

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND SAPIENT CORPORATION

This Agreement is entered into this 11th day of December 2018, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Sapien Corporation, 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 the design, development, implementation, and maintenance of the Assessor Property Assessment System (APAS) for the Assessor-County Clerk-Recorder-Elections (ACRE) Department within the County of San Mateo.

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

1. Definitions, Interpretation, And Construction

1.1 Defined Terms

Except as otherwise expressly provided in the Agreement, all capitalized terms used in the Agreement will have the meanings set forth in Attachment 6 (Defined Terms). If this Agreement does not define a particular term, it will have its generally understood meaning (e.g., in the information technology industry) based on the context in which it is used.

1.2 Interpretation

- a.** The terms defined in the Agreement include the plural as well as the singular and the derivatives of such terms. Unless otherwise expressly stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to the Agreement as a whole and not to any particular Article, Section, subsection or other subdivision. The words "include" and "including" will not be construed as terms of limitation. The words "will" and "shall" are synonymous and inter-changeable.
- b.** Headings, titles, tables of content and the table of Exhibits and attachments included in or attached to the Agreement are used for convenience only and are not to be considered in construing or interpreting the Agreement.
- c.** References to any Law refer to such Law in changed or supplemented form, or to a newly adopted Law replacing a previous Law.
- d.** Except as may be expressly set forth otherwise, all references to (i) time refer to the local time in San Francisco, and (ii) business hours or days refer to County's business hours or days, as applicable.

1.3 Conflict

If there is a conflict between the terms of the Agreement (including approved Change Requests), the Exhibits, Attachments, and any other document incorporated by reference into the Agreement, then such conflict will be resolved by giving precedence to such different parts of the Agreement in the following order of precedence:

- a. First, this Agreement;
- b. Second, the relevant Statement of Work;
- c. Third, the Exhibits and Attachments; and
- d. Fourth, any other documents incorporated by reference

2. Exhibits and Attachments

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

Exhibit A—Statement of Work (SOW #1)
Exhibit B—Fee Methodology and Payments (SOW #1)
Exhibit C – 10-Year Maintenance and Operations Support Statement of Work (SOW #2)
Exhibit D – Payments (SOW #2)
Attachment 1 - Contractor Disaster Recovery and Business Continuity Plans
Attachment 2 - County Policies and Procedures
Attachment 3 - IP – Intellectual Property
Attachment 4 - Contractor Development Methodology (ValuePath)
Attachment 5 - Deliverables templates and examples
Attachment 6 - Defined Terms
Attachment I—§ 504 Compliance

3. Services to be performed by Contractor

3.1 Scope of Services

In consideration of the payments set forth in this Agreement, Contractor shall perform Services for County in accordance with the terms, conditions, and specifications set forth in this Agreement as follows:

3.1.1 Contractor's responsibilities with respect to APAS are set forth in the Statements of Work #1 (Exhibit A) and the Agreement.

- a. Contractor will plan, prepare for and perform the Services in accordance with this Agreement, and the Statement of Work #1 (Exhibit A, A-1 through A-13). The commencement of the Services will be no later than the date specified in the Project Plan (Exhibit A-5). Contractor's responsibilities with respect to the Services include:
 - i. Performing the services, functions, and responsibilities described in the Statements of Work and Agreement in accordance with the time frames set forth in the Project Plan and Exhibit B (Fee Methodology and Payments);

- ii. Developing and providing the Services and Deliverables to be compliant with the Specifications, Acceptance Criteria (Exhibit A-9), and Statements of Work, and delivering the Deliverables in accordance with timeframes in the Project Plan (Exhibit A-5) and Exhibit B (Fee Methodology and Payments);
 - iii. performing the Services without material disruption to County's business operations;
 - iv. otherwise performing such services, integration, and migration tasks as are necessary to enable Contractor to provide the Services in accordance with the terms of the Agreement, without materially disrupting County's business or operations.
- b. The Fees for SOW #1 are fully set forth in Exhibit B (Fee Methodology and Payments) and will be chargeable by or payable to Contractor, unless there are any Changes to Exhibit B (Fee Methodology and Payments) that are processed through the Change Control Procedures (Exhibit A-7).
- c. County acknowledges that time frames in the Project Plan are good faith estimates. Contractor acknowledges that this is a fixed bid and the Deliverables from the Definition Phase listed in Exhibit A-3 (Deliverables) shall constitute the APAS requirements. Any scope or schedule changes will go through the Change Control Procedures (Exhibit A-7). As set forth in Exhibit B (Fee Methodology and Payments) at the conclusion of the Definition Phase, the Contractor may adjust its original Phase 1, Phase 2 and Phase 3 cost estimates not to exceed 10%, provided such 10% limitation shall only apply to specific scope set forth in the Statement of Work. In the event of any gaps or additional scope is discovered after the completion of the Definition Phase, or the parties mutually agree to increase the specific scope of the Statement of Work by greater than 10%, such additional scope and price increases will be managed through the Change Control Process (Exhibit A-7).

3.1.2 Contractor's responsibilities with respect to the Maintenance and Operations support of APAS are set forth in the Statement of Work # 2 (Exhibit C).

