

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND ASSURECARE, LLC

This Agreement is entered into this _____ day of _____, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and **AssureCare, LLC**, hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of maintaining the Q Continuum case management system that supports program services in the Division of Aging and Adult Services.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Services
- Exhibit B—Payments and Rates
- Exhibit C - Confidentiality
- Attachment H—HIPAA Business Associate Requirements
- Attachment I—§ 504 Compliance
- Attachment J-End User License and Maintenance Agreement

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. In no event shall County's total fiscal obligation under this Agreement exceed ONE MILLION DOLLARS (\$1,000,000). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from January 1, 2022, through December 31, 2026.

5. Termination

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding. Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

Due to the investment required by Vendor, any other termination, other than for material breach, shall be subject to an acceleration of license fees for the remainder of the calendar year of the termination.

Upon termination of this Agreement for any reason, each Party will return to the other Party all Language is rejected, the County will pay any services.

Confidential Information and other materials developed by or belonging to such party that have been delivered pursuant to this Agreement. Termination of this Agreement will not relieve County of its obligations to make immediate and full payment to Contractor for any amounts then due and/or payable to Contractor.

6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

7. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. Hold Harmless

a. General Hold Harmless

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from the of all claims, suits, or actions from third parties of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, to the extent that Contractor's active or passive negligence caused loss, cost, damage, or injury. Contractor shall not be responsible for that portion of the lost, cost, damage, or injury for which County and/or its officers, agents, employees, or servants have been found in a court of competent jurisdiction to be liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

- b. **Intellectual Property Indemnification** Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County except to any corporation or business entity of which fifty percent (50%) or more of the ownership interests are acquired. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

10. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that Contractor must make best efforts to provide thirty (30) days' advance notice, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy. In the event of a change or cancellation or modification of such policy without advance notice to County, Contractor shall notify County immediately, in writing, upon the occurrence of such change, cancellation or modification, and such notification shall not waive any rights of County with regard to advance notice.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from

Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

☒ Comprehensive General Liability... \$1,000,000

(Applies to all agreements)

☐ Motor Vehicle Liability Insurance... \$1,000,000

(To be checked if motor vehicle used in performing services)

☐ Professional Liability..... \$1,000,000

(To be checked if Contractor is a licensed professional)

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

11. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

12. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:

- ☒ Contractor complies with Chapter 2.84 by offering the same benefits to its employees with spouses and its employees with domestic partners.
- ☐ Contractor complies with Chapter 2.84 by offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
- ☐ Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- ☐ Contractor does not comply with Chapter 2.84, and a waiver must be sought.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- ☒ No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- ☐ Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or Section 11, above. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

h. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

13. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply unless this Agreement's total value listed in the Section titled "Payments", exceeds two-hundred thousand dollars (\$200,000); Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value exceeds that threshold amount.

14. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

(d) County will maintain proper records and books of account relating to the fees due hereunder including a record of active users who are authorized to access the Licensed Software. At any time, with reasonable notice, Contractor may have an authorized agent of the company or an independent auditor inspect and audit such records at County's business offices to verify compliance with its payment obligations.

15. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

16. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

17. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title:	Moony Tong, Financial Services Manager Aging and Adult Services
Address:	801 Gateway Blvd., South San Francisco, 94080
Telephone:	650-573-2236
Facsimile:	650-887-9173

Email: mtong@smcgov.org and HS_AAS_Contracts@smcgov.org
In the case of Contractor, to:

Name/Title: General Counsel with a copy to Greg Silence
Vora Innovation Center
Address: 10290 Alliance Road
Cincinnati, OH 45242
Telephone: 513-577-5474
Facsimile: N/A
Email: General-counsel@voraventures.com
Greg.Silence@assurecaresoftware.com

18. Electronic Signature

If both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to

be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: ☒ If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Contractor: ☐ If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

19. Reimbursable Travel Expenses

To the extent that this Agreement authorizes reimbursements to Contractor for travel, lodging, and other related expenses as defined in this section, the Contractor must comply with all the terms of this section in order to be reimbursed for travel.

