

## VertiQ Hosted Software (SaaS) Subscription Agreement

This Hosted Software (SaaS) Subscription Agreement, is made and entered into this 14 day of December, 2015 ("Effective Date", by and between VertiQ Software, LLC (hereinafter, "Vendor") with its principal address at 135 E. Main Ave., Suite 150, Morgan Hill, CA 95037 and the Monterey County Coroner (hereinafter, "Customer") with its principal address 1414 Natividad Rd. , Salinas, Ca 93906

### **Background**

Vendor is in the business of providing case management software for coroners and medical examiners. The parties desire that Vendor make such software available to Customer under the terms and conditions of this Agreement, and Customer's access to and use of the software shall conform to these terms and conditions.

In consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **1. Definitions**

As used in this Agreement and in Exhibit A hereto (and any mutually agreed upon modifications thereto), the following terms shall have the following meaning:

"**CME Hosted**" means the case management software for coroners and medical examiners offered via Software as a Service (SaaS), the "Service" provided under the terms of this Agreement, designed as an alternative to a customized CME residing locally on a customer's server.

"**Content**" means the audio and visual information, documents, software, products, and services contained or made available to Customer in the course of using the Service.

"**Customer Data**" means any data, information, or material provided or submitted by Customer to the Service in the course of using the Service.

"**Initial Term**" means the initial period during which Customer is obligated to pay for the Service as defined in Exhibit B attached to this Agreement.

"**Intellectual Property Rights**" means any unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

"**License Administrator(s)**" means those Users designated by Customer who are authorized to purchase licenses and to create User accounts and otherwise administer Customer's use of the Service.

"**License Term(s)**" means the period(s) during which a specified number of Users are licensed to use the Service pursuant to this Agreement.

"**Vendor Technology**" means all of Vendor's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information) made available to Customer by Vendor in providing the Service.

"**Service(s)**" means access under the terms of this Agreement to Vendor's case management software, which is developed, operated, and maintained by Vendor,

accessible via <http://www.vertiq.com> or another designated website or IP address, or ancillary online or offline products and services provided to Customer by Vendor, to which Customer is being granted access under this Agreement, including the Vendor Technology and the Content.

"**User(s)**" means Customer employees, representatives, consultants, contractors, or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by Vendor at Customer's request).

## **2. License Grant and Restrictions**

Vendor hereby grants Customer a *nonexclusive, nontransferable, worldwide right to use the Service, solely for Customer's own internal business purposes, subject to the terms and conditions of this Agreement*, and all rights that are not expressly granted to Customer are hereby reserved by Vendor as outlined in Exhibit A VERTIQ SOFTWARE L.L.C, END-USER LICENSE AGREEMENT.

Customer shall not (i) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.

Customer may use the Service only for Customer's internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws causing any IP address associated with the service provider to be Black Listed; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

## **3. Customer Responsibilities**

Customer is responsible for all activity occurring under Customer's User accounts, including activity initiated by third parties, whether such parties are known or unknown to Customer, with the *sole exception* of activities which are specifically initiated by Vendor or caused by the gross negligence of Vendor and can be verifiably shown as such, and shall abide by all applicable local, state, and federal laws and regulations in connection with Customer's use of the Service, including those related to data privacy, and the transmission of technical or personal data, except to the extent such activity is outside of Customer's reasonable control. Customer shall: (i) notify Vendor immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Vendor immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Customer or

Customer Users; and (iii) not impersonate another Vendor user or provide false identity information to gain access to or use the Service.

**4. Account Information and Data**

Vendor does not own any Customer Data. Customer, not Vendor, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Vendor shall not be responsible or liable for the deletion, correction, destruction, damage, loss, or failure to store any Customer Data, except to the extent that any such deletion, correction, destruction, damage, loss, or failure to store such Customer Data is the result of Vendor's gross negligence in performing services pertaining to Customer Data pursuant to this Agreement. In the event this Agreement is terminated, Vendor will make available to Customer a quality, industry standard, and useable file of the Customer Data within 10 days of termination if Customer so requests at the time of termination for cause. Upon termination for cause, Customer's right to the Services shall cease, but Vendor will make available to Customer a file of the Customer Data within 10 days of termination.