- a. Contractor will plan, prepare for and perform the Services in accordance with this Agreement, and the Statement of Work #2 (Exhibit C). The commencement of the Services will be at the completion of the Warranty Period for Phase 3. Contractor's responsibilities with respect to the Services include:
 - i. Performing the services, functions, and responsibilities described in the Statement of Work #2 and Agreement in accordance with the time frames set forth in Exhibit D (Payments);
 - ii. Developing and providing the Services and Deliverables to be compliant in accordance with the terms in Exhibit A-11 (Maintenance and Operations (M&O) Support Terms) and Exhibit D (Payments);

- iii. performing the Services without material disruption to County's business operations;
 - iv. otherwise performing such services, integration, and migration tasks as are necessary to enable Contractor to provide the Services in accordance with the terms of the Agreement, without materially disrupting County's business or operations.
- b. The Fees for SOW #2 are fully set forth in Exhibit D (Payments) and will be chargeable by or payable to Contractor, unless there are any Changes to Exhibit D (Payments) that are processed through the Change Control Procedures (Exhibit A-7).

3.2 Non-Exclusive Services

As directed by County, Contractor shall reasonably cooperate with third parties and County's staff in connection with the Services, including County's contractors and third-party Service Providers and vendors. County reserves the right to provide itself, or use third parties to provide, any products or services that are related to, the same as, or similar to the Services or otherwise overlap with, replace or increase the Services. The Services will be provided by the Contractor to County without any minimum commitment from County as to the volume, scope or value of such Services.

3.3 Service Priorities and Delays

- a. Contractor acknowledges that County requires flexibility to set priorities with respect to the Services or delay the dates for the performances of the Services. Contractor agrees to cooperate with County in making project schedule adjustments and re-arranging project activities when required by County business operations. County agrees to give Contractor adequate notice for material schedule adjustments and in the event any change has a material impact on the project timelines or cost of providing the Services under this Agreement, the parties shall execute a mutually agreeable Change Request.
- b. If and to the extent that County requests changes to priorities which have previously been agreed with Contractor or County requests that a Service be prioritized in a manner inconsistent with Contractor's relevant obligations pursuant to the Agreement, then (i) Contractor will advise County in writing in advance of any adverse consequences that are reasonably likely to result from such reprioritization; and (ii) any impact on Contractor's performance of the Services under the Agreement resulting from such prioritization will be processed through the Change Control Procedures.

3.4 Required Resources

- a. Subject to any assumptions or County responsibilities set forth in the Statements of Work, Contractor will be responsible for providing the Contractor Location, personnel, Equipment, Resources, Software, technical knowledge, expertise and other resources necessary to provide the Services at its own cost as set forth in the Exhibit

B (Fee Methodology and Payments), and no other amounts will be chargeable for such resources other than as set forth therein.

- b. All open source software & tools are identified in Exhibit A-6 (Financial Responsibility Matrix). Exhibit A-6 (Financial Responsibility Matrix) will be discussed and refined by the County and Contractor during the Definition Phase, as described in Exhibit A (SOW #1), and any Changes to Exhibit A-6 (Financial Responsibility Matrix) will be processed through the Change Control Procedures (Exhibit A-7).

3.5 County Policies and Procedures

Contractor will perform and supply the Services and develop and deliver the Deliverables, and Documentation in compliance with, and cause Contractor Personnel and Subcontractors to comply with, County policies and procedures as set forth in Attachment 2 (County Policies and Procedures) and any associated County standards, policies and requirements that have been disclosed to Contractor in writing from time to time, including physical, logical and IT security policies (collectively, "County Policies and Procedures"). County retains the right and authority to eliminate, modify, update, or replace any County Policies and Procedures at any time and in its sole discretion. County will provide Contractor with any updated County Policies and Procedures and Contractor will comply with same. Any Changes to the County Policies and Procedures will be processed through the Change Control Procedures (Exhibit A-7).

4. 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 (SOW #1) and Exhibit C (SOW #2), County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B (Fee Methodology and Payment) for Exhibit A (SOW # 1) and Exhibit D (Payments) for Exhibit C (SOW #2) . County reserves the right to withhold partial payment for Exhibit A (SOW #1) if County determines that the quantity or quality of the work performed is being conditionally accepted as specified in Exhibit A-9 (Acceptance Criteria). In no event shall County's total fiscal obligation under this Agreement exceed Sixteen Million Three Hundred and One Thousand Nine Hundred Forty-Eight dollars (\$16,301,948). 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.

5. Taxes

County shall pay all applicable federal, state and local sales, use, value added, excise, duty and any other taxes of any nature assessed on the Services or Deliverables required by law, except for taxes based on Contractor's revenue or income. When collection is required solely by Contractor, any applicable sales taxes will be billed by Contractor as required by law and paid by County.

6. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from December 11, 2018, through December 31, 2031.

The term of this Agreement includes a 3-year term to cover the project and development of the system (Exhibit A, SOW #1) and a post-project 10-year term for Maintenance and Operations of the system (Exhibit C, SOW #2). The term for each Statement of Work shall be set forth therein.

6.1 Term Extension

a, The parties agree that the estimated project duration for the Services is set forth in Exhibit A (SOW #1). In the event of any changes to the scope or schedule as set forth in the Statement of Work have been agreed to through the Change Control Procedures the term of this Agreement shall also be extended to account for such scope or schedule changes necessary to complete the applicable Services.

b. In the event, the parties mutually agree for Contractor to provide additional services beyond those set forth in Exhibit A (SOW #1), the County may extend the Agreement to allow for any such additional services. Such extension shall occur no later than sixty (60) days prior to the expiration of this Agreement and shall be for a term of up to twenty-four (24) months. Any additional services shall be agreed to in a separate statement of work and will use the Term Extension rate card.

