

ORIGINAL

**COUNTY OF MONTEREY STANDARD AGREEMENT
(NOT TO EXCEED \$100,000)**

This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

Unidesk Corporation

(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION.

1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide 80 licenses for Unidesk software for Virtual Desktop Management, including support and maintenance.

2.0 PAYMENT PROVISIONS.

2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit C** subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement is not to exceed the sum of \$ 15,600.00.

3.0 TERM OF AGREEMENT.

3.01 The term of this Agreement is from July 1, 2013 to June 30, 2016, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**

3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

- ~~Exhibit A Scope of Services/Payment Provisions~~
- Exhibit A Unidesk End User License Agreement
- Exhibit B Unidesk Complete Care Services Policy
- Exhibit C Project Budget
- Exhibit D HIPAA Business Associate Agreement

5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS.

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of

CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

- 8.01 ~~Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.~~

9.0 INSURANCE REQUIREMENTS.

- 9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

- 9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

9.04 **Other Requirements:**

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of

three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall **provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds** with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that **such insurance is primary** insurance to any insurance or self-insurance maintained by the County and that the insurance of **the Additional Insureds shall not be called upon to contribute** to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY.

- 10.01 **Confidentiality.** CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by

CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

~~10.05 Royalties and Inventions. County shall have a royalty free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.~~

11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

- 12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall

be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR.

13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES.

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Kim Petty, Administrative Services Officer	Mary Teague
Name and Title	Name and Title
1000 South Main Street, Suite 304 Sallnas, CA 93901	313 Boston Post West Marlborough, MA 01752
Address	Address
(831) 755-4492 fax: (831) 755-8476	(508) 573-7820
Phone	Phone

15.0 MISCELLANEOUS PROVISIONS.

15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.

15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.

~~15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.~~

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: _____
Contracts/Purchasing Officer

Date: _____

By: _____
Department Head (if applicable)

Date: 7/1/13

Approved as to Form¹

By: _____
County Counsel

Date: 6/14/13

Approved as to Fiscal Provisions²

By: _____
Auditor/Controller

Date: _____

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

Unidesk Corporation

Contractor's Business Name*

By: _____
(Signature of Chair, President, or Vice-President)*

Brian McDermott V.P. Sales
Name and Title

Date: 6/10/13

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

BOB BULLENS CEO
Name and Title

Date: 6/11/2013

*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.

¹Approval by County Counsel is required

²Approval by Auditor/Controller is required

³Approval by Risk Management is required only if changes are made in sections 7 or 8

UNIDESK CORPORATION
END USER LICENSE AGREEMENT

THIS IS AN END USER LICENSE AGREEMENT ("EULA") BETWEEN MONTEREY COUNTY ("CUSTOMER") AND UNIDESK CORPORATION ("UNIDESK"). THE LICENSED SOFTWARE THAT IS THE SUBJECT OF THIS EULA IS COPYRIGHTED AND LICENSED TO YOU, NOT SOLD TO YOU.

1. DEFINITIONS

1.1. "**Licensed Software**" means the object code version of the computer software licensed by Customer under this Agreement. Licensed Software also includes any updates, enhancements, modifications, revisions, or additions to the Licensed Software developed by Unidesk and made available to Customer.

1.2. "**Documentation**" means manuals, user guides and any other such material regarding the Licensed Software.

1.3. "**Solution Provider**" means a dealer or reseller authorized by Unidesk to sell its products.

1.4. "**Customer Purchase Agreement**" means the agreement between the Customer and a Solution Provider setting out the type of License, number of Named Users and License Fee for the Licensed Software and Support Services.

1.5. "**License**" means the Software License granted herein that governs Customer's use of the Licensed Software.

1.6. "**License Fee**" means the fees paid by Customer to Solution Provider for the Licensed Software.

1.7. "**Support Services**" means telephone, online and other Licensed Software support and maintenance that may be provided by Unidesk to Customer from time to time.

2. LICENSE

2.1. **Grant of License.** Unidesk hereby grants to Customer, and Customer accepts, limited, nonexclusive Licenses to use the Licensed Software in machine-readable, object code form solely as purchased under and authorized in this Agreement. Unidesk warrants that it is the owner of the Licensed Software and each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the intellectual property and other rights granted in this Agreement without the further consent of any third party.