**5. Intellectual Property Ownership**

Vendor (and its licensors, where applicable) shall exclusively own all right, title, and interest, including all related Intellectual Property Rights, in and to the Vendor Technology, the Content, other than Customer's data, and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Customer or any other party relating to the Service. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service, the Vendor Technology, or the Intellectual Property Rights owned by Vendor. Vendor's name, Vendor's logo, and the product names associated with the Service are trademarks of Vendor or third parties, and no right or license is granted to use them as outlined in Exhibit A VERTIQ SOFTWARE L.L.C, END-USER LICENSE AGREEMENT.

**6. Charges and Payment of Fees**

Customer shall pay all fees or charges to Customer's account in accordance with the terms and conditions set forth herein. The initial charges will be equal to the current number of total User licenses requested times the User license fee currently in effect, pursuant to Exhibit B, which is hereby incorporated by reference. Payments must be made annually in advance unless otherwise mutually agreed upon in Exhibit B. Customer is responsible for paying for all User licenses ordered for the year, whether or not such User licenses are actively used. An authorized License Administrator may add licenses by initiating an amendment to Exhibit B, hereto. Added licenses will be subject to the following: (i) added licenses will be coterminous with the preexisting License Term (either Initial Term or renewal term); (ii) the license fee for the added licenses will be the then current, generally applicable license fee; and (iii) licenses added in the middle of a billing month will be charged on a pro-rated basis for that billing month. Vendor reserves the right to modify its fees and charges and to introduce new charges at any time, pursuant to Exhibit B.

**7. Excess Data Storage Fees**

The maximum disk storage space provided to Customer at no additional charge shall be set forth in Exhibit B. If the amount of disk storage required exceeds such maximum disk storage space, Customer will be charged the then-current storage fees. Vendor will

use reasonable efforts to notify Customer when the average storage used per license reaches approximately 90 percent of the maximum; however, any failure by Vendor to so notify Customer shall not affect Customer's responsibility for such additional storage charges. Said notice shall be in addition to a monthly usage report to Customer, which shall provide Customer with its current storage usage and the remaining storage space remaining. Vendor reserves the right to establish or modify its general practices and limits relating to the storage of Customer Data. Vendor shall notify Customer of any changes, limitations, or additions to its general practices and limits relating to the storage of Customer's Data 30 days prior to the effective date of said changes.

#### **8. Billing and Renewal**

Payment for each year of the initial term is as set forth in Exhibit B. Vendor will automatically issue an invoice to Customer each year on the subsequent anniversary or as otherwise mutually agreed upon. Renewal fees will be equal to the then current number of total User licenses times the current license fees at the time of renewal. Other services will be charged on an as-quoted basis. Vendor's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties, excluding only U.S. (federal or state) taxes based solely on Vendor's income. The parties understand and agree that the transaction resulting from this Agreement shall not be subject to sales taxes in California, as further provided in Section 6010.9, 6011, and 6012 of the California Revenue and Taxation Code. If Customer believes its bill is incorrect, Customer must contact Vendor in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

#### **9. Nonpayment and Suspension**

In addition to any other rights granted to Vendor herein, Vendor reserves the right to suspend or terminate this Agreement and Customer's access to the Service if Customer's account becomes delinquent by more than 60 days. Customer will continue to be charged for User fees during any period of suspension. If Customer or Vendor initiates termination of this Agreement, Customer will be obligated to pay the balance due on Customer's account computed in accordance with Section 8 above. Customer agrees that Vendor may bill Customer for such unpaid fees.

Vendor reserves the right to impose a reconnection fee in the event Customer is suspended and thereafter requests access to the Service. Customer agrees and acknowledges that in the event of termination, Vendor will send to Customer a file of Customer Data within 10 days of Customer account being paid in full. Customer will acknowledge in writing that the data received is verified in good order.