7. **Confidentiality**

7.1 **Confidential Information**

A Party shall not disclose any Confidential Information of the other party except with the other party's prior written permission. A Party may only use the other Party's Confidential Information to perform its obligations or exercise its rights under this Agreement. Contractor acknowledges that it may receive individual taxpayer information that is protected from disclosure under the Revenue & Taxation Code in providing Services under this Agreement. Contractor agrees to keep all taxpayer information confidential.

7.2 **Protection**

Each party agrees to protect the Confidential Information of the other party in the same manner that it protects its own Confidential Information of like kind except as specified in Section 7, but in no event using less than a reasonable standard of care.

7.3 **Remedies**

If a Party discloses or uses (or threatens to disclose or use) any Confidential Information of the other party in breach of confidentiality protections hereunder, the other party shall have the right, in addition to any other remedies available, to injunctive relief to enjoin such acts, it being acknowledged by the Parties that any other available remedies are inadequate.

7.4 **Exclusions**

Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the other party; (ii) was known to a party prior to its disclosure by the other party without breach of any obligation

owed to the other party; (iii) was independently developed by a party without breach of any obligation owed to the other party.

7.5 Loss of Confidential Information

Each Party will: (i) immediately notify the other Party of any possession, use, knowledge, disclosure or loss of such other Party's Confidential Information in contravention of the Agreement, (ii) promptly furnish to the other Party all known details and assist such other Party in investigating and/or preventing the reoccurrence of such possession, use, knowledge, disclosure or loss, (iii) cooperate with the other Party in any investigation or litigation deemed necessary by such other Party to protect its rights, and (iv) promptly use all commercially reasonable efforts to prevent further possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of the Agreement. Contractor will bear any costs it incurs in complying with this Section.

7.6 Personally Identifiable Information

Neither party shall transfer, disclose or otherwise make available to the other any information which by itself or in combination with other information can identify an individual ("PII") without the receiving party's prior written consent. If a party wishes to transfer, disclose or otherwise make available PII to the receiving party, disclosing party shall provide at least ten (10) business days' prior written notice of such proposed transfer or disclosure. Except as expressly agreed by the parties in a Statement of Work or other writing signed by the authorized representatives of both parties, neither party has an obligation to collect, store, process, compile, merge or otherwise receive any PII under this Agreement. Each party shall promptly notify the other party in writing in the event any PII is disclosed without written notice and consent.

8. Termination

This Agreement or any Statement of Work may be terminated by County or by the Assessor-County Clerk-Recorder & Chief Elections Officer or his/her designee at any time without a requirement of good cause upon ninety (90) days' advance written notice to Contractor. Contractor shall be entitled to receive payment for work/services provided through the effective date of termination of the Agreement and/or Statement of Work. 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.

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.

County may terminate this Agreement or any Statement of Work for cause in the event of a material breach of Contractor's obligations under this Agreement. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten business days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action, provided, County may not terminate in the event such breach is incapable of cure within such ten (10) business day period and Contractor has undertaken actions to remedy such breach this Agreement and/or a Statement of Work within such time period. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above.

Contractor may terminate this Agreement or any Statement of Work for cause in the event of a material breach of County's obligations under this Agreement. In order to terminate for cause, Contractor must provide County of a material breach by the County and such breach remains uncured for thirty (30) days following delivery of such notice.

County may terminate this Agreement immediately in the event Contractor becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

8.1 Exit Rights

In the event of the Termination of the Agreement by either Party, the County shall have the following Exit Rights for 120 days after the effective date of termination of the Agreement, provided Contractor has been paid for all Services provided through the date effective date of termination:

- a. Periodic Documentation Delivery - Each calendar month/quarter or as otherwise requested by County, Contractor will provide County a copy of the Documentation, in-process Deliverables (including source code) and work product, and other information necessary for County to transfer the Services in-house or to another Contractor.
- b. Termination Assistance Services - Contractor will, upon County's request during each Termination Assistance Period, provide Termination Assistance Services at the prevailing in effect rate card. Such termination assistance services will first (a) be rendered using resources already working on County's APAS solution, provided that the quality and level of Contractor's performance of the Services will not be degraded during any such Termination Assistance Period; then (b) by using additional resources, in each case of (a) or (b) at the additional costs determined by the prevailing in effect rate card set forth in Exhibit B-1 (Rate Card for Additional Services).
- c. The rights and licenses granted to Contractor by County under the Agreement will immediately terminate and Contractor will:
 - i. deliver to County, at no cost to County, a current copy of the relevant County Owned Materials (data, files), Deliverables (if not already delivered), and any work in progress Deliverables; and
 - ii. destroy or erase all other copies of the relevant County Owned Materials (data, files) in Contractor's possession, provided, in the event Contractor is unable to remove such data as a result of its standard backup and archival processes Contractor may retain such information solely for such purposes.
 - iii. Upon County's request, Contractor will certify to County that all such copies have been destroyed or erased;
- d. Upon County's request, with respect to those agreements for maintenance (if any), disaster recovery services or other necessary third party services used by Contractor to provide the terminated Services, Contractor will transfer or assign such agreements to County or County's designee, to the extent permissible under, and in accordance with, the applicable agreements, on terms and conditions acceptable to all applicable parties; provided, however, that in no event will this subsection be

construed as requiring Contractor to transfer or assign any Contractor corporate master agreement;

- e. Upon County's request, Contractor will permit County and/or its designee to shadow (e.g., observe the performance of) Contractor Personnel performing Services, provide reasonable access to Contractor Personnel and Contractor Locations (including reasonable office space to facilitate knowledge transfer and training), and reasonable access (e.g., by telephone) to persons who are or were Contractor Personnel to address questions or issues with respect to Contractor's performance and transfer of the Services.

