

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND  
PANORAMIC SOFTWARE INCORPORATED**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_ ,  
20\_\_\_\_, by and between the COUNTY OF SAN MATEO, hereinafter called "County,"  
and PANORAMIC SOFTWARE INCORPORATED, hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of provided software applications that serve the complex estate and conservatorship accounting and legal requirements of the both the Public Administrator and Public Guardian programs.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:**

**1. Exhibits and Attachments**

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services  
Exhibit B—Payments and rates  
Attachment H—HIPAA Business Associate requirements  
Attachment IP – Intellectual Property

**2. Services to be performed by Contractor**

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

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed ONE HUNDRED FIFTY-THREE THOUSAND DOLLARS (\$153,000).

#### **4. Term and Termination**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2012 through June 30, 2013.

This Agreement may be terminated by Contractor, the Chief of the Health System or his/her designee in whole or in part, if either party has breached a material provision of this Agreement and has failed to cure such breach within sixty (60) days after receiving written notice thereof. The County upon ninety (90) days notice may terminate the Agreement herein in the event of a change in the nature, scope, or requirements of County's program or operations.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

#### **5. Availability of Funds**

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

#### **6. 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 the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

#### **7. Hold Harmless**

Both parties agree to indemnify and defend, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from either parties' failure to comply 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, including but not limited to that caused by the concurrent active or passive negligence of either party, its officers, agents, employees, or servants, resulting from the performance of any work required of either party or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which either party has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of either party to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**8. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion thereof 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. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

**9. Insurance**

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.
- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability . . . . . \$1,000,000
- (b) Motor Vehicle Liability Insurance . . . . . \$1,000,000
- (c) Professional Liability . . . . . \$1,000,000

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 the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees 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, the County of San Mateo 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 pursuant to this Agreement.

**10. Compliance with laws; payment of Permits/Licenses**

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, and will comply with the Business Associate requirements set forth in Attachment "H," and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap 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 State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

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

**11. Non-Discrimination and Other Requirements**

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.

- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *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 of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* 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
  - i) termination of this Agreement;
  - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
  - iii) liquidated damages of \$2,500 per violation;
  - 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 examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person 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 of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

## **12. Compliance with Contractor Employee Jury Service Ordinance**

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

## **13. Retention of Records, Right to Monitor and Audit**

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, 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, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

## **14. Merger Clause**

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto 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 this body of the 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 this 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 shall be in writing and signed by the parties.

## **15. Controlling Law and Venue**

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. 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.

**16. Notices**

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United State mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt, for transmittal, charges prepaid, addressed to:

**In the case of County, to:**

Heather Ledesma, Financial Services Manager II  
Aging and Adult Services  
225 37<sup>th</sup> Avenue  
San Mateo, CA 94403

**In the case of Contractor, to:**

Tim McCracken, Vice President  
Panoramic Software Incorporated  
336 Bon Air Center, #367  
Greenbrae, CA 94904

**In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.**

**17. Disclaimer of Warranty**

Contractor disclaims all warranties or conditions, either expressed, implied or statutory, including all warranties or conditions of merchantability and fitness for particular purpose arising in any way out of related to, or under this Agreement.

**18. Limitation of Liability.**

County agrees that Contractor's liability under this Agreement is limited to four (4) times the quarterly general maintenance services charge. In no event shall Contractor be liable to County for costs of procurement of substitute goods or services, or any loss or injury to earnings, profits, or goodwill, or for an incidental, special, or consequential damages suffered by County, caused directly or indirectly by any breach of the Agreement or the provision of any products, materials, or services pursuant to this Agreement. Contractor shall not be liable for any loss or use thereof, nor any claim made against County by another party.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: \_\_\_\_\_  
President, Board of Supervisors, San Mateo  
County

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

PANORAMIC SOFTWARE INCORPORATED

\_\_\_\_\_  
Contractor's Signature

Date: \_\_\_\_\_

Long Form Agreement/Business Associate v 8/19/08



## Exhibit "A"

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

San Mateo County is moving from the CompuTrust Universe trust accounting system for the Public Guardian Program to Panoramic. In addition, San Mateo County will be upgrading its current Panoramic system used by the Public Administrator Program. Panoramic Software, Inc. will be assisting the County with these changes.

