

A G R E E M E N T

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3 THIS AGREEMENT ("Agreement") is made and entered into this 10th day of July,
4 2018, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of
5 California, hereinafter referred to as "COUNTY," and Jail Education Solutions Inc. d/b/a Edovo,
6 a Delaware corporation, 215 W. Superior, Suite 600, Chicago, Illinois, 60654 hereinafter
7 referred to as "CONTRACTOR." COUNTY and CONTRACTOR may be referred to, herein,
8 together as the "Parties" or, if referred to in the singular, a "Party."

9 WITNESSETH:

10 WHEREAS, COUNTY, through its Sheriff-Coroner and Department of Public
11 Health, desires to provide inmates incarcerated in the Fresno County Jail Facilities (the "Jail
12 Facilities") with access to certain educational, vocational and treatment programming, through
13 tablet and kiosk technology and related infrastructure in a closed system environment, as
14 provided herein;

15 WHEREAS, COUNTY desires to provide inmates the ability to file various forms
16 and to order commissary with said tablets and kiosks, as well as other services as depicted in
17 this Agreement, as provided herein;

18 WHEREAS, COUNTY desires a turnkey system and sought bids for the provision
19 of such services by issuing Request For Proposal ("RFP") No. 17-039, including "Addendum
20 Number: One (1)," which are together attached hereto as Exhibit "A," and incorporated herein
21 by this reference; and

22 WHEREAS, CONTRACTOR submitted a response to RFP 17-039.

23 NOW, THEREFORE, in consideration of the mutual covenants, terms and
24 conditions herein contained, the parties hereto agree as follows:

25 1. OBLIGATIONS OF THE CONTRACTOR

26 All references in this Agreement to "Equipment," include, but are not limited
27 to, tablets, tablet charge carts, kiosks, and all other devices, electronics, hardware, and
28 equipment that is provided to COUNTY, by the CONTRACTOR, as set forth in, or as a result of,

1 this Agreement. All Equipment that is provided by CONTRACTOR, either at the inception of this
2 Agreement, or throughout the duration of this Agreement, shall be new Equipment and in any
3 event shall not be used or refurbished Equipment, or equivalent to the Equipment, unless
4 explicitly agreed to in writing by COUNTY, prior to the provision of any used or refurbished, or
5 equivalent Equipment.

6 CONTRACTOR shall provide Equipment and service, as delineated herein and
7 pursuant to the terms of RFP 17-039, i.e. Exhibit "A", as well as all care necessary to
8 accomplish the desires depicted above, as provided herein.

9 CONTRACTOR's obligations are as follows:

10 A. Installation and Maintenance of Inmate Table and Kiosk Equipment

11 The CONTRACTOR shall install and maintain necessary major hardware,
12 internet protocol routing and switching, secure server, web proxy, kiosk devices, tablets and
13 wireless access points within the Jail Facilities to accommodate all of the tablets and kiosks
14 provided under this Agreement. In the event that there is any issue that in way relates to the
15 installation or maintenance of any of the foregoing that is not specifically set forth in this
16 Agreement, including any hardware or software related to same, it is and shall be
17 CONTRACTOR's obligation to ensure that such installation or maintenance occurs, at no
18 additional cost to the COUNTY, unless such issues are due to COUNTY's negligence or
19 intentional misuse, or are subject to the provisions outlined in Section 22 of this Agreement, i.e.
20 "Force Majeure".

21 i. CONTRACTOR covenants, promises, warranties and
22 represents that CONTRACTOR investigated the Jail Facilities, as identified in Section 1.A.ii,
23 where all Equipment in this Agreement will be placed, and CONTRACTOR covenants,
24 promises, warranties and represents that all Equipment outlined in this Agreement will not
25 conflict with other electronic devices or equipment in the Jail Facilities, will be useable as
26 described in this Agreement, will be able to transmit information and receive transmissions of
27 information as necessary to perform as described in this Agreement, and that the Jail Facilities,
28 as identified in Section 1.A.ii, are sufficient for full and complete use of all Equipment outlined in

1 this Agreement, so long as COUNTY does not materially change the scope of the Agreement.

2 ii. CONTRACTOR shall install and maintain wireless servers and
3 provide services in the following locations:

- 4 • Main Jail, 1225 M Street, Fresno, CA 93721;
- 5 • North Annex Jail, 1265 M Street, Fresno, CA 93721;
- 6 • South Annex Jail, 2280 Fresno Street, Fresno, CA 93721;
- 7 • Additional locations may be mutually agreed upon for services upon the
8 opening of the West Annex Jail, located on the same COUNTY footprint/square
9 block as the Main and North Jails (the current parking lot) or at other future
10 locations.
- 11 • Should COUNTY represent, at any time, that any of the locations identified
12 herein no longer exist, or no longer require CONTRACTOR's services, or should
13 new locations become available and require CONTRACTOR's services, such as
14 the West Annex Jail, which is set to open in 2020, COUNTY may, and
15 CONTRACTOR will therefore, amend this Agreement to provide for reductions or
16 additions of service, or for a change in location of services.

17 iii. Upon the effective date of this Agreement, CONTRACTOR
18 shall deliver two-hundred-and-fifty (250) fully charged tablets, two-hundred-and-fifty (250)
19 earbuds and (six) 6 tablet charging carts, which will be complete and ready for use in specific
20 areas identified by COUNTY. As to these initial tablets, COUNTY will pay the daily rate
21 identified in SECTION 5.A.i, COMPENSATION/INVOICING. The two-hundred-and-fifty (250)
22 earbuds and six (6) tablet charging carts will be provided at no cost to COUNTY.

23 CONTRACTOR shall be solely responsible, during the entire duration of this Agreement, for all
24 costs associated with providing and maintaining the charging carts unless such cost are due to
25 COUNTY's negligence or intentional misuse.

26 iv. Should COUNTY desire additional tablets, in addition to the
27 totals identified in Section 1.A.iii, the Sheriff-Coroner, or her/his designee, shall contact
28

1 CONTRACTOR for additional tablets, and CONTRACTOR shall promptly provide fully-charged
2 tablets. COUNTY will pay for any additional tablets at the daily price identified in SECTION
3 5.A.i, COMPENSATION/INVOICING. The total amount of tablets being used by COUNTY, at
4 any given time, under this Agreement, will not exceed three-hundred (300).

5 v. CONTRACTOR will be required to install and maintain
6 one-hundred-and-eight (108) kiosks in the locations identified in Section 1.A.ii above at no cost
7 to the COUNTY. The specific locations of these kiosks will be identified by COUNTY at least
8 thirty (30) days prior to their installation and CONTRACTOR, at no additional cost to COUNTY,
9 shall be responsible for the installation and all ongoing maintenance of all kiosks and kiosk
10 systems under this Agreement, including, but not limited to, any hardware and software
11 necessary for the COUNTY's use of the kiosks under this Agreement.

12 vi. In addition to the one-hundred-and-eight (108) kiosks
13 identified in Section 1.A.v, COUNTY may determine that additional kiosks are necessary.
14 Should COUNTY determine that additional kiosks are necessary, CONTRACTOR will install
15 and maintain the additional kiosks at the locations identified by COUNTY within forty-five (45)
16 days of COUNTY's request. COUNTY will pay for any additional kiosks at the price identified in
17 SECTION 5.A.ii, COMPENSATION/INVOICING.

18 vii. CONTRACTOR, at no additional cost to COUNTY, will be
19 responsible for the acquisition and continuity of bandwidth, including the procurement of said
20 bandwidth. COUNTY will pay CONTRACTOR the actual cost charged by the third party
21 providing the bandwidth, including installation costs charged by the third party, as identified in
22 SECTION 5.A.iv, COMPENSATION/INVOICING.

23 viii. CONTRACTOR shall continuously monitor tablet hardware
24 assets via a secure networking monitoring system and perform remote troubleshooting
25 whenever necessary or at the request of COUNTY's Inmate Services Director or his or her
26 designee. Should COUNTY desire CONTRACTOR to perform remote troubleshooting more
27 often or at reasonably regular intervals, CONTRACTOR will perform remote troubleshooting at
28 the times and reasonably regular intervals requested by COUNTY's Inmate Services Director or

1 his or her designee, at no additional cost to COUNTY. If non-tablet hardware failure is
2 detected by CONTRACTOR, CONTRACTOR will respond by remotely reconfiguring the
3 hardware asset within one (1) business day or by shipping a replacement asset to COUNTY
4 within three (3) business days. COUNTY will not be charged for these services, unless
5 CONTRACTOR provides written notice, via electronic mail, and as identified in SECTION 17
6 herein, that such hardware failure is due to COUNTY's negligence or intentional misuse, which
7 notice shall specifically state the reason for such COUNTY action. At such time,
8 CONTRACTOR may provide COUNTY with an invoice regarding the costs of repairing or
9 replacing the hardware asset and COUNTY will have the right to either pay for the replacement
10 or repair, or to forego replacement or repair. In no event will the cost of repair or replacement
11 exceed two-hundred-and-fifty-dollars (\$250.00), which includes all taxes, fees, and charges, if
12 any.

13 ix. Routine preventative maintenance will be performed by
14 CONTRACTOR's qualified repair personnel on a regular basis for all Equipment covered by this
15 Agreement, in accordance with the manner and schedule prescribed by the manufacturers of
16 the Equipment, or at sooner intervals as are necessary to ensure that the Equipment functions
17 as described within this Agreement.

18 x. Attached hereto is Exhibit B, CONTRACTOR's Service Level
19 Agreement. CONTRACTOR agrees to provide the services delineated in Exhibit B.

20 xi. CONTRACTOR will be solely responsible for replacement or
21 repair of tablets which are malfunctioning or defective based upon manufacturing defect or
22 other malfunction that is not the result of COUNTY's negligence or misuse.

23 xii. CONTRACTOR shall replace or repair each calendar year, at
24 no cost to COUNTY, up to five-percent (5%) of the total tablets, to be determined by the
25 average total tablets COUNTY used during the respective calendar year. Replacement or
26 repair under this Section 1.A.xii, is for physical damage that prevents or limits the use of the
27 tablets, regardless of the cause of any such physical damage, including but not limited to:
28 physically damaged screens, ports and buttons, and general case wear and tear. Additional

1 replacement or repair of physically damaged tablets, outside of the five-percent (5%) identified
2 within this Section 1.A.xii, will be conducted on an as needed basis, and in such case (i)
3 COUNTY shall pay CONTRACTOR at the rate identified in Section 1.A.viii, provided however,
4 prior to CONTRACTOR undertaking any work to replace or repair any such tablet,
5 CONTRACTOR shall confirm with COUNTY, in writing, regarding any replacement or repair for
6 which COUNTY maybe charged in this Section 1.A.xii, identifying all proposed costs associated
7 with said replacement or repair, including the proposed costs of associated with shipping, and
8 shall await COUNTY's approval of the proposed costs and request for replacement or repair of
9 the tablet, and (ii) CONTRACTOR shall provide an invoice to COUNTY for the total number of
10 additional tablets that have been replaced and repaired within five (5) business days after
11 completing any such work.

