\$63,000
	Additional Services/Enhancement	\$25,000	\$5,000
Line Total for Year 1		\$100,600	\$68,000
Year 2 July 1, 2023 - June 30, 2024			
	Annual Hosting/Support	\$75,600	\$63,000
	Additional Services/Enhancement	\$25,000	\$5,000
Line Total for Year 2		\$100,600	\$68,000
Year 3 July 1, 2024 - June 30, 2025			
	Annual Hosting/Support	\$75,600	\$63,000
	Additional Services/Enhancement	\$25,000	\$5,000
Line Total for Year 3		\$100,600	\$68,000
Year 4 July 1, 2025 - June 30, 2026			
	Annual Hosting/Support	\$75,600	\$63,000
	Additional Services/Enhancement	\$25,000	\$5,000
Line Total for Year 4		\$100,600	\$68,000

Year 5			
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July 1, 2026 - June 30, 2027			
	Annual Hosting/Support	\$75,600	\$63,000
	Additional Services/Enhancement	\$25,000	\$5,000
Line Total for Year 5		\$100,600	\$68,000
Total Cost for Year 1 to Year 5		\$503,000	\$340,000
Additional Services/Enhancement: Any related services/commodities are authorized to be purchase under this contract upon approval of the County's Project Manager or Designee.			

3. **Price Increase/Decreases:** No price increases are permitted during the term of the Contract. County requires documented proof of cost increases on contracts prior to any price adjustment. A minimum of thirty (30) calendar 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. 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 Contractor's profit are not allowed.

4. **Firm Discount and Pricing Structure:** Contractor guarantees that the prices in this Contract are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to County during the term of this Contract not otherwise specified and provided for within this Contract.

5. **Contractor's Expense:** Contractor is responsible for all costs related to photo copying, telephone and fax communications, travel, parking and any and all "out of pocket" expenses incurred by Contractor during the performance of work and services under this Contract. Contractor is responsible for payment of all parking costs and expenses incurred at a County facility while performing work under this Contract, except to the extent the County facility has free parking available to the public and Contractor makes appropriate use of this free parking. However, County will not provide free parking for any service in the County Civic Center.

6. **Payment Terms:** Payment will be net thirty (30) calendar days after receipt of an invoice in a format acceptable to County and verified and approved by the department and subject to routine processing requirements.

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

 Payments made by County shall not preclude the right of County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

7. **Taxpayer ID Number:** Contractor shall include its taxpayer ID number on all invoices submitted to County for payment to ensure compliance with IRS requirements and to expedite payment processing.

8. **Payment – Invoicing Instructions:** Contractor must provide an invoice on Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, Contractor must leave an invoice with each delivery. Each invoice must have a unique number and must include the following information:
- a. Contractor's name and address
 - b. Contractor's remittance address
 - c. Contractor's Taxpayer ID Number
 - d. Name of County Department
 - e. Delivery/service address
 - f. Master Agreement (MA) or Purchase Order (PO) number
 - g. Department's Account Number, if applicable
 - h. Date of Invoice
 - i. Product/service description, quantity, and prices
 - j. Sales tax, if applicable
 - k. Freight/delivery charges, if applicable
 - l. Total

The responsibility for providing acceptable invoices to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and shall be returned to Contractor.

Unless otherwise directed in this Contract, invoice and support documentation are to be emailed to hcaap@ochca.com OR forwarded to:

Orange County Health Care Agency
Accounts Payable
PO Box 689
Santa Ana, CA 92702

9. **Payment (Electronic Funds Transfer)**
County offers Contractor the option of receiving payment directly to its bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT shall also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address shall need to be provided to County via an EFT Authorization Form. Contractor may request a form from the department representative listed in the Contract.

ATTACHMENT C



County of Orange
Health Care
Agency

**Security
Requirements and
Guidelines for
Application
Vendors and
Application
Service Providers**

02/2017

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1 Overview

Security Requirements and Guidelines for Application Vendors and Application Service Providers

This document provides a high-level overview of application security related guidelines and requirements set forth by the Orange County Health Care Agency (OCHCA), and applies to both software vendors for County-implemented applications and application service providers who provide hosted services.

These requirements and guidelines are consistent with regulatory privacy and security requirements and guidelines as well as supportive of OCHCA's position and practices on risk management in terms of appropriately safeguarding OCHCA's information assets.

