

COUNTY OF MONTEREY STANDARD AGREEMENT

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

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:

Web based software subscription, database hosting, technical support and maintenance for the PG-ProWeb solution that tracks information on behalf of Health Department, Public Guardian clients conserved.

2.0 PAYMENT PROVISIONS:

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 shall not exceed the sum of: \$ 169,500.00

3.0 TERM OF AGREEMENT:

3.01 The term of this Agreement is from July 1, 2020 to June 30, 2023, 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:

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

Exhibit A Scope of Services/Payment Provisions

Exhibit B Other: Service Level Agreement
Exhibit C Disaster Recovery Plan
Exhibit D Business Associate Agreement



Panoramic Software, Inc.
07/01/2020 - 06/30/2023

Agreement ID: \$169,500.00

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 in this paragraph. 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:

CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys’ fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR’s performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. “CONTRACTOR’s performance” includes CONTRACTOR’s action or inaction and the action or inaction of CONTRACTOR’s officers, employees, agents and subcontractors.

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.)

Requestor must check the appropriate Automobile Insurance Threshold:

Requestor must check the appropriate box.

Agreement Under \$100,000 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.

Agreement Over \$100,000 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 \$1,000,000 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 always 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:**

- 10.1 **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.
- 10.2 **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.
- 10.3 **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.
- 10.4 **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.
- 10.5 **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:

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:

In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is always 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 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:

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: |
|---|--|
| Sarah House Departmental Information Systems Manager II | Jeff von Waldburg CEO |
| Name and Title 1270 Natividad Road Salinas, Ca. 93906 | Name and Title 32932 Pacific Coast Highway, #14-482 Dana Point, CA 92629 |
| Address 831-755-4531 | Address 877-558-8526 |
| 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; venue shall be Monterey County.
- 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.

EXHIBIT A
SCOPE OF SERVICES/PAYMENT PROVISIONS

County of Monterey
And
PANORAMIC SOFTWARE, INC.

This Exhibit A shall be incorporated by reference as part of Agreement attached hereto governing work to be performed under the attached referenced Agreement, the nature of the working relationship between the **County of Monterey**, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and **Panoramic Software, Inc.** (hereinafter referred to as CONTRACTOR) and specific obligations of the CONTRACTOR.

I. Scope of Services

CONTRACTOR will provide software subscription and hosting services for the PG-ProWeb solution, technical support/maintenance, application training as requested/approved by COUNTY, and professional services not covered under the recurring software subscription and technical support/maintenance costs.

A. Software Subscription Services

1. CONTRACTOR grants to COUNTY all access and use of PG-ProWeb by COUNTY authorized Users. There is not minimum or maximum number of users that will input data into the system. Subscription is a non-exclusive, royalty-free and non-transferable license for COUNTY's business purposes.
2. CONTRACTOR shall under the terms and conditions of this Agreement, provide software support, database access, and all other services described in this Agreement solely to COUNTY "authorized users".
3. CONTRACTOR shall be responsible for all software upgrades and maintenance to ensure the application, database, and operating systems and all other functions representative of the infrastructure is at the latest supported version and application is configured to be compatible with the latest updates without impacting the COUNTY use of the solution.
4. Report Development as requested by COUNTY.
5. Data Extract/Data Dump: CONTRACTOR will upload a daily or weekly data replication to a secure sFTP site and provide COUNTY access to download the COUNTY data.
6. Technical support and configuration changes necessary when changes are needed for the banking, reporting, and uploads to the PC-ProWeb solution.
7. COUNTY Responsibility:
 - Ensuring that only authorized users access Software.
 - Setting up new users that will input data into the system and the ongoing addition/deletion of new/existing users.
 - All data entered in the system will be owned by the County.

B. Technical Support

1. CONTRACTOR shall provide technical support and maintenance as needed during the term of this Agreement. Attached and incorporated as part of this Agreement as EXHIBIT B – SERVICE LEVEL AGREEMENT AND ESCALATION PROCESS defines the support level provided under this Agreement by CONTRACTOR.

C. Training

CONTRACTOR will provide the following training options:

1. On site training: CONTRACTOR will provide training to County on an “as-requested” and “as-approved” basis by County in the amount of **\$1200 per training session**. There will be no travel reimbursement allowed during this Agreement.
2. Remote Web Based Training: CONTRACTOR will provide online web based training using a secure conference line provided by County included in the recurring software subscription costs. Remote training shall be coordinated for a date/time that is mutually agreeable by both parties.