12 xiii. Prior to the program implementation, CONTRACTOR shall
13 conduct initial on-site testing of tablets, kiosks and the network. Should everything be
14 operational and ready for inmate use, CONTRACTOR shall verify such in writing to COUNTY's
15 Inmate Services Director. Upon issuance the foregoing verification, CONTRACTOR will work
16 with COUNTY to plan the on-site launch and training within the following thirty (30) days.

17 xiv. CONTRACTOR'S technicians and subcontractors will be
18 entering secured areas of Fresno County's Jail facilities. CONTRACTOR is aware that the
19 Sheriff-Coroner's Office maintains a NO HOSTAGE POLICY, and agrees and covenants that
20 CONTRACTOR knows all aspects of the NO HOSTAGE POLICY. CONTRACTOR also agrees
21 and covenants that CONTRACTOR will make all of CONTRACTOR's employees, technicians
22 and subcontractors aware of the NO HOSTAGE POLICY prior to performing any work on this
23 Agreement and that CONTRACTOR'S employees, technicians and subcontractors must
24 complete and satisfy the security background clearance requirements as determined by the
25 COUNTY in advance of beginning any work.

26 xv. CONTRACTOR shall designate, in writing, one (1) or more
27 authorized representatives who shall be the COUNTY'S point(s) of contact with
28 CONTRACTOR, and such designation (or change of designation) of such point(s) of contact

1 shall be provided to COUNTY's Inmate Services Director. Such point(s) of contact, so
 2 designated, shall have full authority to bind CONTRACTOR with respect to all issues related to
 3 the performance, enforcement, and issues identified in this Agreement.

4 xvi. COUNTY may make service requests, including repair
 5 requests, and CONTRACTOR shall provide such services and or repairs in a timely manner.
 6 Unless specifically stated otherwise in this Agreement, CONTRACTOR promises, covenants,
 7 agrees, and represents, that CONTRACTOR will provide repair services, or address any issues
 8 pertaining to CONTRACTOR's services under this Agreement, in the timelines requested by
 9 COUNTY at the time of COUNTY's request. For any service or repair requests,
 10 CONTRACTOR may be contacted at the following:

- 11 1. Telephone Service/Repair Requests: 855-976-8903
- 12 2. Email Service/Repair Requests: helpdesk@edovo.com
- 13 3. Edovo Support Portal URL for Service/Repair Requests:
 14 edovo.desk.com

15 B. Tablet and Kiosk Specifications

16 i. CONTRACTOR shall provide all Equipment with inventory
 17 numbering, which shall be sufficient for CONTRACTOR and COUNTY to identify each piece of
 18 Equipment provided to COUNTY. It will be CONTRACTOR's responsibility to ensure that
 19 CONTRACTOR keeps written records of all Equipment provided to COUNTY, including the
 20 inventory numbers, the date(s) each piece of Equipment was provided to COUNTY, and the
 21 date(s) each piece of Equipment was reacquired by CONTRACTOR.

22 ii. CONTRACTOR shall provide tablets that are of a "rugged design,"
 23 meaning the tablet case is Lexan® brand polycarbonate, a similar grade material to the kinds
 24 used in bullet resistant glass and other laminates found in police cars, windows in correctional
 25 facilities, and military applications. The case on the tablets will protect the tablet from
 26 tampering, general damage, and contraband storage. CONTRACTOR will only allow physical
 27 access through the secure case on the tablets via the critical hardware buttons such as the
 28 power button, volume buttons, and home button. The case on the tablets will also protect

1 against physical access to unnecessary components like the MicroSD card slot, and the rear
2 facing camera. The screens for all tablets will be protected via a laminated screen protector
3 designed to prevent cutting, abrasion, shattering, and peeling. CONTRACTOR covenants,
4 promises, and represents that all tablets that CONTRACTOR provides will withstand harsh and
5 destructive environments, such as the environment(s) present at correctional institutions.

6 iii. CONTRACTOR shall ensure that at least of five (5) the
7 aforementioned tablets, provided in the first two-hundred-fifty (250) tablets, will be configured to
8 comply with the Americans with Disabilities Act ("ADA"). If COUNTY desires additional ADA
9 compliant tablets, COUNTY will inform CONTRACTOR within thirty (30) days of the effective
10 date of this Agreement and CONTRACTOR will ensure that the requested number of additional
11 ADA compliant tablets are provided to COUNTY, at the same price as regular tablets.

12 COUNTY may later request additional ADA compliant tablets, at any time, and CONTRACTOR
13 will provide them within thirty (30) days of such a request. COUNTY will pay CONTRACTOR
14 for additional ADA tablets at the daily price identified in SECTION 5.A.i,
15 COMPENSATION/INVOICING.

16 iv. CONTRACTOR shall ensure that all kiosks provided pursuant to
17 this Agreement are installed in a manner that is compliant with the ADA and that said kiosks are
18 compliant with the ADA, at no additional cost to COUNTY.

19 v. CONTRACTOR shall equip the tablets (at a minimum) with
20 content including, but not limited to: academics from literacy and adult basic education to
21 college credit; vocational from career exploration to skill-building and interview preparation;
22 rehabilitation spanning substance abuse, anger management, parenting and other rehabilitation
23 material; entertainment content including 50+ radio stations, numerous games, and 100+
24 Hollywood quality movies; and content as described in Exhibit C, Tab XI (i) (Reports), "EDOVO
25 CONTENT TABLE". CONTRACTOR will provide other content on the tablets, including, but not
26 limited to, the following:

- 27 a. Basic Education;
- 28 b. Academic Advancement;

- 1 c. Professional Life, Law & Finances;
- 2 d. Religious Experience;
- 3 e. Exploratory Content & Creation; and;
- 4 f. Health & Well-Being;

5 CONTRACTOR shall maintain and make available the foregoing content throughout the
6 duration of this Agreement. Should COUNTY request additional content, CONTRACTOR shall
7 provide any such additional content, at no additional cost to COUNTY.

8 vi. CONTRACTOR shall, upon the request of COUNTY, install and
9 maintain software on all tablets and kiosks so as to allow inmates to use the tablets and kiosks
10 to access online legal databases, e.g. LexisNexis or Westlaw. COUNTY will identify which
11 legal database(s) the inmates will access through the tablets and kiosks. This Section 1.B.vi is
12 only applicable if and when COUNTY is able to obtain access to a legal database, for purposes
13 of providing that access through the tablets and kiosks.

14 vii. COUNTY will provide CONTRACTOR with forms that COUNTY
15 desires CONTRACTOR to make available to inmates through tablet and kiosk use (the "Inmate
16 Forms"). CONTRACTOR shall install and maintain software for tablets and kiosks to allow
17 inmates access and fill out the Inmate Forms provided by COUNTY, using said tablets and
18 kiosks, and to then send any completed Inmate Forms to the appropriate persons,
19 departments, or entities, as identified by COUNTY. These Inmate Forms include, but are not
20 limited to, health services request forms, inmate grievance forms, inmate grievance appeal
21 forms, inmate request forms, and commissary order forms. It is and shall be CONTRACTOR's
22 responsibility to ensure that all Inmate Forms COUNTY provides are available to the inmates
23 and that said Inmate Forms are automatically delivered to the appropriate persons,
24 departments, and entities, promptly upon submission by any inmate using the tablets or kiosks.
25 COUNTY will provide CONTRACTOR with all Inmate Forms necessary under this subsection at
26 least thirty (30) days prior to when they are necessary and CONTRACTOR will ensure the
27 Inmate Forms are accessible by the inmates within thirty (30) days after COUNTY provides
28 them to CONTRACTOR.

1 viii. CONTRACTOR is aware of the sensitive nature of the Inmate
2 Forms, including the sensitive nature of potential information that may be included in those
3 forms once they are filled out by the inmates and/or staff. CONTRACTOR agrees to protect any
4 and all information the inmates or COUNTY staff enter into said forms from any manner of
5 observance or disclosure, whatsoever, by or to any person not specifically and explicitly
6 identified and authorized by COUNTY or its designee. Should CONTRACTOR discover or
7 suspect that any information placed in any Inmate Form, by either an inmate or COUNTY staff,
8 has been observed or disclosed by or to a person or persons not specifically and explicitly
9 identified or authorized by COUNTY to observe or disclose same, or that such information is at
10 risk of being observed or disclosed to or by a person or persons not specifically and explicitly
11 identified or authorized by COUNTY, CONTRACTOR must prevent and mitigate the
12 observance or disclosure and immediately notify COUNTY of such condition and corrective
13 action. This Section 1.B.viii is not intended, nor does it attempt to, modify or prevent any
14 disclosures that are compelled by law or valid court order.

15 ix. All tablets and kiosks provided pursuant to this Agreement will be
16 capable of, and will allow, inmates to message or receive messages, through email, or other
17 manners approved by COUNTY, with their families and other persons as approved or provided
18 by COUNTY. These messages will be electronically stored by CONTRACTOR during the
19 entire duration of this Agreement and will be provided to COUNTY, at any time after this
20 Agreement expires or terminates, as provided in Section 1.B.xix of this Agreement.

21 x. In addition CONTRACTOR will provide kiosks, and maintain
22 kiosks, in manner that allows inmates to conduct visitor visitation through electronic means,
23 achieved through the kiosks. CONTRACTOR will keep records of these visitations, in the
24 manner requested by COUNTY, which will be stored electronically by CONTRACTOR during
25 the entire duration of this Agreement and will be provided to COUNTY at any time after this
26 Agreement expires or terminates, as provided in Section 1.B.xix of this Agreement.

27 xi. CONTRACTOR shall provide a system and software that allows
28 COUNTY, without any restriction, to monitor all activities performed on, or actions on, or uses

1 of, all of the tablets and kiosks. This system and software shall have the capability to allow
2 COUNTY to remotely power off or disable the functionality of tablets or kiosks, either
3 individually or collectively, so long as the tablets are operational.

4 xii. CONTRACTOR shall provide COUNTY with mechanisms enabling
5 COUNTY to audit, analyze, or investigate all inmate activities performed on, or actions on, or
6 uses of, the tablets and kiosks.

7 xiii. CONTRACTOR shall install software and program tablets and
8 kiosks so that they provide a warning to any and all inmates, upon an inmate logging into any
9 tablet or kiosk, that any and all information that is entered into, stored, displayed, or retrieved
10 from the tablet or kiosk is viewable by COUNTY employees, staff, and other authorized
11 persons, and that the inmate should not consider any such information confidential. The exact
12 language of warning described in this Section 1.B.xiii shall be provided by the Sheriff-Coroner
13 or her/his designee prior to the time in which the tablets and kiosks are offered to the inmates.