The sections below are comprehensive and may apply in whole or in part based on specific implementation and scope of work. The expectation is that vendors will comply with relevant sections, as necessary. This information will be reviewed, validated and documented by OCHCA Security prior to any contract being finalized.

Vendors are required to comply with all existing legal and regulatory requirements as they relate to OCHCA's systems and data. Example of regulations, rules and laws include, but are not limited to, the Health Insurance Portability and Accountability Act (HIPAA), Senate Bill 1386, Payment Card Industry (PCI) Data Security Standards, and Sarbanes-Oxley (SOX). Vendors must also commit to ensuring compliance with all future local, state and federal laws and regulations related to privacy and security as they pertain to the application or service.

2 General Security Requirements

- The application/system must meet the general security standards based upon ISO 17799 – Code of Practice for Information Security and ISO 27799 – Security Management in Health Using ISO 17799.
- The application must run on an operating system that is consistently and currently supported by the operating systems vendor. Applications under maintenance are expected to always be current in regards to the current version of the relevant operating system.
- For applications hosted by OCHCA, OCHCA will routinely apply patches to both the operating system and subsystems as updated releases are available from the operating system vendor and or any third party vendors. The vendors must keep their software current and compatible with such updated releases in order for the application to operate in this environment.

- Vendors must provide timely updates to address any applicable security vulnerabilities found in the application.
- OCHCA utilizes a variety of proactive, generally available, monitoring tools to assess and manage the health and performance of the application server, network connectivity, power etc. The application must function appropriately while the monitoring tools are actively running.
- All application services must run as a true service and not require a user to be logged into the application for these services to continue to be active. OCHCA will provide an account with the appropriate security level to logon as a service, and an account with the appropriate administrative rights to administer the application. The account password must periodically expire, as per OCHCA policies and procedures.
- In order for the application to run on OCHCA server and network resources, the application must not require the end users to have administrative rights on the server or subsystems.

3 Encryption

- Application/system must use encryption to protect sensitive data at rest wherever technically possible (e.g. SQL TDE Encryption).
- All data transmissions must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level. This requirement pertains to any regulated data in motion such as website access and file transfers.
- All electronic files, where applicable, that contain OCHCA data must be encrypted when stored on any removable media or portable device (USB drives, CD/DVD, mobile phones, backup tapes). The encryption must be a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher.
- All encryption methods used for data storage and transmission must be disclosed by the vendors.

4 Network Application Documentation

- Vendors must provide documentation related to the configuration of the application including methods of secure implementation and port requirements.

5 Access Management

- Application/system must control access to and within the system at multiple levels (e.g. per user, per user role, per area, per section of the chart) through a consistent mechanism of identification

and authentication of all users in accordance with the 'Role Based Access Control' (RBAC) standard.

- Application/system must support measures to define, attach, modify and remove access rights for all classes of users.
- Application/system must support measures to enable and restrict access to the whole and/or sections of the technology solution in accordance with prevailing consent and access rules.
- Application must have the ability to create unique user accounts.
- Application must support session timeouts or automatic logoff after 20 minutes of inactivity.
- The application must provide functionality to automatically disable or lock accounts after 60 days of inactivity.

6 Password Management

- Application must support password management measures including but not limited to password expiration, account lockout and complex passwords.
- Passwords expiration must be set to 90 days and the system must prevent the use of the previous 4 passwords.
- Accounts must be locked after five unsuccessful login attempts.
- The password must be at least 8 characters in length and a combination of letters, numbers, and special characters with at least 3 of the four following categories.
 - ◆ Uppercase letters (A through Z)
 - ◆ Lowercase letters (a through z)
 - ◆ Numeric digits (0 through 9)
 - ◆ Special Characters (! @ # \$ % ^ & etc.)

7 Audit Capabilities

Auditing and logging capabilities will permit HCA to identify, and possibly reverse, unauthorized or unintended changes to application.

- Application must support the identification of the nature of each access and/or modification through the use of logging.
- Application must employ audit capabilities to sufficiently track details that can establish accountability for each step or task taken in a clinical or operational process.
- All audit logs must be protected from human alteration.
- Access to logs must be limited to authorized users.
- The application must employ basic query tools and reports to easily search logs.