D. Professional Services

For services not covered under the recurring costs for software subscription and technical support/maintenance, the rate will be \$170/Hour.

E. Hosting, Accessibility, Uptime, and Ownership of Intellectual Property

1. CONTRACTOR agrees to host Software and database with web based access to County authorized users pursuant to this Agreement.
2. CONTRACTOR is responsible for any data loss or breaches that occur in CONTRACTOR hosted environment. COUNTY is responsible for any data loss at the point of downloading the data and/or reports and the data exists on COUNTY environment and device/s.
3. CONTRACTOR is not responsible for user’s computer hardware or computer operating system failure which restrict the users’ ability to access the Software up and to the point of logging into the Software portal.
4. CONTRACTOR will be responsible for maintaining and securing the hosted environment and data from any attempted breaches, hacking attempts, and any other malicious attempted attack on the CONTRACTOR environment and will notify COUNTY according to the requirements specified in the Business Associate Agreement attached as Exhibit D to this Agreement.
5. Disaster recovery specifications and backup schedule is defined in Exhibit C - Disaster Recovery Plan attached and incorporated as part of this Agreement.
6. The data input by COUNTY belongs to the COUNTY and CONTRACTOR shall not use, reproduce, distribute, utilize, sell, share, or distribute COUNTY data which is separate and distinct from the Software application.

F. Schedule of Rates

CONTRACTOR will provide the Named User Licensing and services associated with this Agreement. The following table reflects the breakdown of costs by category:

| Description | Rate | Monthly | Year 1 | Year 2 | Year 3 | |
|--|----------|------------|----------------------|----------------------|----------------------|----------------------|
| | | | 7/1/2020 - 6/30/2021 | 7/1/2021 - 6/30/2022 | 7/1/2022 - 6/30/2023 | 7/1/2020 - 6/30/2023 |
| Software subscription/maintenance/technical support | | \$4,500.00 | \$54,000.00 | \$54,000.00 | \$54,000.00 | |
| Amount allocated for professional services that are not included in the recurring software subscription/maintenance/technical support to be on an "as-needed" and "as-approved by County" basis. | \$170.00 | | | | | \$7,500.00 |
| Yearly Subtotal | | | \$ 54,000.00 | \$ 54,000.00 | \$54,000.00 | \$ 7,500.00 |

Total \$169,500.00

G. Term of Agreement

1. The term of this Agreement shall be from **July 1, 2020 through June 30, 2023** unless sooner terminated pursuant to the terms specified in Section 3.02 of body of this Agreement.

2. Upon the termination of the subscription services, CONTRACTOR shall provide to COUNTY the data in machine readable format and delete data after sixty (60) days. CONTRACTOR shall not utilize, share, store or otherwise use COUNTY data.

H. Payment Provisions

1. For the services described in this Agreement, the maximum obligation of the County will be **\$169,500.** The payment conditions as specified in Section 6 of the body of this Agreement shall apply.
2. County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
3. Invoices shall be submitted by CONTRACTOR to County on a monthly basis.
4. Invoices shall be mailed to:

Monterey County Health Department – Public Guardian’s Office
1441 Schilling Place – North
Salinas, CA 93901
Attn: Accounts Payable Public Guardian

EXHIBIT B

SERVICE LEVEL AGREEMENT – ESCALATION PROCESS

Panoramic Software, Inc.

Service Level Agreement – Escalation Process

PANORAMIC



[SERVICE LEVEL AGREEMENT – ESCALATION PROCESS]

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5. Scheduled Maintenance and Maintenance Window **Error! Bookmark not defined.**





[SERVICE LEVEL AGREEMENT – ESCALATION PROCESS]

Overview

This document details the Service Level Agreement (SLA) between Panoramic Software Inc. (“Panoramic”, “us”, “we”) and its customers (“you”). This SLA applies separately to each application hosted by Panoramic Software.

Service Level Agreement

1. General Terms

- (a) Panoramic Software has the objective of achieving the quality levels it has set for its application support, operation and hosting services described in this Agreement.