- a. Estimated travel expenses must be submitted to authorized County personnel for advanced written authorization before such expenses are incurred. Significant differences between estimated and actual travel expenses may be grounds for denial of full reimbursement of actual travel expenses.
- b. Itemized receipts (copies accepted) for all reimbursable travel expenses are required to be provided as supporting documentation with all invoices submitted to the County.
- c. Unless otherwise specified in this section, the County will reimburse Contractor for reimbursable travel expenses for days when services were provided to the County. Contractor must substantiate in writing to the County the actual services rendered and the specific dates. The County will reimburse for travel at 75% of the maximum reimbursement amount for the actual costs of meals

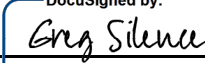
and incidental expenses on the day preceding and/or the day following days when services were provided to the County, provided that such reimbursement is reasonable, in light of travel time and other relevant factors, and is approved in writing by authorized County personnel.

- d. Unless otherwise specified within the contract, reimbursable travel expenses shall not include Local Travel. "Local Travel" means travel entirely within a fifty-mile radius of the Contractor's office and travel entirely within a fifty-mile radius of San Mateo County. Any mileage reimbursements for a Contractor's use of a personal car for reimbursable travel shall be reimbursed based on the Federal mileage reimbursement rate.
 - e. The maximum reimbursement amount for the actual lodging, meal and incidental expenses is limited to the then-current Continental United States ("CONUS") rate for the location of the work being done (i.e., Redwood City for work done in Redwood City, San Mateo for work done at San Mateo Medical Center) as set forth in the Code of Federal Regulations and as listed by the website of the U.S. General Services Administration (available online at <http://www.gsa.gov/portal/content/104877> or by searching www.gsa.gov for the term 'CONUS'). County policy limits the reimbursement of lodging in designated high cost of living metropolitan areas to a maximum of double the then-current CONUS rate; for work being done outside of a designated high cost of living metropolitan area, the maximum reimbursement amount for lodging is the then-current CONUS rate.
 - f. The maximum reimbursement amount for the actual cost of airfare shall be limited to fares for Economy Class or below. Air travel fares will not be reimbursed for first class, business class, "economy-plus," or other such classes. Reimbursable car rental rates are restricted to the mid-level size range or below (i.e. standard size, intermediate, compact, or subcompact); costs for specialty, luxury, premium, SUV, or similar category vehicles are not reimbursable. Reimbursable ride shares are restricted to standard or basic size vehicles (i.e., non-premium vehicles unless it results in a cost-saving to the County). Exceptions may be allowed under certain circumstances, such as unavailability of the foregoing options, with written approval from authorized County personnel. Other related travel expenses such as taxi fares, ride-shares, parking costs, train or subway costs, etc. shall be reimbursable on an actual-cost basis. Reimbursement of tips for taxi fare, or ride-share are limited to no more than 15% of the fare amount.
 - g. Travel-related expenses are limited to: airfare, lodging, car rental, taxi/ride-share plus tips, tolls, incidentals (e.g. porters, baggage carriers or hotel staff), breakfast, lunch, dinner, mileage reimbursement based on Federal reimbursement rate. The County will not reimburse for alcohol.
 - h. Reimbursement of tips are limited to no more than 15 percent. Non-reimbursement items (i.e., alcohol) shall be excluded when calculating the amount of the tip that is reimbursable.
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Contract #

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: Assurecare, LLC

<div>DocuSigned by: </div>	12/13/2021	Greg Silence
Contractor Signature	Date	Contractor Name (please print)

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

- Contractor will provide the Q Continuum System, an automated case management system that meets the California Aging Reporting Systems (CARS) and Multipurpose Senior Services Program reporting requirements. This application will also be used as the source case management system for all programs of Aging and Adult Services.
- If County requests enhancements to the Q system or the Uniform Assessment Tool, which was created by the County with approval of the InterRAI, Inc., Contractor will work with County to execute an additional Statement of Work under a new contract amendment detailing the additional services to be provided by Contractor and the associated fees for County. Details around current enhancements are listed on attachment 1 and 2.
- Contractor will provide training to County Staff, as needed and requested by County; provided however, for any requests for training above the level of “train the trainer” training that has historically been provided by Contractor to the County, Contractor will work with the County to execute an additional Statement of Work under a new contract amendment detailing the additional training services to be provided by Contractor and the associated fees for County.
- Contractor will provide Escrow services according to its standard schedule and parameters.
- Contractor will, pending execution of an additional Statement of Work under a new contract amendment detailing the additional services to be provided by Contractor and the associated fees for County, provide updates to the Q system.
- The methods and techniques used to provide services to the County are within the Contractor's discretion, but subject to any County Information Services Department's technology policies, guidelines and requirements attached to the Agreement. The amount of time, specific hours and location of the performance of Contractor's services is also left to the Contractor' discretion provided that Contractor coordinates with County departments as needed.