#### **10. Termination upon Expiration/Reduction in Number of Licenses**

This Agreement commences on the Effective Date. The Initial Term is described in Exhibit B. Upon the expiration of the Initial Term, this Agreement will automatically renew for successive one-year terms at Vendor's then current fees. Either party may terminate this Agreement or reduce the number of licenses, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least thirty (30) days prior to the expiration of the term. Customer shall be entitled to a pro-rata refund of all payments tendered for any period in excess of the remaining year in which termination notice was served. In the case of free trials, notifications provided through the Service indicating the remaining number of days in the free trial shall constitute notice of termination. In the event this Agreement is terminated, Vendor will send to Customer a

quality, industry standard and useable file of the Customer Data within 10 days of termination. Customer will acknowledge in writing that the data received is verified in good order.

**11. Termination for Cause**

Any breach of Customer's payment obligations or unauthorized use of the Vendor Technology or Service will be deemed a material breach of this Agreement. Vendor, in its sole discretion, may terminate Customer's password, account, or use of the Service if Customer breaches or otherwise fails to comply with this Agreement, provided that Customer fails to cure or otherwise resolve a verified breach within 60 days of receipt of Vendor's notice. Customer agrees and acknowledges that Vendor has no obligation to retain the Customer Data, and may delete such Customer Data, if Customer has not cured within 120 days of notice of such breach; however, in this instance, Vendor agrees to provide Customer with a file of the Customer Data upon Customer's request or within 10 days of such termination.

**12. Representations and Warranties**

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Vendor represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online Vendor help documentation under normal use and circumstances. Customer represents and warrants that Customer has not falsely identified Customer nor provided any false information to gain access to the Service.

**13. Mutual Indemnification**

Customer shall indemnify and hold Vendor, Third Party Server Host, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys, and agents harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by Customer of Customer's representations and warranties; or (iii) a claim arising from the breach by Customer or Customer Users of this Agreement, provided in any such case that Vendor (a) gives written notice of the claim promptly to Customer; (b) gives Customer sole control of the defense and settlement of the claim ; (c) provides to Customer all available information and assistance; and (d) has not compromised or settled such claim.

Vendor shall indemnify and hold Customer and Customer's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys, and agents harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including attorneys' fees and costs) arising out of or in connection with its gross negligence in its performance under this Agreement, or arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by Vendor of its representations or warranties; or (iii) a claim arising from breach of this Agreement by Vendor; provided that Customer (a) promptly gives written notice of the claim to Vendor; (b) gives Vendor sole control of the defense and settlement of the claim (provided that Vendor may not settle or defend any claim unless it unconditionally releases Customer of all liability); (c) provides to Vendor all

available information and assistance; and (d) has not compromised or settled such claim. Vendor shall have no indemnification obligation, and Customer shall indemnify Vendor pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of Customer products, service, hardware or business process(es).

**14. Disclaimer of Warranties**

VENDOR AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. VENDOR AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (B) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (C) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ALL OTHER CONDITIONS, REPRESENTATIONS, AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY VENDOR AND ITS LICENSORS.

**15. Internet and Host Service Delays or Downtime**

VENDOR'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, DOWNTIME, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS, AND THIRD PARTY SERVER HOSTS WHICH WILL BE LOCATED IN THE USA. VENDOR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**16. Limitation of Liability** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR, OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**17. Additional Rights**

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential, or certain other types of damages, so the exclusions set forth above may not apply to Customer.

**18. Local Laws and Export Control**

Notwithstanding anything to the contrary in this Agreement, Vendor agrees not to store Customer's data in any manner whatsoever outside of the continental United States of America. Vendor provides services and uses software and technology that may be subject to U.S. export controls administered by the U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. Customer acknowledges and agrees that the software and Services shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries on which the United States, Switzerland, and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By entering into this Agreement, the parties represent and warrant that they are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National.

The software and Service may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

Vendor and its licensors make no representation that the Service is appropriate or available for use in other locations. Customer is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to U.S., Swiss, or European Union (including European Union Member States) law is prohibited. None of the Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical, or biological weapons, or missile projects, unless specifically authorized by the U.S. government or appropriate European body for such purposes.