2.2. **Scope of Use.** Customer may install and use the Licensed Software to create up to the maximum number of desktops managed by the Licensed Software for which it has purchased Licenses from Unidesk. For purposes of this Agreement, "use" means loading the Licensed Software into the temporary or permanent memory of a computer. Installation of the Licensed Software on a network server solely for

distribution to other computers is not "use" of the Licensed Software, and is permitted, as long as Customer has purchased a License for each desktop created and managed by the Licensed Software. Customer must ensure that the number of desktops created and managed by the Licensed Software at any given time does not exceed the total number of Licenses Customer has purchased, or Customer will be in breach of this Agreement.

2.3. License Restrictions. Customer may not reverse engineer, decompile, disassemble, or otherwise translate the Licensed Software or any license keys. Customer may not modify or adapt the Licensed Software or any license keys that Customer has obtained in any way. Customer may make one copy of the Licensed Software, the Documentation, and any license keys that Customer has obtained solely for backup or archival purposes. Any such copies of the Licensed Software, Documentation, or license keys shall include any copyright or other proprietary notices that were included on such materials when Customer first received them. Except as authorized in this Section, no copies of the Licensed Software, Documentation, or license keys, or any portions thereof, may be made by Customer or any person under Customer's authority or control.

2.4. Assignment of Rights. Customer will not sublicense, lease, rent, or lend its rights in the Licensed Software, Documentation, or license keys to any party without prior written consent of Unidesk.

2.5. Open Source Components. Certain programs included in the Licensed Software may be licensed (or sublicensed) to Customer under the GNU General Public License and other similar open source license agreements ("OSLAs"). Copyrights to the Open Source Software are held by the copyright holders indicated in the copyright notices found in the online Help file accompanying the Licensed Software.

2.6. Ownership. The foregoing license grants to Customer a limited right to use the Licensed Software. Unidesk and its licensors retain all rights, title and interest, including all copyright and intellectual property rights, in and to, the Licensed Software and all copies thereof. All rights not specifically granted in this EULA, including Federal and International Copyrights, are reserved by Unidesk and its licensors.

2.7. Support Services. Support Services for the Licensed Software delivered by Unidesk shall be in accordance with the terms of this EULA and the Unidesk Support Services Policy, which sets out the details of the Support Service entitlements, and which is incorporated herein by reference. The Unidesk Support Services Policy is attached to County of Monterey Service Agreement as Exhibit B.

3. LIMITED WARRANTY AND DISCLAIMER

Unidesk warrants that for a period of ninety (90) days from the date of delivery, the Licensed Software will perform substantially in accordance with the Documentation that accompanies the Licensed Software. Unidesk's entire liability and Customer's sole remedy under this warranty will be, at the sole option of Unidesk and subject to applicable law, to (i) replace the Licensed Software, or (ii) refund the License Fee for the affected Licensed Software and terminate this EULA. This warranty does not apply if the Licensed Software (a) has been altered, except by Unidesk, (b) has not been installed, operated, repaired, or

maintained in accordance with instructions supplied by Unidesk, or (c) is licensed, for beta, evaluation, testing or demonstration purposes for which Unidesk does not receive a payment of purchase price or license fee. Unidesk will provide any Support Services purchased by Customer in a professional and workmanlike manner, but Unidesk does not guarantee that every question or problem raised by Customer will be resolved or resolved within a certain amount of time.

Unidesk warrants that it will use reasonable commercial efforts consistent with industry standards to scan for and remove any software viruses prior to delivery of the Licensed Software and that the Licensed Software, and any media used to distribute it, contain no other computer instructions or technological means intended to disrupt, damage, or interfere with the use of computers or related systems.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNIDESK AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. CUSTOMER ASSUMES THE RESPONSIBILITY FOR THE SELECTION OF THE LICENSED SOFTWARE TO ACHIEVE CUSTOMER'S INTENDED RESULTS, AND FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE LICENSED SOFTWARE.