Refer to Attachment J for the complete Service Level Agreement

Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

Fee Schedule for Q Continuum System (Additional costs might be incurred such as additional named user licenses, additional standard use license fees, annual maintenance & service fees for new licenses, etc.)

Service Description	Standard Named User Licenses	Annual Maintenance Service Fee for Existing Licenses	Call log, CMIPS import & Misc. Enhancements	Azure Blob Enhancement	APS/EDPAT Case Note Move	TOTAL COST
7/1/2021-6/30/2022	196	\$102,900				\$102,900
7/1/2022-6/30/2023	211	\$110,775	\$187,500	\$13,563	\$5,800	\$317,638
7/1/2023-6/30/2024	211	\$110,775				\$110,775
7/1/2024-6/30/2025	211	\$110,775				\$110,775
7/1/2025-6/30/2026	211	\$110,775				\$110,775

Note: This is based on current number of licenses, expected enhancement and expected timeline of when it will be completed effective as of contract start date. Detailed pricing around enhancement are provided in attachment 1 and 2.

Development Support

From time to time LICENSEE may request additional enhancements that are not included in the current public release version of the Licensed Software. Licensee and Licensor may negotiate the terms relating to such work with a new amendment.

Support Fees:

Maintenance Support Fees

Customer shall pay an annual maintenance fee to LICENSOR for the telephone support and software updates at the prices shown in this exhibit. Defects fixing will be included in the maintenance support fees.

In the event LICENSOR provides any services beyond telephone support services, LICENSEE shall pay for such services on a time-and-materials basis at a price not to exceed \$250.00/Hr. based on the type of services required.

Services shall be defined and agreed to in an amendment prior to the start of billable work. All services provided under this agreement must be funded by a LICENSOR Purchase Order authorizing the work.

LICENSEE shall be responsible for any out-of-pocket costs incurred by LICENSOR and agreed upon by LICENSEE if provided outside LICENSOR home offices, unless otherwise approved in advance by the Director of Aging and Adult Services. All items related to travel must be billed according to County terms in the main agreement document.

Additional Standard User License Fee: \$1,500/license

Maintenance and Support Fee per License: \$525/license

Development Support Fees:

A new statement of work will be provided for each development request and will be included in a new amendment that outlines the deliverables, schedule, and cost.

An estimate of the data conversion effort will be provided after the source data content is received from the LICENSEE.

Payment shall be made by wire to:

Name on Account: AssureCare, LLC
ABA Routing# 041001039
Account# 359681501250
Bank: Key Bank

Unless otherwise set forth in an applicable Statement of Work all fees are payable in U.S. Dollars. All fees and other charges are due and payable within 30 days from receipt of invoice from LICENSOR. Any late payment shall be subject to any costs of collection (including reasonable legal fees) and shall bear interest at the rate of one and a half percent (1.5%) per month or fraction thereof until paid.

EXHIBIT C

CONFIDENTIALITY: During the term of this Agreement, each party may disclose to the other certain proprietary or confidential information, which shall be received in confidence and not be revealed to third parties or applied to uses other than recipient's performance of its obligations hereunder, as specified in greater detail in the following. Neither party shall disclose, advertise or publish the specific terms or conditions of this Agreement without the prior written consent of the other party, except (i) as may be required by law, including but not limited to pursuant to the California Public Records Act, Govt. Code §§ 6250 - 6276.48 ("CPRA"); and (ii) to its professional advisors and to investors or potential investors. To the extent LICENSEE/COUNTY's legal obligations under the CPRA conflict with any obligations hereunder, and such conflicting contractual obligations shall be without force or effect.

Mutual Non-Disclosure of Information

All Information exchanged between the parties in conjunction with this Agreement shall be subject to the following terms. Use of the terms "Recipient" and "Discloser" hereunder refer to either LICENSEE/COUNTY or LICENSOR/CONTRACTOR, as the case may be. In consideration of the mutual promises and obligations contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

The parties acknowledge that it may be necessary for each of them, as Discloser, to provide to the other, as Recipient, certain information, including trade secret information, considered to be confidential, valuable and proprietary by Discloser, for the purpose of evaluating a potential business relationship in connection with business projects in which they are engaged (the "Project").

