

**COUNTY OF MENDOCINO  
AGREEMENT FOR EQUIPMENT, SOFTWARE AND SERVICES**

This Agreement is by and between the COUNTY OF MENDOCINO, hereinafter referred to as the "COUNTY", and NOKIA OF AMERICA CORPORATION, hereinafter referred to as the "CONTRACTOR".

**WITNESSETH**

WHEREAS, pursuant to Government Code Section 31000, COUNTY may retain independent contractors to perform special services to or for COUNTY or any department thereof; and,

WHEREAS, COUNTY desires to obtain CONTRACTOR for network upgrade, improvements and related services for the COUNTY Public Safety Microwave Radio Communications System; and,

WHEREAS, CONTRACTOR is willing to provide such services on the terms and conditions set forth in this AGREEMENT and is willing to provide same to COUNTY.

WHEREAS, This Agreement provides for: (a) the sale by CONTRACTOR to COUNTY of new and/or refurbished standard equipment and components made commercially available for sale by CONTRACTOR ("Equipment"), (b) the license by CONTRACTOR to COUNTY of standard software and firmware (including third-party software and firmware) made commercially available for license by CONTRACTOR, regardless of the form or media on which it is delivered, solely in object code form and excluding source code ("Software"), (c) the license by CONTRACTOR to COUNTY of commercially available standard documentation relating to any Equipment or Software ("Documentation") and (d) the performance of services by CONTRACTOR ("Services"). The parties will enter into one or more addenda or statements of work (each an "Addendum" and collectively "Addenda") to supplement this Agreement for specific Products or Services. All references to "Agreement" include this document and its schedules together with any and all Addenda and their attachments. The term "Product" refers to Equipment, Software and/or Documentation, and the term "Licensed Materials" refers to Software and/or Documentation.

WHEREAS, COUNTY will purchase Equipment, license Licensed Materials and/or engage CONTRACTOR to perform Services by delivering to CONTRACTOR a written order (an "Order"). COUNTY may request in writing changes to an Order ("Change Request") that CONTRACTOR has previously accepted. In response to a Change Request, CONTRACTOR will provide written Quotations, including any changes to prices, license fees, delivery dates or completion dates. A Change Request is a separate Order subject to CONTRACTOR's change order process and written acceptance.

NOW, THEREFORE it is agreed that COUNTY does hereby agree to purchase Equipment, license Licensed Materials, and retain CONTRACTOR to provide the Services all described in Exhibit "A", and CONTRACTOR accepts such engagement and agrees to sell the Equipment and license such Licensed Materials, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Exhibit B	Payment Terms
Exhibit C	Insurance Requirements
Exhibit D	Statement of Work(s)
Exhibit E	License Grant
Exhibit F	Limited Warranty

The term of this Agreement shall be from the date this Agreement becomes fully executed by all parties (the "Effective Date"), and shall continue through June 30, 2022.

The compensation payable to CONTRACTOR hereunder shall not exceed One Million, One Hundred Seventy Thousand, Two Hundred Seventy-One Dollars and Eighty-Five Cents (\$1,170,271.85) for the term of this Agreement.

**IN WITNESS WHEREOF**

**DEPARTMENT FISCAL REVIEW:**

DEPARTMENT HEAD \_\_\_\_\_ DATE \_\_\_\_\_

Budgeted: ☒ Yes ☐ No

Budget Unit: 0717

Line Item: 862239-IT047

Grant: ☐ Yes ☒ No

Grant No.: N/A

**COUNTY OF MENDOCINO**

By: \_\_\_\_\_  
JOHN HASCHAK, Chair  
BOARD OF SUPERVISORS

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

**ATTEST:**

CARMEL J. ANGELO, Clerk of said Board

By: \_\_\_\_\_  
Deputy

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: \_\_\_\_\_  
Deputy

**INSURANCE REVIEW:**

By: Carmel J. Angelo  
Risk Management

Date: 12/16/2020

**CONTRACTOR SIGNATURE 1/NOKIA OF AMERICA CORPORATION**

By: Desiree Obleton

Date: December 16, 2020

**CONTRACTOR SIGNATURE 2/NOKIA OF AMERICA CORPORATION**

By: \_\_\_\_\_

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

**NAME AND ADDRESS OF CONTRACTOR:**

NOKIA OF AMERICA CORPORATION

3100 Olympus Blvd., Suite 100

Dallas, TX 75019

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

**COUNTY COUNSEL REVIEW:**

**APPROVED AS TO FORM:**

CHRISTIAN M. CURTIS,  
County Counsel

By: Matthew Kiedrowski  
Deputy

Date: 12/16/2020

**EXECUTIVE OFFICE/FISCAL REVIEW:**

By: Janette Rau  
Deputy CEO

Date: 12/16/2020

**Signatory Authority:** \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; **\$50,001+ Board of Supervisors**

**Exception to Bid Process Required/Completed** ☐ \_\_\_\_\_

**Mendocino County Business License: Valid** ☐

**Exempt Pursuant to MCC Section:** \_\_\_\_\_

## **GENERAL TERMS AND CONDITIONS**

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an Independent Contractor. CONTRACTOR is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONTRACTOR nor for any obligations or liabilities incurred by CONTRACTOR.

CONTRACTOR shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such amounts.