4. CONFIDENTIALITY AND PRIVACY

4.1. Confidentiality. Customer shall permit only authorized users to use the Licensed Software or to view the Documentation. Customer shall not make available the Licensed Software, Documentation, or any license key to any third party, and will use best efforts to cooperate with and assist Unidesk in identifying and preventing any unauthorized use, copying, or disclosure of the Licensed Software, Documentation, or any portion thereof.

5. LIMITATION OF LIABILITY

(a) NEITHER UNIDESK NOR ITS SUPPLIERS SHALL BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, LOSS OR PROFITS, BUSINESS INTERRUPTION OR THE LIKE) ARISING OUT OF (I) THE USE OF, OR INABILITY TO USE, THE LICENSED SOFTWARE OR (II) SUPPORT SERVICES DELIVERED TO CUSTOMER BY UNIDESK BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF UNIDESK OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

(b) UNIDESK'S TOTAL LIABILITY TO CUSTOMER FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE GREATER OF (I) THE TOTAL FEES PAID BY CUSTOMER TO UNIDESK OR TO SOLUTION PROVIDED FOR THE LICENSED SOFTWARE OR SUPPORT SERVICE THAT CAUSED SUCH DAMAGES OR (II) ONE THOUSAND DOLLARS (\$1,000).

(c) The limitation set forth in Section 5(b) does not apply to claims pursuant to Section 9 of this EULA.

(d) The limitations set forth in Sections 5(b) and 5(c) do not apply to claims pursuant to Section 10 of the County of Monterey Service Agreement, or other confidentiality or nondisclosure obligations of Unidesk as set forth in the EULA or County of Monterey Service Agreement.

6. TERM AND TERMINATION

6.1. Term. This agreement is effective July 1, 2013 – June 30, 2016, unless sooner terminated in accordance with its terms.

6.2. Termination. Customer may terminate this EULA at any time by: (i) providing written notice of its decision to terminate the Agreement to Unidesk and (ii) either returning the Licensed Software, Documentation, all copies thereof, and all license keys that Customer has obtained to Unidesk or destroying all such materials and providing written verification of such destruction to Unidesk. Unidesk may terminate this EULA if Customer breaches any term of the Agreement by giving Customer written notice of its breach and Unidesk's decision to terminate the Agreement. Upon termination of the Agreement by Unidesk, Customer agrees to either return to Unidesk the Licensed Software, Documentation, all copies thereof, and all license keys that it has obtained, or to destroy all such materials and provide written verification of such destruction to Unidesk.

7. U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND

This Licensed Software and the documentation are provided with "RESTRICTED RIGHTS" applicable to private and public licenses alike. Without limiting the foregoing, use, duplication, or disclosure by the US Government is subject to restrictions as set forth in this EULA and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013 (c)(1)(ii)(OCT 1988), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227-14, as applicable. Manufacturer: Unidesk Corporation

8. GENERAL

This EULA shall be governed by the laws of the State of California, without giving effect to principles of conflict of laws. You hereby consent to the exclusive jurisdiction and venue of the state courts sitting in Middlesex County, Massachusetts or the federal courts in the District of Massachusetts to resolve any disputes arising under this EULA. In each case this EULA shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

No Unidesk Solution Provider, reseller or agent is authorized to make any amendment to this EULA.

If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect.

All questions concerning this EULA shall be directed to: Unidesk Corporation, 313 Boston Post Road West, Marlborough, Massachusetts, 01752 Attention: General Counsel.

9. INDEMNITY AND INTELLECTUAL PROPERTY

(a) *Indemnified Claims.* An "Indemnified Claim" is any third part claim, suit, or proceeding brought against Customer arising out of, related to, or alleging: (i) infringement of any United States patent, copyright, or other intellectual property right by the Licensed Software; or (ii) injury to or death of any individual, or any loss of or damage to real or tangible personal property, caused by the negligence of Unidesk or any of its agents, subcontractors, or employees.

(b) *Indemnity.* Unidesk will defend, at its expense any Indemnified Claim, and will pay any costs, damages and reasonable attorneys' fees finally awarded against Customer in, or payable in settlement of, such Indemnified Claim; provided Customer gives Unidesk prompt notice of such Indemnified Claim and Customer provides reasonable cooperation, information and assistance in connection with such Indemnified Claim.

(c) *Litigation.* Unidesk will have sole control of the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided that Customer will have the right to approve the terms of any settlement or compromise that includes any admission of liability on the part of Customer or subjects it to any ongoing monetary obligations.

(d) *Exclusions.* Unidesk's obligations set forth in Subsection 9 (b) above do not apply to the extent that a Subsection 9(a)(i) Indemnified Claim arises out of:

(i) Customer's violation of this EULA;

(ii) revisions to the Licensed Software made without Unidesk's written consent;

(iii) Unidesk's modification of the Licensed Software in compliance with technical specifications provided by Customer, or in compliance with a method or process provided by Customer for implementing such specifications, unless Unidesk knew of the potential infringement at the time of such modification and did not notify Customer;

(iv) Customer's failure to incorporate Licensed Software updates or upgrades that would have avoided the alleged infringement, provided Unidesk offered such updates or upgrades without fees or charges not otherwise required pursuant to the Agreement;

(v) use of the Licensed Software in combination with hardware or software not provided by Unidesk: (A) that is specifically forbidden by the Documentation or Specifications; or (B) that is not designated in the Documentation or Specifications as available for interface with the Licensed Software, unless such hardware or software is necessary for the Licensed Software to perform a function listed in the Documentation or Specifications.

Unidesk Complete Care Services Policy

UNIDESK COMPLETE CARE SERVICES POLICY

This policy sets forth the terms and conditions that govern the delivery of maintenance and support services (together, the “Services”) by Unidesk Corporation (“Unidesk”) to the County of Monterey (“Customer”) that has licensed a Unidesk software product (the “Licensed Software”). Customer’s use of the Licensed Software is governed by the Unidesk End User License Agreement (“EULA”), attached to the County of Monterey Services Agreement as Exhibit A.

1. Definitions

“Support Services” is the provision of technical assistance by Unidesk to Customer with respect to installation, analysis of problem reports and errors.

“Major Release” means a generally available release of the Licensed Software that contains functional enhancements, designated by Unidesk by means of a change in the digit to the left of the first decimal point (e.g., Licensed Software 2.0 >> Licensed Software 3.0).

“Minor Release” means a generally available release of the Licensed Software that introduces a limited amount of new features and functionality, designated by Unidesk by means of a change in the digit to the right of the decimal point (e.g., Licensed Software 2.0 >> Licensed Software 2.1).

“Update” means a generally available release of the Licensed Software that typically provides corrections or fixes only, designated by Unidesk by means of a change in the digit to the right of the second decimal point (e.g., Licensed Software 2.0 >> Licensed Software 2.0.1).

2. Support Services. Unidesk Complete Care provides Support Services in accordance with the severity levels and availability set out in the table below. Unidesk will render Support Services to Customer by taking an initial report from the Customer, either by phone or electronically, and making reasonable efforts to resolve the issue. If necessary, Unidesk support personnel will recreate the reported issue in the Unidesk laboratory, and develop a fix or work-around. Support Services may consist of software code modifications from the Unidesk engineering group designed to resolve the Customer’s specific issue. Customer shall allow Unidesk access to the Licensed Software in order for problems to be diagnosed and resolved remotely. Customer acknowledges that delays caused by accessibility to the Licensed Software may result in delays in providing Support Services.

SEVERITY LEVELS AND SUPPORT SERVICES AVAILABILITY

Severity Level	Definition	Availability
1	Licensed Software is in production, is down and cannot be recovered or is in a state of continuous failure without any available work-around.	24 x 7 365 days
2	(a) Licensed Software is in production, and a problem is identified which restricts critical functionality, but data integrity and/or availability is not compromised. (b) Failure during initial installation of system with no work-around.	Monday to Friday, 8:00 a.m. to 5:00 p.m. ET, excluding U.S. holidays
3	A minor problem that does not have a significant effect on business operations. Work-around is available.	Monday to Friday, 8:00 a.m. to 5:00 p.m. ET, excluding U.S. holidays
4	New feature request	Monday to Friday, 8:00 a.m. to 5:00 p.m. ET, excluding U.S. holidays

3. Maintenance Services. Customer is entitled to all Major Releases, Minor Releases and Updates released by Unidesk to its commercial customers.