14 xiv. Tablets and kiosks shall be capable of remitting necessary data to
15 the Fresno County Sheriff-Coroner's Office Jail Management System, (OffenderTrak, Version
16 6.3.5.1 by Motorola Corporation) running on Oracle 10G, on a MicroSoft Windows 64-bit
17 platform. The tablets and kiosks shall also be compatible or capable of remitting necessary
18 data to or with other software systems and platforms that COUNTY desires. CONTRACTOR
19 agrees to work with COUNTY in the event there are software compatibility issues and
20 reasonably resolve any and all issues.

21 xv. After the effective date of this Agreement, upon the request of
22 COUNTY, CONTRACTOR shall immediately, at no cost to COUNTY, provide two a (2) two-
23 hour in-person training program for COUNTY staff assigned to administer the tablets to
24 inmates, and/or the inmates. CONTRACTOR will record, save, store, and/or make available,
25 this training program, in electronic medium acceptable to COUNTY, so as to allow COUNTY to
26 re-use the training program for any staff who are not present for the initial training program.
27 CONTRACTOR will, at no cost to COUNTY, provide additional in-person training sessions
28 should there be new programs, software, or substantial issues which, in the opinion of

1 CONTRACTOR or COUNTY, require additional staff training. At any time, COUNTY may
2 request training or additional training, on any matter relating to tablet or kiosk use, for staff or
3 inmates, and CONTRACTOR will provide any requested or necessary training, for staff,
4 inmates, or other users of the services provided by CONTRACTOR, at no cost to COUNTY.
5 Any additional training sessions will be in-person and provided at a location and time selected
6 by COUNTY, and recorded, saved, stored, and/or available in an electronic medium acceptable
7 to COUNTY that allows COUNTY to provide the training programs to staff or inmates who are
8 not present for any training session. Alternatively, CONTRACTOR will provide any in-person
9 training COUNTY deems necessary and so requests within five (5) Fresno County business
10 days of COUNTY's request. In addition to the foregoing, CONTRACTOR will provide, at the
11 request of COUNTY, training manuals, as necessary, and at no cost to COUNTY.

12 xvi. CONTRACTOR may propose additional methods of operation,
13 organization, or proposals regarding how the tablets and kiosks are used, but for which are not
14 covered in this Agreement (e.g. new technology, etc). COUNTY will consider these ideas based
15 on their feasibility, cost and the impact on facility operations. Any such additional methods of
16 operation, organization, or proposals, if implemented, must be mutually agreed upon by the
17 Parties, pursuant to a written amendment to this Agreement, and executed by the Parties.

18 xvii. CONTRACTOR shall clearly outline, store and keep records of all
19 user fees, including fees associated with the tablets or kiosks. CONTRACTOR will provide any
20 and all records to COUNTY, in electronic, searchable form, within five (5) Fresno County
21 Business days after COUNTY requests such records. CONTRACTOR shall provide such
22 records in a format approved by COUNTY's Inmate Services Director or his or her designee,
23 and shall promptly respond to any and all COUNTY inquiries relating to user fees.

24 xviii. CONTRACTOR shall maintain complete and accurate records with
25 respect to the all services rendered through the tablets and kiosks and the costs associated
26 with same. All records shall be kept and prepared in accordance with generally accepted
27 accounting procedures, clearly identified and kept readily accessible to COUNTY.

28 CONTRACTOR will provide any and all records to COUNTY, in electronic, searchable form,

1 within five (5) Fresno County Business days after COUNTY requests such records.

2 CONTRACTOR shall provide such records in a format approved by COUNTY's Inmate
3 Services Director or his or her designee, and shall promptly respond to any and all COUNTY
4 inquiries relating to the user fees.

5 xix. CONTRACTOR shall maintain and make all records relating to this
6 Agreement or the services provided under this Agreement available to COUNTY for a period of
7 ten (10) years from the date of termination of this Agreement, at no cost to COUNTY.

8 CONTRACTOR agrees to immediately provide any and all records to COUNTY, upon a request
9 that is issued within ten (10) years of the termination of this Agreement, in an electronic,
10 accessible and searchable form, provided however, CONTRACTOR may provide an electronic
11 copy of all records relating to this Agreement and made available to COUNTY, at the time of
12 termination of this Agreement, all at no cost to COUNTY.

13 xx. In addition to the foregoing, CONTRACTOR will archive, encrypt,
14 and back up CONTRACTOR's primary data stores daily. CONTRACTOR will, separately,
15 perform a monthly encryption and storage of all primary data stores, in a separate redundant
16 fault tolerant storage system for a period of ten (10) years. CONTRACTOR shall store, and will
17 make these records available to COUNTY, up to ten (10) years after the expiration or
18 termination of this Agreement.

19 C. Removal of Equipment

20 Upon the termination of this Agreement, CONTRACTOR shall remove
21 and reacquire any and all Equipment located in the Jail Facilities within thirty (30) days
22 following the termination of this Agreement, with the cooperation of the COUNTY.

23 For any such Equipment that CONTRACTOR removes from the Jail
24 Facilities, CONTRACTOR will retain all title and ownership to the tablets, charging carts,
25 hardware, platform and licensed material so removed.

26 If CONTRACTOR fails to remove any or all of such Equipment from the
27 Jail Facilities within such time, COUNTY, through its Sheriff-Coroner or her/his designee, may
28 give CONTRACTOR a thirty (30) day notice to remove any or all such Equipment, the depth of

1 such notice is to be determined by COUNTY (the "Equipment Removal Notice"). For any such
2 Equipment identified by COUNTY in any such Equipment Removal Notice, which is not
3 removed within the time for removal specified by COUNTY, such Equipment will automatically
4 become the property of COUNTY, provided however, should CONTRACTOR begin the removal
5 of any Equipment within thirty (30) days after the date of the Equipment Removal Notice,
6 CONTRACTOR will be given a reasonable amount of time to remove all identified Equipment,
7 but not to exceed sixty (60) days' time after CONTRACTOR begins any such removal, after
8 which time all identified property not removed automatically becomes the property of COUNTY.

9 Upon the termination of this Agreement, CONTRACTOR may
10 request reimbursement for Equipment that is unaccounted for or missing at the time
11 CONTRACTOR attempts to remove its Equipment as provided in this Section 1.C.
12 CONTRACTOR warrants, promises, and covenants, that any amounts requested or charged
13 pursuant to this Section 1.C are inclusive of all taxes, fees, and charges, if any.
14 CONTRACTOR shall be allowed to charge for tablets that are unaccounted for or missing at
15 rates of one-hundred-dollars (\$100.00) for tablets that COUNTY had in its control for less than
16 or equal to one (1)-year, and fifty-dollars (\$50.00) for tablets that COUNTY had in their control
17 for more than one (1)-year. It is CONTRACTOR's obligation to provide proof of the date any
18 missing or unaccounted for tablet was provided to COUNTY, and the absence of such will
19 result in the CONTRACTOR being able to request reimbursement at no greater than fifty-
20 dollars (\$50.00) for each such missing or unaccounted for tablet. As to all other Equipment,
21 excluding tablets, CONTRACTOR shall be allowed to charge for Equipment that is
22 unaccounted for or missing at an amount of fifty-percent (50%) of the amount the
23 CONTRACTOR paid for such Equipment. As to such Equipment, excluding tablets, it is
24 CONTRACTOR's obligation, as a prerequisite to any reimbursement pursuant to this
25 Section 1.C, to provide proof of the amount CONTRACTOR paid for said Equipment. Any
26 request for reimbursement, pursuant to this Section 1.C, shall be sent by written notice
27 pursuant to Section 17 of this Agreement. Regardless of the amount of Equipment that is
28 unaccounted for or missing, CONTRACTOR cannot, in any event, pursuant to this Section 1.C,

1 charge more than, and COUNTY will not be obligated to pay more than, \$34,000.00 for missing
2 or unaccounted for Equipment. In addition, at the time of termination or expiration of this
3 Agreement and at COUNTY's request, COUNTY may keep all network hardware, as installed,
4 for an amount up to and including, but not in excess of, \$34,000.00.

5 2.OBLIGATIONS OF THE COUNTY

6 A. COUNTY will provide CONTRACTOR with a daily digital file of accurate
7 inmate identification information which will be uploaded to CONTRACTOR's File Transfer
8 Protocol (herein after "FTP") site by 9:00pm daily, Pacific Standard Time, and will at a minimum
9 contain: inmates' first and last names, jail ID numbers and dates of birth. COUNTY may
10 request and CONTRACTOR will, upon any such request, store any additional information in
11 CONTRACTOR's FTP. COUNTY may, at its discretion or at the discretion of COUNTY's
12 Inmate Services Director, or his or her designee, limit any such information that is provided to
13 CONTRACTOR, for any reason whatsoever.

14 B. COUNTY shall designate secure locations within the Jail Facilities for the
15 storage of tablets and other equipment related to this Agreement. It is CONTRACTOR's
16 responsibility to ensure that any selected or identified storage locations are capable of
17 providing and do provide wireless connectivity. COUNTY will be responsible for storage of
18 charge carts within wireless range during daily overnight charging of the tablets.
19 CONTRACTOR is responsible for identifying the options of charge cart storage to ensure
20 storage is in wireless range and informing the CONTRACTOR of such identified areas. If it is
21 determined that additional or different secure locations are necessary for storage of tablets
22 and/or wireless connectivity, CONTRACTOR and COUNTY will work together to identify
23 additional or different secure locations.

24 C. After CONTRACTOR provides the first two-hundred-and-fifty (250)
25 earbuds to COUNTY, it will be COUNTY's responsibility to provide any additional or further
26 earbuds to the inmates. COUNTY shall provide CONTRACTOR with examples of the earbuds
27 or headphones COUNTY proposes to provide to the inmates, prior to COUNTY providing any
28 earbuds or headphones to the inmates, so that CONTRACTOR can ensure that the earbuds

1 and/or headphones are compatible with the tablets and kiosks. Once CONTRACTOR has
2 confirmed, in writing, that the provided earbuds or headphones are compatible with the kiosks
3 and tablets, COUNTY shall make the earbuds and/or headphones approved by CONTRACTOR
4 available to the inmates, or available for purchase by the inmates, throughout the duration of
5 this Agreement. COUNTY and CONTRACTOR commit to approving the compatible earbuds or
6 headphones prior to the launch of tablets to inmates.

7 D. COUNTY shall provide CONTRACTOR, its officers, agents or
8 contractors, reasonable access to the tablets and kiosks to perform routine inspections and
9 make necessary repairs or maintenance, at such times that the COUNTY's operation of the Jail
10 Facilities will not be unreasonably disturbed.

11 E. COUNTY agrees that all products, software and hardware provided by
12 CONTRACTOR pursuant to this Agreement shall at all times remain the property of
13 CONTRACTOR, except as provided in Section 1.C.

14 F. COUNTY will appoint a Contract Administrator. Unless otherwise notified
15 by COUNTY, the Contract Administrator will be the Fresno County Inmate Services Director.