### 1. PANORAMIC UPGRADE/ COMPUTRUST DATA CONVERSION

Panoramic will use BaseCamp to manage the conversion process. The County will be given access to the project and action items will be listed and assigned to project team members for completion. Panoramic will adhere to the project plan and deliver the product on time and within budget.

Panoramic will conduct weekly Project Meetings with key administrators and users. The purpose of the meetings will be to define current functionalities, discover additional needs, identify gaps in the application and validate the completion of the tasks described below. Many of the tasks run in parallel. Success will require both the County and Panoramic to work diligently during the Project Phase.

#### Tasks

1. Analyze current data structures. This task produces a list of all of the tables that are relevant to the County's current system. The field names and alias names as well as field type and length will be listed for each table.
2. Work with users to analyze current use and identify needs. This may include dropping some data items, adding others. This effort will produce a document that defines the data to be converted. (Tables, Columns, Descriptions). This document starts with documentation from Task A and modifies it based on the actual current usage of each data item.
3. Analyze extracted data to be converted. Verify data converted is complete and accurate. The number of records in each table should be the same as the number of records converted. This is the first-level verification of data conversion integrity.

4. Create a SQL Server database to accept the extracted data ("RAW database". The schema matches the document produced in Task 1.
5. Import the converted data into the RAW database. The output of this task includes a repeat verification that all of the data captured was successfully imported. In addition, second-level verifications that involve calculations can now be performed.
6. Map the RAW data to the Panoramic base Web Application. This task produces a document that explains how each data item to be converted will be transformed as it is imported into the new Web Application database. The practical implementation of this document is a custom-written data transformation application that can be repeated for verification of the process.
7. Transform the data from the RAW database to the Web Application database. Verify that data transformed was complete and accurate. At this point more detailed verifications can be done. A number of Clients can be selected for Cash Ledger History verification against the current application.
8. Test Server Set-Up. Panoramic will work with its hosting company to make sure the capacity and security of the hosted server environment meets the needs of the new Web Application users.
9. Work with selected (power and /or critical) users to define gaps in the functionality and flow of the Web Application using the newly transformed data. This task develops some ownership of the part of critical users. These users will also become capable of advocating, training and aiding other users. As this task proceeds, it is possible that changes to the data transformation process will become necessary. It may be necessary to re-do parts of the data capture process as well. This task will ultimately produce a document that specifies certain changes to the flow of the basic Web Application and minor adjustments to the functionality.
10. Implement the defined changes to the Web Application.
11. Acceptance. The users and the County Information Services Department will verify that the agreed upon changes have been implemented. A date is agreed upon for putting the Application on line.
12. Create a Training and Implementation Schedule.

13. Do a full "User Training" process that exposes each user to the overall application (2-4 hours) as well as a focused training on their own area of use (2 sessions of 2-3 hours each). Panoramic will train up to 80 users as part of this response.
14. Go Live on Panoramic's Web Application.
  - a. Halt new input on the current system and begin data capture.
  - b. Begin data capture and transformation.
  - c. Document the verifications done.
  - d. Load data into the Web Application. Verify.
  - e. Begin live operation.
15. Initial Personal Support Period. During the first few weeks, Panoramic will provide an onsite support person to provide personal, one-on-one assistance for people who may experience difficulty and have critical tasks to perform. In addition, there are some specific, critical tasks that should be supported onsite for the first time (or two) when done on the new Application. These include the "End of Period" accounting process, the production of large batches of Board and Care payments at the first of the month, and receipt of ACH deposits on the first and third of the month.
16. Transition to Ongoing Support and Maintenance. Initial issues will be tracked and solved by the Panoramic project team. After all processes have been used live multiple times and users are comfortable, Panoramic will transition the program support to its support team. This will involve directing requests to the Panoramic support email and phone number. Panoramic will provide toll-free and email helpdesk-type application support during business hours.