2. 99% Prime Time Service Availability

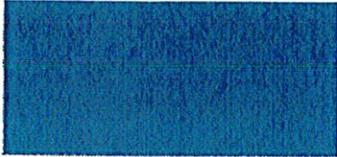
- (a) Panoramic Software maintains a production environment for the provision and rendering of its services in the United States. Data access within the environment is available on a 24-hour per day, 7-days per week basis, divided into prime hours of 7 am to 7 pm PST on regular customer work days with a service availability objective of 99% uptime, and non-prime hours of 7 pm to 7 am PST on regular customer work days and all day on customer non-work days with a service availability objective of 95% with the exception of:
- (i) Periods of Scheduled maintenance, which Panoramic Software will perform (if needed) on Sunday between the hours of 6 am and 12 pm PST at each data center to which a customer is linked;
 - (ii) Loss of service due to circumstances that are normally covered under “Force Majeure” clauses, such as power outages due to weather, fires, floods, other acts of nature, strikes, lock-outs, and acts of war or sabotage,;

Calculated uptime for the Prime-Time hours and Non-Prime-Time hours for that quarter as follows:

Prime-Time Uptime = $1 - (\text{\#-of-hours-of-prime-DT} / \text{Total-number-of-hours-of-prime-time})$

Non-Prime-Time Uptime = $1 - (\text{\#-of-hours-of-non-prime-DT} / \text{Total-number-of-hours-of-non-prime-time})$

Where Downtime (DT) is defined as the period of time that the Panoramic software/system is not



[SERVICE LEVEL AGREEMENT – ESCALATION PROCESS]

accessible to the end-users or a critical process is not functioning properly at a critical time (defined below as an “Urgent” Priority request (see below)). . Intermittent downtime for a period of less than 5 minutes will not be counted towards any Downtime Periods.

3. Outage Notification

During its regular business hours (7:00AM – 5:00PM PST), Panoramic Software will respond to Support Ticket or Support Phone Call within 15 minutes to reports of an outage or significant performance issue. After access and/or performance has been restored, details of the cause of the outage or performance issue will be provided to the customer’s “critical contact”. Panoramic Software has created an email account (support@panosoft.com) for customers to communicate their support issues to Panoramic. This account is set up to forward emails to support staff in Panoramic Software who can investigate an issue and determine an effective solution to correct the problem.

Anytime a customer feels they have an urgent issue they directly may call the Support Team or Project Manager to help solve a particular critical issue at 1-877-558-8526.

4. Services Definition

Panoramic Software Inc’s Service Level Agreement below defines the categories, priorities, and response times . In addition, we have defined our Service Level Targets so that our customers know what to expect from our support and operational services.

The following tables describe the Services, Support Request Categories, Request Priorities, and the Request Priority Response Time supported by Panoramic Software.

Panoramic or the Customer can open a ticket request for service or report an issue in Panoramic Software’s ticketing system. The ticket will include, at a minimum, a description of the issue/request and steps to duplicate where possible, date-time of the issue/request, name of the requestor, Support Request Category, Priority, and the actual time to resolve. Before closing a ticket, Panoramic Software will verify/confirm with the original requestor that the issue/request has been resolved/completed.


[SERVICE LEVEL AGREEMENT – ESCALATION PROCESS]

Panoramic Software Services

Panoramic Software has developed the following Services and their corresponding target level as defined in the following table.

| <i>Service</i> | <i>Target Level</i> |
|--|---|
| Application Availability (Prime) | 99% |
| Application Availability (non-Prime) | 95% |
| Application Hours Available (Prime) | 7 am – 7 pm PST |
| Application Hours Available (non-Prime) | 7 pm – 7 am PST |
| Application Support | 7 am – 5 pm PST (or Emergency Outage) |
| Maintenance Window | Sunday 6 am – 12 pm PST (see Maintenance Window section for more details) |
| Test and implement application upgrade ¹ | 1 week |
| Application configuration modification (changes under 2 hours) | 2 week |
| "Purge" Cases upon written request from the customer's Contract Contact | 1 week |
| Incorporate new form letters into the application based on customer-provided Word templates. | 1 week |

¹ Panoramic Software Application upgrades that include planned maintenance and enhancements are scheduled on a weekly basis. If a Panoramic Software System-Wide defect is found, depending on the severity, it might be migrated to production on an exception basis. In either case Panoramic will notify customer in advance. Application Configuration changes that do not require the application to be refreshed can be accommodated on a daily and emergency basis. If a configuration change requires an application refresh, then the normal weekly schedule would apply unless required in a daily (emergency) release. Releases to production are controlled through the Panoramic Software IT Administration and Support Teams.