16 G. COUNTY shall monitor use of the tablets and kiosks in the same manner
17 that the COUNTY monitors the use of other property of the COUNTY in the Jail Facilities, take
18 appropriate action with regard to misuse of tablets and kiosks and report inmate misuse to
19 CONTRACTOR. In the event that a tablet or kiosk is damaged by intentional inmate misuse,
20 and to the extent COUNTY may charge said inmate with the expense of repairing or replacing
21 such tablet or kiosk, COUNTY will attempt to recover any such charges from the inmate.
22 Should any such amounts be recovered from an inmate, said amounts will be used to
23 compensate CONTRACTOR for any respective and necessary repair or replacement. In
24 regards to tablets, any amounts recovered by COUNTY and given to CONTRACTOR will be
25 deducted and credited by CONTRACTOR, against any amounts charged to or to be charged to
26 COUNTY. Assuming any repair or replacement has occurred and CONTRACTOR has done so
27 as part of COUNTY's annual five-percent (5%) allowance of repairs and replacements, as
28 identified in Section 1.A.xii of this Agreement, any amounts recovered by COUNTY and given

1 to CONTRACTOR will be credited towards the annual five-percent (5%) repairs or
2 replacements, as depicted in Section 1.A.xii, allowing the COUNTY to recuperate the annual
3 five-percent (5%) repairs or replacements that CONTRACTOR provides.

4 3. TERM

5 The term of this Agreement shall be for a period of three (3) years,
6 commencing on July 10, 2018 through and including July 31, 2021. This Agreement may be
7 extended for two (2) additional consecutive twelve (12) month periods upon written approval of
8 both parties no later than thirty (30) days prior to the first day of the next twelve (12) month
9 extension period. The Sheriff-Coroner or his or her designee is authorized to execute such written
10 approval on behalf of COUNTY based on CONTRACTOR'S satisfactory performance.

11 4. TERMINATION

12 A. Non-Allocation of Funds - The terms of this Agreement, and the services to
13 be provided hereunder, are contingent on the approval of funds by the appropriating government
14 agency. Should sufficient funds not be allocated, the services provided may be modified, or this
15 Agreement terminated, at any time by giving the CONTRACTOR thirty (30) days advance written
16 notice.

17 B. Events of Default; Termination

18 i. Event of Default by Either Party. Any or all of the following events or
19 conditions shall constitute an "Event of Default" by CONTRACTOR or COUNTY:

20 a. Any failure by a Party to pay the other Party any sum due hereunder
21 for a period of more than thirty (30) days after written notification by the other Party that such
22 nonpaying Party is delinquent in making payment;

23 b. Any other material failure by a Party to perform or comply with the
24 terms and conditions of this Agreement, or covenant contained herein, provided that such
25 failure continues for thirty (30) days after notice to such Party demanding that such failure to
26 perform be cured or if such cure cannot reasonably be effected in such thirty (30) days, the
27 Party shall be deemed not to have defaulted upon the commencement of a cure within such
28 thirty (30) days and diligent subsequent completion thereof within a reasonable time, but in any

1 event not to exceed ninety (90) days. Pursuant to this Section 4.B.i.b, "material failure"
2 includes CONTRACTOR breaching of any warranty or guaranty within this Agreement.

3 ii. Events of Default by CONTRACTOR. In addition to and separate
4 from the provisions of Section 4.B.i, herein, any or all of the following events or conditions shall
5 constitute an "Event of Default" by CONTRACTOR:

6 a. CONTRACTOR fails to furnish and install any or all of the tablets
7 and/or kiosks and make them fully operational and ready for use by COUNTY under the terms
8 of this Agreement, within the times specified in this Agreement;

9 b. Any representation or warranty furnished by CONTRACTOR to
10 COUNTY in this Agreement is false or misleading in any material respect when made;

11 c. Any or all of the tablets and/or kiosks fail to fully operate and
12 function according to the manufacturer's specifications, and, after thirty (30) days' written notice
13 thereof by COUNTY to CONTRACTOR demanding that such failure be cured, such failure
14 remains uncured;

15 d. CONTRACTOR persistently breaches or defaults under any material
16 terms or conditions of this Agreement, including breach of or default under any material
17 covenant, warranty or guaranty contained herein after fifteen (15) days' written notice thereof
18 by COUNTY to CONTRACTOR demanding that such breach or default cease, and such breach
19 or default remains uncorrected;

20 e. CONTRACTOR fails to perform or comply with any or all of the
21 material terms or conditions of this Agreement, including, without limitation, breach of any
22 material covenant, warranty or guaranty contained herein and, after thirty (30) days' written
23 notice thereof by COUNTY to CONTRACTOR demanding that such failure be cured, such
24 failure remains uncured;

25 f. Any liens, stop notices, claims, security interest or encumbrances
26 upon or against any of the tablets and/or kiosks, or properties of COUNTY, by any
27 subcontractor of CONTRACTOR or any third party, including persons providing labor, services,
28 supervision, management, services, equipment, supplies, goods or material for the tablets

1 and/or kiosks, which is not released or resolved to County's satisfaction in thirty (30) days;

2 g. CONTRACTOR files a bankruptcy petition, or its creditors file a
3 bankruptcy petition against CONTRACTOR, either of which proceeding shall not have been
4 dismissed within thirty (30) days of its filing, or there is an involuntary assignment for the benefit
5 of all creditors of CONTRACTOR or the liquidation of CONTRACTOR;

6 h. CONTRACTOR admits in writing to its inability to pay its debts as
7 they become due;

8 i. A receiver is appointed for CONTRACTOR;

9 j. CONTRACTOR fails to obtain and maintain the insurance coverages
10 required under this Agreement, and, after fifteen (15) days' written notice thereof by COUNTY
11 to CONTRACTOR demanding that such failure be cured, such failure remains uncured;

12 k. There is an illegal or improper use of funds by CONTRACTOR

13 l. There is a substantially incorrect or incomplete report submitted by
14 CONTRACTOR to the COUNTY; or

15 m. There is any improperly performed service by CONTRACTOR and,
16 after fifteen (15) days' written notice thereof by COUNTY to CONTRACTOR demanding that
17 such improperly performed service be performed properly, such CONTRACTOR continues to
18 improperly perform said service.

19 iii. COUNTY'S Remedies upon Event of Default by CONTRACTOR

20 If there is an Event of Default by CONTRACTOR, then COUNTY may serve
21 written notice thereof upon CONTRACTOR. Such notice shall contain the reason or reasons for
22 the Event of Default, and, unless within five (5) days after the serving of such notice, such
23 Event of Default is cured to COUNTY's satisfaction by CONTRACTOR, then COUNTY may,
24 upon the expiration of said five (5) days terminate this Agreement.

25 If an Event of Default by CONTRACTOR occurs in connection with any matter
26 under this Agreement, COUNTY may, without a waiver of other remedies that exist in law or
27 equity or under this Agreement, exercise any and all remedies under this Agreement, or at law
28 or equity, or institute other proceedings, including, without limitation, bringing an action or

1 actions from time to time for specific performance, and/or for the recovery of damages, and/or
2 for such other and further relief as the court may order.

3 If an Event of Default by CONTRACTOR occurs in connection with the tablets
4 and/or kiosks or any other matter under this Agreement, COUNTY also may suspend or
5 terminate this Agreement.

6 In no event shall any payment by the COUNTY constitute a waiver by the
7 COUNTY of any breach of this Agreement or any default which may then exist on the part of
8 the CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to
9 the COUNTY with respect to the breach or default. The COUNTY shall have the right to
10 demand of the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the
11 CONTRACTOR under this Agreement, which in the judgment of the COUNTY were not
12 expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly
13 refund any such funds upon demand.

14 iv. Remedies of CONTRACTOR upon Event of Default of COUNTY

15 If an Event of Default by COUNTY occurs under this Agreement, CONTRACTOR
16 may, without a waiver of other remedies that exist in law or equity or under this Agreement,
17 exercise any and all remedies under this Agreement, or at law or equity, or institute other
18 proceedings, including, without limitation, bringing an action or actions from time to time for
19 specific performance, and/or for the recovery of damages, and/or for such other relief as the
20 court may order. For all claims arising out of or related to this Agreement, nothing in this section
21 establishes, waives, or modifies any claims presentation requirements or procedures provided by
22 law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the
23 Government Code, beginning with section 810).

24 If an Event of Default by COUNTY occurs in connection with this Agreement,
25 CONTRACTOR also may terminate this Agreement.

26 C. WITHOUT CAUSE

27 This Agreement may be terminated by either Party for any reason and at any time by
28 giving prior written notice of such termination to the other Party specifying the effective date

1 thereof at least sixty (60) days prior to the effective date. CONTRACTOR shall be entitled to
2 receive compensation for any satisfactory work completed prior to expiration of the Agreement
3 or receipt of the notice of termination, or commenced prior to receipt of the notice of termination
4 and completed satisfactorily prior to the effective date of the termination.

5 5. COMPENSATION/INVOICING:

6 CONTRACTOR will perform the services identified in this Agreement for the amounts set
7 forth in Section 5.A herein.

8 A. COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive
9 compensation as follows:

- 10 i. Daily Tablet Rate: COUNTY will be charged one-dollar-and-fifty-cents (\$1.50),
11 per day, commencing on the day that COUNTY receives the fully operational and
12 charged tablet(s) and distributes to incarcerated users and ceasing on the day
13 that CONTRACTOR reacquires the tablet(s), per tablet, for the duration of time
14 that the COUNTY has had possession of the tablet(s). For purposes of this
15 Section 5.A.i, COUNTY is not obligated to pay CONTRACTOR for any tablet(s) in
16 its possession, but, for reasons outside of COUNTY's control, COUNTY is unable
17 to use, e.g. infrastructure not yet installed or inoperable. COUNTY is not
18 obligated to pay the Daily Tablet Rates during any period of time that this
19 Agreement is terminated or expired. No later than thirty (30) days after the
20 commencement of each one (1) calendar year anniversary of this Agreement,
21 CONTRACTOR may make a single request for up to a five-cent (\$0.05) increase
22 in the Daily Tablet Rate. Such requests must be in writing, to the Sheriff-Coroner,
23 or her designee, and the Sheriff-Coroner her designee may agree to such
24 increases, if at all, within thirty (30) days. In no event will the Daily Tablet Rate
25 ever exceed one-dollar-and-seventy-cents (\$1.70), per day, without an
26 Amendment to this Agreement.
- 27 ii. Kiosks: The initial one-hundred-and-eight (108) kiosks will be provided to
28 COUNTY, and maintained, repaired, or replaced by CONTRACTOR, at no cost to

1 COUNTY. In the event COUNTY wishes to increase the total amount of kiosks
2 beyond one-hundred-and-eight (108), CONTRACTOR will charge COUNTY a one
3 (1)-time charge of seven-hundred-dollars (\$700.00) for each kiosk.