9. Warranties

9.1 Warranties

Each Party warrants that it has the authority to enter into this Agreement and, in connection with its performance of this Agreement, shall comply with all Laws applicable to it related to data privacy, international communications and the transmission of technical or personal data. Contractor warrants that during the Term the Service shall be performed in a professional and workmanlike manner.

9.2 Warranty Remedies

As County's exclusive remedy and Contractor's sole liability for breach of the warranty set forth in Section 9.1, Contractor shall correct or re-perform the non-conforming Service at no additional charge to County. To receive warranty remedies, County must promptly report deficiencies in writing to Contractor, but no later than thirty (30) days of the first date the deficiency is identified by the County. EXCEPT AS MAY BE EXPRESSLY SET FORTH IN SECTION 9.1 AND 17, CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES NOT EXPRESSLY SET FORTH IN THIS AGREEMENT.

10. Contract Materials

At the end of this Agreement, or in the event of termination, any work in progress Deliverables shall upon County acceptance and payment of all amounts owing to Contractor, become the property of County and shall be promptly delivered to County. Such in progress Deliverables shall be provided on an "as-is" basis and Contractor makes no representation or warranty regarding such in process Deliverables, nor shall Contractor have any indemnification obligations regarding such Deliverables.

11. 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.

12. Hold Harmless

a. General Hold Harmless

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, in all cases that are brought by a third-party against County, that arise 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; or
- (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;
- (D) Contractor's fraud, gross negligence or willful misconduct, including, but not limited to, employee misconduct resulting in claims of harassment against County employees or members of the general public;
- (E) any claims made by third parties based upon any amounts assessed or reassessed against, or imposed on, County that are the obligation of Contractor in respect of any taxes;.
- (F) any Claim by or on behalf of Contractor's employees including, but not limited to, salary, wages, benefits, termination or severance costs, or other compensation, as well as fines, penalties, and interest for or by reason of or in any way arising out of Contractor's failure to deduct, withhold, or contribute any amount in respect of withholdings, premiums, contributions, or payments for which Contractor is responsible in respect of such Contractor employees

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 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 against County that the Deliverables provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States.

The foregoing obligation to indemnify in subsection (b) will not apply (i) where Contractor relied upon instructions, information, data or other materials provided, selected or approved by County, (ii) where County, despite being advised of the potential risk of a violation, authorized Contractor to proceed with the action giving rise to such a violation, (iii) where County or some third party damaged, misused or modified the Deliverables where the unmodified version of the Deliverables would not be infringing, (iv) where County or some third party combined the Deliverables with software or other materials not supplied by Contractor, (v) where the claim arose from County's performance of (or failure to perform) its obligations under this Agreement, (vi) where County authorized the implementation of methods, processes, components or systems that County was using without a license prior to such implementation, or (vii) where the claim arose from the implementation of generally available and non-site specific technology, know-how, materials or information representing functionality already generally available or used throughout the industry without a license. The foregoing provisions of this paragraph constitute the sole and exclusive remedy of County, and the sole and exclusive obligation of Contractor, relating to a claim that the Services or a Deliverable infringes any intellectual property right of a third party.

c. Indemnification Process

Contractor's duty to defend, indemnify, and hold harmless under this Section 12 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 Deliverables 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.

13. Limitation of Liability

13.1 Limitation of Liability

NEITHER PARTY SHALL BE LIABLE FOR DAMAGES THAT EXCEED THE AMOUNT OF THE FEES FOR SERVICES PAID BY COUNTY RELATED TO THE SERVICE(S) FROM WHICH THE CLAIM AROSE

13.2 Exclusion of Damages

EXCEPT WITH RESPECT TO COUNTY'S PAYMENT OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, OR FOR ANY LOST PROFITS, LOSS OF USE, COST OF DATA RECONSTRUCTION, COST OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS OR

SUBCONTRACTORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

14. Dispute Resolution

14.1 Dispute Resolution

The Parties agree that it is in the best interests of the parties to resolve all disputes in good faith in an informal and collaborative fashion. In the event a dispute cannot be resolved informally by the parties, the Parties shall take the following steps to resolve any dispute:

- a. The parties to the dispute shall first submit any concerns to the County's ACRE Deputy IT Director and Contractor's IT Representative.
- b. In the event the County's ACRE Deputy IT Director and the Contractor's IT Representative are unable to resolve a dispute in an amount of time that either Party deems reasonable under the circumstances, such Party may refer the dispute for resolution to the APAS Executive Committee upon written notice to the other Party;
- c. Within five (5) business days of a notice under Subsection (i) above referring a dispute for resolution by APAS Executive Committee, the County's ACRE Deputy IT Director and the Contractor's IT Representative will prepare and provide to the APAS Executive Committee summaries of the relevant information and background of the dispute, along with any appropriate supporting documentation, for its review. Within 10 days of receiving the summaries, the APAS Executive Committee will meet to determine whether it needs additional information from the parties in order to resolve the dispute. The APAS Executive Committee will discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding. The specific format for the discussions will be left to the discretion of the APAS Executive Sponsor and the Contractor's Counterpart to the County's Executive Sponsor, but may include the preparation of agreed upon statements of fact or written statements of position;

During the course of discussion under this Section, all reasonable requests made by one Party to another for non-privileged information, reasonably related to the dispute, will be honored in order that County and the Contractor may be fully advised of the other's position.

