

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**by and between**

**PAETEC SOFTWARE CORP. (“Assignor”)**

**And**

**CALERO SOFTWARE LLC. (“ASSIGNEE”)**

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment”) is made and entered as of June 2, 2015, 2013 (the “Assignment Effective Date”), by and between Paetec Software Corp (“Assignor”), and Calero Software LLC. (“Assignee”).

### RECITALS

A. COUNTY OF MONTEREY (“County”) and Assignor, Paetec Software Corp., entered into a Professional Services Agreement effective as of April 1, 2012. Hereinafter the original Professional Services Agreement shall be referred to as the “Agreement.”

B. Assignor now wishes to assign to Assignee, Calero Software LLC. (“Assignee”), all of its rights, title and interest in and to, and all of its obligations under, the Agreement, to Assignee, and Assignee desires to accept such assignment and to assume such obligations.

### AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained in this Assignment and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignment. Effective as of Assignment Effective Date, Assignor hereby assigns to Assignee all of its right, title, interest in and to, and all of its terms, covenants, conditions and obligations under, the Agreement.
2. Assumption. Effective as of Assignment Effective Date, Assignee hereby accepts the assignment set forth in Section 1 above and expressly assumes and agrees to keep, perform and fulfill, from and after the Assignment Effective Date, all of the terms, covenants, conditions and obligations required to be kept, performed and fulfilled by Assignor under the Agreement.
3. Successors and Assigns. This Assignment shall be binding on and inure to the benefit of Assignor and Assignee and their respective successors and assigns.
4. Third Party Beneficiaries. Except as expressly provided in this Section, no person other than the parties hereto shall have any right, benefit or obligation under this Assignment as a third-party beneficiary or otherwise.
5. Indemnification. CALERO SOFTWARE LLC. hereby assumes and undertakes the indemnification obligations set forth in the parties’ agreement.
6. Insurance. Calero Software LLC. agrees to assume the insurance requirements set forth in the Agreement; and it will provide the County with a letter evidencing the required insurance(s).

7. Miscellaneous.

(i) Headings. The headings in this Assignment are for convenience of reference only and are not part of the substance hereof.

(ii) Benefit. This Assignment shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and, if applicable, heirs and administrators.

(iii) Counterparts. This Assignment may be executed in multiple originals and by counterpart.

(iv) Governing Law. This Assignment shall be construed under the laws of the State of California.


(v) Amendments. No alteration, amendment or modification hereof shall be valid, unless executed by an instrument in writing by the parties hereto with the same formality as this Assignment.

(vi) Further Assignments. Nothing in this Assignment shall imply any right to make further assignments of the Agreement other than in accordance with the Agreement.


*[signature page follows]*

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of \_\_\_\_\_, 2013.

**ASSIGNOR: PAETEC SOFTWARE CORP.**

  
By: David A. Winters  
Its: Chief Financial Officer  
Tax ID#: 16-1384745


**ASSIGNEE: CALERO SOFTWARE LLC.**

  
By: David A. Winters  
Its: Chief Financial Officer  
Tax ID#: 46-4085812

**ACKNOWLEDGEMENT AND CONSENT**

COUNTY OF MONTEREY hereby consents to the foregoing assignment and assumption.

**COUNTY OF MONTEREY**

By:   
Dianah Neff, Director of Information Technology

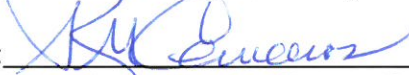
Date: 6/2/2015

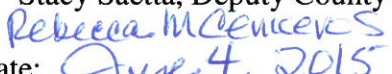
Approved as to Fiscal Provisions:

  
Mike Derr, Contracts/Purchasing Officer


Date: 6-9-15

**APPROVED AS TO LEGAL FORM:  
CHARLES J. MCKEE, County Counsel**

By:   
Stacy Saetta, Deputy County Counsel

  
Rebecca McConner  
Date: June 4, 2015

Reviewed as to fiscal provisions

  
Auditor-Controller  
County of Monterey 6-5-15



AMENDMENT NO. 1 TO AGREEMENT BETWEEN  
THE COUNTY OF MONTEREY AND CALERO LLC.

WHEREAS, Paetec Software Corporation, a subsidiary of Windstream Corporation (Paetec), , and the County OF Monterey (County)” previously entered into an agreement, No. A-10088 ("Agreement"), dated March 27, 2012, for the provision of Pinnacle Telemangement Software, including maintenance/ support and database modifications; and

WHEREAS, the, on <sup>June 2, 2015</sup> ~~date~~, with the consent of County, Paetec assigned its rights and obligations under the Agreement to Calero, LLC (Contractor);

WHEREAS, the County Board Supervisors authorized the Agreement by order, dated March 27, 2012, including authorization for the Contracts/Purchasing Officer to sign future renewals to the Agreement with the same liability and indemnification provisions as recommended by the Director of Information Technology; and

WHEREAS the Agreement expires on March 31, 2015; and

WHEREAS, County and Contractor wish to amend the Agreement, extending the term by one year from April 1, 2015 through March 31, 2016, and increasing the existing contract amount of \$68,644 by \$17,906; and

NOW THEREFORE,

County and Contractor agree as follows:

1. Section 3, “Term of Agreement,” is amended to state, “The term of this Agreement is from April 1, 2012 to March 31, 2016, unless sooner terminated pursuant to the terms of this Agreement.”