4 CONTRACTOR will not charge COUNTY any daily rate for kiosks. Once
5 CONTRACTOR provides any additional kiosk, CONTRACTOR will incur all costs
6 associated with installation, additional Infrastructure, repair, replacement, and
7 maintenance of said kiosk, at no cost to COUNTY.

8 iii. Infrastructure: "Infrastructure", for purposes of this agreement, means the
9 information technology hardware, including routers, firewalls, servers, switches,
10 and access points, including all low voltage cabling and fiber optic cabling needed
11 for inter-connectivity of devices. CONTRACTOR may charge a one (1)-time
12 grand total of \$154,000.00 for Infrastructure, which compensates CONTRACTOR
13 for all Infrastructure costs, including installation of Infrastructure, which is to be
14 charged to the COUNTY no sooner than thirty (30) days after the execution of this
15 Agreement. The Infrastructure costs identified in this Section 5.A.iii include all
16 Infrastructure necessary for the tablets and kiosks to be operational as described
17 within this Agreement, and include costs to interface tablets and kiosks with all
18 Inmate Forms provided by the Fresno County Sheriff, MDF Infrastructure and
19 installation (quantity of 1), IDF Infrastructure and Installation (quantity of 9),
20 Access Points (quantity of 86), Labor, Construction and Cabling Costs. Should
21 CONTRACTOR need to modify the amount of any of the foregoing, or replace any
22 of the foregoing with different hardware or software, in order to cause or allow the
23 Equipment to operate as described within this Agreement, CONTRACTOR shall
24 only do so with the express written consent of COUNTY, or its designee, and for
25 no additional cost to COUNTY. CONTRACTOR will provide any additional and
26 necessary Infrastructure at no cost to COUNTY.

27 iv. Bandwidth: CONTRACTOR will pay the third party vendor for bandwidth and
28 COUNTY will reimburse CONTRACTOR for bandwidth costs, including

1 installation of bandwidth. COUNTY may pay up to \$10,000.00 per year for
2 bandwidth. CONTRACTOR will make every effort to negotiate bandwidth for the
3 lowest possible price.

4 v. Additional Services: COUNTY may pay up to \$20,000.00 per year for Additional
5 Services provided by CONTRACTOR and related to this Agreement, which
6 includes additional costs identified in this Agreement, but only upon the express
7 written consent of COUNTY, through its Sheriff-Coroner or her/his designee.

8 vi. Additional Expenses Due To Missing Or Unaccounted For Equipment: COUNTY
9 may pay up to and including, but not in excess of, \$34,000.00, pursuant to
10 Section 1.C, at the expiration or termination of this Agreement, for additional
11 expenses due to missing or unaccounted for Equipment.

12 vii. Costs Resulting From Purchase of Network Hardware: If at the expiration or
13 termination of the Agreement, COUNTY wishes to purchase network hardware,
14 pursuant to Section 1.C., COUNTY will pay up to and including, but not in excess
15 of, \$34,000.00.

16 B. CONTRACTOR shall submit monthly invoices in triplicate to the County of Fresno
17 Sheriff-Coroner's Office, at 2200 Fresno Street, Fresno, CA 93721, no later than first
18 day of each month. For Infrastructure costs, at such time that all Infrastructure is
19 installed and fully operational and when the first two-hundred-and-fifty (250) tablets, first
20 two-hundred-and-fifty (250) earbuds, six (6) charging carts, and one-hundred-and-eight
21 (108) kiosks, are delivered and fully operational, so as to allow COUNTY to begin
22 offering the tablets and kiosks to the inmates for full and complete use, as described in
23 this Agreement, CONTRACTOR may send COUNTY an invoice for the cost of
24 Infrastructure. COUNTY shall compensate CONTRACTOR within forty-five (45) days of
25 receiving any invoice.

26 C. It is the goal of this Agreement that the CONTRACTOR will charge inmates and the
27 persons they communicate with, or receive communications from, for messaging
28 services on the tablets and kiosks, and that such charges will subsidize all costs to

1 COUNTY. CONTRACTOR will charge inmates for messaging services at rates and
2 according to rules and processes determined by COUNTY and COUNTY will have sole
3 discretion, through its Sheriff-Coroner or her designee, regarding any additional services
4 CONTRACTOR may charge for and the amounts CONTRACTOR may charge for said
5 services. Any amounts recovered by CONTRACTOR, on COUNTY's behalf, will be
6 credited towards amount(s) COUNTY is required to pay, or is indebted to,
7 CONTRACTOR, if any. Should there be no amounts COUNTY is required to pay, or
8 indebted to, CONTRACTOR, CONTRACTOR will and shall refund any excess amounts
9 to COUNTY so that COUNTY may recuperate any and all amounts previously paid by
10 COUNTY as a result of this Agreement. Should CONTRACTOR recover excess
11 charges, above and beyond the amounts that COUNTY owes or is indebted to
12 CONTRACTOR, and in the event COUNTY has recuperated all amounts previously
13 expended on the Agreement, twenty percent (20%) of excess charges will be set aside
14 for COUNTY and the remaining eighty percent (80%) will be kept by CONTRACTOR.
15 Any amounts set aside for COUNTY will be accounted for, reported to COUNTY, and
16 kept as a credit for COUNTY, and at all times COUNTY may, in the discretion of Sheriff-
17 Coroner or her/his designee, use any set aside amounts for purchase of additional
18 services related to this Agreement, for payment of costs, or for payment into the Inmate
19 Welfare Trust.

- 20 D. CONTRACTOR estimates that COUNTY should be able to recoup \$81,000.00 to
21 \$149,693.00 in subsidies, per year, with the overall goal, being to provide the tablet and
22 kiosk service at no or little cost to COUNTY.
- 23 E. During the term of this Agreement, the costs of services performed under this Agreement
24 shall not be in excess of \$821,640.00. In the event this Agreement is renewed for the
25 first optional renewal term as provided in Section 3, the maximum payable by COUNTY
26 to CONTRACTOR under this Agreement will be \$1,032,315.00. In the event this
27 Agreement is renewed for the second optional renewal term as provided in Section 3,
28 the maximum payable by COUNTY to CONTRACTOR under this Agreement will be

1 \$1,248,465.00. It is understood that all expenses incidental to CONTRACTOR'S
2 performance of services under this Agreement shall be borne by CONTRACTOR.

3 F. CONTRACTOR promises, covenants, and represents, that any and all costs specifically
4 identified in this Agreement, or later made as a result of an Agreement made between
5 CONTRACTOR and COUNTY, that result in COUNTY making any payment, include any
6 and all charges, costs and taxes, including any necessary sales taxes, and shipping
7 expenses.

8 G. Any and all costs, attributable to any services or equipment provided by CONTRACTOR,
9 which are not specifically identified in this Agreement, or for which no specific price is
10 identified in this Agreement, shall be provided to COUNTY at no cost to COUNTY,
11 unless COUNTY, through its Sheriff-Coroner or her/his designee, and CONTRACTOR
12 agree otherwise, through an amendment of this Agreement.

13 6. SECTION INTENTIONALLY OMITTED.

14 7. INDEPENDENT CONTRACTOR: In performance of the work, duties and
15 obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and
16 agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and
17 employees will at all times be acting and performing as an independent contractor, and shall act in
18 an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or
19 associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or
20 direct the manner or method by which CONTRACTOR shall perform its work and function.

21 However, COUNTY shall retain the right to administer this Agreement so as to verify that
22 CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

23 CONTRACTOR and COUNTY shall comply with all applicable provisions of
24 law and the rules and regulations, if any, of governmental authorities having jurisdiction over
25 matters the subject thereof.

26 Because of its status as an independent contractor, CONTRACTOR shall have
27 absolutely no right to employment rights and benefits available to COUNTY employees.

28 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its

1 employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely
2 responsible and save COUNTY harmless from all matters relating to payment of
3 CONTRACTOR'S employees, including compliance with Social Security withholding and all other
4 regulations governing such matters. It is acknowledged that during the term of this Agreement,
5 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this
6 Agreement.

7 8. MODIFICATION: Any matters of this Agreement may be modified from time
8 to time by the written consent of all the parties without, in any way, affecting the remainder.

9 9. NON-ASSIGNMENT: Except as specifically and otherwise provided in
10 Section 6, herein, CONTRACTOR may not sell, lease, assign, or otherwise transfer any of its
11 rights or obligations hereunder to any third party without the express written consent of
12 COUNTY, through the Board of Supervisors.

13 10. HOLD HARMLESS:
14 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY'S
15 request, defend the COUNTY, its officers, agents, and employees from any and all costs and
16 expenses (including attorney's fees and costs), damages, liabilities, claims, and losses, and
17 any and all claims, damages, costs, fees, regulatory fines and penalties, and forms of legal
18 action involving Cyber Risks, occurring or resulting to COUNTY in connection with the
19 performance, or failure to perform, by CONTRACTOR, its officers, agents, or employees under
20 this Agreement, and from any and all costs and expenses (including attorney's fees and costs),
21 damages, liabilities, claims, and losses, and any and all claims, damages, costs, fees,
22 regulatory fines and penalties, and forms of legal action involving Cyber Risks, occurring or
23 resulting to any person, firm, or corporation who may be injured or damaged by the
24 performance, or failure to perform, of CONTRACTOR, its officers, agents, or employees under
25 this Agreement.

26 COUNTY agrees to indemnify, save, hold harmless, and at
27 CONTRACTOR'S request, defend the CONTRACTOR, its officers, agents, and employees
28 from any and all costs and expenses (including attorney's fees and costs), damages, liabilities,

1 claims, and losses occurring or resulting to CONTRACTOR in connection with the performance,
2 or failure to perform, by COUNTY, its officers, agents, or employees under this Agreement, and
3 from any and all costs and expenses (including attorney's fees and costs), damages, liabilities,
4 claims, and losses occurring or resulting to any person, firm, or corporation who may be injured
5 or damaged by the performance, or failure to perform, of COUNTY, its officers, agents, or
6 employees under this Agreement.