In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and County laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of COUNTY is to ensure that said Service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, COUNTY may upon two (2) week's written notice to CONTRACTOR, withhold from payments to CONTRACTOR hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **SERVICES INDEMNIFICATION.** To the furthest extent permitted by law (including without limitation California Civil Code sections 2782 and 2782.8, if applicable), Contractor (a) shall assume the defense of, indemnify and hold harmless the COUNTY, its officers, agents, and employees, from and against any and all claims, demands, damages, costs, liabilities, and losses whatsoever alleged to be occurring or resulting in connection with the CONTRACTOR'S performance or its obligations as relating to the provision of the Services under this AGREEMENT, unless arising out of the sole negligence or willful misconduct of COUNTY. "CONTRACTOR'S performance" includes CONTRACTOR'S action or inaction and the action or inaction of CONTRACTOR'S officers, employees, agents and subcontractors.
3. **INFRINGEMENT INDEMNIFICATION:** To the furthest extent permitted by law (including without limitation California Civil Code sections 2782 and 2782.8, if applicable), Contractor (a) shall assume the defense of the COUNTY from and against any and all claims, demands, actions or proceeding alleging an infringement or misappropriation of any United States patent, copyright, trade secret or other intellectual property right of any third party (other than an affiliate of COUNTY) because of use, consistent with CONTRACTOR's specifications, of any Equipment manufactured by CONTRACTOR or Software owned by CONTRACTOR (a "Claim") and provided to COUNTY under this Agreement; and (b) shall indemnify COUNTY against, and hold COUNTY harmless from, any and all costs and damages assessed against COUNTY in a final judgment on such Claim, alleged to be occurring or resulting in connection with the CONTRACTOR'S obligations under this AGREEMENT, unless arising out of the sole negligence or willful misconduct of COUNTY.

If COUNTY's use of any Product is enjoined as a result of any Claim, is subject to a Claim, or in CONTRACTOR's opinion is likely to be enjoined or to be subject to a Claim, then, at its expense, CONTRACTOR may: (a) procure for COUNTY the right to continue to use the Product; or (b) replace or modify the Product with a functionally-equivalent or better Product so that COUNTY's use is not subject to a Claim. If CONTRACTOR determines that it cannot accomplish either of the foregoing in a commercially reasonable manner, then, upon CONTRACTOR's request, (c) COUNTY shall deliver the Product to CONTRACTOR, and (d) CONTRACTOR shall promptly credit to COUNTY the price of the Product less a reasonable allowance for use.

CONTRACTOR has no obligations under this Paragraph 3 with respect to a Claim to the extent that it: (a) arises from adherence to design modifications, specifications, drawings or written instructions which COUNTY directs CONTRACTOR to follow, (b) relates to uses of any Product in combination with any item not provided directly by CONTRACTOR, if use of the Product alone would not have resulted in such infringement, (c) relates to the use of any Product in a manner not contemplated by this Agreement, or (d) relates to a modification of any Product by any person other than CONTRACTOR. Furthermore, COUNTY shall



defend CONTRACTOR against any such Claim, and indemnify CONTRACTOR against, and hold CONTRACTOR harmless from, any and all costs and damages incurred by CONTRACTOR arising from any such Claim.

The rights and remedies set forth in this Paragraph 3 are COUNTY's exclusive rights and remedies with respect to third party claims of infringement and misappropriation.

#### 4. LIMITATION OF LIABILITY

- a. In no event will CONTRACTOR or any of its suppliers or licensors be liable for any indirect, special, exemplary, consequential or incidental damages (including lost profits, lost revenues, lost data and other economic losses), however caused and regardless of whether such damages are foreseeable or whether CONTRACTOR has been advised of their possibility.
- b. Except for a claim for personal injury proximately caused by CONTRACTOR, CONTRACTOR's liability for any claim arising out of this Agreement will be limited to actual, provable direct damages not to exceed the price of the Product or Service that is the subject of such claim. IN NO EVENT WILL CONTRACTOR'S CUMULATIVE LIABILITY FOR ALL CLAIMS, LOSSES, DAMAGES AND EXPENSES OF COUNTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL PRICE ACTUALLY PAID BY COUNTY TO CONTRACTOR UNDER THIS AGREEMENT.

#### 5. DELIVERY, TITLE, AND RISK OF LOSS

- a. Delivery is FCA CONTRACTOR's designated dock (Incoterms® 2010). CONTRACTOR shall pack each Product for shipment according to CONTRACTOR's commercial standards, except as the parties may otherwise agree in writing.
- b. Title to Equipment, and risk of loss and damage to any Product, pass to COUNTY upon full payment. CONTRACTOR and its licensors retain title to all Licensed Materials, CONTRACTOR Confidential Information, and other data delivered to COUNTY and all copies of same.
  - i. "Confidential Information" means: (a) any nonpublic information disclosed by either Party (the "Discloser") to the other Party (the "Recipient") in any form, including written, electronic, photographic or other tangible form, or information provided orally or visually; (b) any notes and other records made from or about such information; and (c) all copies of any of such information, notes or other records. Confidential Information disclosed in a tangible or electronic form may be marked or otherwise identified by Discloser with a legend as being confidential or proprietary, but the

absence of such mark or identification will not affect Recipient's obligations to treat such information as Confidential Information.

1. Use of Confidential Information. Discloser grants Recipient the right to use the Confidential Information solely to exercise its rights and to perform its obligations under this Agreement (the "Purpose"). Recipient shall hold the Confidential Information in confidence using the same degree of care the Recipient normally exercises to protect its own proprietary information of a similar nature, using no less than a reasonable degree of care, and shall not disclose the Confidential Information to any third party, except as expressly provided herein, and as may be required by the California Public Records Act. Recipient may disclose Discloser's Confidential Information only to those of Recipient's and its affiliates' employees ("Representatives") who require knowledge of the Confidential Information to accomplish the Purpose and who have been advised by Recipient of their obligations under this Agreement. In addition, Recipient may disclose Confidential Information of Discloser to Recipient's subcontractors and agents who, in each case, (i) require knowledge of the Confidential Information to accomplish the Purpose, (ii) have agreed in writing to maintain the confidentiality of the information and (iii) are not competitors or employees of any competitor of CONTRACTOR or any of its affiliates (when COUNTY is the Recipient). Recipient shall provide Discloser with a copy of each such writing at its request. Recipient is liable for each Representative's, subcontractor's and agent's compliance with this Agreement. An individual who has seen Discloser's Confidential Information under this Agreement is not precluded from working on projects for Recipient that relate to similar subject matters whether during or after the term of this Agreement, provided that the individual does not use or make reference to Discloser's Confidential Information.