Such information may include, but is not limited to, technical, financial, marketing, staffing and business plans and information, strategic information, proposals, requests for proposals, specifications, drawings, prices, costs, customer information, procedures, proposed products, processes, business systems, software programs, techniques, services and like information of, or provided by, Discloser, its Affiliates or any of their third party suppliers, and also includes the fact that such information has been provided by the Discloser, the fact that the parties are discussing the Project and any terms, conditions or other facts with respect to the Project (collectively Discloser's "Information"). Information provided by one party to the other before execution of this Agreement and in connection with the Project is also subject to the terms of this Agreement. "Affiliates" means any company owned by, or owning in whole or in part, now or in the future, directly or indirectly through a subsidiary, a party hereto.

Recipient will protect Information provided to Recipient by or on behalf of Discloser from any use, distribution or disclosure except as permitted herein. Recipient will use the same standard of care to protect Information as Recipient uses to protect its own similar confidential and proprietary information, but not less than a reasonable standard of care.

Recipient agrees to use Information solely in connection with the Project and for no other purpose. Recipient may provide Information only to Recipient's employees who: (a) have a substantive need to know such Information in connection with the Project; and (b) have been advised of the confidential and proprietary nature of such Information.

All Information will be provided to Recipient in written or other tangible or electronic form and must be marked with a confidential and proprietary notice. Information orally or visually provided to Recipient must be designated by Discloser as confidential and proprietary at the time of such disclosure and must

be reduced to writing marked with a confidential and proprietary notice and provided to Recipient within thirty (30) calendar days after such disclosure.

Discloser's Information does not include: a) any information publicly disclosed by Discloser; b) any information Discloser in writing authorizes Recipient to disclose without restriction; c) any information Recipient already lawfully knows at the time it is disclosed by Discloser, without an obligation to keep it confidential; d) any information Recipient lawfully obtains from any source other than Discloser, provided that such source lawfully disclosed such information; or e) any information Recipient independently develops without use of or reference to Discloser's Information.

If Recipient is required to provide Information to any court or government agency pursuant to written court order, subpoena, regulation or process of law, Recipient must first provide Discloser with prompt written notice of such requirement and cooperate with Discloser to appropriately protect against or limit the scope of such disclosure. To the fullest extent permitted by law, Recipient will continue to protect as confidential and proprietary all Information disclosed in response to a written court order, subpoena, regulation or process of law.

Information remains at all times the property of Discloser. Upon Discloser's request and upon termination of this Agreement, all or any requested portion of the Information (including, but not limited to, tangible and electronic copies, notes, summaries or extracts of any Information) will be promptly returned to Discloser or destroyed, and Recipient will provide Discloser with written certification stating that such Information has been returned or destroyed.

Recipient will not identify Discloser, its Affiliates or any other owner of Information in any advertising, sales material, press release, public disclosure or publicity without prior written authorization by Discloser. No license under any trademark, patent, copyright, trade secret or other intellectual property right is either granted or implied by disclosure of Information to Recipient.

The term of this Mutual Non-Disclosure and the parties' obligations hereunder commence on the Effective Date of this Agreement and extend with regard to all Information until two (2) years after termination of this Agreement.

This Agreement is binding upon and inures to the benefit of the parties and their heirs, executors, legal and personal representatives, successors and assigns, as the case may be.

The following terms are incorporated herein by reference:

- 1.1 **"Affiliate"** shall mean any entity directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity.
- 1.2 **"Documentation"** means any written manuals and other materials published by LICENSOR and made generally available in hard copy or electronic form by LICENSOR regarding the Q Continuum System
- 1.3 **"Licensed Software"** means the specific software applications developed by LICENSOR called the Q Continuum System together with any Updates (if provided via Maintenance & Support) and Enhancements (if commissioned through SOWs) thereto
- 1.4 **"LICENSOR Technology"** means the Licensed Software, Services, Training, Support, Documentation, Marketing Materials, Training Materials, Updates, and Enhancements provided by LICENSOR to LICENSEE under this Agreement.
- 1.5 **"Named User License"** shall mean a license for use of the Software by specific individuals up to a maximum number of Named User Licenses (License User Max). The Software may be moved to another Named User at any time and at no additional charge as long as it is no longer used by the previous Named User. Additional Named user Licenses may be procured at the rates described herein.
- 1.6 **"Update"** means a modification of any of the Licensed Software, in object code format, that is generally released by LICENSOR, including corrections to existing functionality so that the Licensed Software materially conforms to the Documentation. Updates will include all bug fixes, patches, and maintenance releases. Updates do not include any release, option, future product, or any upgrade in features, functionality or performance of the existing Licensed Software which LICENSOR licenses separately or offers for an additional fee.
- 1.7 **"Enhancement"** means a modification of any of the Licensed Software, in object code format, that is generally released by LICENSOR, and any release, option, future product, or upgrade in features, functionality or performance of the Licensed Software, which LICENSOR may license separately for an additional fee. Major Enhancements which significantly alter the functionality of the Licensed Software may be performed at the request of the LICENSEE under a separate Statement of Work (SOW) for an additional fee. Upon acceptance, these Enhancements are incorporated into the Licensed Software per the terms and conditions of this Agreement.
- 1.8 **"Maintenance and Support Fee"** means the annual fee charged to provide telephone support.