## 2. CERTAIN DEFINITIONS

- 1.1 Software. As used herein, the term "Software" shall mean the computer application software known to **Contractor** as "**PA-Pro Web**", and all coding (object code and source code), tapes, discs, modules, and similar materials comprising such software. The Software is described more specifically in the Documentation (defined below).
- 1.2 Documentation. As used herein, the term "Documentation" shall mean the documentation relating to the Software, which documentation is described below, and all manuals, reports, brochures, sample runs, specifications and other materials comprising such documentation.

- 1.3 System. As used herein, the term "System" shall mean the Software and the Documentation, collectively. Reference to the System shall include any component thereof. All modifications and enhancements to the System shall be deemed to be part of the System as defined herein and shall be subject to all of the terms and conditions set forth herein.
- 1.4 License. As used herein, the term "License" shall have the meaning assigned to such term in Section 3.1.

3. DESCRIPTION OF THE SOFTWARE AND DOCUMENTATION

- 2.1 Software. **PA-Pro Web**, Client and Data Management System for the Public Administrator Program
- 2.2 Documentation.

<u>Quantity</u>	<u>Description</u>
1	<b>PA-Pro Web</b> User's Guide
1	<b>PA-Pro Web</b> Sample Reports Package

4. GRANT OF LICENSE

- 3.1 Grant. Contractor hereby grants to County a license with respect to the Software, subject to the terms and conditions set forth herein (the "License").
- 3.2 Scope. The License granted herein shall consist solely of: (i) the non-exclusive, non-transferable right of Contractor to operate the Software for the purpose of providing services solely in connection with County's existing business; (ii) the non-exclusive, non-transferable right of County to copy the Software solely for backup purposes; and (iii) the right to receive and use the Documentation. The License granted herein shall not entitle County: (a) to operate the Software on any equipment other than County owned hardware; or (b) to operate the Software other than in connection with County's existing business; or (c) to permit any person or entity other than County and its employees to operate the Software; or (d) to copy the Software in any manner or in any form other than solely for backup purposes; or (e) to modify or enhance the Software in any respect; or (f) to transfer any right in the Software to any other person or entity.

- 3.3 Ownership. County acknowledges and agrees that, as between Contractor and County, title and full ownership of all rights in and to the System and all other materials provided to County hereunder shall remain with Contractor. County further acknowledges and agrees that the System, and all ideas and expressions contained therein, are proprietary information and trade secrets of Contractor.
- 3.4 Source Code Access. Contractor will make the source code for **PA-Pro Web** available to County if Contractor goes out of business.

5. DESCRIPTION OF SYSTEM INSTALLATION

- 4.1 Hardware Location. San Mateo County Health System
- 4.2 Software Delivery and Installation. Contractor or its designated agent shall deliver and install the Software at County's facility. Contractor will verify the installation of the Software through demonstration of: (i) County's, Receipts, Disbursements, Journals, Incidents, Inventory, and Case Background data entry; (ii) Printing of Client Lists; and (iii) Printing of a suite of sample reports.

6. TRAINING

- 5.1 Training and Implementation Schedule. Contractor shall provide County a training and implementation schedule prior to the effective date of the Agreement.
- 5.2 Training Days. Training services included in this Agreement are for four (4) man days. County may elect to purchase additional training days at the current rate in effect (pursuant to Exhibit B)
- 5.3 Training Location and Class Size. Training for **PA-Pro Web** is conducted by Contractor staff at the County site. Training will be customized to fit the needs and experience of the County's staff. The maximum class size is six(6) participants per instructor, with a ratio of two (2) participants to each workstation.