- OCHCA record retention policies must be followed. [Currently OCHCA requires that this period be at least six years from the time the record was initiated.](#)
- Logging and auditing functionality must include the following:
 - ◆ Record of who did what to which object, when and on which system.
 - ◆ Successful/unsuccessful log-in and log-out of users.
 - ◆ Add, modify and delete actions on data/files/objects.
 - ◆ Read/view actions on data classified as restricted/confidential.
 - ◆ Changes to user accounts or privileges (creation, modification, deletion).
 - ◆ Switching to another users access or privileges after logging in (if applicable).

8 Protection from Malicious Code

- For cloud hosted solutions, vendors must utilize antivirus/antispymware software on servers and monitor to prevent malicious code which may lead to a compromise of OCHCA's data.
- For local hosted solutions, vendors must ensure that the application appropriately supports the use of antivirus/antispymware software.

9 Remote Support Functionality

- Provider must conform to OCHCA Vendor Remote Access Policy.

10 HCA Data Usage

- During the course of any implementation and subsequent support and life cycle management, any OCHCA data that the vendors have access to in any manner shall be considered confidential unless otherwise designated in writing.
- Vendors must not use or disclose OCHCA's data other than as permitted or as required by contract or law.
- The vendors must agree to use appropriate safeguards to prevent the unauthorized use or disclosure of OCHCA's data during any time that the data is stored or transported in any manner by vendors.
- After the end of any appropriate use of OCHCA's data within the vendors' possession, such data must be returned to OCHCA or securely destroyed unless otherwise permitted by contract or law.

11 Cloud Solutions

Application Service Providers hosting OCHCA data must meet the following additional requirements and are required to comply with and provide deliverables noted below:

- **Network Intrusion Detection and Prevention.** All systems that are accessible via the internet must actively use a network based intrusion detection and prevention solution.
- **Workstation/Laptop Encryption.** All workstations, laptops and mobile devices that process and/or store OCHCA data must be encrypted using full disk encryption that uses a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher.
- **Jurisdiction and Location of OCHCA Data.** To protect against seizure and improper use by non-United States (US) persons and government entities, all data / information stored and processed for OCHCA must reside in a facility under the legal jurisdiction of the US.
- **Patch Management.** All workstations, laptops, and other systems that access, process and/or store OCHCA data must have appropriate security patches installed. Application Service Providers must utilize a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a minimum, all applicable patches must be installed within 30 days of vendor release.
- **Application Access.** All systems accessible via the internet must employ security controls to prevent access to the application via an asset not approved or owned by the county.
- **Risk Assessment.** Application Service Providers hosting data for HIPAA covered services must conduct an accurate and thorough Risk Assessment as required by HIPAA Security Rule, Security Management (§ 164.308(a)(1)). Further, they must follow the risk assessment methodology, based on the latest version of NIST SP 800-30 (http://csrc.nist.gov/publications/nistpubs/800-30-rev1/sp800_30_r1.pdf). Upon request, the Risk Assessment findings and remediation strategy must be shared with OCHCA.
- **NIST.** To ensure compliance with HIPAA, Application Service Providers shall implement appropriate security safeguards by following National Institute of Standards and Technology (NIST) guidelines.

12 Policies

Vendors must have formal, published IT security policies that address how they manage and maintain the internal security posture of their own or sub-contracted infrastructure. The vendor shall also clearly demonstrate that additional security features are in place to protect systems and data in the unique environment of the service provider model: namely, security issues associated with storing County-owned data on a remote server that is not under direct County control and the necessity of transferring this data over an untrusted network.

Vendors must provide, to the extent permissible, all relevant security policies and procedures to the County for review and validation. All documentation must be provided in electronic format for the County's review.

These policies must include, but not be limited to, the following:

- **IT Staff Usage Agreement.** All vendor employees performing services for the County must sign and agree to an IT usage agreement within their own organization as part of an overall security training and awareness program. At a minimum, vendor employees must sign a statement of understanding within their own organization regarding Internet dangers, IT security, and IT ethics and best practices,
- **IT Security Policies and Procedures.**
- **IT Operations Security Policy.** Written standards for operational security for any facilities where the County data, staff or systems shall exist. These documents must include, but not be limited to, physical security, network security, logical security, systems/platform security, wireless access, remote access, and data protections.
- **Data Management Security Policy.** Policy for the safeguarding and management of all data provided by the County or accessed by vendor as part of implementation and ongoing maintenance. This policy must, at a minimum, include check-in, check-out, copy control, audit logs and separation of duties.
- **Security Incident Notification and Management Process.** A detailed document that outlines the contact names and order and escalation of events that will occur in the case of a security breach concerning the County staff, data, or systems. This document must be updated immediately upon any change. The vendor shall be held liable to the time-tables and protections outlined in the document.