7 In the event of a claim of alleged infringement of patent rights, copyright, trade
8 secret rights, or intellectual property rights, to the fullest extent permitted by law,
9 CONTRACTOR agrees to and shall indemnify, save, hold harmless, and at COUNTY's request,
10 defend COUNTY, including its officers, officials, agents, and employees from any and all
11 demands, costs and expenses, penalties, attorney's fees and court costs, damages of any
12 nature whatsoever (including, without limitation, injury or damage to or loss or destruction of
13 property), judgments (including, without limitation, amounts paid in settlement and amounts
14 paid to discharge judgments), liabilities, claims and losses, suits, actions or proceedings of
15 every name, kind and description occurring or resulting to COUNTY, out of or in connection
16 with any claim that is based on the infringement (or assertions of infringement) of any of patent
17 rights, copyright, trade secret rights, or intellectual property rights with respect to services,
18 software, or any Equipment provided by CONTRACTOR as part of this Agreement, including,
19 but not limited to, their materials, designs, techniques, processes and information supplied or
20 used by CONTRACTOR or any of CONTRACTOR's subcontractor of any tier in performing or
21 providing any portion of CONTRACTOR's obligations as outlined in this Agreement. If, in any
22 suit, action, proceeding or claim relating to the foregoing, a temporary restraining order or
23 preliminary injunction is granted, CONTRACTOR shall make every reasonable effort to secure
24 the suspension of the injunction or restraining order. If, in any such suit, action, proceeding or
25 claim, the services, software or any Equipment provided by CONTRACTOR or any part,
26 combination or process thereof, is held to constitute an infringement and its use is enjoined,
27 CONTRACTOR shall immediately (a) pay the reasonable direct out-of-pocket costs and
28 expenses to secure a license to use such infringing work, replace the infringing work or modify

1 the same so that it becomes non-infringing, and (b) make every reasonable effort to secure for
 2 the COUNTY a license, at no cost to COUNTY, authorizing COUNTY's continued use of the
 3 infringing work. If CONTRACTOR is unable to secure such license within a reasonable time,
 4 CONTRACTOR, at its own expense and without impairing performance requirements of the
 5 services, software, or any Equipment provided by CONTRACTOR as part of this Agreement,
 6 shall either replace the affected services, software, or any Equipment provided by
 7 CONTRACTOR as part of this Agreement, combination or process thereof, with non-infringing
 8 services, software, or other equipment, or modify the same so that they become non-infringing.

9 The provisions of this Section 10 shall survive the termination of this Agreement.

10 11. INSURANCE

11 Without limiting the COUNTY's right to obtain indemnification from
 12 CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full
 13 force and effect, the following insurance policies or a program of self-insurance, including but not
 14 limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the
 15 term of the Agreement:

16 A. Commercial General Liability

17 Commercial General Liability Insurance with limits of not less than One
 18 Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars
 19 (\$2,000,000). This policy shall be issued on a per occurrence basis. COUNTY may require
 20 specific coverages including completed operations, products liability, contractual liability,
 21 Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed
 22 necessary because of the nature of this contract.

23 B. Automobile Liability

24 Comprehensive Automobile Liability Insurance with limits for bodily injury of
 25 not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred
 26 Thousand Dollars (\$500,000.00) per accident and for property damages of not less than Fifty
 27 Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred
 28 Thousand Dollars (\$500,000.00). Coverage should include non-owned vehicles used in

1 connection with this Agreement.

2 C. Professional Liability

3 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N.,
4 L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less
5 than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00)
6 annual aggregate.

7 D. Worker's Compensation

8 A policy of Worker's Compensation insurance as may be required by the
9 California Labor Code.

10 E. Technology Professional Liability (Errors and Omissions)

11 Technology professional liability (errors and omissions) insurance with limits
12 of not less than Two Million Dollars (\$2,000,000.00) per occurrence. Coverage shall
13 encompass all of the CONTRACTOR's duties and obligations that are the subject of this
14 Agreement. Coverage shall include, but not be limited to, any and all claims, damages, costs,
15 fees, regulatory fines and penalties, or forms of legal action involving Cyber Risks.

16 F. Cyber Liability

17 Cyber liability insurance with limits of not less than Two Million Dollars
18 (\$2,000,000.00) per occurrence. Coverage shall include, but not be limited to, any and all
19 claims, damages, costs, fees, regulatory fines and penalties, or forms of legal action involving
20 Cyber Risks. The cyber liability policy shall be endorsed to cover the full replacement value of,
21 damage to, alteration of, loss of, theft of, ransom of, or destruction of intangible property
22 (including but not limited to information or data) that is in the care, custody, or control of
23 CONTRACTOR.

24 For purposes of the technology professional liability insurance and the cyber
25 liability insurance required under this Agreement, Cyber Risks include, but are not limited to, (i)
26 security breaches, which include disclosure of, whether intentional or unintentional, information
27 provided by COUNTY, information provided by or obtained from any inmate, or personal-
28 identifying information relating to any inmate, to an unauthorized third party; (ii) breach of any of

1 CONTRACTOR's obligations under this Agreement relating to data security, protection,
2 preservation, usage, storage, transmission, and the like; (iii) infringement of intellectual property
3 including, but not limited to, infringement of copyright, trademark, and trade dress; (iv) invasion
4 of privacy, including any release of private information; (v) information theft by any person or
5 entity, whatsoever; (vi) damage to or destruction or alteration of electronic information; (vii)
6 extortion related to CONTRACTOR's obligations under this Agreement regarding electronic
7 information, including information provided by COUNTY, information provided by or obtained
8 from any inmate, or personal-identifying information relating to any inmate; (viii) network
9 security; (ix) data breach response costs, including security breach response costs; (x)
10 regulatory fines and penalties related to CONTRACTOR's obligations under this Agreement
11 regarding electronic information, including information provided by COUNTY, information
12 provided by or obtained from an inmate, or personal-identifying information relating to any
13 inmate; and (xi) credit monitoring expenses.

14 CONTRACTOR shall obtain endorsements to the Commercial General Liability
15 insurance naming the County of Fresno, its officers, agents, and employees, individually and
16 collectively, as additional insured, but only insofar as the operations under this Agreement are
17 concerned. Such coverage for additional insured shall apply as primary insurance and any other
18 insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be
19 excess only and not contributing with insurance provided under CONTRACTOR's policies herein.
20 This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance
21 written notice given to COUNTY.

22 Within Thirty (30) days from the date CONTRACTOR signs and executes this
23 Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated
24 above for all of the foregoing policies, as required herein, to the County of Fresno, Inmate
25 Services Director, 1225 M street, Fresno, CA 93721, stating that such insurance coverages have
26 been obtained and are in full force; that the County of Fresno, its officers, agents and employees
27 will not be responsible for any premiums on the policies; that such Commercial General Liability
28 insurance names the County of Fresno, its officers, agents and employees, individually and

1 collectively, as additional insured, but only insofar as the operations under this Agreement are
2 concerned; that such coverage for additional insured shall apply as primary insurance and any
3 other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees,
4 shall be excess only and not contributing with insurance provided under CONTRACTOR's policies
5 herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30)
6 days advance, written notice given to COUNTY.

7 In the event CONTRACTOR fails to keep in effect at all times insurance
8 coverage as herein provided, the COUNTY may, in addition to other remedies it may have,
9 suspend or terminate this Agreement upon the occurrence of such event, or purchase such
10 insurance coverage, and charge the cost thereof to CONTRACTOR. Such charges may be offset
11 by any amounts owed by COUNTY to CONTRACTOR under this Agreement.

12 All policies shall be issued by admitted insurers licensed to do business in the
13 State of California, and such insurance shall be purchased from companies possessing a current
14 A.M. Best, Inc. rating of A FSC VII or better.

15 12. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during
16 business hours, and as often as the COUNTY may deem necessary, make available to the
17 COUNTY for examination all of its records and data with respect to the matters covered by this
18 Agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to
19 audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance
20 with the terms of this Agreement.

21 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR
22 shall be subject to the examination and audit of the Auditor General for a period of three (3) years
23 after final payment under contract (Government Code Section 8546.7).

24 13. TITLE

25 In the event CONTRACTOR requests, and to the extent CONTRACTOR
26 has provided services through software and applications materials licensed to COUNTY by
27 CONTRACTOR, COUNTY shall promptly return the software and application materials to
28 CONTRACTOR upon termination of this Agreement, except as provided in Section 1.C.

1 COUNTY shall not infringe or misappropriate any intellectual property delivered pursuant to this
2 Agreement.

3 Any copyrightable or patentable work created solely by CONTRACTOR
4 under this Agreement shall be deemed owned by CONTRACTOR. To the extent services
5 under this Agreement involve the development of previously patented inventions or copyrighted
6 software, then upon expiration or termination of this Agreement, title to, ownership of, and all
7 applicable patents, copyrights and trade secrets in the products developed or improved under
8 this Agreement, shall remain with CONTRACTOR or any other person or entity if such person
9 previously owned or held such patents, copyrights, and trade secrets, and such persons shall
10 retain complete rights to market such product.

11 14. CONFIDENTIALITY:

12 Any Correspondence, records, or other written information (hereinafter "Records" for
13 purposes of this Section 14) provided by CONTRACTOR to the COUNTY concerning
14 CONTRACTOR's business operations (e.g. financial statements, financial information, technical
15 information, or other information that in anyway relates to CONTRACTOR's business) which
16 are the subject of a request for access thereto by a member of the public would qualify as a
17 request under the Public Records Act will be handled as follows:

18 i. If the COUNTY receives any Records from the CONTRACTOR that are not
19 labeled as confidential or exempt from disclosure to members of the public, such records shall
20 not be exempt from disclosure to members of the public.

21 ii. If the COUNTY receives any Records from the CONTRACTOR that are
22 labeled as confidential or exempt from disclosure to members of the public, the COUNTY, as
23 applicable, will promptly notify the CONTRACTOR, in writing, of any request for access to such
24 Record or Records by any member of the public. CONTRACTOR shall promptly respond to the
25 COUNTY, as applicable, in writing (but in no event more than forty-eight (48) hours from the
26 time and date that the COUNTY notifies the CONTRACTOR of the request), by informing the
27 COUNTY, as applicable, as to whether the CONTRACTOR is agreeable or objects to the
28 release of such Record or Records to the public. If the CONTRACTOR objects to such release,

1 such notice of the CONTRACTOR shall give the COUNTY, as applicable, the specific reason(s)
2 why the CONTRACTOR believes such Record or Records should not be released, citing the
3 specific facts and legal authority supporting its position. If the CONTRACTOR fails to timely
4 object to the release of the Record or Records to the member of the public requesting access
5 to such Record or Records, the CONTRACTOR shall be deemed to have waived any and all
6 rights, if any, to claim that the Record or Records are confidential or exempt from disclosure to
7 members of the public.

8 iii. If the County, as applicable, after considering such reason(s) given by the
9 CONTRACTOR, chooses to release or not to release the Record or Records, the COUNTY, as
10 applicable, may, in its sole discretion, release or not release such records.

11 iv. If the COUNTY, as applicable, chooses not to release such Record or
12 Records, CONTRACTOR shall, in addition to any other indemnification and defense provisions
13 in this Agreement, protect, indemnify and hold harmless the COUNTY, its elective and
14 appointive boards, officers, agents and employees, from any and all claims, suits, liabilities,
15 expenses, costs, damages, or judgments of any nature, including attorney fees arising out of,
16 or in any way connected with the COUNTY's failure or refusal to release such records to such
17 member of the public. In addition, if the member of the public requesting access to the Record
18 or Records pursues legal action against the COUNTY in order to obtain access to the Record
19 or Records, the CONTRACTOR shall, at its own expenses, appear through legal counsel in
20 such court action by joining in the defense of the COUNTY.