## 6. ACCEPTANCE AND VERIFICATION TESTING

- a. Products are deemed accepted upon shipment to COUNTY, unless CONTRACTOR is obligated to install the Products by the terms of an applicable Addendum or Quotation.
- b. When CONTRACTOR is required by the terms of any Addendum or Quotation to install a Product, CONTRACTOR will perform its standard verification tests after the installation Service for that Product is complete, and upon successful completion, CONTRACTOR shall advise COUNTY that the installation has been verified. Upon the earlier of COUNTY's commercial or beneficial use of a Product or receipt of such advice (a) the Product will be deemed accepted by COUNTY and (b) any failure by CONTRACTOR to perform the related installation Services will be deemed waived by COUNTY. If COUNTY's actions cause a delay in CONTRACTOR's installation for more

than 15 days (in aggregate) following delivery, COUNTY's acceptance will be deemed to occur on the 16th day after the delivery date.

c. Acceptance of Services is deemed to occur as Services are completed.

7. EXPORT CONTROL

a. The parties acknowledge that Products, Licensed Materials and Confidential Information may be subject to the export laws and regulations of the United States, the European Union and/or other countries (cumulatively, "Export Laws"). COUNTY shall not use, distribute, export, re-export, transfer, or transmit the Products, Licensed Materials or Confidential Information (even if incorporated into other items) in violation of the Export Laws. If requested by CONTRACTOR, COUNTY will sign written assurances and other export-related documents as may be required for CONTRACTOR to comply with the Export Laws.

8. DATA PRIVACY:

a. COUNTY agrees that personal data received from COUNTY may be transferred to, stored and processed in any country in which CONTRACTOR or its Affiliates or subcontractors maintain facilities. COUNTY hereby authorizes CONTRACTOR to perform any such transfer of personal data received from COUNTY to any such country and to store and process personal data received from COUNTY in order to provide the Services or to perform its obligation under this Agreement.

9. INSURANCE AND BOND: CONTRACTOR shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.

10. WORKERS' COMPENSATION: CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

CONTRACTOR affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and CONTRACTOR further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. CONTRACTOR shall furnish to COUNTY certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and CONTRACTOR shall require all



subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of subcontractors' employees.

11. LICENSE GRANT: COUNTY shall use Licensed Material in accordance with the License Grant in Exhibit "F". All Products and Services furnished by CONTRACTOR to COUNTY are for COUNTY's own internal use in the United States only. COUNTY represents and warrants that it shall not resell any Equipment without contacting CONTRACTOR, undergoing a compliance check and entering into a subsequent reseller agreement with CONTRACTOR. COUNTY has no right to sublicense any Licensed Materials.
12. LIMITED WARRANTY: CONTRACTOR provides to COUNTY, and COUNTY accepts a limited warranty solely on or with the single unit or arrangement of Equipment for which the Licensed Material was delivered, for COUNTY's internal use in the United States, as provided in Exhibit "G".
13. CONFORMITY WITH LAW AND SAFETY:
  - a. In performing Services under this Agreement, both COUNTY and CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Both COUNTY and CONTRACTOR shall indemnify and hold one another harmless from any and all liability, fines, penalties and consequences from any failures to comply with such laws, ordinances, codes and regulations.
  - b. Accidents: If a death, serious personal injury or substantial property damage occurs in connection with CONTRACTOR's performance of this Agreement, CONTRACTOR shall immediately notify Mendocino County Risk Manager's Office by telephone. CONTRACTOR shall promptly submit to COUNTY a written report, in such form as may be required by COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONTRACTOR's sub-contractor, if any; (3) name and address of CONTRACTOR's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.
  - c. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.

14. **PAYMENT:** For Services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit "B" hereto as funding permits.

If COUNTY over pays CONTRACTOR for any reason, CONTRACTOR agrees to return the amount of such overpayment to COUNTY.

All invoices, receipts, or other requests for payment under this contract must be submitted by CONTRACTOR to COUNTY in a timely manner and consistent with the terms specified in Exhibit B. In no event shall COUNTY be obligated to pay any request for payment for which a written request for payment and all required documentation was first received more than six (6) months after this Agreement has terminated, or beyond such other time limit as may be set forth in Exhibit B.

15. **TAXES:** Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.
16. **RESERVED**
17. **CONFLICT OF INTEREST:** The CONTRACTOR covenants that, to the best of its knowledge, it presently has no interest, and does not anticipate any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement.
18. **FORCE MAJEURE:** A party will be excused (a) from whatever performance is prevented by acts or events beyond its reasonable control (including but not limited to acts of war, acts of nature, fire, flood or other natural disasters, government requirements, wars, riots, strikes, power failures, or embargoes) and (b) from satisfying whatever conditions precedent to the other party's obligations that cannot be satisfied due to acts or events beyond its reasonable control. In the event of such delays, the schedule will be extended for the duration of the delaying cause. Despite the preceding sentences, should any Force Majeure prevent COUNTY from making any payment to CONTRACTOR for more than (10) business days, CONTRACTOR shall be entitled to terminate this Agreement upon notice to COUNTY.
19. **ASSIGNMENT:** COUNTY shall not assign or otherwise transfer any of its rights or delegate any of its obligations under this Agreement, without the prior written consent of CONTRACTOR, in each instance. CONTRACTOR may assign or otherwise transfer any of its rights or delegate any of its obligations under this Agreement, only with the prior consent of COUNTY, which shall not be unreasonably withheld. Nothing precludes CONTRACTOR from employing a subcontractor in carrying out its obligations under this Agreement. CONTRACTOR's use of such subcontractor will not release CONTRACTOR

from its obligations under this Agreement. Any purported assignment of rights or delegation of obligations in violation of this Paragraph is void ab initio.

20. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY: COUNTY OF MENDOCINO  
501 Low Gap Road, Room 1440  
Ukiah, CA 95482  
Attn: Cody Snider

To CONTRACTOR: NOKIA OF AMERICA CORPORATION  
3100 Olympus Blvd., Suite 100  
Dallas, TX 75019  
ATTN: Head of Legal and Compliance

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

21. **USE OF COUNTY PROPERTY:** CONTRACTOR shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
22. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** CONTRACTOR certifies that it will comply with all Federal, State, and local laws, rules and regulations pertaining to nondiscrimination in employment.
  - a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, pregnancy, disability, sex, sexual orientation, gender identity, ancestry, national origin, age, religion, Veteran's status, political affiliation, or any other factor prohibited by law.
  - b. CONTRACTOR shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
  - c. If requested to do so by the COUNTY, CONTRACTOR shall provide the COUNTY with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under State or Federal law.
  - d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
  - e. The CONTRACTOR shall include the provisions set forth in this paragraph in each of its subcontracts.
23. **DRUG-FREE WORKPLACE:** CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the CONTRACTOR, within five days thereafter, shall notify the head of the County department/agency for which the contract Services are performed. Violation of this provision shall constitute a material breach of this Agreement.

24. RESERVED

25. COMPLIANCE WITH LICENSING REQUIREMENTS: CONTRACTOR shall comply with all necessary licensing requirements and shall obtain appropriate licenses. To the extent required by law, CONTRACTOR shall display licenses in a location that is reasonably conspicuous. Upon COUNTY's request, CONTRACTOR shall file copies of same with the County Executive Office.

CONTRACTOR represents and warrants to COUNTY that CONTRACTOR and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

26. AUDITS; ACCESS TO RECORDS: The CONTRACTOR shall make available to the COUNTY, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the COUNTY, and shall furnish to the COUNTY, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONTRACTOR.

The CONTRACTOR shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the CONTRACTOR in the performance of this Agreement. If such books and records are not kept and maintained by CONTRACTOR within the County of Mendocino, California, CONTRACTOR shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within County. CONTRACTOR shall provide such assistance as may be reasonably required in the course of such inspection. CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after the COUNTY makes the final or last payment or within four (4) years after any pending issues between the COUNTY and CONTRACTOR with respect to this Agreement are closed, whichever is later.

Upon reasonable notice, CONTRACTOR may inspect and audit COUNTY'S compliance with this Agreement in regard to the Licensed Materials, including assistance and access to applicable materials, personnel, records or documents. If an audit reveals that COUNTY possesses or at any time possessed unlicensed copies of any Licensed Materials, or used any Licensed Materials beyond the licensed functionality, features or capacity restrictions or beyond the terms stated herein, then COUNTY shall pay CONTRACTOR the applicable license fees (plus interest) and the costs incurred in the audit immediately upon request.

27. DOCUMENTS AND MATERIALS: CONTRACTOR shall maintain and make available to COUNTY for its inspection and use during the term of this



Agreement, all Documents and Materials, which shall include all proposals, plans, specifications, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the COUNTY, the CONTRACTOR, the CONTRACTOR'S subcontractors or third parties at the request of the CONTRACTOR ("Documents and Materials" as defined in Exhibit D of this Agreement). CONTRACTOR's obligations under the preceding sentence shall continue for four (4) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONTRACTOR shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for four (4) years following the COUNTY's last payment to CONTRACTOR under this Agreement.

28. RESERVED

29. TERMINATION

- a. COUNTY RIGHT OF TERMINATION: The COUNTY has and reserves the right to suspend, terminate or abandon the execution of any work by the CONTRACTOR without cause at any time upon giving the CONTRACTOR notice; provided that 30-days written notice shall be required prior to termination. Such notice shall be in writing and may be issued by any county officer authorized to execute or amend the contract, the County Chief Executive Officer, or any other person designated by the County Board of Supervisors. In the event that the COUNTY should abandon, terminate or suspend the CONTRACTOR's work, the CONTRACTOR shall be entitled to payment for Equipment, Licenses and Services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONTRACTOR for its network upgrade, improvements and related Equipment, Licenses and Services for the COUNTY Public Safety Microwave Radio Communications System shall not exceed \$1,170,271.85 payment for Equipment, Licenses and Services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding.
- b. CONTRACTOR RIGHT OF TERMINATION: Upon the occurrence of any one or more of the following events and upon giving 30-days written notice to COUNTY, CONTRACTOR will have the right, in its sole discretion and without prejudice to any other rights or remedies which it may have under this Agreement, to immediately terminate this Agreement in its entirety and to suspend performance hereunder (including suspension of performance of all outstanding Orders), without any further obligation or liability to COUNTY except with respect to Products already shipped and Services already performed: (a) COUNTY files, or consents to the filing

against it of, any petition for relief, reorganization or liquidation under any bankruptcy or insolvency law of any jurisdiction, or has any such petition filed against it that is not dismissed within 30 days thereafter or makes a general assignment for the benefit of its creditors, or consents to the appointment of a custodian, receiver, trustee or other officer with similar powers over a substantial portion of its assets, or has any proceeding seeking such an appointment filed against it that is not dismissed within 30 days thereafter; (b) COUNTY breaches its obligation to, or otherwise fails, to make payment of any amount when due to CONTRACTOR, regardless of (i) whether such amount results from an invoice, fee or charge due under this Agreement or (ii) whether a portion of the invoice is subject to a Dispute Notice, and such breach or default continues for a period of 10 days after COUNTY's receipt of notice thereof; (c) COUNTY is in breach of any of its material obligations under this Agreement and such breach continues for 30 days after COUNTY's receipt of notice thereof; or (d) COUNTY breaches any term or condition of any Software license or its obligations under "Use of Confidential Information" as defined in paragraph 5(b) and that breach continues for 10 days after receiving notice thereof; or (e) COUNTY breaches any of the terms of any other agreement, as such breach is defined in such agreement, between COUNTY and CONTRACTOR or any of its subsidiaries or affiliates. Each of the events described in subparagraphs (a) through (e) above constitutes an "Event of Default".