Attachment H

Health Insurance Portability and Accountability Act (HIPAA) Business Associate Requirements

DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.
- b. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (EPHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- g. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- h. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 160.103 and is limited to the information created or received by Business Associate from or on behalf of County.
- i. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.
- j. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- k. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low

probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:

1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
 2. Identity of the unauthorized person or to whom impermissible disclosure was made;
 3. Whether PHI was actually viewed or only the opportunity to do so existed;
 4. The extent to which the risk has been mitigated.
- l. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
- m. **Unsecured PHI.** "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.
- n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.

- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.
- n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.
- q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

OBLIGATIONS OF COUNTY

- a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

PERMISSIBLE REQUESTS BY COUNTY

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so requested by County, unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

DUTIES UPON TERMINATION OF AGREEMENT

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

MISCELLANEOUS

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.

ATTACHMENT I**Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended**

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- ☐ a. Employs fewer than 15 persons.
- ☒ b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person:

Greg Silence

Name of Contractor(s):

AssureCare

Street Address or P.O. Box:

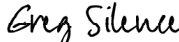
250 West Court Street, Suite 450E

City, State, Zip Code:

Cincinnati, OH 452025

I certify that the above information is complete and correct to the best of my knowledge

Signature:

DocuSigned by:

ACA86137CF45498...

Title of Authorized Official:

EVP, Co-Founder

Date:

12/13/2021

*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

Q Continuum System End User License and Maintenance Agreement

This End User Software License and Maintenance Agreement ("Agreement"), is made by and between the County of San Mateo Aging and Adult Services (hereinafter "LICENSEE"), with its principal place of business located at 225 37th Avenue, San Mateo, California, 94403 and AssureCare, LLC (hereinafter "LICENSOR"), with its principal place of business located at 250 West Court Street, Cincinnati, Ohio 45202.

BACKGROUND:

WHEREAS, LICENSEE previously licensed the Licensed Software from Charles H. Mack & Associates, Inc., d/b/a C.H. Mack, Inc. ("CH Mack") and such Licensed Software was acquired by LICENSOR; and

WHEREAS LICENSEE wishes to enter into a new contract relationship with the LICENSOR;

WHEREAS, LICENSOR hereby grants certain licenses to LICENSEE for use of its software products including documentation, training materials, marketing materials and product support related thereto; under the terms and conditions contained in this Agreement.

NOW THEREFORE, the LICENSEE agrees as follows:

1.0 Definitions. The following terms are incorporated herein by reference:

- 1.1 "Affiliate"** shall mean any entity directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity.
- 1.2 "Documentation"** means any written manuals and other materials published by LICENSOR and made generally available in hard copy or electronic form by LICENSOR regarding the Q Continuum System.
- 1.3 "Licensed Software"** means the specific software applications developed by LICENSOR called the Q Continuum System together with any Updates and Enhancements thereto.
- 1.4 "LICENSOR Technology"** means the Licensed Software, Services, Training, Support, Documentation, Marketing Materials, Training Materials, Updates, and Enhancements provided by LICENSOR to LICENSEE under this Agreement.
- 1.5 "Named User License"** shall mean a license for use of the Software by specific individuals up to a maximum number of Named User Licenses (License User Max). The Software may be moved to another Named User at any time and at no additional charge as long as it is no longer used by the previous Named User. Additional Named user Licenses may be procured at the rates described herein.
- 1.6 "Term"** means the period commencing on the Effective Date and continuing for the Initial Term and any Renewal Term, unless earlier terminated as provided below.
- 1.7 "Update"** means a modification of any of the Licensed Software, in object code format, that is generally released by LICENSOR, including corrections to existing functionality so that the Licensed Software materially conforms to the Documentation. Updates will include all bug fixes, patches, and maintenance releases. Updates do not include any release, option, future product,

or any upgrade in features, functionality or performance of the existing Licensed Software which LICENSOR licenses separately or offers for an additional fee.