7. ADDRESS OF PARTIES

Panoramic Software Incorporated  
336 Bon Aire Center, #367  
Greenbrae, CA 94904  
Phone: (877) 558-8527  
Fax: (877) 548-0636

San Mateo County Health System  
Aging and Adult Services  
225 37<sup>th</sup> Avenue  
San Mateo, CA 94403  
Phone: (650) 573-3900  
Fax: (650) 573-2193

8. GENERAL MAINTENANCE SERVICES.

- 6.1 General Maintenance Services. Contractor will provide to County the following types of services under this Agreement on all weekdays, Monday through Friday, from 8:30 to 4:30 Pacific Standard Time, excluding holidays:
- (a) **Telephone Support:** Contractor staff will be available to answer questions by telephone concerning **PA-Pro Web** application software.
  - (b) **Training Classes:** Software user training classes for **PA-Pro Web** will be offered from time to time by Contractor. Training classes will be conducted at various locations to include Contractor's corporate headquarters, at PG Association training conferences, and at County sites. The timing and location of such classes shall be at the discretion of Contractor.
  - (c) **Software Enhancements:** Updates to **PA-Pro Web** will be provided to fix application software errors and to improve ease of use and performance. Such updates may include changes necessary to meet federal, state, and county mandated requirements. All software enhancements will be provided at the discretion of Contractor.
  - (d) **Error Correction:** An error is defined as any aspect of the software performance which does not conform substantially to the operation specified in the user documentation. County identified errors will be corrected and brought into conformance with the user documentation.
  - (e) **Software Releases:** Software Enhancements and Error Corrections will be made available to Customers in Software Releases from time to time as considered necessary by Contractor.
  - (f) **New Documentation Releases:** Documentation to accompany Software Enhancements will be provided when available.

- (g) **Technical Services Bulletins:** Contractor will provide Technical Services Bulletins to Customers from time to time. Such bulletins may include information concerning **PA-Pro Web** usage, third party software, and other matters considered relevant to Customers by Contractor. Technical Services Bulletins will be issued at the discretion of Contractor.

## 9. ADDITIONAL MAINTENANCE SERVICES

7.1 Additional Maintenance Services. Contractor will provide additional maintenance services at an additional charge. Contractor may require County authorization in writing and/or a County Purchase Order before any service which results in billable costs is performed. Additional Maintenance Services includes, but is not limited to, the following:

- (a) **Additional Training:** Additional software training is available at County sites.
- (b) **Data and Systems Corrections:** Data and Systems corrections include any corrective actions accomplished by Contractor staff on-site or via remote dial-in which are necessary due to County error(s) or unauthorized data access by County. Unauthorized data access by County is defined as any County staff editing or entering of data other than through normal system usage as described in the user documentation.
- (c) **County Site Visits:** Visits to County sites requested by County for reasons such as, but not limited to: (1) additional system training on hardware or software usage; (2) resolution of system difficulties not resulting from actions by, or otherwise the responsibility of, Contractor (as determined by mutual agreement between Contractor and County); (3) installation of Software Releases; and, (4) assistance in equipment maintenance, movement, or diagnosis.
- (d) **New Software Modules:** Software Modules are developed to address areas of information management not currently or significantly addressed by **PA-Pro Web**. The License for any such New Software Modules will be available for County to purchase under separate contractual agreement with Contractor.
- (e) **Custom Programming:** Requests for supplemental programming or customization of system features will be available for County. Such requests will be reviewed by

Contractor and, if accepted for implementation by Contractor, will be subject to the then current hourly programming rate.

## 10. COUNTY SYSTEM RESPONSIBILITIES

8.1. County System Responsibilities. County is responsible for performing the following duties relating to the successful operation of **PA-Pro Web**. Contractor will provide assistance to County in performance of County System Responsibilities at an additional charge. Contractor recommends that County appoint a System Administrator who will be responsible for County System Responsibilities.