21 v. It is understood that CONTRACTOR's labeling of or requesting the COUNTY
22 to treat any Record or Records as confidential or exempt from disclosure to any member of the
23 public shall not, in and of itself, deem such Records or Record as being confidential or exempt
24 from disclosure to members of the public.

25 15. CONFIDENTIAL LAWS AND REGULATIONS:

26 All services performed by CONTRACTOR under this Agreement shall be in strict
27 conformance with all applicable Federal, State of California and/or local laws and regulations
28 relating to confidentiality.

1 16. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT:
2

3 A. The Parties to this Agreement shall be in strict conformance with all
4 applicable Federal and State of California laws and regulations, including but not limited to
5 Sections 5328, 10850, and 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1 and
6 431.300 *et seq.* of Title 42, Code of Federal Regulations (CFR), Section 56 *et seq.* of the
7 California Civil Code, Sections 11977 and 11812 of Title 22 of the California Code of Regulations,
8 and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to
9 Section 1320 D *et seq.* of Title 42, United States Code (USC) and its implementing regulations,
10 including, but not limited to Title 45, CFR, Sections 142, 160, 162, and 164, and The Health
11 Information Technology for Economic and Clinical Health Act (HITECH) regarding the
12 confidentiality and security of patient information.

13 B. Except as otherwise provided in this Agreement, CONTRACTOR, as a
14 Business Associate of COUNTY, may use or disclose Protected Health Information (PHI) to
15 perform functions, activities or services for or on behalf of COUNTY, as specified in this
16 Agreement, provided that such use or disclosure shall not violate the HIPAA, USC 1320d *et seq.*
17 The uses and disclosures of PHI may not be more expansive than those applicable to COUNTY,
18 as the "Covered Entity" under the HIPAA Privacy Rule (45 CFR 164.500 *et seq.*), except as
19 authorized for management, administrative or legal responsibilities of the Business Associate.

20 C. CONTRACTOR shall protect, from unauthorized access, use, or disclosure
21 of names and other identifying information concerning persons receiving services pursuant to this
22 Agreement, except where permitted in order to carry out data aggregation purposes for health
23 care operations [45 CFR Sections 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)].
24 This pertains to any and all persons receiving services pursuant to a COUNTY funded program.
25 CONTRACTOR shall not use such identifying information for any purpose other than carrying out
26 CONTRACTOR's obligations under this Agreement.

27 D. CONTRACTOR shall not disclose any such identifying information to any
28 person or entity, except as otherwise specifically permitted by this Agreement, authorized by law,

1 or authorized by the client/patient.

2 E. For purposes of this Section 16, identifying information shall include, but
3 not be limited to name, identifying number, symbol, or other identifying particular assigned to the
4 individual, such as finger or voice print, or a photograph.

5 F. CONTRACTOR shall provide access, at the request of COUNTY, and in
6 the time and manner designated by COUNTY, to PHI in a designated record set (as defined in 45
7 CFR Section 164.501), to an individual or to COUNTY in order to meet the requirements of 45
8 CFR Section 164.524 regarding access by individuals to their PHI.

9 G. CONTRACTOR shall make any amendment(s) to PHI in a designated
10 record set at the request of COUNTY, and in the time and manner designated by COUNTY in
11 accordance with 45 CFR Section 164.526.

12 H. CONTRACTOR shall provide to COUNTY or to an individual, in a time and
13 manner designated by COUNTY, information collected in accordance with 45 CFR Section
14 164.528, to permit COUNTY to respond to a request by the individual for an accounting of
15 disclosures of PHI in accordance with 45 CFR Section 164.528.

16 I. CONTRACTOR shall report to COUNTY, in writing, any knowledge or
17 reasonable belief that there has been unauthorized access, viewing, use, disclosure, or breach of
18 Protected Information not permitted by this Agreement, and any breach of unsecured PHI of which
19 it becomes aware, immediately and without reasonable delay and in no case later than two (2)
20 business days of discovery. Immediate notification shall be made to COUNTY's Information
21 Security Officer and Privacy Officer, within two (2) business days of discovery. The notification
22 shall include, to the extent possible, the identification of each individual whose unsecured PHI has
23 been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or breached.
24 CONTRACTOR shall take prompt corrective action to cure any deficiencies and any action
25 pertaining to such unauthorized disclosure required by applicable Federal and State Laws and
26 regulations. CONTRACTOR shall investigate such breach and is responsible for all notifications
27 required by law and regulation or deemed necessary by COUNTY and shall provide a written
28 report of the investigation and reporting required to COUNTY's Information Security Officer and

1 Privacy Officer. This written investigation and description of any reporting necessary shall be
 2 postmarked within the thirty (30) working days of the discovery of the breach to the addresses
 3 below:

4
 5 County of Fresno
 6 Dept. of Public Health Privacy
 7 Officer
 8 (559) 600-3200
 9 1221 Fulton Mall
 10 Fresno, CA 93721

County of Fresno
 Information Technology Services
 Information Security Officer;
 (559) 600-5800
 2048 N. Fine Ave
 Fresno, CA 93727

11 J. CONTRACTOR shall make its internal practices, books, and records
 12 relating to the use and disclosure of PHI received from COUNTY, or created or received by the
 13 CONTRACTOR on behalf of COUNTY, available to the United States Department of Health and
 14 Human Services upon demand.

15 K. Safeguards

16 CONTRACTOR shall implement administrative, physical, and technical safeguards as
 17 required by 45 CFR 164.308, 164.310, and 164.312 that reasonably and appropriately protect
 18 the confidentiality, integrity, and availability of PHI, including electronic PHI, that it creates,
 19 receives, maintains or transmits on behalf of COUNTY; and to prevent access, use or
 20 disclosure of PHI other than as provided for by this Agreement. CONTRACTOR shall develop
 21 and maintain a written information privacy and security program that includes administrative,
 22 technical and physical safeguards appropriate to the size and complexity of CONTRACTOR's
 23 operations and the nature and scope of its activities. Upon COUNTY's request,
 24 CONTRACTOR shall provide COUNTY with information concerning such safeguards.

25 CONTRACTOR shall implement strong access controls and other security safeguards
 26 and precautions in order to restrict logical and physical access to confidential, personal (e.g.,
 27 PHI) or sensitive data to authorized users only. Said safeguards and precautions shall include
 28 the following administrative and technical password controls for all systems used to process or
 store confidential, personal, or sensitive data:

///

1 i. Passwords must not be:

- 2 a. Shared or written down where they are accessible or recognizable by
3 anyone else; such as taped to computer screens, stored under
4 keyboards, or visible in a work area;
5 b. A dictionary word; or
6 c. Stored in clear text

7 ii. Passwords must be:

- 8 a. Eight (8) characters or more in length;
9 b. Changed every ninety (90) days
10 c. Changed immediately if revealed or compromised; and
11 d. Composed of characters from at least three of the following four groups
12 from the standard keyboard:
13 • Upper case letters (A-Z);
14 • Lowercase letters (a-z);
15 • Arabic numerals (0 through 9); and
16 • Non-alphanumeric characters (punctuation symbols).

17 CONTRACTOR shall implement the following security controls on each workstation or
18 portable computing device (e.g., the Equipment, tablets, kiosks, etc.) containing confidential,
19 personal, or sensitive data:

- 20 1. Network-based firewall and/or personal firewall;
21 2. Continuously updated anti-virus software; and
22 3. Patch management process including installation of all operating system/software
23 vendor security patches.

24 CONTRACTOR shall utilize a commercial encryption solution that has received FIPS
25 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable
26 electronic media (including, but not limited to, tablets, compact disks and thumb drives) and on
27 portable computing devices (including, but not limited to, tablets, laptop and notebook
28 computers).

1 CONTRACTOR shall not transmit confidential, personal, or sensitive data via e-mail or
2 other internet transport protocol unless the data is encrypted by a solution that has been
3 validated by the National Institute of Standards and Technology (NIST) as conforming to the
4 Advanced Encryption Standard (AES) Algorithm.

5 L. Mitigation of Harmful Effects

6 CONTRACTOR shall mitigate, to the extent practicable, any harmful effect that is known
7 to CONTRACTOR of an unauthorized access, viewing, use, disclosure, or breach of PHI by
8 CONTRACTOR or its subcontractors in violation of the requirements of these provisions.

9 M. Contractor's Subcontractors

10 CONTRACTOR shall ensure that any of its contractors, including subcontractors, if
11 applicable, to whom CONTRACTOR provides PHI received from or created or received by
12 CONTRACTOR on behalf of COUNTY, agree to the same restrictions and conditions that apply
13 to CONTRACTOR with respect to such PHI; and to incorporate, when applicable, the relevant
14 provisions of these provisions into each subcontract or sub-award to such agents or
15 subcontractors.

16 N. Employee Training and Discipline

17 CONTRACTOR shall train and use reasonable measures to ensure compliance with the
18 requirements of these provisions by employees who assist in the performance of functions or
19 activities on behalf of COUNTY under this Agreement and use or disclose PHI and discipline
20 such employees who intentionally violate any provisions of these provisions, including
21 termination of employment.

22 O. Termination for Cause

23 Upon COUNTY's knowledge of a material breach of these provisions by
24 CONTRACTOR, COUNTY shall either:

- 25 i. Provide an opportunity for CONTRACTOR to cure the breach or end the violation and
26 terminate this Agreement if CONTRACTOR does not cure the breach or end the
27 violation within the time specified by COUNTY; or
28

- 1 ii. Immediately terminate this Agreement if CONTRACTOR has breached a material
2 term of these provisions and cure is not possible.

3 If neither cure nor termination is feasible, the COUNTY Privacy Officer shall report
4 the violation to the Secretary of the U.S. Department of Health and Human Services.

5 P. Judicial or Administrative Proceedings

6 COUNTY may terminate this Agreement in accordance with the terms and conditions of
7 this Agreement as written hereinabove, if: (1) CONTRACTOR is found guilty in a criminal
8 proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) a
9 finding or stipulation that the CONTRACTOR has violated a privacy or security standard or
10 requirement of the HITECH Act, HIPAA; or other security or privacy laws in an administrative or
11 civil proceeding in which the CONTRACTOR is a party.

12 Q. Effect of Termination

13 Notwithstanding any other Section in this Agreement, upon termination or expiration of
14 this Agreement for any reason, CONTRACTOR shall return or destroy all PHI received from
15 COUNTY (or created or received by CONTRACTOR on behalf of COUNTY) that
16 CONTRACTOR still maintains in any form, and shall retain no copies of such PHI. If return or
17 destruction of PHI is not feasible, it shall continue to extend the protections of these provisions
18 to such information, and limit further use of such PHI to those purposes that make the return or
19 destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of
20 subcontractors or agents, if applicable, of CONTRACTOR. If CONTRACTOR destroys the PHI
21 data, a certification of date and time of destruction shall be provided to the COUNTY by
22 CONTRACTOR.