2. Section 2, “Payments By County” is amended to read as follows:

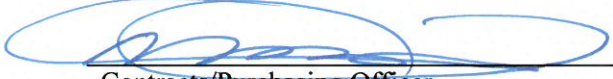
"The total amount payable by County to Contractor under this Agreement shall not exceed \$86,550."

3. Section 4, “Additional Provisions/Exhibits”: Exhibit A shall be replaced with Exhibit A-1.

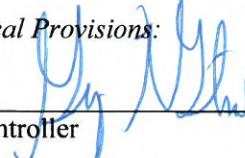
A copy of this Amendment No.1 shall be attached to the original Agreement dated March 27, 2012.

IN WITNESS WHEREOF, the parties have executed this AMENDMENT on the day and year written below.

MONTEREY COUNTY

  
Contracts/Purchasing Officer

Dated: 6-9-15

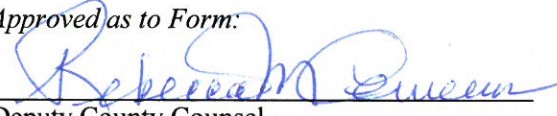
Approved as to Fiscal Provisions:  
  
Deputy Auditor/Controller

Dated: 6-5-15

Approved as to Liability Provisions:


Risk Management

Dated:

Approved as to Form:  
  
Deputy County Counsel

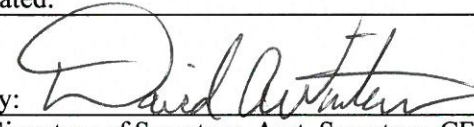
Dated: June 4, 2015

CONTRACTOR

By:   
Signature of Chair, President, or Vice-President

Christopher Jurasek President + CEO  
Printed Name and Title

Dated:

By:   
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)\*

David A. Winters Chief Financial Officer  
Printed Name and Title

Dated: 5/27/15

\*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

**NOTE TO COUNTY STAFF: The revised Exhibit A1 needs to also be attached using the same footer and page numbering as in this Amendment**

**EXHIBIT A-1**  
**SCOPE OF SERVICES/PAYMENT PROVISIONS**

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**I. Scope of Services**

Contractor shall provide maintenance support of the PINNACLE Telemangement Software and provide software modifications and database updates as needed by the County.

- a. The maintenance and support services will be for the following modules within the application:
- Service Manager, Usage, Chargeback, Optimization, Service Desk, and Inventory
  - Infrastructure & E911 (for 4,000 lines, within 2 nodes)
  - Switch Manager for Ericsson MD-110 Resynch

The terms and conditions of the maintenance and support are specified in **Exhibit B-1**, Pinnacle Customer Care Guide incorporated as part of this Agreement.

The yearly Maintenance and Support, costs will be as follows:

<b>Term</b>	<b>Amount</b>
April 1, 2012 – March 31, 2013	\$16,548
April 1, 2013 – March 31, 2014	\$16,879
April 1, 2014 – March 31, 2015	\$17,217
April 1, 2015 – March 31, 2016	\$17,906

- b. The software and database modifications services will be provided by the Contractor on an as needed basis at the rate of \$225/hour billed on an **incurred basis**. The maximum hours of software and database modifications **shall not exceed 80 hours or \$18,000** for the term of the Agreement.
- c. For all software and database modifications as requested by the County, the Contractor shall provide a quote of the estimated hours and defined services, which are hereby incorporated by reference. County shall review and approve any labor prior to the Contractor performing any modifications.
- d. County shall provide access to the vendor to the database as needed to perform the changes.

**II. Term of the Agreement**

The term of this Agreement shall be from April 1, 2012 through March 31, 2016 unless sooner terminated pursuant to the terms of this Agreement.



### III. Payment Provisions

- a. For the services described in this Agreement, the maximum obligation of the County shall be:

<b>Term</b>	<b>Amount</b>
April 1, 2012 – March 31, 2013 (Yearly Rate)	\$16,548
April 1, 2013 – March 31, 2014 (Yearly Rate)	\$16,879
April 1, 2014 – March 31, 2015 (Yearly Rate)	\$17,217
April 2, 2015 – March 31, 2016 (Yearly Rate)	\$17,906
Software & Database Modifications (Hourly Labor as incurred)	\$18,000
<b>Maximum Agreement Amount</b>	<b>\$86,550</b>

In order to be reimbursed for travel costs, Contractor must comply with Monterey County Travel Policy which is available on the County website at <http://www.co.monterey.ca.us/auditor/pdfs/travelpolicy2008.pdf>

- b. Payment conditions as specified in Section 6 of the body of this Agreement shall apply. In the event that the Agreement is terminated prior to completion of the services, the amount paid shall be prorated over the length of the Agreement and should the County determine a reimbursement is owed, the Contractor shall reimburse the County within thirty (30) days of the termination.
- c. Invoices shall be mailed to:

Monterey County Information Technology  
1590 Moffett Street  
Salinas, Ca. 93905  
Attn: Accounts Payable