- c. BREACH: If a party is in material breach of: (i) a provision of this Agreement related to Services; and/or (ii) a Quotation or Addendum related to Services, and the breach continues for more than 30 days after the non-breaching party delivers to the other party notice thereof, then the non-breaching party may terminate the specific Services provision, Quotation and/or Addendum that is the subject of the breach.
- d. EFFECT OF TERMINATION: Upon termination for any reason or expiry of this Agreement or any Services-related Quotation or Addendum: (a) CONTRACTOR may immediately cease providing any Services; (b) COUNTY shall immediately pay all sums due to CONTRACTOR, for Products and Services provided as of the date of termination, including costs and expenses and pro-rated fees for work partially complete at the date of termination. Upon COUNTY's payment of all amounts owing to CONTRACTOR, CONTRACTOR will deliver all Licensed Materials and work in progress in CONTRACTOR's possession as of the date of termination.
- e. WRITTEN NOTICE: As used in this Paragraph, "written notice" means a reasonably detailed statement of the subject matter of the Event of Default or breach.

30. **NON APPROPRIATION:** If COUNTY should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the Products set forth in this Agreement, or other means of performing the same functions of such Products, COUNTY may unilaterally terminate this Agreement only upon thirty (30) days written notice to CONTRACTOR. Upon termination, COUNTY shall remit payment for all Products and Services delivered to COUNTY and all expenses incurred by CONTRACTOR prior to CONTRACTOR'S receipt of the termination notice.
31. **CHOICE OF LAW:** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
32. **VENUE:** All lawsuits relating to this contract must be filed in Mendocino County Superior Court, Mendocino County, California.
33. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
34. **ADVERTISING OR PUBLICITY:** Neither party shall use the name of the other party, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of other party in each instance.
35. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document signed by both parties. In the event of a conflict between the body of this Agreement and any of the Exhibits, the provisions in the body of this Agreement shall control.
36. **HEADINGS:** Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.

37. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
38. **ASSURANCE OF PERFORMANCE:** If at any time the COUNTY has good objective cause to believe CONTRACTOR may not be adequately performing its obligations under this Agreement or that CONTRACTOR may fail to complete the Services as required by this Agreement, COUNTY may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within thirty (30) business days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
39. **SUBCONTRACTING/ASSIGNMENT:** CONTRACTOR shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the COUNTY's prior written approval.
- a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Paragraph shall confer no rights on any party and shall be null and void.
  - b. Only the department head or his or her designee shall have the authority to approve subcontractor(s).
  - c. CONTRACTOR shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its subcontractors.
40. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Services Indemnification (Paragraph 2) Infringement Indemnification (Paragraph 3), Limitation of Liability (Paragraph 4), Export Control (Paragraph 7), and Conflict of Interest (Paragraph 17), shall survive termination or expiration for two (2) years.
41. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.



42. **INTELLECTUAL PROPERTY WARRANTY:** CONTRACTOR warrants and represents that it has secured all rights and licenses necessary for any and all materials, services, processes, software, or hardware ("CONTRACTOR PRODUCTS") to be provided by CONTRACTOR in the performance of this AGREEMENT, including but not limited to any copyright, trademark, patent, trade secret, or right of publicity rights. CONTRACTOR hereby grants to COUNTY, or represents that it has secured from third parties, limited license, pursuant to Paragraph 11 of this Agreement.
43. CONTRACTOR further warrants and represents that it knows of no allegations, claims, or threatened claims that the CONTRACTOR PRODUCTS provided to COUNTY under this Agreement infringe any patent, copyright, trademark or other proprietary right. In the event that any third party asserts a claim of infringement against the COUNTY relating to a CONTRACTOR PRODUCT, CONTRACTOR shall indemnify and defend the COUNTY pursuant to Paragraph 3 of this AGREEMENT.

In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for COUNTY the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.

44. **ELECTRONIC COPIES:**

The parties agree that an electronic copy, including facsimile copy, email, or scanned copy of the executed Agreement, shall be deemed, and shall have the same legal force and effect as, an original document.

45. **COOPERATION WITH COUNTY**

Contractor shall cooperate with County and County staff in the performance of all work hereunder.

46. **PERFORMANCE STANDARD**

Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees to provide all Services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable Federal, State, and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release. If County determines that any of Contractor's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following:



(a) require Contractor to meet with County to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of paragraph 29 (Termination) or (d) pursue any and all other remedies at law or in equity.

47. ATTORNEYS' FEES

In any action to enforce or interpret the terms of this agreement, including but not limited to any action for declaratory relief, each party shall be solely responsible for and bear its own attorneys' fees, regardless of which party prevails.

[END OF GENERAL TERMS AND CONDITIONS]

## **EXHIBIT A**

### **DEFINITION OF SERVICES**

CONTRACTOR shall provide the following Services:

Network upgrade, improvements and related services to the COUNTY Public Safety Microwave Radio Communications System as identified in the statement of work, attached hereto as Exhibit D.

1. The term of performance for each Service will begin when specified in the Service Quotation or Addendum and will continue until the earlier of: (a) the expiry date specified in the Quotation or Addendum; (b) the date the Service has been accepted or completed, as the case may be; or (c) the date it is terminated under this Agreement.
2. COUNTY understands that CONTRACTOR is in the business of providing services drawing upon the knowledge, understanding and expertise CONTRACTOR has gained from working with many varied customers. Nothing in this Agreement will be deemed to assign rights to or limit CONTRACTOR's use of any information, know-how or knowledge to the extent it does not contain COUNTY's confidential information.
3. COUNTY hereby grants to CONTRACTOR a non-exclusive, personal, royalty-free and non-transferable license to make, have made, use, execute, perform, copy (as reasonably necessary), display, modify and make derivative works under any and all intellectual property rights owned by COUNTY to the extent necessary for furnishing Services and deliverables under this Agreement and to perform its obligations under this Agreement. Except as expressly set forth in this Agreement, no right or license is either granted or implied by either party to the other with respect to any technical or business information, or with respect to rights in any patents, trademarks, copyrights, trade secrets, mask work protection rights, and other intellectual property. Subject to COUNTY's right, title and interest in COUNTY's Confidential Information, any and all inventions, derivative works, improvements, developments or innovations that CONTRACTOR (and its contractors or consultants, as the case may be) may make, conceive or devise in the course of performing Services and/or furnishing deliverables under this Agreement, are the sole and exclusive property of CONTRACTOR, including all patents, copyrights, trademarks and trade secrets embodied in them.