23 R. Disclaimer

24 COUNTY makes no warranty or representation that compliance by CONTRACTOR with
25 these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be adequate or
26 satisfactory for CONTRACTOR's own purposes or that any information in CONTRACTOR's
27 possession or control, or transmitted or received by CONTRACTOR, is or will be secure from
28

1 unauthorized access, viewing, use, disclosure, or breach. CONTRACTOR is solely responsible
2 for all decisions made by CONTRACTOR regarding the safeguarding of PHI.

3 S. Amendment

4 The parties acknowledge that Federal and State laws relating to electronic data security
5 and privacy are rapidly evolving and that amendment of these provisions may be required to
6 provide for procedures to ensure compliance with such developments. The parties specifically
7 agree to take such action as is necessary to amend this agreement in order to implement the
8 standards and requirements of HIPAA, the HIPAA regulations, the HITECH Act and other
9 applicable laws relating to the security or privacy of PHI. COUNTY may terminate this
10 Agreement upon thirty (30) days written notice in the event that CONTRACTOR does not enter
11 into an amendment providing assurances regarding the safeguarding of PHI that COUNTY in
12 its sole discretion deems sufficient to satisfy the standards and requirements of HIPAA, the
13 HIPAA regulations and the HITECH Act.

14 T. No Third-Party Beneficiaries

15 Nothing express or implied in the terms and conditions of these provisions is intended to
16 confer, nor shall anything herein confer, upon any person other than COUNTY or
17 CONTRACTOR and their respective successors or assignees, any rights, remedies, obligations
18 or liabilities whatsoever

19 U. Interpretation

20 The terms and conditions in these provisions shall be interpreted as broadly as
21 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State
22 laws. The parties agree that any ambiguity in the terms and conditions of these provisions shall
23 be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA
24 regulations.

25 V. Regulatory References

26 A reference in the terms and conditions of these provisions to a section in the HIPAA
27 regulations means the section as in effect or as amended.

28

1 W. Survival

2 The respective rights and obligations of CONTRACTOR as stated in this Section shall
3 survive the termination or expiration of this Agreement.

4 X. No Waiver of Obligations

5 No change, waiver or discharge of any liability or obligation hereunder on any one or
6 more occasions shall be deemed a waiver of performance of any continuing or other obligation,
7 or shall prohibit enforcement of any obligation on any other occasion.

8 17. NOTICES: The persons and their addresses having authority to give and
9 receive notices under this Agreement include the following:

10	<u>COUNTY</u>	<u>CONTRACTOR</u>
11	COUNTY OF FRESNO	Edovo
12	Sheriff-Coroner's Office	Brian Hill, CEO
13	EMAIL:	EMAIL: [brian@edovo.com]
14	[michelle.lefors@fresnosheriff.org]	
15	2200 Fresno Street	215 W Superior St. Suite 600
16	Fresno, CA 93721	Chicago, Illinois 60654

17 All notices between the COUNTY and CONTRACTOR provided for or
18 permitted under this Agreement must be in writing and delivered either by personal service, by
19 first-class United States mail, by an overnight commercial courier service, or by secure e-mail
20 transmission. A notice delivered by personal service is effective upon service to the recipient. A
21 notice delivered by first-class United States mail is effective three COUNTY business days after
22 deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered
23 by an overnight commercial courier service is effective one COUNTY business day after deposit
24 with the overnight commercial courier service, delivery fees prepaid, with delivery instructions
25 given for next day delivery, addressed to the recipient. A notice delivered by secure e-mail is
26 effective when transmission to the recipient is completed (but, if such transmission is completed
27 outside of COUNTY business hours, then such delivery shall be deemed to be effective at the
28 next beginning of a COUNTY business day), provided that the sender maintains a read-receipt of

1 the completed transmission. For all claims arising out of or related to this Agreement, nothing in
2 this section establishes, waives, or modifies any claims presentation requirements or procedures
3 provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of
4 the Government Code, beginning with section 810).

5 18. GOVERNING LAW: Venue for any action arising out of or related to this
6 Agreement shall only be in Fresno County, California.

7 The rights and obligations of the parties and all interpretation and performance
8 of this Agreement shall be governed in all respects by the laws of the State of California.

9 19. COMPLIANCE WITH THE LAW

10 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the
11 rules and regulations, if any, of governmental authorities having jurisdiction over matters the
12 subject thereof. CONTRACTOR acknowledges public funds are used for payments made by
13 COUNTY under this AGREEMENT and for "public works" projects. Accordingly, if any work is
14 undertaken under this Agreement by or on behalf of COUNTY, CONTRACTOR shall comply
15 with, and shall ensure compliance by all contractors and subcontractors with, all applicable laws
16 and regulations, including the payment of prevailing wages pursuant to Section 1770 et. seq. of
17 the Labor Code.

18 20. CONSISTENT FEDERAL INCOME TAX POSITION

19 CONTRACTOR acknowledges that the Jail Facilities have been acquired, constructed,
20 or improved using net proceeds of governmental tax-exempt bonds (collectively, "Bond-
21 Financed Facilities"). CONTRACTOR agrees that, with respect to this Agreement and the Bond
22 Financed Facilities, CONTRACTOR is not entitled to take, and shall not take, any position (also
23 known as a "tax position") with the Internal Revenue Service ("IRS") that is inconsistent with
24 being a "service provider" to the COUNTY, as a "qualified user" with respect to the Bond-
25 Financed Facilities, as "managed property," as all of those terms are used in Internal Revenue
26 Service Revenue Procedure 2017-13, and to that end, for example, and not as a limitation,
27 CONTRACTOR agrees that CONTRACTOR shall not, in connection with any federal income
28 tax return that it files with the IRS or any other statement or information that it provides to the

1 IRS, (a) claim ownership, or that it is a lessee, of any portion of the Bond Financed Facilities, or
2 (b) claim any depreciation or amortization deduction, investment tax credit, or deduction for any
3 payment as rent with respect to the Bond-Financed Facilities.

4 21. POSSESSORY INTEREST TAX

5 In the event it is ever determined that CONTRACTOR has a possessory interest through
6 the covenants, promises, representations, or services made in or provided as a result of this
7 Agreement, CONTRACTOR agrees to pay any possessory interest tax which may be levied. In
8 this respect, CONTRACTOR understands that CONTRACTOR's services are being provided
9 on property owned by a tax exempt public agency, that CONTRACTOR may be subject to
10 property taxation and that CONTRACTOR (the person in whom any potential possessory
11 interest may vest) may be subject to the payment of property taxes levied on any such interest.

12 22. FORCE MAJEURE

13 Notwithstanding anything stated herein to the contrary, neither the
14 CONTRACTOR nor the COUNTY shall be responsible for performance of its obligations under
15 this Agreement, to the extent that, or while, such Party's performance is prevented, hindered, or
16 delayed by fire, flood, earthquake, elements of nature, acts of God, acts of war (whether
17 declared or undeclared), terrorism (whether actual or threatened), riots, strikes, rebellion,
18 revolutions, or acts, omissions, circumstances, or events beyond such Party's reasonable
19 control, regardless of whether foreseen or unforeseen, including acts, omissions,
20 circumstances, or events caused by third parties including but not limited to a Party's
21 Contractors (individually or collectively, "Force Majeure"); provided, however, that Force
22 Majeure will in no event include acts, omissions, circumstances, or events caused by a third
23 party that is under contract with a Party where and to the extent that the acts, omissions,
24 circumstances, or events caused by the third party could have been avoided by commercially-
25 reasonable, timely, and diligent management or administration of the third party's performance
26 of its contractual rights, obligations, and duties under its contract by the Party to such contract.

27 For purposes of this Section 22, a "third party" shall not include any officer, agent,
28 employee, department, agency, board, commission, legislative, judicial, or administrative

1 branch, department, or authority of the State, or the COUNTY, as applicable.

2 During a Force Majeure, the Party affected by the Force Majeure shall give to
3 each other Party prompt written notice of the Force Majeure with the reasons relating thereto.
4 Upon giving such notice of Force Majeure, the obligations of the Party giving such notice of
5 Force Majeure, so far as they are affected by the Force Majeure, shall be suspended during,
6 but no longer than, the continuance of the Force Majeure, except for a reasonable time
7 thereafter required to resume performance. The Party whose performance is excused due to
8 the occurrence of a Force Majeure, during such period, shall keep the other Party reasonably
9 informed of the continuance of the Force Majeure.

10 23. DISCLOSURE OF SELF-DEALING TRANSACTIONS

11 This provision is only applicable if the CONTRACTOR is operating as a
12 corporation (a for-profit or non-profit corporation) or if during the term of the agreement, the
13 CONTRACTOR changes its status to operate as a corporation.

14 Members of the CONTRACTOR's Board of Directors shall disclose any self-
15 dealing transactions that they are a party to while CONTRACTOR is providing goods or
16 performing services under this agreement. A self-dealing transaction shall mean a transaction
17 to which the CONTRACTOR is a party and in which one or more of its directors has a material
18 financial interest. Members of the Board of Directors shall disclose any self-dealing
19 transactions that they are a party to by completing and signing a Self-Dealing Transaction
20 Disclosure Form, attached hereto as Exhibit D and incorporated herein by reference, and
21 submitting it to the COUNTY prior to commencing with the self-dealing transaction or
22 immediately thereafter.

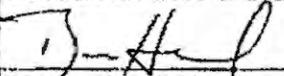
23 24. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement
24 between the CONTRACTOR and COUNTY with respect to the subject matter hereof and
25 supersedes all previous Agreement negotiations, proposals, commitments, writings,
26 advertisements, publications, and understanding of any nature whatsoever unless expressly
27 included in this Agreement. Certain documents, i.e. Exhibits "A", "B", "C", and "D" constitute part
28 of the Agreement, but only to the extent they are incorporated into this Agreement. In the event

1 of any inconsistency in interpreting the documents which constitute this Agreement, the
2 inconsistency shall be resolved by giving precedence in the following order of priority: (1) the
3 text of this Agreement (excluding Exhibit "A", Exhibit "B", Exhibit "C", and Exhibit "D"); (2)
4 Exhibit "A," the COUNTY'S Request for Quotation/Proposal No. 17-039, which includes
5 "Addendum Number: One (1)"; (3) Exhibit "B", Edovo Service Levels; (4) Exhibit "C", Tab XI (i)
6 (Reports), "EDOVO CONTENT TABLE"; and (5) Exhibit "D".
7

8 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first
9 hereinabove written.

11 **CONTRACTOR: Jail Education
Solutions Inc. d/b/a Edovo**

COUNTY OF FRESNO

12 
13 _____
(Authorized Signature)


14 _____
Sal Quintero, Chairperson of the
Board of Supervisors of the County of
Fresno

15 BRIAN Hill, CEO
Print Name & Title

16 215 W. Superior St. Ste 600

17 Chicago, IL 60654
18 Mailing Address

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

24 By: Susan Bishop
Deputy

25 **FOR ACCOUNTING USE ONLY:**

26 ORG No.:
27 Account No.:
28 Requisition No.: