

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:

McWilliams-Mailliard Technology Group, Inc.,
(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 license, subscriptions, maintenance and support for the AACTS (Aging & Adult Client Tracking System) software for Department of Social Services' Adult Protective Services staff.

2.0 PAYMENT PROVISIONS.

2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, 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 \$ 13,350.00.

3.0 TERM OF AGREEMENT.

3.01 The term of this Agreement is from July 1, 2014 to June 30, 2015, 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 AACTS Software License & Support Agreement
- Exhibit B Sample Invoice
- Exhibit C HIPAA Certification
- Exhibit D Insurance Exemption

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.~~

See Exhibit A, Section 8 Term & Termination

- 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.~~

See Exhibit A, Sections 9.3 & 9.4

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. See Exhibit D

(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:
Allison Yant, MA II	Antoinette Mailliard, President
Name and Title	Name and Title
1000 South Main Street, Suite 112	1870 Jackson Street, Suite 704
Salinas, CA 93901	San Francisco, CA 94109
Address	Address
(831) 883-7515	(415) 771-3452
Phone	Phone

15.0 MISCELLANEOUS PROVISIONS.

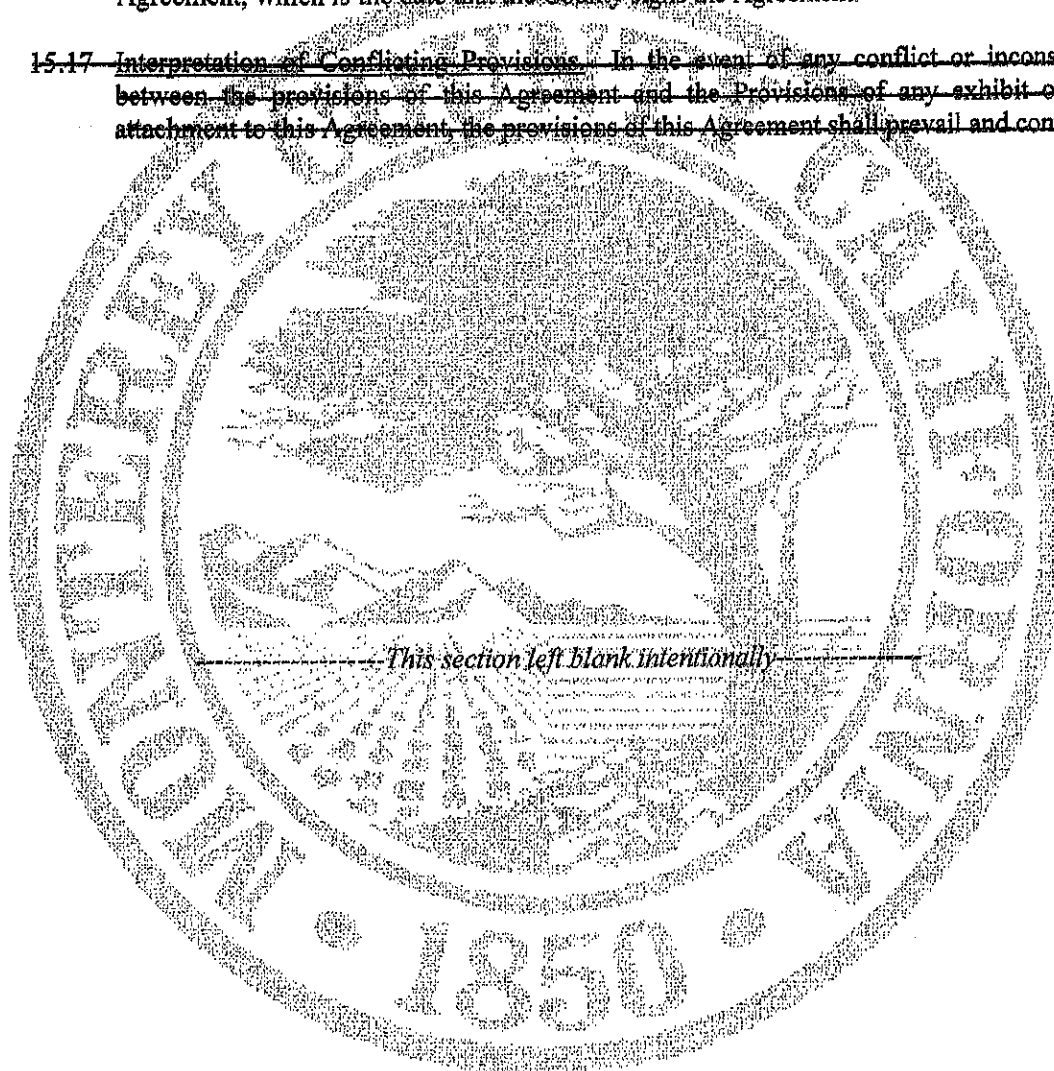
- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to 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, except as per Exhibit A, Section 8.5
- 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.~~ See Exhibit A, Section 10.2
- 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.~~



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

By: _____
McWilliams-Maillard Technology Group
Contractor's Business Name*

Date: _____

By: _____
Department Head (if applicable)

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

Date: _____

Approved as to Form

Name and Title

By: _____
County Counsel

Date: _____

Date: _____

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

Approved as to Fiscal Provisions²

By: _____
Auditor/Controller

Name and Title

Date: _____

Date: _____

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

*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.

¹ Approval by County Counsel is required

² Approval by Auditor/Controller is required

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



Software License and Support Agreement

This User Software License, Subscription and Support Agreement ("Agreement"), is made by and between the **County of Monterey**, (hereinafter "COUNTY"), and **McWilliams Mailliard Technology Group, Inc.** (hereinafter "MMTG" or "MMTG/AACTS"), and is effective upon full execution of this agreement..

BACKGROUND:

WHEREAS, MMTG is an independent software-as-a-service (SAAS) provider for the health and human/social services industry and has developed certain software product(s) for commercial use; and

WHEREAS, COUNTY desires to access the automated elder care and dependent adult services system for Adult Protective Services and/or In Home Supportive Services, known as AACTS as developed and offered by MMTG; and

WHEREAS, COUNTY desires to access this system through a secure Web Portal Host (Virtual Private Portal) operated by an Application Service Provider and has entered or will enter into an agreement with CareAccess or other Provider agreeable to both parties to perform this function; and

WHEREAS, MMTG will work collaboratively with the CareAccess or other Web Portal Provider agreed upon and approved by both parties, to implement and administer AACTS; and

WHEREAS, MMTG hereby grants certain licenses to COUNTY for use of its software as a service product(s) on a Web Portal/Host system along with collateral documentation, training materials, marketing materials and product support related thereto, under the terms and conditions contained in this Agreement.

NOW THEREFORE, the Parties agree as follows:

1.0 DEFINITIONS

The following terms are incorporated herein by reference:

- 1.1 "Licensed Software"** means the specific software application developed by MMTG, called AACTS, together with any Upgrades, Updates and Enhancements thereto as accessible on the approved web portal provider.
- 1.2 "MMTG Technology" and/or "AACTS"** means the Licensed Software, Services, Training, Support, Documentation, Marketing Materials, Training Materials, Upgrades, Updates and/or Enhancements provided by MMTG to COUNTY under this Agreement.
- 1.3 "Upgrade and Enhancement"** mean a modification of the Licensed Software, in object code format, generally released by MMTG, including upgrade in features, functionality or performance of the Licensed Software. Upgrades and enhancements include new major version releases denoted by a change to the left of the first decimal point (e.g., v.3.0 to v.4.0). Upgrades and enhancements may also include a) bug fixes, patches, and maintenance releases, b) new point releases denoted by a change to the right of the first decimal point (e.g., v.6.0 to

v.6.1, v.6.1 to v.6.1.1, etc.). Upgrades and enhancements will not include any release that MMTG licenses separately.

- 1.4 **"Update"** means any modification of the Licensed Software, in object code format, generally released by MMTG and may include changes that affect version number ("enhancements" and "upgrades") and/or minor changes that do not affect version number.
- 1.5 **"Documentation"** means AACTS' most current on-line Training Guide/User Guide and any written training, user and other manuals/materials published by MMTG and made generally available by MMTG regarding AACTS.
- 1.6 **"Term"** means the period commencing on Agreement effective date and continuing for the Initial Term and any Renewal Term, unless earlier terminated as provided below.

2.0 GRANT OF RIGHTS

- 2.1 **License Grant.** In consideration of the payment of client access license (CAL), subscription and other fees set forth herein, MMTG hereby grants to COUNTY a non-exclusive, non-transferable license to use the specified MMTG Technology (AACTS) in machine-readable form (object code) and all related documentation, when used in conjunction with approved web portal/host provider subject to the terms and conditions of this Agreement.

2.2 License Restrictions.

- 2.2.1 COUNTY acknowledges that, except as stated in this Agreement, COUNTY is not granted any right or title to the MMTG Technology or any intellectual property rights therein. COUNTY may not use, reproduce, demonstrate, distribute, lend, share, give or sell MMTG Technology in any manner or for any purpose except as specifically permitted under this Agreement or by separate written agreement.
- 2.2.2 COUNTY may not provide or permit access to the Licensed Software by any third party or assist such party in obtaining knowledge, or materials regarding features, functions, and general capabilities of the AACTS without written consent of MMTG. COUNTY will take reasonable precautions to protect against unauthorized access or use potentially unfavorable to the business interests of MMTG/AACTS.
- 2.2.3 COUNTY may not remove any of MMTG/AACTS trade names, trademarks, copyright notices or any other MMTG or AACTS identifiers or proprietary notices appearing on splash screens, documentation or any other material provided by MMTG. Each copy of the MMTG/AACTS Technology or documentation reproduced by, or on behalf of COUNTY, will contain the proprietary notices placed by MMTG on the media or within the code of the Licensed Software or on the documentation, training materials, or marketing materials.
- 2.2.4 COUNTY may not use, copy, rent, lease, lend, give, share, sell, modify, decompile, disassemble, otherwise reverse engineer or transfer the Licensed Software except as provided in this Agreement.

Any unauthorized use may result in immediate termination of this Agreement and/or other legal remedies at the sole discretion of MMTG.

- 2.2.5** COUNTY may host onsite review or inspection of AACTS by those considering AACTS for purchase or for other reasons only with advance permission from MMTG. MMTG reserves the right to deny such permission. No "screen shots" or copying, whether electronic photographic or manual, is to be permitted.

3.0 SUPPORT AND TRAINING

- 3.1 General Support.** MMTG will use its best efforts to resolve any bugs, malfunctions or other non-conformities reported by COUNTY, with due regard for the reproducibility and/or severity of the bug, malfunction, or non-conformity incident. COUNTY will facilitate direct contact with individual user(s) experiencing difficulties to aid in diagnosis. Upon diagnosing the nature of reproducible bug, malfunction, or non-conformity, MMTG will inform COUNTY immediately and if remediation is required, will give an estimate of time needed to resolve reported issue(s).
- 3.2 Product Support.** MMTG will provide Maintenance Support and Enhancements/Upgrades/Updates to the Licensed Software as specified in "Section E Product Support."
- 3.3 System Support.** COUNTY will, or has entered into a separate agreement with CareAccess, or other web host/portal provider agreed upon by the parties, which will provide all support involving hardware, system software, and network issues associated with their services to COUNTY and with COUNTY access to the web portal system. MMTG will provide COUNTY information and training needed to access the Licensed Software on the portal
- 3.4 Training.** MMTG will provide technical and user training with respect to AACTS, in accordance with "Section C Training." COUNTY shall provide appropriate training facilities for all on-site AACTS training as detailed in "Section C Training."

4.0 RIGHTS AND OBLIGATIONS

- 4.1 Marketing.** MMTG may market, advertise and otherwise promote AACTS as it deems appropriate, at its sole discretion. MMTG may include reference to County's use of AACTS in general communications and in marketing, promotional material and press releases, while specific terms of the Agreement shall not be disclosed. COUNTY may promote the Licensed Software in accordance with the terms of this Agreement and as mutually agreed between COUNTY and MMTG.
- 4.2 Compliance with Laws.** MMTG shall comply and require its officers and employees to comply with all applicable federal and state laws affecting the services covered by this Agreement, including, but not limited to the following, to the extent that they apply.
- 4.2.1** MMTG shall not publish or disclose, permit or cause to be published, disclosed or used, any confidential information pertaining to a public

social services applicant(s) or recipient(s) obtained in the course of work performed for or with COUNTY.

- 4.2.2 MMTG will establish and implement appropriate privacy and security safeguards with respect to COUNTY's Protected Health Information that may be maintained, transmitted or viewed in connection with the services under this Agreement. MMTG affirms that to the full extent pertinent to the services provided under this Agreement, such safeguards will be consistent with the standards set forth in regulations under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("HITECH Act") and the Omnibus Rule (the "Final Rule") published on January 17, 2013
- 4.2.3 To the full extent pertinent to the services provided under this agreement, MMTG shall comply with Sections 13401 and 13404 of the HITECH Act to comply with the HIPAA Security Rule, Sections 164.308 through 164.316, and the use and disclosure provisions of the HIPAA Privacy Rule, Sections 164.502 and 164.504.
- 4.2.4 MediCal PII information that may be shared with MMTG by COUNTY or which MMTG may view or come into contact with in the course of delivery of services under this Agreement shall be held as confidential and shall be used only in accordance with Welfare and Institutions Code section 14100.0 and 42 Code of Federal Regulations section 431.300 and sections following, as permitted under the terms of this Agreement and/or as required by law, and/or by court order.
- 4.2.5 MMTG personnel who may encounter legally protected HIPAA or MediCal PII data in the performance of services under this Agreement shall be informed of legally confidential nature of such data and of the civil and criminal sanctions for non-compliance with the applicable federal and state laws.
- 4.3 **Rights to Database Content.** COUNTY will maintain all rights and privileges to its specific database content. MMTG shall have no rights or privileges to database content, other than as required to implement MMTG Technology and for the purpose of training, research, support and maintenance of AACTS. COUNTY will permit one (1) web portal provider (CareAccess) profile and one (1) MMTG profile on their database for such purposes.
- 4.4 **Independent Contractor.** MMTG, a California corporation, is not an agent or employee of COUNTY, and shall perform all work and services described herein as an independent contractor. No person performing any work or service described herein shall be considered an officer, agent, volunteer, or employee of COUNTY, nor shall any such person be entitled to any benefits, including but not limited to Workers Compensation Benefits, available or granted to employees of

COUNTY. COUNTY shall not be liable for any obligations or liabilities incurred by MMTG, including applicable payroll taxes (including federal and state income taxes) and wages, benefits or other compensation to MMTG's employees and/or its officers. MMTG shall be solely responsible for the acts or omissions of its officers, agents, employees, and subcontractors. Nothing herein shall be construed as creating a partnership or joint venture between parties.

5.0 WARRANTY

- 5.1 Anti-Virus Warranty.** MMTG represents and warrants that the media containing the Licensed Software, any download, Upgrade/Update/Enhancement provided by MMTG will not contain any virus, worm or other code or routines designed to disable, damage, impair, or erase AACTS, other software or data or the system upon which the Licensed Software, Upgrade/Update/Enhancement is installed.
- 5.2 Service Level and Software Warranties.** MMTG warrants that services it provides to COUNTY will be performed in a professional and ethical manner. MMTG warrants to COUNTY that Licensed Software will perform in substantial compliance with the User Manual.
- 5.3 Warranty and Disclaimers.** There are no express or implied warranties, including the implied warranty of merchantability and fitness for a particular purpose not specifically set forth in this Agreement or compatibility with other products now used or that may be in the future used by COUNTY.
- 5.4 Termination Option for Repeated Failure to Meet Service Level Agreement.** COUNTY may terminate this Agreement for cause and without penalty by submitting to MMTG written documentation detailing instances of failure within five (5) days following the end of the calendar month in which MMTG fails to meet Service Level standards. Documentation of failures shall be submitted to MMTG in writing. Termination under this provision will be effective thirty (30) days after receipt of such notice by MMTG.
- 5.5 Disclaimer of Actions Caused by and/or Under the Control of Third Parties.** MMTG does not and cannot control the functioning or services provided by CareAccess web portal/host provider or other provider and/or its Co-Location Data Center network and other portions of the Internet. MMTG shall not be held liable or accountable for performance issues (i) caused by factors outside of MMTG's reasonable control; (ii) that resulted from actions/inactions of COUNTY or any third parties that are not under the sole control of MMTG; or (iii) that result from COUNTY equipment and/or third party equipment function/non-function, including web portal/host provider, its Co-Location Service Center and/or the Internet. MMTG disclaims any and all liability resulting from or related to such events.

6.0 INVOICE TERMS, PAYMENT

- 6.1 License Fees.** COUNTY will pay MMTG license fees as set forth in "Section A License & Subscription" and "Section I Budget." AACTS training requires user log-in access to the secure, live system. Thus licenses must be in place and license fees paid prior to commencement of training.
- 6.2 Subscription Fees.** COUNTY will pay Subscription fees as set forth in "Section A License & Subscription" and "Section I Budget." Use of AACTS requires user log-

in access to the secure, live system. Thus subscriptions must be in place and subscription fees paid for user access, including user training.

- 6.3 Product Support/Update/Enhancement Fees.** COUNTY will be assessed a reasonable annual charge for State and/or Federally-mandated, user-requested and/or other indicated updates, enhancements/upgrades. Such charges will be shared pro rata among all AACTS subscriber counties based on number of CALs/ Licenses held. COUNTY will pay such fees as set forth in "Section E Product Support" and "Section I Budget." At COUNTY's election, COUNTY may purchase additional MMTG services under terms and conditions set forth in this Agreement or upon a duly executed amendment to this Agreement.
- 6.4 Training Fees.** COUNTY will pay Training fees on the terms and conditions set forth in "Section C, Training" and "Section I Budget," or as otherwise agreed between the parties in writing.
- 6.5 Documentation, Training Materials, and Marketing Materials.** MMTG shall provide electronic copies of proprietary Documentation, Training Materials, and Marketing Materials as set forth in "Section F Documentation," at no additional cost to COUNTY. COUNTY may print at its own expense and without reimbursement to or from MMTG, hard copies of Documentation, Training Materials and Marketing Materials for use in association with authorized use of AACTS only. At COUNTY's election, MMTG will provide printed hard copies of such documentation at fees set forth in "Section F Documentation."
- 6.6 Payment Terms.** All fees payable hereunder will be paid in U.S. Dollars. All fees and other charges are due and payable upon receipt of the applicable invoice from MMTG and as set forth in this Agreement and all appurtenant Sections.
- 6.7 Records and Inspection Rights.** COUNTY and MMTG shall maintain proper records and books of account relating to the active users authorized to access the Licensed Software via web portal provider. In case of disagreement on user number or identity, COUNTY and MMTG agree to accept web portal provider/host's real time user records.

7.0 INTELLECTUAL PROPERTY & CONFIDENTIALITY

- 7.1 Ownership.** Except for the rights expressly granted herein, this Agreement does not transfer from MMTG to COUNTY any intellectual property and/or developed technology, and all right, title and interest in and to such property/technology will remain solely with MMTG. Except for the rights expressly granted herein, this Agreement does not transfer from COUNTY to MMTG any COUNTY-developed technology or data, and all right, title and interest in and to such technology or data will remain solely with COUNTY.
- 7.2 Trade Secrets and Source Code.** COUNTY agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from MMTG's developed technology.
- 7.3 Confidential Information.**
 - 7.3.1** During the term of this Agreement, each party may disclose to the other certain proprietary or confidential information, which shall be received in confidence and shall not be revealed to third parties or

applied to uses other than recipient's performance of its obligations hereunder, as detailed in "Section G Mutual Non-disclosure."

- 7.3.2** Neither party shall disclose, advertise or publish the specific terms or conditions of this Agreement without the prior written consent of the other party, except (i) as may be required by law and (ii) to its professional advisors and to investors or potential investors.

8.0 TERMS AND TERMINATION

- 8.1 Term.** Unless earlier terminated as provided herein or by the mutual written agreement of the parties, the initial billing term of the Agreement ("Initial Term") will commence on the effective date of this Agreement. Billing term shall extend through June 30, 2015 and service term shall extend through September 30, 2015.
- 8.2 Renewal.** Renewal may be by new Agreement, or by Requisition, Amendment or Purchase Order referencing this Agreement, as agreed between the parties.
- 8.3 Early Termination:** Either party may terminate this Agreement prior to its expiration date by giving 30 days written notice. As set forth in "Section A License & Subscription," COUNTY shall be responsible for payment of all subscription and license fees owing for the entire calendar quarter in which such notice is received by MMTG and any additional quarter(s) of COUNTY authorized service.
- 8.4 Effect of Termination.** Upon termination of this Agreement for any reason, each party will return to the other party all confidential materials developed by or belonging to such party, which have been delivered pursuant to this Agreement. Termination of this Agreement will not relieve COUNTY of its obligations to make immediate and full payment to MMTG for any amounts then due and/or payable to MMTG. The provisions of Agreement paragraphs 5.0 "Warranty," 7.0 "Intellectual Property & Confidentiality," 8.0 "Terms and Termination," 9.0 "Limitation of Liability" and 10.0 "General Provisions," including all sub-paragraphs, will survive the expiration or termination of this Agreement, regardless of the cause of expiration or termination.
- 8.5 Failure to Pay.** COUNTY's failure to pay AACTS fees for services as specified in "Section A License & Subscription," "Section E Product Support" and "Section I Budget" may result in service interruption or termination of COUNTY access to AACTS and subject COUNTY to a reestablishment-of-service fee of \$250 per delinquent month or partial month. COUNTY's failure to pay Web Portal Provider (CareAccess) or other third party fees, resulting in COUNTY's inability to access AACTS via the web portal will not relieve COUNTY of its obligation to pay AACTS license, subscription, upgrade and/or other fees according to terms of this Agreement and its appurtenant Sections.

9.0 LIMITATION OF LIABILITY

- 9.1 County Insurance not applicable.** Except in the event of criminal or negligent action/inaction by the COUNTY, its officers, employees, contractors or agents, nothing herein shall be construed as granting to MMTG, its officers, employees, contractors or agents any insurance benefit/coverage under COUNTY insurance.

9.2 Insurance. MMTG shall maintain the following insurance coverage at its sole cost and expense throughout the term of this Agreement. If available, special coverage requested by COUNTY in excess of specified levels may be provided at COUNTY expense. Unless otherwise agreed in writing, insurance shall be with insurers that are admitted insurance companies in the State of California with a Best's Rating of B+ or higher. In the event of failure by MMTG to comply with insurance coverage requirements, COUNTY may, at its discretion, terminate this Agreement.

9.2.1 Certificates of Insurance. MMTG will submit or cause to be submitted to COUNTY Certificate(s) of insurance documenting agreed upon insurance coverage, naming COUNTY as additional insured and shall submit or cause to be submitted annually evidence of renewal in the form of updated Certificates of Insurance, prior to policy renewal date(s).

9.2.2 Workers' Compensation insurance. To the extent required by law during the term of this Agreement, MMTG shall provide workers' compensation insurance for all employees engaged in performance of duties under this Agreement in an amount not less than ONE MILLION dollars (\$1,000,000).

9.2.3 Liability insurance. MMTG shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverage.

9.2.3.1 General Liability. Commercial or comprehensive general liability [CGL] insurance coverage (personal injury and property damage) of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit per occurrence, covering liability or claims for personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of MMTG or any officer, agent, or employee of MMTG under this Agreement. COUNTY, its officers, employees, and agents shall be named as "Additional Insured" on any policy. The policy or policies shall provide that COUNTY will be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

9.2.3.2 Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on company owned, hired and leased vehicles used in conjunction with contractor's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence

9.3 Indemnification by MMTG. MMTG shall indemnify, defend and hold harmless COUNTY its directors, agents, officers, employees and volunteers from and against all claims, damages, losses, causes of action and expenses, including reasonable attorneys' fees, for any personal injury, bodily injury, loss of life, damage to property, violation of federal, state or municipal law, ordinance or constitutional provision, or other cause that arise out of, relate to or result from

acts or omissions, negligent or otherwise, in breach of the terms of this Agreement by MMTG, its directors officers, agents and/or employees.

9.4 Indemnification by COUNTY. COUNTY shall indemnify, defend and hold harmless MMTG, its directors, agents, officers and employees and volunteers from and against all claims, damages, losses, causes of action and expenses, including reasonable attorneys' fees, for any personal injury, bodily injury, loss of life, damage to property, violation of federal, state or municipal law, ordinance or constitutional provision, or other cause that arise out of, relate to or result from activities or omissions, negligent or otherwise, in breach of the terms of this Agreement by COUNTY, its directors, officers, agents and/or employees.

9.5 Limitations on Liability. Notwithstanding the provisions of Agreement paragraph 9.0 "Limitation of Liability" and sub-paragraphs, the liability of the parties and the remedies of the parties shall be limited as follows:

9.5.1 Uncontrollable Events Neither party shall bear any liability arising out of events beyond the control of such party, including but not limited to acts of God, acts of a public enemy, fires, floods, storms, earthquakes, riots, strikes, lock-outs, wars, restraints of government, court orders, power shortages or outages, equipment or communications malfunctions, nonperformance by any third parties, or other events which cannot be controlled or prevented with reasonable diligence by such party.

9.5.2 Consequential Damages. Neither party shall bear any liability for special, consequential, incidental or indirect damages resulting from "uncontrollable events" (including without limitation loss of anticipated income or profits, loss of goodwill, or other loss or damages), even if such party has been informed of the possibility of such damages.

9.5.3 Value of Contract. In no event shall the aggregate liability of MMTG to COUNTY (regardless of the form, whether in contract or tort) exceed the amount of the fee paid by COUNTY to MMTG pursuant to the terms of this contract.

9.5.4 Passage of Time. In no event shall a cause of action be asserted by COUNTY against MMTG or MMTG against COUNTY, which arises out of or relates to any event, condition, breach, or claim known to the filing party more than one (1) year prior to the filing of such cause of action.

10.0 GENERAL PROVISIONS

10.1 Notices. All notices and other communications shall be in writing and shall be considered given when (i) delivered personally, (ii) sent by confirmed e-mail or facsimile, (iii) sent by commercial overnight courier (e.g., Federal Express, DHL) with written verification of receipt, or (iv) certified mail to the address provided herein.

10.2 Assignment. Neither party may assign or transfer this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of the other party; except that either party may assign or transfer this Agreement in the case of a merger, acquisition, consolidation or sale of substantially all the assets

to which this Agreement relates. Subject to the foregoing limitation, this Agreement will inure to the benefit of and be binding upon the parties hereto, their successors, and assigns.

10.3 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government applicable to this Agreement, the validity of the remaining portions or provisions hereof will not be affected thereby. The parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision.

10.4 Waiver of Breach. Waivers of breach, failure, right or remedy of any conditions contained herein shall be by written agreement of the parties only. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy except by written agreement of the parties.

10.5 Entire Agreement and Amendment. This Agreement and its attached Sections (A Through I, inclusive), incorporated by reference herein, constitute the entire Agreement between the parties regarding the subject matter hereof; and supersede all previous communications, representations or agreements, either written or oral, with respect to such subject matter. This Agreement may not be varied, modified, altered, or amended except in a writing signed by both parties.

10.6 Governing Law. This Agreement shall be construed in accordance with the laws of State of California.

10.7 The terms **"Agreement"** and **"Contract"** are used interchangeably throughout and refer to the same document.

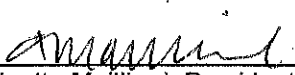
11.0 SECTIONS INCORPORATED IN AGREEMENT

The following Sections are attached to and made a part of this Agreement:

- SECTION A License, & Subscription
- SECTION B Discovery & Training Prep
- SECTION C Training
- SECTION D Travel Time & Expenses
- SECTION E Product Support
- SECTION F Documentation
- SECTION G Mutual Non-Disclosure
- SECTION H Additional Provisions
- SECTION I Budget(s)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, as of the date(s) set forth below. Each signatory represents that he/she has the authority to execute this Agreement and to bind the party on whose behalf his/her execution is made.

CONTRACTING PARTIES:

<u>MCWILLIAMS MAILLIARD TECHNOLOGY GROUP, INC.</u> 1870 Jackson St. Ste 704 San Francisco, CA 94109	<u>COUNTY OF MONTEREY</u>
By <u></u> Antoinette Mailliard, President & Secretary Date <u>4/16/2014</u>	By _____ Signature Name _____ Title _____ Date _____ By _____ Signature Name _____ Title _____ Date _____

SECTION A

License & Subscription

I. Licenses

- A. AACTS Licenses are available on a Client Access License (CAL) basis. A CAL gives a User the right to access the AACTS application through an internet portal. Each person requiring access to AACTS for data entry, review, reporting or administration will require a CAL.
- B. Access to AACTS by additional COUNTY Users, whether on a permanent or temporary basis, will require the purchase of the appropriate number of additional licenses. Replacement of one User with another User will be counted as a single User. Two overlapping Users will be counted as 2 Users. If COUNTY owns more licenses than it has current Users, it may add Users up to the number of licenses owned without additional license (CAL) purchase.

II. Subscriptions

- A. **Initial Subscription Fee:** The Initial Subscription period may not encompass a complete quarter. In that case COUNTY will be invoiced for either one or two months (instead of three months). Any portion of a month in which Users have access to the system will count as a billable month.

Because subscription fee are payable in advance, the subscription for the first quarter of each fiscal year shall be due prior to the start of the new quarter/new fiscal year (ie. July-September subscription payable by June 30). This requires that the COUNTY include this amount in the prior fiscal year's budget. Thus, if COUNTY selects a start-date in July, August or September the initial subscription year only may include up to 5 subscription quarters.

- B. **Subscription Fees:** COUNTY will be invoiced in advance quarterly (quarters starting Oct 1, Jan 1, Apr 1, Jul 1) based on the number of Users at the time of invoicing or projected number for next quarter. Payment will be due before the start of the new quarter. Late payment may result in service interruption or termination, which may subject COUNTY to a Re-establishment-of-service fee.

Additional Users added during a quarter such that at any time during the quarter the total User number exceeds the User number invoiced for the quarter, may be billed separately, or in arrears in the next scheduled quarterly invoice. Overpayment for subscriptions not used during the entire billing quarter will be credited in arrears. Users added during a quarter will be counted for the entire quarter. Replacement of one User with another User will be counted as a single User. Two overlapping Users during a quarter will be counted as 2 Users. When COUNTY has purchased more Client Access Licenses than it has active Users, COUNTY's subscription fees will reflect only the number of Users with access to the system.

- III. **Access:** MMTG reserves the right to refuse access AACTS to any User at MMTG's discretion.

SECTION B
Discovery & Training Prep

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SECTION C

Training

I. User Preparedness

AACTS Users should have achieved a minimum of 60% Windows and Internet-navigation literacy prior to training. Where appropriate, literacy should be determined through Microsoft-certified testing.

II. Onsite Training Facilities

COUNTY shall provide facilities and equipment for all onsite trainings. For Initial Training COUNTY shall provide an appropriate training room, with a computer with high-speed internet connection for each student and the AACTS Trainer, a linked projector suitable for use with the provided Trainer computer and a projection screen. For Advanced Skills Seminar(s) COUNTY shall provide a room large enough to seat all AACTS users, a single Trainer computer with high speed internet access, a linked projector and projection screen.

III. Onsite End User Training

A qualified MMTG trainer/facilitator will conduct training for all End Users. Each onsite Training Module consists of approximately 8 hours of class time, delivered in two 4-hour sessions over two successive days. Each Training Module will accommodate a maximum of 10 students.

Post-implementation, training of 4 or more new users in a calendar quarter requires an on-site training class. Training of 3 or fewer new users in a calendar quarter may be done online in one-on-one training sessions. See "Section C Training, VII Post Implementation Training for New AACTS Users" below.

IV. Super-User Training

Super-User defined: A Super-User is an individual who is computer literate and confident, a seasoned APS Social Worker, well regarded by peers, and both willing and able to assist others as they learn AACTS. After initial training, Super-Users will be the "go-to" AACTS resource for colleagues and new hires.

Super-User Training: All Super-Users attend the first two-day End User Training Module. In counties receiving more than one Training Module, Super-Users attend a second two-day Module where they learn by assisting others under the guidance of MMTG trainer. In counties with only one Training Module, MMTG trainer will provide additional coaching for Super-user(s). Additional "homework" exercises and/or consultation will be provided as needed for Super-Users during the start-up period.

III. AACTS Administrator Training

A qualified MMTG trainer will conduct training for IT Personnel or APS System Administrator(s). Each Administrator-Training accommodates a maximum of 3 students. In the second and subsequent contract years County may receive one AACTS Administrator Training at no charge per year.

VI. Advanced Skills Training

Approximately 2-3 months after AACTS implementation, a qualified MMTG trainer/facilitator will conduct a 3-4 hour, onsite, customized Advance Skills training seminar for all AACTS users.

VII. Post Implementation Training for New AACTS Users

Access to AACTS requires training by a qualified AACTS trainer. Training options include:

- On-site End User classes (required for groups of 4 or more new users in a single quarter).
- One-on-one training, for individual new users, using telephone instruction combined with online shadowing in 2 sessions conducted over 2 days.

Additional customized Advanced Skills seminars to refresh User skills, address changes in County practices/process, update Users on County, State or Federal regulations and/or to address particular points of interest to the County may be purchased by separate agreement.

VIII. Training on live System

Training requires user log-in access to the live system. Thus licenses and subscriptions must be in place and fees paid prior to commencement of training.

SECTION D

Travel Time & Expenses

~~For onsite trainings/meetings travel expenses to and from COUNTY offices are based on travel time at MMTG consultant's billable rate, plus mileage/airfare and expenses as set forth in "Section I Budget"~~

SECTION E

Product Support

I. Maintenance Support

A. Post Implementation Telephone/Email Support

As set forth herein, MMTG shall provide reasonable telephone/email support through designated COUNTY AACTS Primary Contact, regarding use/functionality of AACTS, during business hours (8:30 a.m. to 5:30 p.m. Pacific Time), excluding holidays. Reasonable telephone/email support shall mean (1) Unlimited support during initial User training class week(s), (2) Up to 2 hours per week during the subsequent one month, (3) Up to 2 hours per month during the subsequent two months. All questions must come through COUNTY Primary Contact. Support or instruction beyond the levels stated herein, may be purchased by COUNTY under separate agreement.

COUNTY Primary Contact, Title	Alison Yant, Management Analyst
Telephone No.	(831) 883-7515
Email Address	yanta@co.monterey.ca.us

B. On-going Support

Following the initial training and post-implementation support period, Super-users (see "SECTION C Training") provide COUNTY's first line of User support. Questions requiring escalation beyond Super-users may be submitted through the COUNTY Primary Contact by telephone, email or the AACTS support page at www.mmtg.com. All such submissions will be addressed promptly. COUNTY Primary Contact is not an IT role and must be assigned to a regular AACTS user; typically a Manager, Supervisor, Super-user or Analyst.

C. Error Correction

MMTG shall correct, within a reasonable period of time, any material, reproducible error or malfunction in the Licensed Software (See Agreement paragraph "3.0 Support and Training" and sub paragraphs). If MMTG, at its sole discretion, requests written verification of an error or malfunction discovered by COUNTY, COUNTY shall immediately provide such verification by e-mail, setting forth in reasonable detail the material error or malfunction. An error or malfunction shall be "material" if it represents nonconformity with MMTG's current published specifications for the Licensed Software and/or materially interferes with COUNTY's productive use of the Licensed Software as specified, and has no reasonable work-around. If MMTG, at its sole discretion, requests direct communication with user(s) reporting difficulties to aid in isolating potential causes, COUNTY will facilitate such contact. If COUNTY experiences complete loss of productive use of AACTS due to reproducible material error or malfunction as defined herein for a continuous period in excess of 2 business days, MMTG will refund to COUNTY, as a credit in next billing cycle, an amount reflecting days of such loss above 1 day.

II. Development/Update/Enhancement Support

New features, functionality, upgrades, enhancements and/or updates of Licensed Software may be released in response to state or federal mandates, legal considerations, technical considerations, User request, or as otherwise indicated.

Cost of these upgrades, enhancements or updates will be shared among all subscriber-counties on a pro rata basis, based on the number of Client Access Licenses held by the COUNTY. MMTG will provide an estimate of COUNTY share of anticipated charges for annual budget purposes. COUNTY will be charge only for releases implemented.

MMTG shall provide a copy of new releases to CareAccess/Web Portal Provider without additional charge to COUNTY for purposes of upgrading system. MMTG will provide appropriate notice and documentation in electronic copy, including updated pages to User Guide, without additional charge to COUNTY.

SECTION F

Documentation

1. Materials

AACTS Training Manual and User Guide (available online within the AACTS system).

AACTS System Administrator Guide

AACTS Marketing and Promotion Material

2. Material Fees

These materials are distributed in electronic form at no cost to COUNTY. COUNTY may, at its own expense and exclusively for use by licensed, trained AACTS users and without payment to MMTG, print Training Manual/User Guides and other documents provided to COUNTY in electronic form by MMTG.

Hardcopy/printed materials are also available on request at the following costs:

AACTS System Administrator Guide	\$100.00 per copy, plus shipping
AACTS Training Manual	\$100.00 per copy, plus shipping

3. Training Materials Printed in Advance by County

If COUNTY elects to provide printed materials, COUNTY agrees to have printed in advance of AACTS training, the complete AACTS Training Manual/User Guide developed for COUNTY by MMTG, in sufficient number to provide one copy per student plus one or more Trainer copies as determined during the Training Preparation Meeting. Training Manual/User Guide should be distributed in loose leaf binders large enough for future addition of pages documenting changes to AACTS system.

4. Documentation to Contain Proprietary Notices

Each copy of the MMTG Documentation reproduced by, or on behalf of COUNTY, must contain in the Documentation all proprietary notices placed by MMTG as placed, including trade names, trademarks, copyright notices or any other MMTG or AACTS identifiers or proprietary notices appearing in the original. (See Agreement paragraph 2.2 "License Restrictions.")

5. Intellectual Property

Sharing or distributing of the User/Training materials in any way whatsoever is barred under the terms of this Agreement. See Agreement Paragraph 1.2 "Definitions: 'MMTG Technology' and/or 'AACTS'" and Agreement Paragraph 2.2 "License Restriction."

SECTION G

Mutual Non-Disclosure

All Information exchanged between the parties in conjunction with this Agreement shall be subject to the following terms. Use of the terms "Recipient" and "Discloser" hereunder refer to either COUNTY or MMTG, as the case may be. In consideration of the mutual promises and obligations contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

- A) The parties acknowledge that it may be necessary for each of them, as Discloser, to provide to the other, as Recipient, certain information, including trade secrets, information considered to be confidential, valuable and proprietary by Discloser, in connection with business purposes of this Agreement.
- B) Such information may include, but is not limited to, technical, financial, marketing, staffing and business plans and information, strategic information, specifications, drawings, prices, costs, privileged client information, procedures, proposed products, processes, business systems, software programs, techniques, services and like information of, or provided by, Discloser, its Affiliates or third party suppliers or other facts pertinent to the business relationship between Discloser and Recipient (collectively Discloser's "Information"). Information provided by one party to the other before execution of this Agreement and pertinent to this Agreement is also subject to the terms of this Provision
- C) Recipient will protect Information provided to Recipient by or on behalf of Discloser from any use, distribution or disclosure except as permitted herein. Recipient will use the same standard of care to protect Information as Recipient uses to protect its own confidential and proprietary information, but not less than a reasonable standard of care.
- D) Recipient agrees to use Information solely in connection with purposes of this Agreement and for no other purpose. Recipient may provide Information only to Recipient's employees who: (a) have a substantive need to know such Information in connection with the project; and (b) have been advised of the confidential and proprietary nature of such Information.
- E) Discloser's Information does not include: a) any information publicly disclosed by Discloser; b) any information Discloser, in writing, authorizes Recipient to disclose without restriction; c) any information Recipient already lawfully knows at the time it is disclosed by Discloser, without an obligation to keep it confidential; d) any information Recipient independently develops without use of or reference to Discloser's Information.
- F) If Recipient is required to provide Information to any court or government agency pursuant to written court order, subpoena, regulation or process of law, Recipient shall provide Discloser with prompt written notice of such requirement and cooperate with Discloser to appropriately protect against or limit the scope of such disclosure. To the fullest extent permitted by law, Recipient will continue to protect as confidential and proprietary all Information disclosed in response to a written court order, subpoena, regulation or process of law.
- G) Information remains at all times the property of Discloser. Upon Discloser's request and/or upon termination of this Agreement, all or any requested portion of the Information (including, but not limited to tangible and electronic copies, notes, summaries or extracts of any Information) will be promptly returned to Discloser or destroyed (at Disclosers option), and Recipient will provide Discloser with written certification stating that such Information has been returned or destroyed.
- H) No license under any trademark, patent, copyright, trade secret or other intellectual property right is either granted or implied by disclosure of Information to Recipient.
- I) The term of this Mutual Non-Disclosure and the parties' obligations hereunder commences, except as otherwise stated herein, on the Effective Date of this Agreement and extends with regard to all Information until five (5) years after termination of this Agreement.
- J) This Agreement is binding upon and inures to the benefit of the parties and their heirs, executors, legal and personal representatives, successors and assigns, as the case may be.

SECTION H

Additional Provisions

1. CONFIDENTIALITY:

MMTG agrees to comply and to require employees to comply with the provisions of Welfare and Institutions Code (WIC) Section 10850 and 14100.2 to assure that records concerning individuals in connection with the administration of or delivery of services under this Agreement will be kept confidential and not open to examination for any purpose not directly related to such administration. MMTG will not publish or disclose, use or permit, or cause to be published, used or disclosed any confidential information pertaining to any recipient served by the COUNTY. The parties acknowledge that any person knowingly and intentionally violating the provisions of said laws is guilty of a misdemeanor. MMTG agrees that services provided hereunder shall comply to the full extent applicable, with Health Insurance Portability and Accountability Act (HIPAA), Medi-Cal Data Privacy and Security Agreement (Medi-Cal PII), paragraphs E, F, G, H, K, L, M, Q.

2. CHILD SUPPORT: Public Contract Code / Family Code

MMTG agrees, in accordance with Public Contract Code, Section 7110, to comply with applicable state and federal laws relating to child and family support enforcement including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code, Division 9, Part 5, Chapter 8 (commencing with Section 5200).

3. NON-DISCRIMINATION: CDSS MPP / Executive Orders / Dept. of Labor Regulations

MMTG shall not unlawfully discriminate against any qualified worker because of race, religious creed, color, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status or age. MMTG shall comply and shall require its employees, consultants, agents to comply with non-discrimination requirements as defined in CDSS MPP Sections 21-100. MMTG shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR Part 60).

4. DRUG FREE WORKPLACE

MMTG and its employees shall comply with all pertinent State and Federal regulations with regard to maintaining a drug-free workplace.

5. CONFLICT OF INTEREST:

MMTG warrants that it has no interest which would conflict in any manner with the performance of services required under this Agreement.

6. RESTRICTIONS, LIMITATIONS OR CONDITIONS

This Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Federal and/or State government that may affect the provisions, terms or funding of this Agreement.

7. NON-ALLOCATION OF FUNDS

The terms of this Agreement, and the services to be provided there under, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated by COUNTY, at any time by giving the MMTG sixty (60) days advance written notice.

8. INTERPRETATIONS

The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against one or the other of the parties hereto.

9. INVOICING

Invoices as provided in this Agreement shall be sent by email to:

Christel Lucero, lucero@co.monterey.ca.us

Alison Yant, yanta@co.monterey.ca.us

SECTION I**Budget****MONTEREY COUNTY 2014-15**

Description	Units	Rate	Amount
Client Access License (CAL) AACTS Client Access License v.6.9 or current version. AACTS Client Access License (CAL). Each CAL grants single user-access to County's AACTS database. Vacated CALs are transferable to replacement users.	1	\$950.00	\$950.00
Subscription Software Subscription Fee - AACTS. \$150/qtr per user, payable in advance quarterly, based on highest number of users during billing period. Adjustments may be made in arrears. Quarters: Oct-Dec 2014, Jan-Mar, Apr-June, July-Sept 2015.	14	\$600.00	\$8,400.00
Update/Enhancement AACTS Upgrade/Enhancement Budget. For changes to State data gathering and reporting requirements and other indicated updates. Charges are shared pro rata among AACTS subscriber counties, based number of Licenses. County will be charged only for upgrades/enhancements actually implemented.	14	\$200.00	\$2,800.00
New/Replacement User Training: New User Training consisting two sessions of 1-on-1 training for 1 student with MMTG trainer using on-line "shadowing" combined with telephone instruction.	3	\$400.00	\$1,200.00
TOTAL			\$13,350.00

Use of AACTS via CareAccess Web Portal system requires separate agreement with CareAccess. For CareAccess information, please contact Edith Gong at (408) 350-3295, egong@careaccess.biz.

MMTG/AACTS has no legal or financial interest in, and receives no commission or financial benefit from CareAccess.

McWilliams Mailliard Technology Group, Inc.

1870 Jackson Street Ste. 704

San Francisco, CA 94109

Telephone 415-771-3452



Invoice To:

Monterey County Dept. of Social Services
Office of Aging & Adult Programs
1000 South Main St.
Salinas, CA 93901
Attn. Alison Yant & Christel Lucero

invoice

Invoice #	1335
Date	4/14/2014
Customer P.O. #	

Customer #	Vendor #	Project	Rep.	Terms
Monterey Co.		AACTS 2014-15	AM	Net 30

UNITS	DESCRIPTION	PRICE/UNIT	TOTAL
1	xxxxx	0.00	0.00

Please remit to:
McWilliams Mailliard Technology Group, Inc
1870 Jackson St. Ste.#704
San Francisco, CA 94109

Subtotal	\$0.00
Sales Tax (0.00)	\$0.00
Total Due	\$0.00

EXHIBIT C

Health Insurance Portability & Accountability Act (HIPAA) Certification

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, CONTRACTOR and COUNTY have entered into an Agreement ("the Agreement") to which this Certification is an attachment whereby CONTRACTOR will provide certain services to COUNTY ; and

WHEREAS, CONTRACTOR may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under the underlying Agreement.

THEREFORE, in consideration of the Parties' continuing obligations under the Agreement, compliance with the HIPAA Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CONTRACTOR agrees to the provisions of this Certification and of the HIPAA Privacy Rule and to protect the interests of COUNTY.

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 Certification and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule shall control. Where provisions of this Certification are different than those mandated in the HIPAA Privacy Rule, but are nonetheless permitted by the HIPAA Privacy Rule, the provisions of this Certification 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.

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

II. CONFIDENTIALITY REQUIREMENTS

- (a) CONTRACTOR 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 COUNTY is required to disclose such information, or as otherwise permitted under this Certification, or the underlying Agreement, (if consistent with this Certification 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 COUNTY; and
 - (ii) at termination of the Agreement, (or any similar documentation of the business relationship of the Parties), or upon request of COUNTY, whichever occurs first, if feasible CONTRACTOR will return or destroy all Protected Health Information received from or created or received by CONTRACTOR on behalf of COUNTY that CONTRACTOR still maintains in any form, and retain no copies of such information, or if such return or destruction is not feasible, CONTRACTOR 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(s), to whom it provides Protected Health Information received from or created by CONTRACTOR on behalf of COUNTY, agrees to the same restrictions and conditions that apply to CONTRACTOR with respect to such information. In addition, CONTRACTOR agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause CONTRACTOR to breach the terms of the Agreement.
- (b) Notwithstanding the prohibitions set forth in this Certification or the Agreement, CONTRACTOR may use and disclose Protected Health Information as follows:
- (i) if necessary, for the proper management and administration of CONTRACTOR or to carry out the legal responsibilities of CONTRACTOR, provided that as to any such disclosure, the following requirements are met:
 - (A) the disclosure is required by law; or
 - (B) CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR for the health care operations of COUNTY pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Certification and the Agreement, data aggregation services means the combining of Protected Health Information by CONTRACTOR with the protected health information received by CONTRACTOR in its capacity as CONTRACTOR of another COUNTY, to permit data analyses that relate to the health care operations of the respective covered entities.

EXHIBIT C

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

III. AVAILABILITY OF PHI

At this time it is anticipated and intended that CONTRACTOR does not and will not provide services to, nor have any contact with, County recipients of social services. However, if, in the course of providing services pursuant to the terms of this Agreement, CONTRACTOR does provide those services or have contact with County recipients of social services, CONTRACTOR agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule. CONTRACTOR 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, CONTRACTOR 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 Certification or the Agreement to the contrary, COUNTY shall have the right to terminate the Agreement immediately if COUNTY determines that CONTRACTOR has violated any material term of this Certification and/or the Agreement. If COUNTY reasonably believes that CONTRACTOR will violate a material term of this Certification and/or the Agreement and, where practicable, COUNTY gives written notice to CONTRACTOR of such belief within a reasonable time after forming such belief, and CONTRACTOR fails to provide adequate written assurances to COUNTY that it will not breach the cited term of this Certification and/or the Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then COUNTY shall have the right to terminate the Agreement immediately.

V. MISCELLANEOUS

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

EXHIBIT C

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

In the event that either party believes in good faith that any provision of this Certification and/or the 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 (30) days, the parties shall address in good faith such concern and amend the terms of this Certification and/or the Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Certification and/or 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.

CONTRACTOR: McWilliams-Mailliard Technology Group, Inc.

By: Amman

Title: president

Date: 6/18/2014

EXHIBIT D

PROFESSIONAL LIABILITY INSURANCE EXEMPTION

CONTRACTOR is an independent software and services provider for the health and human services industry, and has developed case management and reporting software for Adult Protective Services, known as the AACTS (for *aging and adult client tracking system*). CONTRACTOR provides its case management software to county Adult Protective Services and IHSS staff throughout California. Under prior agreement with CONTRACTOR, the Department purchased 18 licenses for AACTS, and has paid subscriber fees since March 1, 2004. This Agreement will provide the means to pay for ongoing, monthly subscription and upgrade fees to continue using the AACTS system.

CONTRACTOR carries the required Commercial General Liability, Automobile coverage, Worker's Compensation and all required endorsements. However, CONTRACTOR does not carry Professional Liability Insurance, and COUNTY did not required professional liability coverage from CONTRACTOR in fiscal years, 2004-2008. The Department believes that an exemption from Professional Liability Insurance is appropriate for the following reasons:

- For over ten years, a large percentage of CONTRACTOR's business has been with California counties, and none has required professional liability coverage. CONTRACTOR is unwilling to charge the additional cost of this insurance to other user counties, and COUNTY would thus have to assume the entire cost of such coverage.
- At no point in the implementation or administration of AACTS does CONTRACTOR have direct contact with, or control of, COUNTY's computer system, and thus cannot cause it harm.
- CONTRACTOR's software does not sit on COUNTY's computers, but is accessed through a web portal and resides on equipment managed by CareAccess (covered under separate agreement with CareAccess, Silicon Valley).
- CareAccess servers are part of an AT&T server farm in San Jose, CA. The servers are Windows-based. The access infrastructure (channel) is Citrix.
- CareAccess servers are HIPAA compliant, have at least 10x redundancy and nightly backup, which offers a very high level of data safety. AACTS resides on the CareAccess server farm.
- AACTS is written in Microsoft.NET. The database engine is MS SQL Server. The report writer is Crystal Reports.
- COUNTY does not require professional liability coverage when it purchases other software licenses; i.e. MS Access, Crystal Reports or Adobe 5.0.

Amended 6/16/2014 for MMTG