- d. In the event the Executive Committee is unable to resolve the dispute, the Executive Sponsor may, in his\her sole discretion, refer the matter to mediation by a mediator mutually agreed to by the parties. The Parties agree to mediate any disputes prior to resort to litigation in the courts. Nothing in this section shall preclude the parties from agreeing to further arbitration of the dispute prior to resort to the courts.

14.2 Continued Performance

County and the Contractor agrees that it will, unless otherwise directed by the other party, continue performing its obligations under the Agreement while any dispute is being resolved; provided that this provision will not operate or be construed as extending the Term or prohibiting or delaying the County or Contractor exercising any right it may have to terminate the Term as to all or any part of the Services.

15. 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, provided, however, County's prior written consent shall not be required for any Services provided by affiliates of Contractor or any individual independent contractors. Any such assignment without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

16. 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 cancellation notice shall be provided in accordance with policy provisions.

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 General 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:

- (a) Comprehensive General Liability... \$1,000,000 per occurrence/general aggregate

(b) Professional Liability..... \$1,000,000 per claim/general aggregate

County and its officers, agents, employees, and servants shall be named as additional insured on the General Liability policy, 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 General Liability 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.

17. Warranty

- a. Contractor represents and warrants that:
 - i. Each Deliverable related to a particular Phase shall remain free of any Severity 1, 2 or 3 defects as defined in Exhibit A-9 (Acceptance Criteria) (each a "Warranty Nonconformity") for a period of ninety (90) days following the earlier of (a) the date that the particular Phase for such Deliverable goes to live production environment or (b) six (6) months following the acceptance of the final milestone for the particular Phase for such Deliverable.
- b. If any Deliverable for a Phase does not conform to the representation and warranty set forth in this Section (a), Contractor shall remedy each such Warranty Nonconformity at no additional charge and make such repair, replacement, additions, modifications, or adjustments to the Warranty Nonconformity or Deliverable as may be necessary to comply with the Acceptance Criteria, no more than ten (10) days from the time that County notifies Contractor that there is a Warranty Nonconformity (unless Contractor obtains County's approval in writing to extend such period to a time acceptable to County, with such approval not to be unreasonably withheld or delayed)..
- c. In addition to the Contractor's obligations in this Section and during the Warranty Period, Contractor will, at no additional charge, provide the following Services:
 - i. Maintain, repair, and correct errors, defects, and Warranty Nonconformities in the Deliverables, including releases, modules, custom configurations, code, functions or iterations of the Deliverables, so that they may comply with the Acceptance Criteria and terms of the Agreement.
 - ii. Production support Service Level Requirements as defined in Exhibit A-10 (Warranty Services)
 - iii. Maintain a record of the requests, activities, tasks, and services related to the remedial or maintenance services performed on the Deliverables and share those with County upon request;

- iv. For each Service Level Requests, the Contractor shall ensure the following information is recorded and maintained: (1) nature of the Warranty Nonconformity; (2) current status of Warranty Nonconformity; (3) action plans and times for the correction of the Warranty Nonconformity; (4) expected and actual completion date for the correction of the Warranty Nonconformity; and (5) Warranty Nonconformity resolution information, including cause of the Warranty Nonconformity; and Work with County to identify and troubleshoot potentially large-scale system failures or Warranty Nonconformities by collecting the following information: (1) average time between the time the Warranty Nonconformity is reported to Contractor and the time it is resolved; (2) diagnosis of the root cause of the Warranty Nonconformity; and (3) identification of repeat Warranty Nonconformities or repeat system problems.
- v. In the event that the production roll back is required, upon the earlier of (a) when the Phase is re-deployed to the live production environment, or (b) six (6) months following the acceptance of final Deliverable required for the rollback, the Warranty Period will begin a new 90-day period.

18. Continued Provision of Services

18.1 Disaster Recovery and Business Continuity

The County and Contractor will comply with the business continuity and disaster recovery obligations set out in Attachment 1 (Disaster Recovery and Business Continuity). Contractor will, as a deliverable under the applicable Statement of Work, modify the business continuity and disaster recovery plan set forth in Attachment 1 (Disaster Recovery and Business Continuity) so that it is customized to apply to the Deliverables, subject to County's input and written approval. Contractor will comply with the obligations under such revised business continuity and disaster recovery plan.

18.2 Force Majeure

Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that party's reasonable control and occurring without that party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Contractor or County employees, respectively), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

19. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all Federal, State, County, and municipal laws, ordinances, and regulations applicable to Contractor's Services, including but not limited to the Americans with Disabilities Act of 1990 ("ADA"), 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 ordinances and regulations applicable to Contractor's Services under this Agreement, 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. In the event there is a change in applicable law, ordinance or regulations, County and Contractor shall follow the process identified in SOW section 3.1.8.4.4(Change Management Plan). Nothing in this section shall require Contractor to ensure that Deliverables are ADA compliant or compliant with any other applicable accessibility regulations regarding the business of operating any website or application unless specifically specified in the SOW.

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

20. 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

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

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 certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. 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 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. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

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.

21. 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 if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

22. 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 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 any program and fiscal reporting requirements applicable to the Services provided under this Agreement and as required by in writing by County.

23. Audit Rights

Contractor shall provide to County, its auditors (including internal audit staff and external auditors mutually acceptable to both parties), inspectors, regulators and other representatives as County may from time to time designate in writing and reasonably acceptable to Contractor, access at all reasonable times to data and records relating to Contractor's amounts invoiced for performance of the Services.