In addition to developing, maintaining, and enforcing the above named policies, the vendor must:

- Bear the cost of compliance for any required changes to security infrastructure, policies and procedures to comply with existing regulations, unless such change is unique to the County.

- Comply with reasonable requests by the County for audits of security measures, including those related to identification and password administration.
- Comply with reasonable requests by the County for onsite physical inspections of the location from which the vendor provides services.
- Provide the County with any annual audit summaries and certifications, including but not limited to HIPAA, ISO or SOX audits, as applicable.
- Designate a single point of contact to facilitate all IT security activities related to services provided to the County, with the allowance of appropriate backups. Such contact(s) must be available on a 7/24/365 basis.

13 Business Continuity / Disaster Recovery Plans

Application Service Providers must have a viable risk management strategy that is formally documented in a Business Continuity Plan (BCP) and/or a Disaster Recovery Plan (DRP). This BCP/DRP plan(s) must identify recovery strategies within the application service areas, outline specific recovery methods and goals, and provide the mutually agreed upon recovery time and point objectives.

14 Backup and Restore

The vendor must provide their routine Backup and Restore policy and procedure which includes their backup data security strategy. These procedures shall allow for protection of encryption keys (if applicable) as well as a document media destruction strategy including media management tasks (i.e., offsite vaulting and librarian duties).

15 Staff Verification

For any employee a vendor contemplates using to provide services for the County, the vendor shall use its standard employment criteria as used for similar services provided to other customers in evaluating the suitability of that employee for such roles.

At a minimum, subject to the requirements of applicable law, such criteria must include the information as outlined below for each employee:

- **Relevant Skills, Licenses, Certifications, Registrations.** Each service employee must possess the educational background, work experience, skills, applicable professional licenses, and related professional certifications commensurate with their position. The County may, at any time and at its sole discretion, request that the vendor demonstrate compliance with this requirement as applicable to the nature of the services to be offered by the vendor's employee. The County may, at its sole discretion, also request the vendor's

certification that the vendor employee has undergone a chemical/drug screening, with negative results, prior to granting access to the County facilities.

- **Background Checks.** In accordance with applicable law, the vendor must, at the County's request, obtain as a condition of employment, a background investigation on any vendor employee selected to work for the County. The security and background investigation shall include criminal record checks, including records of any conviction in the U.S. or other relevant jurisdiction where the employee resides. Costs for background investigations must be borne by the vendor.

At a minimum, subject to the requirements of applicable law, the vendor must:

1. Ensure that all vendor service employees performing applicable services or supporting the vendor's duties and obligations under a County agreement: (i) have not been convicted of any crime involving violence, fraud, theft, dishonesty or breach of trust under any laws; and (ii) have not been on any list published and maintained by the Government of the United States of America of persons or entities with whom any United States person or entity is prohibited from conducting business.
2. Follow such verification procedures as may be reasonably specified by the County from time to time. If either the vendor or the County becomes aware that any vendor employee has been convicted of a crime involving violence, fraud, theft, dishonesty or breach of trust, or has been included on any such list of persons or entities convicted of such crimes, then the vendor shall promptly remove the employee from providing services to the County and prohibit that employee from entering any facilities at which services are provided.
3. Annually certify to the County that, to the best of its knowledge, none of the service employees have been convicted of any felony involving fraud, theft, dishonesty or a breach of trust under any laws.

16 IT Physical Security and Access Control

The vendor must establish processes and procedures for physical access to and control of their own facilities that are, at a minimum, consistent with relevant industry-specific best practices.

Vendor employees are expected to:

- Comply with facility access procedures, using procedures such as sign-in/sign-out requirements and use of assigned ID badges.
- Scan ID badges, where applicable, at any secure door and/or entrance and exit gates, including any door or gate that may already be open.
- Refrain from using recordable media in conjunction with County-owned equipment.
- Comply with check-in/check-out requirements for materials and/or equipment.
- Adhere to the facility's established emergency, safety and evacuation procedures.
- Report any unsafe conditions to the facility's safety representative.
- Report any access violations or security threats to the facility's local security administrator.

17 IT Security Compliance and Training

The vendor must ensure that all vendor employees comply with security policies and procedures and take all reasonable measures to reduce the opportunity for unauthorized access, transmission, modification or misuse of the County's data by vendor employees.