- 1.8** **"Enhancement"** means a modification of any of the Licensed Software, in object code format, that is generally released by LICENSOR, and any release, option, future product, or upgrade in features, functionality or performance of the Licensed Software, which LICENSOR may license separately for an additional fee. Major Enhancements which significantly alter the functionality of the Licensed Software may be performed at the request of the LICENSEE under a new amendment for an additional fee. Upon acceptance, these Enhancements are incorporated into the Licensed Software per the terms and conditions of this Agreement.

2.0 Grant of Rights.

- 2.1 License Grant.** In consideration of the payment of fees specified in the Fee Schedule (Exhibit A), LICENSOR hereby grants to LICENSEE a non-exclusive, non-transferable, world-wide license, to use LICENSOR Technology in machine-readable form (object code) and all related Documentation, subject to the terms and conditions of this Agreement. The prohibitions included, but not limited to, this Section 2 are conditions of any license granted in this Agreement.
- 2.2 License Restrictions.** LICENSEE acknowledges that, except as stated in this Agreement, LICENSEE is not granted any right or title to the LICENSOR Technology or any intellectual property rights therein. LICENSEE may not use, reproduce, demonstrate, distribute or sell the LICENSOR Technology in any manner or for any purpose except as specifically permitted under this Agreement.
- 2.3** LICENSEE agrees that the Licensed Software, and its structure, organization, and source code, and the Documentation are the exclusive property of LICENSOR. LICENSOR remains the sole owner of, and LICENSEE hereby assigns, all right, title, and interest in and to, any and all patent, copyright, trade secret or other proprietary or intellectual property rights now existing or hereafter coming into existence related to the Licensed Software and Documentation. No rights thereto are granted, whether by implied license or otherwise, to LICENSEE, except as specifically provided in this Agreement. All rights in and to the Licensed Software and LICENSOR Technology not provided herein are reserved by LICENSOR.
- 2.4** LICENSEE may not remove any of LICENSOR's trade names, trademarks, copyright notices or any other LICENSOR identifiers or proprietary notices appearing on splash screens, Documentation or any other material provided by LICENSOR. Each copy of the LICENSOR Technology or Documentation reproduced by, or on behalf of LICENSEE, will contain the proprietary notices placed by LICENSOR on the media or within the code of the Licensed Software or on the Documentation, Training Materials, or Marketing Materials.
- 2.5** LICENSEE agrees not to (i) make copies of the Licensed Software (except for reasonable backup purposes); (ii) modify, adapt, alter, translate, or create derivative works from the Licensed Software; (iii) merge the Licensed Software with other software except as otherwise authorized or permitted herein; (iv) distribute, sublicense, provide, permit access to, lease, rent, loan, or otherwise transfer the Licensed Software to any third party except as expressly authorized herein; or (v) reverse engineer, decompile, disassemble, reduce to a human perceivable form, or otherwise attempt to derive the source code for the Software.
- 2.6** LICENSEE may not use, copy, rent, lease, sell, modify, decompile, disassemble, otherwise reverse engineer or transfer the Licensed Software except as provided in this Agreement. Any unauthorized use may result in immediate termination of this Agreement at the sole discretion of LICENSOR.

- 2.7** During the Term of this License Agreement, upon LICENSOR's written request (but no more than once, annually), LICENSEE shall certify in writing that its use of the Software (and any other use that LICENSEE has authorized or permitted) is in full compliance with the terms and conditions of this License Agreement and/or any subsequent schedules or incorporated documents (including any use, user and quantity limitations).

3.0 Support and Training

- 3.1 Product Support.** LICENSOR will provide Maintenance Support to LICENSEE for Updates to the Licensed Software as set forth in Exhibit A. In addition, LICENSOR will provide Development Support to LICENSEE for Enhancements to the Licensed Software subject to payment of the Development Support Fees as will be indicated in Exhibit B.
- 3.2 Training.** LICENSOR will provide LICENSEE with technical training with respect to the Licensed Software, in accordance with Exhibit A.

4.0 LICENSOR Rights and Obligations

- 4.1 Marketing.** LICENSOR may market, advertise and otherwise promote the Licensed Software, as it deems appropriate at its sole discretion. LICENSOR may include reference to LICENSEE's use of the Licensed Software in its general marketing and promotional material and issue a press release acknowledging the existence of this Agreement of which specific terms shall remain confidential.
- 4.2 Compliance With Laws.** LICENSOR will comply with all applicable laws and regulations in its use, marketing, distribution, and support of the Licensed Software.