- i. examine Contractor's performance of the Services, development of the Deliverables, and compliance with this Agreement, including, to the extent applicable, (1) audits of practices and procedures, and (ii) audits necessary to enable County to meet applicable regulatory requirements; and
 - ii. enable County to meet the regulatory, financial reporting, and other requirements imposed by applicable Laws.
- b. Contractor and County will develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns and/or recommendations arising out of any audit, and Contractor, at its own expense, will undertake remedial action in accordance with such action plan and the dates specified therein.
- c. Contractor shall provide to such auditors, inspectors, regulators and representatives such assistance as they reasonably require, including:
 - i. a right and license of reasonable access to Contractor Locations and other sites from which Contractor performs its obligations under the Agreement and the facilities of any Subcontractor;
 - ii. access to the County Data ;
 - iii. reasonable access to Contractor Personnel and Subcontractors engaged in the provision of the Services, including for the purpose of providing reasonable assistance in understanding or interpreting information pertaining to any Audit Purpose
- d. Contractor shall cooperate fully with County or its designees in connection with audit functions and with regard to examinations by regulatory authorities. County's auditors and other representatives shall comply with Contractor's reasonable security requirements.
- e. If County or its third-party contractor or auditor are physically present on-site at a Contractor Location, County shall during the time that such persons are onsite comply with Contractor's reasonable and lawful safety and security policies applicable to such onsite presence, provided that Contractor has provided County with such policies in writing within a reasonable

time prior to such person's entry onto such Contractor Location. County shall cause its third-party contractor or auditor to comply with same.

- f. Notwithstanding anything to the contrary in this Agreement, any audit rights set forth herein shall, unless otherwise required by applicable law, be limited to once per calendar year and shall not permit the County to have any access to: (a) any information of other customers of Contractor, any Contractor affiliates, or a Contractor subcontractor; (b) assets and equipment used by Contractor which are used to provide services to other customers of Contractor; (c) Contractor's costs of providing the Services, unless Contractor is charging County based on time and materials; (d) any personal information of Contractor employees, other than as expressly provided in this Agreement; (e) time cards or records of employee time for Services provided on a fixed price basis; or (f) books, records or information unrelated to this Agreement.

23.1 Audit Costs

Each Party will bear its own costs related to its compliance with this Section. If any audit or examination reveals that Contractor's invoices for the Services for the audited period are not correct for such period, Contractor will promptly credit County for the amount of any such overcharges within two (2) invoice cycles.

23.2 Records Destruction

Upon the expiration or termination of this Agreement for any reason, each party shall return or destroy the other's Confidential Information in its possession or control, at the other party's election and excluding any archival copies regularly stored on its computer systems

23.3 ISO 27001:2013

Once per calendar year (at a minimum of six months apart), at Contractor's sole cost, Contractor shall cause an ISO 27001:2013 security standard, and IT controls for Contractor global technology Infrastructure. Additionally, Contractor key datacenter in U.S shall regularly undergo ISO 27001 and SOC1/SOC2 assessments. County shall be entitled to provide to third parties, including its regulators, a copy of the ISO 27001-2013 Audit report. If any Contractor Audit or Assessment identifies exceptions, issues or weaknesses in the Service delivery environment or any Contractor internal control that prevents an auditor from issuing an unqualified report, or (b) internal audit performed by County identifies exceptions, issues or weaknesses in the Service delivery environment or any Contractor internal control, then (i) Contractor shall promptly prepare a plan for and correct such issues pursuant to such plan, and (ii) Contractor shall provide County status and information regarding such corrections as requested by County.

24. 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.

25. 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.

26. General

26.1 Entire Agreement

The Agreement, including any, Exhibits, and attachments referred to therein and attached thereto, each of which is incorporated herein for all purposes, constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth in the Agreement. The Agreement supersedes all prior agreements, representations, warranties, promises, covenants, commitments or undertaking, whether written or oral, with respect to the subject matter contained in the Agreement. No amendment, modification, change, waiver, or discharge hereof will be valid unless in writing and signed by an authorized representative of both Parties.

26.2 Counterparts

The Agreement may be executed in several counterparts, all of which taken together will constitute one single agreement between the County and the Contractor hereto.

26.3 Headings

The headings and the table of contents used herein are for reference and convenience only and will not be considered in the interpretation of the Agreement.

26.4 Severability

In the event that any provision of the Agreement conflicts with the Law under which the Agreement is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the Parties, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable Laws. The remaining provisions of the Agreement and the application of the challenged provision to persons or circumstances other than those as to which it is invalid or unenforceable will not be affected thereby, and each such provision will be valid and enforceable to the full extent permitted by applicable Laws.

26.5 Consents and Approval

- a. Except where expressly provided as being in the sole discretion of a Party, where agreement, approval, acceptance, consent, confirmation, notice or similar action by either Party is required under the Agreement, such action will not be unreasonably delayed or withheld. An approval or consent given by a Party under the Agreement will not relieve the other Party from responsibility for complying with the requirements of the Agreement, nor will it be construed as a waiver of any rights under the Agreement, except as and to the extent otherwise expressly provided in such approval or consent.
- b. Except where expressly provided otherwise, any agreement, approval, acceptance, consent, confirmation, report or similar action by either Party must be in writing to be effective. With respect to day-to-day operational and delivery related agreements, approvals, acceptances, consents, confirmations, notices, reports or similar action, the Parties acknowledge and agree that an e-mail delivered by one Party and received and acknowledged by the other Party will satisfy such requirement, except where expressly provided otherwise.
- c. The Parties further acknowledge and agree that specific references throughout the Agreement to “in writing,” “not to be unreasonably withheld or delayed” or other similar phrases are for emphasis and will not impact the general applicability of the foregoing.