[END OF DEFINITION OF SERVICES]

## **EXHIBIT B**

### **PAYMENT TERMS**

COUNTY will pay CONTRACTOR for the Products and Services described in this Agreement the amount not to exceed One Million, One Hundred Seventy Thousand, Two Hundred Seventy-One Dollars and Eighty-Five Cents (\$1,170,271.85). Contract payments shall be made upon receipt of an approved invoice.

CONTRACTOR will issue invoices as follows: (a) for Products, upon shipment; (b) for non-recurring Services, including engineering and installation Services, as such Services are incurred; and (c) for recurring Services, including maintenance and management Services, upon commencement of such Services. Except as may be expressly provided in an applicable Addendum or Quotation, all amounts due for recurring Services are payable in advance.

Each invoice will describe the requested Products or Services and their respective prices and will also show the total amount due to CONTRACTOR from COUNTY, including all taxes, transportation charges, and other costs or charges that are COUNTY's responsibility (the "Invoice Total"). COUNTY shall pay each Invoice Total in full, exclusively in United States dollars, for receipt by CONTRACTOR within 30 days after the date of the related invoice. COUNTY shall pay each Invoice Total in excess of U.S. \$100,000.00 by wire transfer according to the instructions on the invoice.

CONTRACTOR has the right to reject any unaccepted Order, suspend or delay shipment of any Product and/or performance of any Service under an accepted Order, if (i) COUNTY has filed for bankruptcy protection under Chapter 9 of the United States Bankruptcy Code, (ii) COUNTY breaches any of its payment obligations under this Agreement or (iii) an Event of Default exists. If CONTRACTOR fails to receive COUNTY's timely payment for Services, CONTRACTOR may immediately cease performing the Services.

COUNTY shall notify CONTRACTOR of any billing discrepancies or disputes about an invoice within 10 days after receiving it, specifying with particularity the basis of any such discrepancy or dispute ("Dispute Notice"). Tender of a Dispute Notice does not relieve COUNTY of its obligations to pay the undisputed portion of the invoice. The parties shall negotiate in good faith to resolve any Dispute Notice. Interest will accrue on any past due amount (not subject to a Dispute Notice) at the lesser of 18% per annum or the maximum rate permitted by applicable law. Notwithstanding the foregoing, any amounts that were the subject of a Dispute Notice and are subsequently resolved in favor of CONTRACTOR will be subject to interest charges accruing from the original due date. COUNTY shall reimburse CONTRACTOR for reasonable attorneys' fees and other costs associated with collecting delinquent amounts.

COUNTY hereby grants CONTRACTOR a security interest in all Products and all proceeds of them in any form to secure payment and performance of all obligations

of COUNTY under this Agreement. COUNTY shall provide such additional documentation as CONTRACTOR deems reasonably necessary to establish or perfect this security interest.

Detailed Pricing Summary			<b>NOKIA</b>
County of Mendocino			Nokia of America Corporation
MPLS Network Upgrade Project			
Proposal #	20.US.903624	July 9, 2020	
NASPO contract # 05715/7-17-58-02			
Item	Category	Item Description	Extended Price
<b>1.00 HARDWARE/SOFTWARE</b>			
1.01	7705 Service Aggregation Routers	Router	\$478,362.15
1.02	Network Management System	NSP Software/Hardware	\$173,357.14
HARDWARE/SOFTWARE SubTotal:			\$651,719.29
<b>2.00 INSTALLATION/INTEGRATION SERVICES</b>			
2.01	7705/NSP INSTALLATION	Installation, Test, and Turn Up	\$301,216.00
INSTALLATION SERVICES SubTotal:			\$301,216.00
<b>3.00 MAINTENANCE</b>			
3.01	7705 Maintenance	Maintenance (7 Years)	\$1,296,540.21
MAINTENANCE SubTotal			\$1,296,540.21
<b>4.00 TRAINING</b>			
4.01	7705 and NSP Training	On-Site Training Session	\$78,183.00
TRAINING SubTotal			\$78,183.00
<b>5.00 Services - Sanhedrin Equipment Move</b>			
5.01	Materials	Microwave Materials	\$10,855.20
5.02	Services	Microwave Equipment Move Services	\$67,973.21
SubTotal			\$78,828.42
<b>Total</b>			<b>\$2,406,486.92</b>
<b>6.00 Adjustments</b>			
6.01	MPLS Hardware	One-Time Management Adjustment	-\$278,177.40
6.02	NSP Software	One-Time Management Adjustment	-\$48,000.00
6.03	Maintenance	One-Time Management Adjustment	-\$957,622.48
Special Management Incentive			-\$1,283,799.88
Project SubTotal:			<b>\$1,122,687.04</b>
<b>7.00 Tax and Freight</b>			
7.01	Tax	Tax (8.875%)	\$44,084.82
7.02	Equipment Freight	Equipment Freight	\$3,500.00
Tax and Freight SubTotal:			\$47,584.82
Project Total:			<b>\$1,170,271.85</b>

[END OF PAYMENT TERMS]

## **EXHIBIT C**

### **INSURANCE REQUIREMENTS**

Insurance coverage in the amounts set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude COUNTY from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law. Insurance requirements shall be in addition to, and not in lieu of, Contractor's indemnity obligations under Paragraph 2 of this Agreement.

CONTRACTOR shall obtain and maintain insurance coverage as follows:

- a. Commercial General Liability insurance including coverage for bodily injury and property damage - with a limit of \$1,000,000 each occurrence/general aggregate.
- b. Business Automobile Liability insurance including coverage for bodily injury and property damage - with a combined single limit of \$500,000 each occurrence.

CONTRACTOR, or CONTRACTOR'S agent or broker shall furnish to COUNTY certificates of insurance evidencing the required levels of insurance described above.

[END OF INSURANCE REQUIREMENTS]



## **EXHIBIT D**

### STATEMENT OF WORK(S)

CONTRACTOR statement of works, attached hereto as Exhibit D, identified as follows:

- Phase II MPLS Replacement Exhibit D\_20.US.903624.01 County of Mendocino Maintenance SOW v2 Final
- Phase II MPLS Replacement Exhibit D\_20.US.903624.01 Mendocino County Network Upgrade Services SOW 12072020 v2 Final

## **EXHIBIT E**

### **LICENSE GRANT**

CONTRACTOR hereby assigns the COUNTY and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the COUNTY, the CONTRACTOR, the CONTRACTOR's subcontractors or third parties at the request of the CONTRACTOR (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

- a. CONTRACTOR grants to COUNTY, and COUNTY accepts, a personal, nonexclusive, nontransferable license to use the portions of the Licensed Material for which activation has been authorized by CONTRACTOR, solely on or with the single unit or arrangement of Equipment for which the Licensed Material was delivered, for COUNTY's internal use in the United States, as provided in this Exhibit E. COUNTY shall use all Licensed Materials in accordance with this Exhibit E. Upon delivery of any Licensed Material and subject to COUNTY's payment of the applicable fees for such Licensed Material and compliance with the other terms and conditions of this Agreement,
- b. COUNTY acknowledges and agrees that: (a) CONTRACTOR may have encoded within the Software optional functionality, features and/or capacity, which may be accessed only through the purchase of the applicable license extension from CONTRACTOR at an additional price (no licenses are granted to such functionality, features and/or capacity unless COUNTY purchases the applicable license extension); and (b) COUNTY may need to obtain a new or additional application key from CONTRACTOR to use such Software.
- c. This Agreement applies to all updates, upgrades, maintenance releases, revisions and enhancements for the Licensed Materials which CONTRACTOR may supply to COUNTY from time to time.
- d. COUNTY may copy Licensed Materials as reasonably necessary for backup and archival purposes if the copies contain all of the CONTRACTOR proprietary notices contained in the original Licensed Materials. All copies of all Licensed Materials (including partial copies) are CONTRACTOR Confidential Information. All rights, title and interest in and to the Licensed Materials, including all intellectual property rights, remain vested in CONTRACTOR, its suppliers and licensors, and COUNTY is granted only a limited license to use the Licensed Materials in conjunction with the Equipment, as set out in this Exhibit E.
- e. COUNTY shall not directly or indirectly: (a) modify, copy, transmit, alter, merge, decompile, disassemble, reverse engineer or adapt any Licensed Material or portion

thereof; (b) encumber, time-share, rent or lease the rights granted herein; (c) manufacture, adapt, create derivative works of, localize, port or otherwise modify any Licensed Material or portion thereof; (d) disclose or otherwise make available any Licensed Material or portion thereof to any third party; (e) enable any Software functionality, feature or capacity which CONTRACTOR licenses as a separate product, without CONTRACTOR's prior written consent; (f) take any action that may result in the Software becoming subjected to the terms of a license that requires it to be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge; or (g) use any Licensed Material or portion thereof except in accordance with this Exhibit E.

- f. Upon reasonable prior written notice, CONTRACTOR may inspect and audit COUNTY's compliance with this Exhibit E during normal business hours. COUNTY shall cooperate with the audit and shall grant assistance and access to applicable records, materials, personnel, Equipment, and any other information or products which may reasonably enable CONTRACTOR to determine whether the use, copying and disclosure of the Licensed Materials comply with this Agreement. In addition, COUNTY agrees to provide remote access to its systems upon prior written consent, which shall not unreasonably be withheld, to enable CONTRACTOR to electronically audit COUNTY's compliance with this Exhibit E. If an audit reveals that COUNTY possesses or at any time possessed unlicensed copies of any Licensed Materials, or used any Licensed Materials beyond the licensed functionality, features or capacity restrictions or beyond the terms stated herein, then COUNTY shall pay CONTRACTOR the applicable license fees (plus interest) and the costs incurred in the audit immediately upon request.
- g. Certain Software may be delivered with its own specific license ("Additional License"). In such a case, the terms of the Additional License will be delivered to COUNTY, such as in a separate license.txt file or as part of a tear-open document, and will govern use of the Software by COUNTY to the extent CONTRACTOR does not have a right to supersede them in this Agreement. CONTRACTOR's licensors are third party beneficiaries of this Agreement with respect to their Licensed Materials.
- h. If COUNTY's license or Additional License is cancelled or terminated, or when COUNTY no longer uses the Licensed Materials, COUNTY shall return or destroy the Licensed Materials and all copies and certify to CONTRACTOR that it has done so.

COUNTY hereby grants to CONTRACTOR a non-exclusive, personal, royalty-free and non-transferable license to make, have made, use, execute, perform, copy (as reasonably necessary), display, modify and make derivative works under any and all intellectual property rights owned by COUNTY to the extent necessary for furnishing Services and deliverables under this Agreement and to perform its obligations under this Agreement. Except as expressly set forth in this Agreement, no right or license is either granted or implied by either party to the other with

respect to any technical or business information, or with respect to rights in any patents, trademarks, copyrights, trade secrets, mask work protection rights, and other intellectual property. Subject to COUNTY's right, title and interest in COUNTY's Confidential Information, any and all inventions, derivative works, improvements, developments or innovations that CONTRACTOR (and its contractors or consultants, as the case may be) may make, conceive or devise in the course of performing Services and/or furnishing deliverables under this Agreement, are the sole and exclusive property of CONTRACTOR, including all patents, copyrights, trademarks and trade secrets embodied in them.