The vendor must ensure that all vendor employees are trained on security measures and practices. The vendor will be responsible for any costs related to such training.

At a minimum, the vendor is expected to:

- Ensure that a formal disciplinary process is defined and followed for vendor employees who violate established security policies and procedures.
- Proactively manage and administer access rights to any equipment, software and systems used to provide services to the County.
- Define, maintain and monitor access controls, ranging from physical access to logical security access, including a monthly review of vendor employees' access to systems used to provide services to the County.

The vendor shall monitor facilities, systems and equipment to protect against unauthorized access.

At a minimum, the vendor is expected to:

- Monitor access to systems; investigate apparent security violations; and notify the County of suspected violations, including routine reporting on hacking attempts, penetrations and responses.
- Maintain data access control and auditing software and provide adequate logging, monitoring, and investigation of unusual or suspicious activity.
- Initiate immediate corrective actions to minimize and prevent the reoccurrence of attempted or actual security violations.
- Document details related to attempted or actual security violations and provide documentation to the County.
- Provide necessary documentation and evidence to the County in connection with any legal action or investigation.

18 Security Testing Recommendations

The vendor should perform a series of steps to verify the security of applications, some of which are noted below. This section will not be validated by the County, but reflects best practices that the vendor should consider and follow.

1. Look for vulnerabilities at various layers of the target environment. In the lowest layer, the vendor's testing team should look for flaws in the target network environment, including any routers and firewalls designed to control access to the web server and related target components. The team should attempt to determine whether such filters provide adequate protection at the network layer of the target hosts that the team can reach across the Internet.
2. Look for flaws in the Internet-accessible hosts associated with the target infrastructure, including the web server. This host-based component of the test will analyze which network-accessible services are available on the target hosts across the Internet, including the web server process. The testing team should look for incorrect configuration, unpatched or enabled services, and other related problems on the target hosts.

This review performed by the vendor should include but not be limited to:

- The web application (i.e., the software that interacts with users at their web browsers; typically custom-crafted code created by the web development team)

- The web server application (the underlying software that sends and receives information via HTTP and HTTPS, typically off-the-shelf software such as Microsoft's IIS or the open-source Apache software)
- Any separate backend application servers that process information from the web application
- The backend database systems that house information associated with the web application.
- Infrastructure diagrams.
- Configuration host review of settings and patch versions, etc.
- Full code review.
- Identification and remediation of well-known web server, code engine, and database vulnerabilities.
- Identification and remediation of any server and application administration flaws and an exploitation attempt of same.
- Analysis of user interface, normal application behavior, and overall application architecture for potential security vulnerabilities.
- Analysis of data communications between the application and databases or other backend systems.
- Manual analyses of all input facilities for unexpected behavior such as SQL injection, arbitrary command execution, and unauthorized data access.
- Analyses of user and group account authentication and authorization controls to determine if they can be bypassed.
- Identification of information leakage across application boundaries, including the capability to enumerate other users' data and "show code" weaknesses that reveal internal application logic.
- Identification of areas where error handling is insufficient or reveals too much sensitive information.
- Identification of opportunities to write to the host file system or execute uploaded files.

- Identification of product sample files, application debugging information, developer accounts or other legacy functionality that allows inappropriate access.
- Determination as to whether or not fraudulent transactions or access can be performed.
- Attempts to view unauthorized data, especially data that should be confidential.
- Examination of client-side cached files, temporary files, and other information that can yield sensitive information or be altered and re-submitted.
- Analysis of encoded and encrypted tokens, such as cookies, for weakness or the ability to be reverse engineered.

19 Vendor Deliverables

The following items are to be provided by the vendor prior to the contract finalization:

- OCHCA Security Requirements and Guidelines for Application Vendors and Application Service Providers - Questionnaire
- Business Continuity Plan Summary (as related to service provided)
- SSAE 16 SOC 2 Type 2 or SSAE 16 SOC 1 Type 2 compliance certificate (if applicable)
- Network Diagram that demonstrates vendor network and application segmentation including the security controls in place to protect HCA data
- IT Security Staff Usage Policy
- IT Security Policies and Procedures
- IT Operations Security Policy
- Data Management Security Policy
- Security Incident Notification and Management Process
- Security Contact Identification (24x7x365)
- Staff Related Items
 - Pre-Employment Screening Policy/Procedure
 - Background Checking Procedure
 - Ongoing Employment Status Validation Process
 - Staff Roster and Duties