- (a) **System Operation**: System Operation is the general operation of County's hardware and all software including, but not limited to, system restarts, configuration and operation of system peripherals (such as printers, modems, and workstations).
- (b) **County Hardware Repair**: County is responsible for resolving all hardware problems, reinstalling repaired equipment, and all other actions necessary to complete the repair process.
- (c) **Service Contracts**: Service Contracts for County hardware and system software other than **PA-Pro Web** must be initiated and renewed by County.
- (d) **Software Maintenance Agreement**: This Agreement must be in effect for County to receive from Contractor any of the services listed in this Agreement. Services listed in this Agreement will be unavailable to contractors who are not under a current Software Maintenance Agreement. In the event County discontinues this Agreement and subsequently desires to reinstate the Agreement in order to receive any of the services listed in this Agreement, **Customer** will be required to pay the normal monthly charge for all months during the term of the Agreement during which service was discontinued before service will be reinstated.

## 11. WARRANTY

9.1 General Warranty Contractor warrants to County that Contractor has full right and authority to grant to Contractor the License herein and that Contractor's possession and use of the System in accordance with the License herein shall not infringe any United States copyright or patent.



- 9.2 Performance Contractor warrants to County that **PA-Pro Web** application software contracted for by County will perform in substantial compliance with the **PA-Pro Web User's Manual** listed on Schedule A. There are no express or implied warranties, including the implied warranty of merchantability and fitness for a particular purpose not specifically set forth in this agreement, with respect to this agreement, or the software or other products, documentation or other products.
- 9.3 Sole and Exclusive Remedy. If County believes a product does not conform to the above warranties at any time during the term of this Agreement, County shall notify Contractor in writing. Contractor will use commercially reasonable efforts to repair or replace the software medium or bring the Licensed Programs into substantial conformance with the applicable specification at no additional cost to the County. In the event that the foregoing remedy is determined to fail of its essential purpose, Contractor shall refund or reimburse County the total amount actually paid by County to Contractor under the terms of this Agreement.

## 12. CONFIDENTIALITY

- 10.1 County Obligations. County acknowledges that, by virtue of the License granted herein, it will have access to certain proprietary information and trade secrets of Contractor, including without limitation proprietary information and trade secrets relating to the System (collectively, the "Confidential Matters"). County agrees that the Confidential Matters, and all information comprising or relating to the Confidential Matters, shall be deemed confidential and proprietary to Contractor, shall be held in trust by County, and shall be safeguarded by County to the same extent that County safeguards confidential matters relating to its own operation which in no event shall be less than the safeguards that a reasonably prudent person or business would exercise under similar circumstances.

To these ends, County agrees to take such steps as may be necessary to ensure that neither the Confidential Matters, nor any information comprising or relating to the Confidential Matters, are used by County or any of its employees, agents, or representatives in any manner or for any purpose other than as provided herein or are made available by County or any of its employees, agents, or representatives to any other person or entity, without the prior written consent of Contractor. Such steps shall include without limitation the execution by County's employees, agents and representatives having access to the Confidential Matters of

binding agreements to maintain confidentiality in accordance with this provision.

- 10.2 Exceptions County's obligations pursuant to Section 10.1 shall not apply to: (i) information which is in the public domain, other than as a result of any breach of this Agreement; (ii) information which the County is required to disclose under California's Public Records Act, Gov't. Code section 6250 et. seq.; or (iii) information which County is obligated to disclose pursuant to the lawful order of any court or government instrumentality in the United States, but only to the extent required by such order.
- 10.3 Contractor's Obligations. Contractor acknowledges that, by virtue of the County/developer relationship established herein, it will have access to certain confidential information relating to the County's clients and activities. Contractor agrees that all information relating to the activities and the clients of County shall be deemed confidential and proprietary to County, shall be held in trust by Contractor, and shall be safeguarded by Contractor to the same extent that Contractor safeguards confidential matters relating to its own clients and activities which in no event shall be less than the safeguards that a reasonably prudent person or business would exercise under similar circumstances.

To these ends, Contractor agrees to take such steps as may be necessary to ensure that no information comprising or relating to the clients or activities of County are used by Contractor or any of its employees, agents, or representatives in any manner or for any purpose other than as provided herein or are made available by Contractor or any of its employees, agents, or representatives to any other person or entity, without the prior written consent of County. Such steps shall include without limitation the execution by Contractor's employees, agents and representatives having access to the County's confidential information of binding agreements which impose on such persons the same obligations which are imposed on Contractor under this section.