5.0 Warranty

- 5.1 Training and Services Warranty.** LICENSOR warrants that any training and ancillary services (such as customer support) contracted to be performed by LICENSOR pursuant to this Agreement will be performed in a professional manner consistent with generally accepted industry standards. If LICENSEE wishes to obtain additional consulting services or professional services from LICENSOR, both parties will negotiate and agree to final terms in a new amendment.
- 5.2 Anti-Virus Warranty.** LICENSOR represents and warrants that the media containing the Licensed Software, any download, Update, or Enhancement will not contain any virus, worm or other code or routines designed to disable, damage, impair, or erase the Licensed Software, other software or data or the system upon which the Licensed Software, Update or Enhancement is installed.
- 5.3 Warranty Disclaimers.** This licensed software is provided on an "as is" basis. Except as set forth above, LICENSOR does not warrant that the licensed Software will meet LICENSEE's requirements or that the Licensed Software will operate in the combinations which LICENSEE may select for use. LICENSEE acknowledges that it is not entitled to any warranties from any third party LICENSOR. LICENSEE also acknowledges that they have paid the published commercial license fees charged for use of products provided herein. Neither LICENSOR nor anyone else who has been involved in the creation, production, or delivery of this Licensed Software shall be liable for any indirect, consequential, or incidental damages arising out of the use or inability to use the Licensed Software. The warranties above are exclusive and in lieu of

all other warranties, whether expressed, implied, or statutory, including without limitation the implied warranties of merchantability and fitness for a particular purpose.

Maintenance and Support

Maintenance Support:

LICENSOR will provide support for its products through its customer/product support group. There are three components to the support that is provided under the terms of this agreement.

1. LICENSOR will provide a first level Product Support desk to respond directly to any questions or requests.
2. LICENSOR will manage the resolution of any defects in the product and issue Product Patches to LICENSEE as necessary.
3. LICENSOR will provide Product Upgrades that may be issued from time to time as part of LICENSOR's continuing efforts to improve the licensed products.

1. PRODUCT SUPPORT

LICENSOR shall provide reasonable telephone and e-mail support to LICENSEE's personnel to assist them in utilizing the **Q Continuum System (Q)** software during the hours of 8:00 a.m. to 8:00 p.m. prevailing USA Eastern Time on weekdays (exclusive of holidays).

Product Support shall be defined as same day (within eight business hours) response to any request for support either by telephone or e-mail. Included in response will be a solution to the issue or acknowledgement of the issue if no immediate solution is possible, and a time/date estimate given for when the incident can be resolved. Product Support will then manage the process of getting final resolution back to the LICENSEE.

LICENSOR's product support function will be staffed by resources knowledgeable in the LICENSOR's products and technologies. The product support organization will receive LICENSEE's input, categorize and log incidents, track the resolution of incidents using an automated incident tracking system, and will communicate incident status back to the LICENSEE based on the schedule dictated by the incident priority.

2. ESCROW

Promptly after the execution of this Agreement and no later than thirty (30) days after the Effective Date, LICENSOR shall enter into a customary source code escrow agreement (the "**Code Escrow Facility Agreement**") with a reputable independent escrow agent and deposit a copy of the application source code (and related technical components and documentation) with such escrow agent (the "**Code Escrow Facility**"). LICENSEE shall be designated as a beneficiary under the Code Escrow Facility Agreement. The Code Escrow Facility Agreement shall be based on customary and reasonable terms and at a minimum provide the following:

- a) The Code Escrow Facility will be released to LICENSEE or its designees in the event of a bankruptcy or a cessation of business. A change of control shall not constitute a cessation of business as long as the successor entity continues to fulfill this Agreement in accordance with its terms).
- b) LICENSEE shall have access to the Code Escrow Facility solely in support of a Project from the Escrow Release Date until eighteen (18) months thereafter, unless such information is covered by the LICENSEE Licenses.
- c) LICENSOR shall update the Code Escrow Facility for major version updates, as promptly as practical but in no later than thirty (30) business days. Licensor shall update the Code Escrow Facility for major version updates as promptly as practical but in no later than thirty days (30) days.
- d) Each party will retain their respective rights and title to the information in the Code Escrow Facility and any third party gaining access to use the Code Escrow Facility will enter into a confidentiality

agreement and the terms of which shall, at a minimum, be as protective of intellectual property rights and Confidential Information as the terms set forth in this Agreement.