4. Term. The term of this Agreement is July 1, 2013 – June 30, 2016. This Agreement may be renewed, extended, or modified in writing, and signed by both parties. The terms of sections 5 and 6 shall survive termination or expiration of the Services.

5. Warranty; Limitation of Liability. Unidesk will provide any Services purchased by Customer in a professional and workmanlike manner, but Unidesk does not guarantee that every question or problem raised by Customer will be resolved, or resolved within a certain amount of time

6. Miscellaneous. Title to and ownership of any correction, corrected copy, version or release of the Licensed Software will remain with Unidesk. The County of Monterey Standard Agreement and the Exhibits attached thereto, including the Unidesk Complete Care Services Policy, the EULA, the Project Budget, and Business Associate Agreement constitute the entire agreement between the parties hereto with respect to the delivery of Services by

Unidesk to Customer. The ability of Customer to assign its rights and obligations hereunder is governed by the Assignment of Rights provision of the EULA. Any invalidity, in whole or in part, of any provisions of this policy will not affect the validity of any of its other provisions. Neither party will be liable for the failure to perform its obligations under this policy due to events beyond its reasonable control including, but not limited to, natural disasters, strikes, riots, wars, fire, the infrastructure of the Internet or acts in compliance with any applicable law, regulation or order of any court or government body.

Unidesk Corporation

BUDGET

July 1, 2013 – June 30, 2016

Unidesk Desktop & Image Management License (80 @ \$120/license)	\$9,600
Unidesk Support & Maintenance (3 years) (80 @ \$25/year x 3 years)	\$6,000
TOTAL:	\$15,600

Invoice Procedures:

County shall pay Contractor in accordance with Section 6.0, PAYMENT CONDITIONS, of this Agreement. Contractor shall submit an invoice to County no later than the 10th day of the month for services rendered in the previous month. County shall pay for license fee within 30 days of County Auditor-Controller's receipt of an invoice certified by the Department of Social Services Contract Administrator. License fees are non-refundable, and are not subject to Section 7.01 of the County of Monterey Services Agreement.

The maximum amount payable by County to Contractor under this Agreement is **fifteen thousand, six hundred dollars (\$15,600)**.

BUSINESS ASSOCIATE AGREEMENT

This Agreement is made effective the 1st day of July, 2013, by and between **MONTEREY COUNTY**, hereinafter referred to as "Covered Entity", and **Unidesk Corporation**, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Privacy Rule"); and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy Rule (the agreement evidencing such arrangement is entitled **agreement to provide Desktop & Image Management Licenses, including support and maintenance, dated July 1, 2013**, and is hereby referred to as the "Arrangement Agreement"); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement Agreement, compliance with the HIPAA Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule and to protect the interests of both Parties.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Rule, but are nonetheless permitted by the HIPAA Privacy Rule, the provisions of this Agreement shall control.

The term "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

EXHIBIT D

Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

II. CONFIDENTIALITY REQUIREMENTS

(a) Business Associate agrees:

(i) to use or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Arrangement Agreement (if consistent with this Agreement and the HIPAA Privacy Rule), or the HIPAA Privacy Rule, and (3) as would be permitted by the HIPAA Privacy Rule if such use or disclosure were made by Covered Entity;

(ii) at termination of this Agreement, the Arrangement Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible; and

(iii) to ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.

(b) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:

(i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:

(A) the disclosure is required by law; or

(B) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its

EXHIBIT D

capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(c) Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Rule. Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which it becomes aware. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

III. AVAILABILITY OF PHI

Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

IV. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately.

V. MISCELLANEOUS

Except as expressly stated herein or the HIPAA Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of California. No change, waiver or discharge of any liability or obligation hereunder

EXHIBIT D

on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

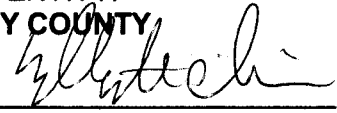
The parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:

MONTEREY COUNTY

By: 

Title: DSS Director

Date: 2/14/13

BUSINESS ASSOCIATE:

UNIDESK CORPORATION

By: 

Title: V.P. Sales

Date: 4/10/13