Exhibit "B"

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. FEE AND PAYMENT SCHEDULE

1.1 License Fee. The full fee for the Software License, State Taxes on the Software License, Documentation and Installation is not to exceed \$25,000 (itemized below).

Monthly Software Hosting, License, Maintenance and Support	\$4,500
Upgrade and Conversion Project (breakdown below)	Not to Exceed \$99,000
Data Conversion	\$25,000
Customization	\$45,000
Implementation/Server Set-Up	\$10,000
On-Site Training	\$10,000
Go-Live On-Site Support	\$9,000

1.2 Additional Training. Any visits to County's site by Contractor staff other than for Initial Training will be made at the County's written request. Such visits will be invoiced at a rate of \$1,200.00 per day, with a one (1) day minimum. All reasonable costs of travel associated with such visits (automobile mileage or air fare, car rental, food and lodging, and other out-of-pocket expenses) will be billed to County at cost.

1.3 Programming. Custom programming is available at County's written request. Charges for custom programming will be on an hourly basis at a rate of \$150.00 per hour. For any given request, Contractor will provide an estimate of the total programming charges in advance of beginning work and further notify County if the ongoing estimate of total charges to completion should ever exceed the initial estimate. In no case will County be billed for charges in excess of the greatest approved estimate

1.4 Payment Schedule. Maintenance fees will be paid quarterly upon receipt of invoice from Contractor. Any costs for training or other services will be paid for upon receipt of invoice from Contractor. Contractor shall invoice County for all sums which Country owes Contractor hereunder, and County shall pay each invoice within thirty (30) days after receipt thereof.

- 1.5 Late Charges. Contractor may charge Customer one-half percent (0.5%) per month on any amount which County is delinquent in paying to Contractor hereunder, except that such charge may not exceed the maximum amount permitted under law

2. OTHER COMPENSATION

2.1 Other Compensation.

- (a) Fee for Additional Services. If Contractor provides services requested in writing by County which are in addition to the services specified in Exhibit A, County shall as compensation for such additional services pay to Contractor a fee based on Contractor's then prevailing rate for such services.
- (b) Expenses Relating to Services. County shall reimburse Contractor for all necessary travel, lodging, and per diem expenses incurred by Contractor and its employees in performing Contractor's obligations hereunder.
- (c) Prior Approval. With respect to charges for any "Additional Services" or "Expenses relating to Services" as set forth above in Sections (a) and (b), Contractor will provide an estimate of the total charges for such "Additional Services" or "Expenses relating to Services" and shall obtain County's prior approval in advance of incurring any such charges. Contractor shall immediately notify County if the ongoing estimate of total charges to completion are likely to exceed the initial estimate. In no case will County be billed for charges in excess of the greatest approved estimate or that will cause the aggregate maximum payments allowable under this Agreement to exceed \$25,000.
- (d) Telephone Line Charges. All telephone charges incurred by Contractor in connection with Remote Dial-In Diagnostics and other system-related activities utilizing modems, telephone equipment and the use of telephone lines will be billed to County.
- (e) Travel: Charges for transportation according to IRS mileage rates, Lodging shall be Moderate for the area or Medium Priced Lodging, meals allowance shall be \$42.00 per day per consultant including breakfast, lunch and dinner, incurred by Contractor in connection with providing General Maintenance Services or Additional Maintenance Services will be billed to County. Costs will include, but not be limited to airline tickets,

car rentals, taxis, personal auto mileage, lodging, meals, and incidental expenses.