**19. Notice**

The parties may give notice by means of an email to the other party's address on record in Vendor's account information or this Agreement, or by written communication sent by first class mail or pre-paid post to the receiving party's address on record in Vendor's account information or this Agreement. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). Customer may give notice to Vendor (such notice shall be deemed given when received by Vendor) at any time by any of the following: letter sent by confirmed facsimile to Vendor at the following fax number: **(408) 782-0850**; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Vendor or Customer at the following address. Vendor will notify Customer of receipt of such notification:

(Vendor)	(Customer)
VertiQ Software LLC	Monterey County Coroner
P. O. Box 787	1414 Natividad Rd.
Morgan Hill, CA 95037	Salinas, CA 93906

**20. Modification to Terms**

Parties have the right to amend as long as both parties consent in writing.

**21. Assignment; Change in Control**

This Agreement may not be assigned by Customer without the prior written approval of Vendor but may be assigned without Customer's consent by Vendor to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Vendor shall provide written notice as provided in Section 19, above, of any proposed or actual assignments or changes in control. Said notice shall include information on the effects, if any, made to Customer's service by the assignment. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of Customer that results or would result in a direct competitor of Vendor directly or indirectly owning or controlling 50 percent or more of Customer shall entitle Vendor to terminate this Agreement for cause immediately upon written notice.

**22. General**

This Agreement shall be governed by California law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims, or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state courts located in Santa Clara County, California.

No text or information set forth on any other purchase order, preprinted form, or document shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Customer and Vendor as a result of this agreement or use of the Service. The failure of any party hereto to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by the other party in writing. This Agreement, together with the specific terms set forth in Exhibits A and B, comprises the entire agreement between Customer and Vendor and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

**23. Time is of the Essence.** Time is of the essence of this Agreement as outlined in the timeline as set forth in Exhibit C

**24. Third Party Beneficiary Rights.** This Agreement is not intended to and does not create any third party beneficiary rights in any person not a party hereto.



BY SIGNING IT IS AGREED THAT THIS AGREEMENT, INCLUDING THE ACCOMPANYING TERMS AND CONDITIONS, ITS EXHIBITS AND ITS EXHIBITS ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES AND THAT THIS AGREEMENT SUPERSEDES ALL PROPOSALS OR PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THE AGREEMENT. THIS AGREEMENT SHALL BECOME EFFECTIVE WHEN IT IS EXECUTED BY YOU AS THE CUSTOMER, AND APPROVED AND EXECUTED BY VERTIQ.

IN WITNESS WHEREOF, the parties have executed this Hosted Software (SaaS) Subscription Agreement on the day and in the year as set forth above.

VENDOR:

BY: \_\_\_\_\_

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



**Anthony Kessel**

Title: \_\_\_\_\_

**COO**

CUSTOMER:

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

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

Title: \_\_\_\_\_

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



Signature: \_\_\_\_\_

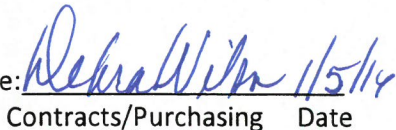
Auditor-Controller

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


Signature: \_\_\_\_\_

Risk Management

Signature: \_\_\_\_\_



Contracts/Purchasing Date

Approved by  
  
Twp County Council

**EXHIBIT A**

Between

Address: VertiQ Software LLC  
135 E. Main Ave., Suite 150  
Morgan Hill, CA 95037

Telephone: (408) 778-0608

Principal Contact: Anthony Kessel, COO

And

Customer Name: Monterey County Coroner ("**You**")  
Address: 1414 Natividad Rd., Salinas, CA 93906  
Telephone:

Principal Contact: Randal Dyke

**VERTIQ'S PRODUCTS ARE COPYRIGHTED AND LICENSED (NOT SOLD). VERTIQ DOES NOT SELL OR TRANSFER TITLE TO THE LICENSED PRODUCT TO YOU. YOUR LICENSE OF THE LICENSED PRODUCT WILL NOT COMMENCE UNTIL AN AUTHORIZED REPRESENTATIVE OF VERTIQ HAS RECEIVED, APPROVED, AND EXECUTED THIS AGREEMENT.**

This Agreement is an exhibit to and supplementary to the Agreement between the parties hereto and consists of the accompanying Terms and Conditions; and which are hereby incorporated by reference.

## TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1. **"You or your"** means the single end-user customer organization signing this Agreement.
- 1.2. **"Product"** is the computer software application for medical examiners, coroners and toxicology laboratories that can be customized by VertiQ for your purposes, and known as 'CME-V3' in object code only, and its accompanying documentation.
- 1.3. **"Material Error"** means any material reported and verifiable failure of the Product to perform substantially in accordance with its system specifications. **"Material"** shall mean an error that prevents use of the Product, or which seriously impacts use of the Product.
- 1.4. **"Error Correction"** means either a modification or addition that, when made or added to the Product, brings the Product into material conformity with its published specifications, or a procedure or routine that, when observed in the regular operation of the Product, avoids the practical adverse effect of such nonconformity.
- 1.5. **"Maintenance Services"** means the maintenance and support services provided by VertiQ pursuant to, and more fully described herein.
- 1.6. **"Upgrades"** shall mean any Error Corrections, Enhancements, software modifications or additions, which are provided at VertiQ's sole discretion.

### 2. SCOPE OF RIGHTS

- 2.1. **Grant of License.** You are granted a non-exclusive right to use the Product (including any Error Corrections, standard enhancements or Upgrades for your use only upon payment of the Fees, specified in Exhibit B, in machine-readable form. This license specifically prohibits redistribution, transfer or resale of the Product.
- 2.2. **Limitations on Use.** You may not use, copy, modify, or distribute the Product (electronically or otherwise), or make any copy, adaptation, transcription, or merge any portion thereof, except as expressly authorized by VertiQ in writing. You may not reverse assemble, reverse compile, or otherwise translate the Product. Your license may not be transferred, leased, assigned, or sub-licensed without VertiQ's prior written consent, which will not be unreasonably withheld. If you copy or modify the Product in any way not expressly authorized by VertiQ, your license is automatically terminated.

### 3. YOUR RESPONSIBILITIES.

- 3.1. **Your Responsibilities.** You are responsible for the following actions:
- 3.1.1. Determining whether the Product will achieve the results you desire;
- 3.1.2. Procuring, installing, and operating computers, operating systems, and networking software to run the Product, and providing the hardware and software configuration requirements identified by VertiQ in Exhibit B;
- 3.1.3. Providing a proper environment and proper utilities for the computers on which the Product operates;
- 3.1.4. Selecting and training your personnel to familiarize them with the operation of the Product;
- 3.1.5 Promptly notifying VertiQ in the event your use of the Product exceeds that set forth in Exhibit B, and paying for any additional fees that result from such excess use.

### 4. ACCEPTANCE.

- 4.1. **Acceptance of Work.** Within thirty (30) business days ("Acceptance Period") of delivery by VertiQ of the Product you will examine and test the Product to determine whether it conforms to its documentation. You will provide

VertiQ with a written notice of acceptance of the Product ("Acceptance") within the Acceptance Period or a statement of Material Errors (the "Statement of Errors"). In the event you do not provide VertiQ with a Statement of Errors within the Acceptance Period the Product shall be deemed to be accepted. Within sixty (60) days of receipt of your Statement of Errors, VertiQ, will correct such Material Errors set forth in the Statement of Errors and redeliver the Product to you. The procedure set forth in this Section will be repeated for one more cycle. In the event you do not accept the Product after VertiQ has resubmitted the corrected Material Errors to you for the second time you, at your sole option, may either terminate this Agreement and receive a full refund within 30 days of invoiced and paid services, or extend additional time to VertiQ to correct the reported Material Errors.

## 5. SERVICES

**5.1. Training.** VertiQ shall provide you with training services as part of the services set forth in Exhibit B.

**5.2. Support.** VertiQ shall provide you access to telephone and electronic mail during normal business hours (8.00 AM to 5.00 PM Pacific Standard Time excluding holidays) that allows you to ask for assistance in how to use the Product, or to report problems in the Product as set forth in Exhibit B. Calls or emails by your designated representative will be directed to 800-222-7947 or [VQTechSupport@vertiq.com](mailto:VQTechSupport@vertiq.com)

**5.3. Customization.** VertiQ offers customization of the Product for specific customer requirements. VertiQ provides such customization services at the rates set forth in Exhibit B.

## 6. DATA.

Should it be required, you acknowledge that data conversion is subject to the likelihood of human and machine errors, omissions, delays, and losses, including inadvertent loss of data or damage to media, that may give rise to loss or damage. VertiQ shall not be liable for any such errors, omissions, delays, or losses, unless caused by its negligence or willful act or omission. VertiQ may not be able to perform its responsibilities under this Agreement unless you adopt reasonable measures to limit the impact of such problems and adopting procedures to ensure the accuracy of input data; examining and confirming results prior to use; and adopting procedures to identify and correct errors and omissions, replace lost or damaged media, and reconstruct data. Both parties hereto are responsible for complying with all local, state, and federal laws pertaining to the use and disclosure of any data.

## 7. FEES

**7.1. Services Fees.** VertiQ will provide you with the services described in Exhibit B, at the Services Fees set forth there under.

**7.2. Expenses.** Services Fees do not include travel and living expenses ("Expenses") incurred by VertiQ when providing you with such services. If time allows, an estimate of the Expenses to be incurred shall be provided to Customer prior to Vendor's incurring said Expenses. Customer shall have the right to object to the proposed or actual Expenses if deemed excessive and shall likewise have the right to propose an alternative amount as fair and full compensation to Vendor prior to any expense being incurred. You agree to pay promptly the Expenses when and as the services are rendered and/or the Expenses are incurred, upon receipt of an invoice from VertiQ. VertiQ agrees to use the same diligence in controlling Expenses as it uses in its own business. VertiQ reserves the right to require prepayment or advance deposit for Services Fees or Expenses, at its discretion.

**7.3. Payment Terms.** You agree to the payment terms as set forth in Exhibit B. All invoices from VertiQ shall be due and payable within thirty (30) days of the date of each invoice, subject to Paragraph 8 of the Agreement.

**7.4. Taxes.** You are responsible for sales or use taxes, and state or local property or excise taxes associated with your licensing, possession, or use of the Product, modifications, or any associated services. The parties understand and agree that, as this agreement concerns the sale and transfer of intangible property, California sales taxes do not apply to this transaction. In the event this understanding is incorrect, Customer shall be responsible for the payment of any assessed sales taxes.

## 8. CONFIDENTIAL INFORMATION

**8.1 “Confidential Information”** of a party (the “**Disclosing Party**”) means any and all technical and non-technical information (including, but not limited to, patent, copyright, trade secret, and proprietary information) related to the current, future and proposed business, products and services of the Disclosing Party, Disclosing Party’s suppliers and customers, and information concerning development, design details and specifications, customer lists, business forecasts, sales, and marketing plans and any other similar information or data which is disclosed to the other party (“**Receiving Party**”). “Confidential Information” also includes proprietary or confidential information of any third party that may disclose such information to the Disclosing Party or the Receiving Party in the course of the Disclosing Party’s business. Confidential Information does not include information, technical data or know-how which is required by law to be disclosed or is subject to Customer’s public records laws, or which: (i) is in the Receiving Party’s possession at the time of disclosure as shown by the Receiving Party’s files and records immediately prior to the time of disclosure or other credible evidence; (ii) before or after it has been disclosed to the Receiving Party, enters the public domain, not as a result of any action or inaction of the Receiving Party; (iii) is approved for release by written authorization of the Disclosing Party; (iv) is disclosed to the Receiving Party by a third party not in violation of any obligation of confidentiality; or (v) is independently developed by the Receiving Party without reference to Confidential Information. During the Term of this Agreement and thereafter, the Receiving Party will (a) use the Confidential Information of the Disclosing Party solely for the purposes set forth in this Agreement, (b) take suitable precautions and measures to maintain the confidentiality of the Confidential Information of the Disclosing Party, and (c) not disclose or otherwise furnish the Confidential Information of the Disclosing Party to any third party other than employees or contractors of the Receiving Party who have a need to know such Confidential Information to perform its obligations under this Agreement, provided such employees or contractors are obligated under confidentiality obligations substantially similar to those set forth herein.

**8.2 Injunctive Relief.** Each party acknowledges that, in the event of breach of the foregoing provision, the Disclosing Party will not have an adequate remedy in money or damages. The Disclosing Party shall, therefore, be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request without the necessity of posting a bond. The Disclosing Party’s right to obtain injunctive relief shall not limit its right to seek further remedies.

**8.3 Survival.** Notwithstanding the termination of this Agreement for any reason, the rights and duties of the parties (Fees), (Ownership), (Confidential Information), and (Indemnification) shall survive such termination and remain in full force and effect.

## **9. GENERAL**

**9.1 Assignment.** This Agreement shall not be assignable by you without the prior written consent of VertiQ.

**9.2 Waiver of Construction Against the Drafter.** This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against either of the parties to this Agreement.

**9.3 Severability.** In the event that any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT, IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL OTHER LIMITATIONS OF LIABILITY AND EXCLUSION OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT.

**9.4 Force Majeure.** Neither party shall be responsible for any failure to perform due to unforeseen circumstances or to causes beyond the parties’ reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor, or materials. In the event of any such delay, either party may defer any delivery dates for a period equal to the time of such delay. Notwithstanding the foregoing, if either party is in default under this Section for more than forty five (45) days, the non defaulting party may terminate this Agreement.

**EXHIBIT B**

**Cost Proposal #2 Detail for Monterey County Coroner  
RFP #10488**

**Product: CME-V3 Hosted**

CME-V3 Hosted is an "off the shelf" case management program offered via Software as a Service (SAAS) and was designed to be an alternative to a customized CME residing on servers at the Customer's location. **As a CME Hosted customer, you are not purchasing a perpetual license to the Program.** You are granted a non-exclusive, annually renewable right to use the Program. CME Hosted customer's annual usage fee includes any VertiQ Updates to the application, initial usage training and ongoing support and complete set up specifically for their agency.

<b># of Concurrent Users</b>	<b>Annual Fee</b>
10 Users	\$18,000

**DATA STORAGE LIMITS:**

CME Hosted provides storage based on 15.75 GB per user for the term of the contract for a total of 157.5 Gb. (also see #7 Excess Data Storage Fees) When server space exceeds 157.5 Gb, you may purchase 100 Gb of additional storage at the rate of \$.39 Per Gb which will be prorated to end of that year's term and then billed annually thereafter.

**DURATION OF TERM**

Customer agrees to an initial Term of 5 years (60 months), during which no rate or fee increases shall occur, except to the extent Customer may add new licenses or additional space.

The charge for the new license will be equal to the then current license fee in effect at the time of renewal times the number of new users. There after automatically renewing for successive one-year terms at Vendor's then current fees, unless terminated by either Customer or VertiQ pursuant to Section 10 of the Agreement.

**INCLUDED SERVICES\*\***

- Logos and Personnel report alterations specific to your agency
- System Administrator training via WebEx for up to 8 hours will allow you to:
  - Set up roles
  - Set up users
  - Set up menus for roles
  - Create dropdowns - for organizations and users only specific to you
  - Overview of the application

**ADDITIONAL SERVICES**

There may be a need to provide additional services for you. These services will be quoted separately at our current per diem rate of \$1400 or \$175/hour. Payment for services is due upon completion of the specific service item and receipt of invoice.

**Conversion of existing data:** VertiQ will assist in mapping the data from the old system to the new. Data cleansing should be performed by you prior to submission of data to VertiQ. VertiQ will perform a trial conversion of the existing data which will require a preliminary and post conversion analysis by your staff. VertiQ will allow you 15 days to review the converted data once it has been installed on your server. If you are non-responsive, it will be assumed you have approved the data conversion and you will be invoiced for the services performed. VertiQ will then perform a final conversion of your data.

Prior to the final conversion you will be required to sign off on the converted data and system changes.

**Customization:** Upon review of the CME system, you may want to implement some modifications. Such modification upon review will be done by VertiQ at our per diem rate. Customization will require establishment of an SOW (Statement of

Work) to be approved by both parties. Upon establishment of an SOW, development will be scheduled and then installed on your server. VertiQ will allow you 15 days to review the modifications for sign off once it has been installed on your server. If you are non-responsive, it will be assumed to be approved and you will be invoiced for services performed.

**Report development:** We support the use of Microsoft SQL Reporting Services (SRS) for report development. SRS is a free report writing tool with extensive functionality. CME includes a set of "canned" reports. Any additional reports deemed necessary by you to be designed by VertiQ or integrated with another report service will be chargeable at our per diem rate.

**Estimated services quoted based on requirements outlined in RFP #10488**

<b>Project Services - based on use of cme-v3 application, reports and conversion mapping</b>	<b><u>Number of Days</u></b>	<b><u>Total</u></b>
<b>Reports</b> - Logos and Personnel report alterations specific to your agency are included	-	-
<b>Potential Report Development</b> -estimated as no report samples submitted with RFP	4	\$5,600
<b>Future Configuration:</b> based on any SOW results this may be considered for a Phase 2 project and is not quoted at this time.	-	-
<b>Database Conversion.</b> Based on Sirron Database - including; 60 key fields for statistical purposes, SSIS kit setup, mapping fields, internal run and testing, adjustment and final conversion. <b>Images and Documents will not be converted.</b>	5	\$7,000
Review and corrections based on <i>data base conversion</i>	1	\$1,400
System Administrator Training on site will allow you to: <ul style="list-style-type: none"> <li>o Set up roles</li> <li>o Set up users</li> <li>o Set up menus for roles</li> <li>o Create dropdowns - for organizations and codes specific to your agency</li> <li>o Overview of the application</li> </ul>	1	\$1,445
End User Training on site	2	\$2,890
Support for acceptance testing, moving the system into production	1	\$1,400
<b>Estimated Services</b>	<b>10</b>	<b>\$19,735</b>
<b>OPTIONAL</b>		
<b>NMS Integration</b> - Work with NMS team to configure web services that will allow for the importing & exporting of Tox related data. Test in coming Toxicology results and running the NMS report from within CME	5	\$7,000

**Payment Terms**

1. Your first Annual Fee shall be invoiced upon go-live.
  2. Payment for services is due upon completion of the specific service item and receipt of invoice.
- All invoices from VertiQ shall be due and payable within thirty (30) days of the date of each invoice.

**Exhibit C**

<b>Tasks for putting Monterey County Coroner Hosted Project into Production</b>	<b>Responsible Party</b>	<b>Timeline by</b>
<b><u>KEY DEADLINES</u></b>		
Contract finalization and signing	VQ/Client	
Client to deliver database for conversion analysis and list of 60 fields to be converted	Client	
Client to deliver logo and address information for report edification	Client	
Report Edits of logo and address information	VQ	
Install base application on hosted server	VQ	
VertiQ will provide system administrator training to:	VQ/Client	
Set up users and roles	Client	
Create menus for all roles	Client	
Create/ Customized drop down lists for all drop downs	Client	
Determine system defect list if any	Client	
System configuration determination as outlined in Services	Client	
Configuration of base application as outlined above	VQ	
VQ install application with converted data incorporated	VQ	
Sign off and acceptance of application and database conversion and determine cut-off date for final conversion.	Client	
End User Training	VQ/Client	
Sign off on go-live checklist	Client	
GO LIVE DATE final conversion	VQ/ Client	
1 <sup>st</sup> Annual Hosted Fee/Support goes into effect and is invoiced	VQ	
Post Implementation Support	VQ	