[SERVICE LEVEL AGREEMENT – ESCALATION PROCESS]

Administration Support Request Categories

Requests for support will be typed into three broad categories as defined in the following table:

| <i>Support Request Category</i> | <i>Definition</i> |
|---|---|
| <i>Configuration Changes</i> | <i>Existing field label or attribute changes</i> |
| <i>Maintenance</i> | <i>Defined to be any IT Administration work required to keep the system functioning as designed. This includes but may not be limited to apply bug fixes, system patches, data value based modifications (note 1), scheduled releases, database monitoring and tuning, and making any routine updates at no additional cost under the maintenance agreement. Examples of "routine" changes are updating options in a drop down field; minor report modifications like formatting changes or adding a summary count; adding new form letters; adding a new field to a system page; or minor cosmetic changes to pages.</i> |
| <i>Enhancements requested by the customer (different than "Software Enhancements" referred to in the Software Maintenance Agreement, as those refer to enhancements to the base product that all customers receive)</i> | <i>Changes that require new database fields or modification to existing application objects: Modules, Screens, New Fields, New Values, and New Reports. Enhancement requests (not covered under standard Support) will be evaluated, prioritized and quoted individually.</i> |

Note 1: "Data value based modification" = A customer may request that Panoramic Software clean up data which has been entered incorrectly, and they don't have the access to change it. An example is a user voids the wrong check, and then unvoids it through the system. The judge to whom the annual accounting is submitted doesn't want to see erroneous transactions. Panoramic Software can clean up the data error but will require written authorization from the Customer's Contract POC to authorize this type of change because of auditing requirements.


[SERVICE LEVEL AGREEMENT – ESCALATION PROCESS]

Request Priority

Support requests will be assigned a priority in accordance with the following table:

| <i>Priority Level</i> | <i>Reason</i> | <i>Example</i> |
|-----------------------|--|--|
| <i>Urgent</i> | <i>No Workaround - Multiple resources (people/processes are down) or a critical process is not functioning properly at a critical time.</i> | <i>Application Server Down Router/Switch Down DNS Server Down</i> |
| <i>High</i> | <i>Workaround – Multiple resources (people/processes are down)</i> | <i>(single) – cannot login (group) – application bug</i> |
| <i>Medium</i> | <i>Workaround - A single user is impacted but not down. (Most requests fall into this priority) A single user is somewhat impacted by the issue. A group is somewhat impacted by the issue.</i> | <i>Application enhancement request Code Table Change Request Workflow Change Request</i> |
| <i>Low</i> | <i>Workaround - A single user is somewhat impacted by the issue</i> | <i>Application enhancement request Workflow Change Request</i> |


[SERVICE LEVEL AGREEMENT – ESCALATION PROCESS]

Request Priority Response Time

Responses to requests will be within the following times 98% of the time measured on a quarterly basis.

| <i>Priority Level</i> | <i>Acknowledgement</i> | <i>Problem Diagnosis</i> | <i>Resolution Time</i> <i>*dependent upon problem complication and customer engagement and turn around time (Change Control Process)</i> |
|-----------------------|------------------------|--------------------------|---|
| <i>Urgent</i> | <i>5 minutes</i> | <i>As required</i> | <i>2 hours*</i> |
| <i>High</i> | <i>5 minutes</i> | <i>As required</i> | <i>1 week</i> |
| <i>Medium</i> | <i>5 minutes</i> | <i>As required</i> | <i>2 weeks</i> |
| <i>Low</i> | <i>5 minutes</i> | <i>As required</i> | <i>3 weeks</i> |

Support Level Definitions:

Level-1:

Level-1 support is the first line support, typically referred to as the Help Desk.

The responsibilities of this level are:

- To be available to answer user calls during normal operation hours.
- To be able to help users with any usability issue that is covered in either training manuals or user and system documentation.
- To document all issues that are reported, and see the issue through to resolution.
- To interface with Level-2 support when issue cannot be resolved at the level-1.

Level-2:

Level-2 support is responsible for handling any calls that Level-1 does not have the knowledge or technical ability to handle. The staff at this level typically has more technical knowledge about the specifics of the system than do the Level-1 staff. The main purpose of Level-2 support is to investigate the issues in more detail and determine whether the issue is a system problem or a user training issue.

The responsibilities of this level are:



[SERVICE LEVEL AGREEMENT – ESCALATION PROCESS]

- Perform analysis to determine whether it is a user training issue, system configuration issue, or a system problem / bug.
- Work with Level-1 support if the issue is a training or system setup issue.
- Work with Level-3 support if the issue is a system problem or bug.

Level-3:

Level-3 support is responsible for handling all issues that are determined to be system problems / bugs. Typically, this level is staffed by members of the product development team.

The responsibilities of this level are:

- Coordinate with level-2 support to understand and further document the issue.
- Perform detailed analysis of the issue, working with the appropriate development team members when needed.
- Determine the appropriate course of action to mitigate the issue.

Level-4

Level-4 support handles issues beyond the scope of Level-3. These may be related to the infrastructure applications are hosted on. These fixes affect all customers of Panoramic Software.

- The responsibilities of this level are:
- Support the toolkit upon which all applications are built
- Maintain servers, URLs, Web Services and Data Bases required to adhere to the availability of the production environment.

EXHIBIT C

DISASTER RECOVERY PLAN

Overview

Panoramic Software Inc. hosts its web applications on the Amazon Cloud. Amazon Web Services (AWS) provides state of the art infrastructure utilizing innovative architectural and engineering approaches. Panoramic Software Inc., has chosen to host its applications on AWS, because of a combination of security, reliability, and scalability.

Panoramic intends to provide the highest percentage of uptime possible. To do this we must make decisions regarding the course of action which will restore service the fastest. It isn't always clear what is causing the outage and decisions must be made as to the nature of the "disaster" and potential ramifications of different responses.

There are 5 levels of disaster which could affect the accessibility of the software Panoramic provides to its customers. This document will detail the response to each of these disaster levels.

Terminology

Some terminology will be important throughout this document.

EC2 (Elastic Compute Cloud) – Server Instance, which contains programs and configuration files.

AMI (Amazon Machine Image) – pre-configured operating system and virtual application software which is used to create a virtual machine within the Amazon Elastic Compute Cloud (EC2)

EBS (Elastic Block Storage) - highly available, highly reliable storage volumes that can be attached to a running Amazon EC2 instance.

S3 (Simple Storage Service) – Long term data storage, designed to provide 99.99999999% durability and 99.99% availability of objects over a given year.

Backup Scheme

Panoramic's backup scheme uses Redgate SQL Backup Pro, to schedule database backups. These backups are performed at regular intervals. Redgate manages this process, as well as compresses the backup files.

This backup scheme gives us the ability, using the weekly full backups, in combination with the nightly differential and hourly logs, to restore to within an hour of any point in time.

- Every hour, an hourly differential backup is taken
- Every night, a full day differential backup is taken

- Weekly full database backups are taken early on Sunday mornings

On the schedule outlined above, each of these backup files, is copied from the Database Sever to a separate server within our AWS infrastructure. On the same schedule, each of these backup files is copied to our S3 storage within AWS.

In addition to these two locations within AWS, on an hourly basis, all backups are sync'd with a server located at our Southern California office.

Disaster Recovery

Level 1 - Single EC2 Instance Down

Circumstance

Our production environment runs on 3 EC2 instances. If one of these EC2 instances fails all applications will be unavailable until the instance returns to service or is duplicated and placed in to service.

Action 1

Initial response is to re-boot instance, and restore service. If instance will not reboot and cannot be accessed, then Action 2 will be pursued.

Action 2

A new AMI (Amazon Machine Image) is spun up from a snapshot of the production AMI and existing EBS volumes are attached.

Result

In the case of a level 1 disaster, customers will experience up to 2 hours of down time with no data loss when service is resumed.

Level 2 - Amazon Availability Zone Down for Extended Time

Circumstance

AWS provides multiple redundant Availability Zones within an AWS Region. If the Availability Zone our production environment is located in fails, or loses communication, all applications will be down until service is restored.

Action

Panoramic will boot new AMI in alternate zone within the same Region.

Panoramic will then configure EC2 and restore data from hourly backups from S3.

Result

Customers will experience downtime of up to 6 hours and potentially the loss of up to 2 hours of data.

Level 3 - AWS Region Inaccessible

Circumstance

If the entire AWS region within which our production environment is hosted fails or become inaccessible, all applications will be down until service is restored or the environment is duplicated.