26.6 Waiver of Default; Cumulative Remedies

A delay or omission by either Party to exercise any right or power under the Agreement will not be construed to be a waiver. A waiver by a Party of any provision or any breach will not be construed to be a waiver of any succeeding breach or of any other provision. All waivers must be in writing and signed by the Party waiving its rights. All remedies provided for in the Agreement will be cumulative and in addition to and not in lieu of any other remedies available to either Party in the Agreement, at Law, in equity or otherwise.

26.7 Survival

The provisions of Sections 7 Confidentiality and 12 Hold Harmless (to the extent applicable), of the Agreement, as well as any other provision of the Agreement which contemplates performance or observance subsequent to any termination or expiration of the Agreement or is required to survive to give the Parties the benefits of this bargain will survive any termination or expiration of the Agreement and continue in full force and effect.

26.8 Publicity

Contractor will not disclose the existence of this Agreement or refer to it or County in any way in press releases or promotional media, without the prior written consent of County, provided Contract may reference the existence of this Agreement in connection with proposals to other customer's. Notwithstanding the foregoing, Contractor will not be prohibited from disclosing the existence of this Agreement as required by Law to Regulatory Entities in accordance with Section 7 (Confidentiality). Notwithstanding any confidentiality obligations, Contractor acknowledges and agrees that County may freely

discuss all aspects of Contractor's performance and County's satisfaction with such performance with prospective Contractor customers brought to County by Contractor.

26.10 Third Party Beneficiaries

Except as expressly provided, the Agreement is entered into solely between, and may be enforced only by, County and Contractor. The Agreement will not be deemed to create any rights or causes of action in or on behalf of any third parties, including employees, vendors and customers of a Party, or to create any obligations of a Party to any such third parties, except as expressly provided otherwise.

26.11 Background Checks

To the extent permitted under applicable Laws, Contractor will perform or have performed a Background Check on any personnel identified in a Statement of Work. The cost of such Background Checks performed will be payable by the Contractor.

27. 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: Mark Church, San Mateo County Assessor-County Clerk-Recorder
Address: 555 County Center 3rd floor, Redwood City, CA 04063
Telephone: (650) 363-4988
Facsimile: (650) 780-9952
Email: mchurch@smcare.org

In the case of Contractor, to:

Name/Title: Aseem Gupta, Vice President
Address: 18300 Von Karman Avenue, Suite 700, Irvine, CA 92612
Telephone: (949) 404-2848
Email: asgupta@sapient.com

with a copy to:

Sapient Corporation
Attention: Legal Counsel
131 Dartmouth Street, 3rd Floor
Boston, Massachusetts 02116

28. Electronic Signature

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. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

29. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

* * *

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

For Contractor: SAPIENT CORPORATION



Contractor Signature

11/16/2018

Date

Jennifer Lee

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 (SOW #1)

In consideration of the payments set forth in document Exhibit B (Fee Methodology and Payments), Contractor shall provide the following services as described in the following documents:

Document	Title
Exhibit A	Statement of Work (SOW #1)
Exhibit A-1	Business Requirements (Functional and General Requirements)
Exhibit A-2	Technical Requirements
Exhibit A-3	Deliverables
Exhibit A-4	Roles and Responsibility Matrix
Exhibit A-5	Project Plan
Exhibit A-6	Financial Responsibility Matrix
Exhibit A-7	Change Control Procedures
Exhibit A-8	Risk Management Procedures
Exhibit A-9	Acceptance Criteria
Exhibit A-10	Warranty Services
Exhibit A-11	Maintenance and Operations (M&O) Support Terms
Exhibit A-12	Approved Subcontractors
Exhibit A-13	Location of Service

Exhibit B (Fee Methodology and Payments)

In consideration of the services provided by Contractor as described in document Exhibit A (SOW #1) and subject to the terms of the Agreement, County shall pay Contractor as described in the Exhibit B (Fee Methodology and Payments) document.

Payment Schedule:

Exhibit B – Fee Methodology and Payments for SOW # 1

Exhibit B - Fee Methodology and Payments							
Phase	Milestone	Deliverables and Key Milestones	Date	% of Total Phase Fee	Key Milestone Payment (Excludes Holdback Fee)	Holdback (% of total fixed fee for Key Milestone)	Holdback Amount
Definition	1	Initial Kickoff & Planning	Month 1	10%	\$225,126.72	10%	\$25,014.08
	2	High Level Business Requirement	Month 2	15%	\$337,690.08	10%	\$37,521.12
	3	Detailed Business Requirement	Month 3	15%	\$337,690.08	10%	\$37,521.12
	4	Solution Design	Month 4	20%	\$450,253.44	10%	\$50,028.16
	5	Technical Requirements & Software Requirement Specifications	Month 5	20%	\$450,253.44	10%	\$50,028.16
	6	Planning	Month 6	20%	\$450,253.44	10%	\$50,028.16
	7	Definition Phase Acceptance and Sign off - Holdback Release	Month 6	50%	\$125,070.40		\$250,140.80
		Total Definition Phase Payments			\$2,376,337.60		
Phase 1	8	Release 1.1 Development & Testing Complete	Month 9	10%	\$257,584.59	10%	\$28,620.51
	9	Release 1.1 UAT Complete	Month 11	15%	\$386,376.89	10%	\$42,930.77
	10	Release 1.2 Development & Testing Complete	Month 12	15%	\$386,376.89	10%	\$42,930.77
	11	Release 1.2 UAT Complete	Month 14	15%	\$386,376.89	10%	\$42,930.77
	12	Release 1.3 Development & Testing Complete	Month 15	15%	\$386,376.89	10%	\$42,930.77
	13	Release 1.3 UAT & Phase 1 End-to-End UAT Complete	Month 17	15%	\$386,376.89	10%	\$42,930.77
	14	Production Deployment	Month 18	15%	\$386,376.89	10%	\$42,930.77
	15	Phase 1 Warranty Complete and Acceptance - Holdback Release	Month 21	100%	\$286,205.10		\$286,205.10
		Definition Phase - Holdback Release (50%)	Month 21	50%	\$125,070.40		
		Total Phase 1 Payments			\$2,987,121.40		
Phase 2	16	Release 2.1 Development & Testing Complete	Month 21	10%	\$178,233.66	10%	\$19,803.74
	17	Release 2.1 UAT Complete	Month 22	15%	\$267,350.49	10%	\$29,705.61
	18	Release 2.2 Development & Testing Complete	Month 24	15%	\$267,350.49	10%	\$29,705.61
	19	Release 2.2 UAT Complete	Month 25	15%	\$267,350.49	10%	\$29,705.61
	20	Release 2.3 Development & Testing Complete	Month 27	15%	\$267,350.49	10%	\$29,705.61
	21	Release 2.3 UAT & Phase 2 End-to-End UAT Complete	Month 28	15%	\$267,350.49	10%	\$29,705.61
	22	Production Deployment	Month 30	15%	\$267,350.49	10%	\$29,705.61
	23	Phase 2 Warranty Complete and Acceptance - Holdback Release	Month 33	100%	\$198,037.40		\$198,037.40
		Total Phase 2 Payments	Month 33		\$1,980,374.00		
Phase 3	24	Release 3.1 Development & Testing	Month 32	20%	\$110,192.94	10%	\$12,243.66
	25	Release 3.1 UAT Complete	Month 33	20%	\$110,192.94	10%	\$12,243.66
	26	Release 3.2 Development & Testing Complete	Month 34	20%	\$110,192.94	10%	\$12,243.66
	27	Release 3.2 UAT & Phase 3 End-to-End UAT Complete	Month 35	20%	\$110,192.94	10%	\$12,243.66
	28	Production Deployment	Month 36	20%	\$110,192.94	10%	\$12,243.66
	29	Phase 3 Warranty Complete and Acceptance - Holdback Release	Month 39	100%	\$61,218.30		\$61,218.30
		Total Phase 3 Payments	Month 39		\$612,183.00		
		Total APAS Development and Implementation Cost	Month 39		\$7,956,016.00		

Implementation M&O					
Phase 1	Production Support	Phase 1 Maintenance & Operations - Starts at Month 21 and runs through Month 39	Month 21		\$297,920.00
Phase 2 & 3	Production Support	Phase 1, 2 and 3 Maintenance & Operations - 6 months	Month 33		\$343,200.00
APAS Production M&O for Phase 1, 2, 3 Cost					\$641,120.00
Total APAS 3-Year Development/Implementation, and Production M&O for Phase 1, 2, 3 Cost					\$8,597,136.00
Potential Definition Phase adjustment up to 10% of original Phase 1, 2 & 3 proposal					\$561,012.00
Total APAS 3-Year Development/Implementation, and Production M&O for Phase 1, 2, 3 Cost + 10% adjustment					\$9,158,148.00
APAS 10-year Maintenance & Operations Support Cost - see Exhibit D					\$ -
APAS Development Contingency (approximately 15%) cost					\$ 1,275,000.00
Total APAS 3-Year Development/Implementation, and Production M&O for Phase 1, 2, 3 Cost + 10% adjustment + 15% contingency					\$10,433,148.00

The Exhibit B-1 (Rate Card for Additional Services) document specifies the rates being used in the event there are change orders and additional services for scope beyond that is listed in Exhibit A (SOW #1) subject to the change control procedures and the maximum contingency dollars.

Terms are net (30) days after invoices are approved.

Exhibit C (SOW #2)

In consideration of the payments set forth in Exhibit D (Payments), Contractor shall provide the following services as described in the following document.

Document	Title
Exhibit C	10-Year Maintenance and Operations Support Statement of Work (SOW #2)

Exhibit D (Payments)

In consideration of the services provided by Contractor as described in document Exhibit C (SOW #2) and subject to the terms of the Agreement, County shall pay Contractor as described in the payment schedule below:

Year 1 Maintenance & Operation Support	\$586,880.00
Year 2 Maintenance & Operation Support	\$586,880.00
Year 3 Maintenance & Operation Support	\$586,880.00
Year 4 Maintenance & Operation Support	\$586,880.00
Year 5 Maintenance & Operation Support	\$586,880.00
Year 6 Maintenance & Operation Support	\$586,880.00
Year 7 Maintenance & Operation Support	\$586,880.00
Year 8 Maintenance & Operation Support	\$586,880.00
Year 9 Maintenance & Operation Support	\$586,880.00
Year 10 Maintenance & Operation Support	\$586,880.00

*The total 10-year Maintenance & Operations Support cost = \$5,868,800

**Maintenance payments are due annually at the beginning of the payment period.