## **EXHIBIT F**

### **LIMITED WARRANTY**

- a. CONTRACTOR warrants to COUNTY that for the warranty period: (a) Equipment and Software media manufactured by CONTRACTOR (including those manufactured for CONTRACTOR by a contract manufacturer and based on CONTRACTOR's procurement specification) and purchased hereunder will, under normal use and service, be free from defects in material and workmanship; (b) Equipment manufactured by CONTRACTOR or Software owned by CONTRACTOR and purchased or licensed hereunder will materially conform to CONTRACTOR's specifications in effect on the date of shipment; and (c) Services purchased hereunder will be performed in accordance with CONTRACTOR's written standards, or in the absence of such standards, in a professional and workmanlike manner. However, CONTRACTOR makes no warranty that any Software will operate uninterrupted or error free. For Products or partial assembly of Products furnished by CONTRACTOR where the Equipment and Software media was not manufactured by CONTRACTOR and/or the Software is not owned by CONTRACTOR, CONTRACTOR hereby assigns, to the extent permitted, the warranties given to CONTRACTOR by its suppliers or licensors of such items.
- b. The warranty period for CONTRACTOR Equipment is 12 months and for the Software is 90 days, and begins on the shipment date, unless CONTRACTOR performs installation Services for the Equipment or Software, in which case the warranty period begins on the date of Product acceptance as determined herein. The warranty period for Services is 30 days beginning on the date of completion.
- c. If any Equipment is not as warranted in this Exhibit F, then (a) COUNTY must obtain from CONTRACTOR a return authorization number and properly pack and return the Equipment at its expense, together with the authorization number and a detailed description of the problem, to CONTRACTOR's designated repair facility; and (b) CONTRACTOR shall repair or replace the Equipment and return it at CONTRACTOR's expense to COUNTY's point of shipment. COUNTY has the risk of loss and damage to any Equipment returned to CONTRACTOR for repair or replacement until receipt by CONTRACTOR of such Equipment. CONTRACTOR shall assume the risk of loss and damage to any Equipment returned to CONTRACTOR for repair or replacement from receipt until delivery to COUNTY's point of shipment. If CONTRACTOR ascertains that Equipment is not readily returnable for repair, then at its option, CONTRACTOR may elect to repair or replace the Equipment at COUNTY's site. In such instances, COUNTY, at its expense, shall make the Equipment accessible for repair or replacement and shall restore the site after CONTRACTOR has completed its repair or replacement. For any Equipment or parts thereof repaired or replaced under this Exhibit F, the warranty period applicable to the Equipment will continue for the longer of (c) the remainder of the original warranty period or (d) 90 days after shipment date of the repaired or replaced Equipment.



- d. Upon notice from COUNTY that any Software is not as warranted in this Exhibit F, CONTRACTOR shall correct the Software by (a) electronic means or (b) delivery to COUNTY of suitable media chosen solely by CONTRACTOR. The warranty period for the corrected Software via fixes and/or patches will be the remainder of the original warranty period.
- e. Upon notice from COUNTY that any Service is not as warranted in this Exhibit F, CONTRACTOR shall correct the Service. The warranty period for the corrected Service will be the remainder of the original warranty period.
- f. If CONTRACTOR determines that it cannot, in a commercially reasonable manner: (a) repair or replace any Equipment, (b) correct any Software, or (c) correct any Services, then CONTRACTOR may, in its sole discretion, credit to COUNTY the price of the Product or Services, less a reasonable adjustment for beneficial use. In repairing or replacing any Equipment, part of Equipment, or Software medium under this warranty, CONTRACTOR may use new, remanufactured, reconditioned, refurbished, or functionally equivalent Equipment, parts of Equipment, or Software medium.
- g. Notwithstanding any provision of this Agreement to the contrary, CONTRACTOR has no obligation to repair or replace any Equipment, correct any Software, or correct any Services if (a) the Product has been modified, repaired or reworked by anyone other than CONTRACTOR; or (b) the defect is the result of (i) any improper storage, handling or use by anyone other than CONTRACTOR, (ii) failure to provide a suitable climatic and/or operational environment (including, by way of example, failure to provide the facilities prescribed in CONTRACTOR's specifications, failure to provide for adequate control of humidity or failure to prevent the ingress of dust particles), (iii) operator error, (iv) improper installation of the Product by anyone other than CONTRACTOR, (v) use in a manner not in accordance with the Documentation, (vi) failure to implement any new releases or updates to the Software, (vii) any use of the Product in conjunction with another non-CONTRACTOR product (except to the extent provided in the Documentation), (viii) consumable items, including fuses, light bulbs, motor brushes and the like, (ix) Products which have had their serial numbers or month and year of manufacture removed, altered, defaced, or deleted, or (x) any damage by power failure, fire, explosion or any act of God or other cause beyond CONTRACTOR's control. The warranties set forth in this Exhibit F are nontransferable.
- h. If CONTRACTOR determines that any returned Equipment or Software is not defective, COUNTY shall pay CONTRACTOR's costs of handling, inspecting, testing, and transportation and, if applicable, travel and living expenses.
- i. Warranty does not include: CONTRACTOR assisting in diagnostic efforts; access to CONTRACTOR's technical support web sites, databases, or tools; Product

integration; on-site assistance; or Documentation updates. These Services may be available during and after the warranty period at CONTRACTOR's published prices.

- j. THE LIMITED WARRANTY SET FORTH IN THIS EXHIBIT F IS THE EXCLUSIVE WARRANTY. CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS AND/OR CONDITIONS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NON-INFRINGEMENT. THE REMEDIES PROVIDED ARE COUNTY'S EXCLUSIVE REMEDIES FOR FAILURE OF PRODUCTS OR SERVICES TO CONFORM TO THE WARRANTY.