- (f) Customer Travel Costs. All costs of County travel to Contractor training classes, including but not limited to transportation, lodging, meals, and other travel expenses will be paid by County.
- (g) Taxes. All maintenance charges under this Agreement are exclusive of any taxes legally imposed on the licensing, delivery, and use of **PA-Pro Web**. County shall pay, or reimburse Contractor, for any such taxes, and Contractor may add such taxes to the invoices submitted to County by Contractor. County shall be responsible for payment of any and all taxes or other governmental charges or fees attributable to the License granted herein.
- (h) Changes in Charges Contractor may change the charges for Maintenance Services upon 30 days written notice effective at the beginning of any maintenance period.
- (i) The parties agree that the sum of any and all payments made by Customer to PSI shall not exceed \$25,000. Contractor acknowledges that Agreement amounts exceeding \$25,000 will require additional approvals from the County and that the Office of the Public Administrator cannot guarantee that such approvals will be forthcoming.

**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 section 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. *Designated Record Set.* “Designated Record Set” shall have the same meaning as the term “designated record set” in Section 164.501.
- b. *Electronic Protected Health Information.* “Electronic Protected Health Information” (“EPHI”) means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- c. *Individual.* “Individual” shall have the same meaning as the term “individual” in Section 160.103 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- d. *Privacy Rule.* “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.
- e. *Protected Health Information.* “Protected Health Information” 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 Contractor from or on behalf of County.
- f. *Required By Law.* “Required by law” shall have the same meaning as the term “required by law” in Section 164.103.
- g. *Secretary.* “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- h. *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, but does not include minor incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate
- i. *Security Rule.* “Security Rule” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

## Obligations and Activities of Contractor

- a. Contractor 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. Contractor agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- d. Contractor agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- f. If Contractor has protected health information in a designated record set, Contractor 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.
- g. If Contractor has protected health information in a designated record set, Contractor 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.
- h. Contractor 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 Contractor on behalf of, County available to the County or to 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.
- i. Contractor 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.

- j. Contractor agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (i) of this Schedule, 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.
- k. Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Contractor creates, receives, maintains, or transmits on behalf of County.
- l. Contractor shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- m. Contractor shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- n. Contractor shall report to County any Security Incident within 5 business days of becoming aware of such incident.
- o. Contractor shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of the U.S. Department of Health and Human Services and, at County's request, to the County for purposes of the Secretary determining County's compliance with the HIPAA privacy and security regulations.

#### Permitted Uses and Disclosures by Contractor

Except as otherwise limited in this Schedule, Contractor 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 Contractor 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 Contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Contractor's permitted or required uses and disclosures.
- c. County shall notify Contractor 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 Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by County, unless the Contractor will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Contractor.

### Duties Upon Termination of Agreement

- a. Upon termination of the Agreement, for any reason, Contractor shall return or destroy all Protected Health Information received from County, or created or received by Contractor on behalf of County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.
- b. In the event that Contractor determines that returning or destroying Protected Health Information is infeasible, Contractor 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, Contractor 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 Contractor maintains such Protection Health Information.

### Miscellaneous

- a. *Regulatory References.* A reference in this Schedule to a section in the 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 Contractor 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 Contractor

## Attachment IP – Intellectual Property Rights

1. The County of San Mateo (“County”), shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively “Vendors”) for the County under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the County.
2. “Work Products” are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.
3. Contractor shall not dispute or contest, directly or indirectly, the County’s exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the County, shall assign to the County all titles, rights and interests in all Work Products. Contractor shall cooperate and cause subcontractors to cooperate in perfecting County’s titles, rights or interests in any Work Product, including prompt execution of documents as presented by the County.
4. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the County commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the sole benefit of the County and the copyright of which is vested in the County.
5. In the event that the title, rights, and/or interests in any Work Products are deemed not to be “work-made-for-hire” or not owned by the County, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to the County all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the County requests cooperation of Contractor to perfect the County’s titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of the County in the Work Products with no additional charges to the County beyond that identified in this Agreement or subsequent change orders. The County, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.
6. Contractor agrees that before commencement of any subcontract work it will incorporate this Schedule I to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the County’s titles, rights, and interests in Work Products are preserved and protected as intended herein.