- e) The third party gaining access to the Code Escrow Facility shall do so only to use such information for purposes of the Project; however, if LICENSOR is unable to support such Code Escrow Facility for LICENSEE, nothing herein shall preclude said LICENSEE from utilizing third party support within the purposes of the Project to support the Code Escrow Facility.
- f) Notwithstanding the foregoing, the deposit or release of information into the Code Escrow Facility shall not impact the Intellectual Property Rights associated with such information.

3. PRODUCT PATCHES

LICENSEE will be entitled to product patches as is necessary to maintain the integrity of the product. Incidents reported through the Product Support process that are defects in the LICENSOR's product will be addressed in the Product Patch process. Product Patches are new versions of the LICENSEE's product that will be issued to resolve these defects. The LICENSOR shall use its best efforts to achieve the following defect resolution response times based on the severity of the defect. Actual response times may vary according to the degree of difficulty of the defect.

Defects are defined as anything in the product that does not function as intended or designed. Defects will be categorized and priorities will be assigned by the LICENSOR using the following guidelines:

Priority	Incident Description	Target Response
Severity 1 – Critical Impact	The product is not usable; no workaround is identified at time error is reported.	Update, correction, correction plan, or workaround within four (4) hours; if correction requires a software modification and has no workaround and the software modification cannot be delivered in four hours, LICENSOR will provide an estimated time when the code fix will be deployed and will update LICENSEE no less frequently than every four hours until software modification is deployed.
Severity 2 – Major Impact	Function or service is not available; a workaround is identified at time error is reported.	Update, correction, correction plan, or workaround within eight (8) hours; if correction requires a software modification and has no workaround, LICENSOR will provide an estimated time when the software modification will be deployed.
Severity 2 – Minor Impact	The product or function is not seriously affected; a workaround is identified.	The product or function is not seriously affected; a workaround is identified. Response and update within sixteen (16) hours. If correction requires a software modification, the software modification will be included in LICENSOR's next scheduled maintenance release of the Licensed Software.

4. CUSTOMER ENHANCEMENTS

Customer-Requested Enhancements – These are enhancements to the Q system specifically for the LICENSEE. The modification will conform to the LICENSEE's specific requirements as defined in the a Statement of Work. The effort to complete the modification will be funded by the LICENSEE at an hourly rate not to exceed \$250.00.

Type	Priority	“Enhancement” Incident Description	Target Response
Customer-Requested Enhancement	High, Medium, or Low	Customer-requested enhancements can be submitted through the LICENSOR’s Product Support group. They will document and prioritize the request in the incident tracking tool. Enhancements can be prioritized by the customer to indicate the relative level of importance the enhancement is to the customer.	Based on a release schedule mutually agreed to between the LICENSEE and LICENSOR.

5. NEW PRODUCT VERSIONS

LICENSOR will issue new Releases as agreed to with LICENSEE, including Upgrades and Patches of the Licensed Programs to its LICENSEEs. Whenever LICENSEE is issued a new build, the build will include all enhancements and bug fixes that have been made to the product up to that point in time.

LICENSOR is responsible for issuing a complete, accurate, and functional version of Q. Along with each version, LICENSEE will receive a document that specifies the changes that have made to the system since the LICENSOR’s current production version (Release Notes) was released. These Release Notes will also identify any process changes and installation directions specific to this version that deviate from the standard Q installation instructions. LICENSOR will provide product support, but does not provide technical support of the hardware or database server or SQL Server database.

If LICENSEE encounters any errors or problems concerning Q, the LICENSEE should contact LICENSOR immediately. Any questions or defects will be addressed based on the priorities listed above. If the problem is a result of a failure in the product, the instructions provided, or the process defined by the LICENSOR, the error will be addressed at no charge to the LICENSEE. If the issue proves to be unrelated to the Q product or is directly due to a failure of the LICENSEE to fulfill its responsibilities according to instructions provided by LICENSOR, LICENSEE will pay for services rendered to investigate and/or correct the problem at the LICENSOR’s going rate for professional services.

LICENSOR shall correct, based on timeframes listed above, any material reproducible error or malfunction incident in the System. If LICENSOR, in its discretion, requests written verification of an error or malfunction incident from LICENSEE, LICENSEE shall provide such verification as soon as reasonably possible, by e-mail, fax, or overnight mail, setting forth in detail the situations in which the System fails to perform. An error or malfunction shall be “material” if it represents a nonconformity with LICENSOR’s current published specifications for the System and LICENSEE, in its discretion, determines (and notifies LICENSOR) that such error or malfunction interferes with its use of the System.