Action

Panoramic will spin up a new AMI in new region.
The AMI will be configured to production specifications (AMI snapshots do not transfer across AWS regions)
Data will be restored from hourly backups in S3

Result

Up to 12 hours of down time and up to 2 hours of data loss

Level 4 - AWS Gone

Circumstance

The entire AWS infrastructure is inaccessible for an extended period of time.

Action

Panoramic will configure instances on new hosting infrastructure
Data will be restored from nightly offsite backup

Result

Up to 3 Days of downtime and up to 24 hours of data loss
Access to documents uploaded within applications would only be restored after AWS restoration.

EXHIBIT D

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective July 1, 2020 (“Effective Date”), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of the Health Department (“Covered Entity”) and Panoramic Software, Inc. (“Business Associate”) (each a “Party” and collectively the “Parties”).

Business Associate provides certain services for Covered Entity (“Services”) that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity (“PHI”). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Rule”), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the “Security Rule”), under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH”). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* (“CMIA”), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. The Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 (“Red Flag Rules”). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“EPHI”), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

1. DEFINITIONS

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

2. PERMITTED USES AND DISCLOSURES OF PHI

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(f) use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1);

(g) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

3. **RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate shall:

(a) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within two (2) days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents

agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within two (2) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) subject to Section 4.4 below, return to Covered Entity within twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(h) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) if all or any portion of the PHI is maintained in a Designated Record Set:

(i) upon ten (10) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

(ii) upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

(j) maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(k) notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge;

(l) maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

3.2 Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

(a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

(b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within two (2) days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

3.3 Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

(a) provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

(c) notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;

(d) notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and

(e) notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4. TERMS AND TERMINATION

4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2 Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

5. MISCELLANEOUS

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.4 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

PANORAMIC Software, Inc

Attn: Jeff von Waldburg
Tel: 949-510-4552
Fax: -

If to Covered Entity, to:

County of Monterey, Health Dept.
1270 Natividad Road, Salinas, Ca 93906

Attn: Elsa Mendoza Jimenez, Director of Health Services
Tel: 831-755-4526
Fax: 831-755-4797

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

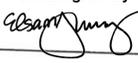
5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

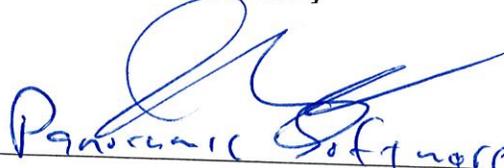
5.7 Indemnification. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA, arising out of, or in connection with, performance of this BAA by Contractor and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this BAA to provide the broadest possible indemnification for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Contractor is obligated to indemnify, defend, and hold harmless the County under this BAA. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

**COUNTY OF MONTEREY, ON BEHALF OF
THE HEALTH DEPARTMENT**

[BUSINESS ASSOCIATE]

DocuSigned by:
By: 
C7A30BA59CA8423...
Print Name: Elsa Mendoza Jimenez
Print Title: Director of Health Services
Date: 5/12/2020 | 1:53 PM PDT

By: 
Print Name: Jeff von Walden
Print Title: CEO
Date: 2/27/20

..Title

- a. Approve and Authorize the Director of Health or the Assistant Director of Health to sign an Agreement with Panoramic Software Inc., for the provision of web based software subscription, database hosting, technical support/maintenance of the PG-ProWeb solution utilized by the Monterey County Health Department’s Public Guardian Bureau, in the amount of \$169,500 for the term of July 1, 2020 through June 30, 2023; and
- b. Approve and authorize the Health Director to approve up to three (3) future amendments that do not exceed ten percent (10%) (\$16,950) of the original Agreement amount and do not significantly alter the scope of services.

..Report

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Approve and Authorize the Director of Health or the Assistant Director of Health to sign an Agreement with Panoramic Software Inc., for the provision of web based software subscription, database hosting, technical support/maintenance of the PG-ProWeb solution utilized by the Health Department - Public Guardian Bureau in the amount of \$169,500 for the period of July 1, 2020 through June 30, 2023; and
- b. Approve and authorize the Health Director to approve up to three (3) future amendments that do not exceed ten percent (10%) (\$16,950) of the original Agreement amount and do not significantly alter the scope of services.

SUMMARY/DISCUSSION:

The Monterey County Health Department’s Public Guardian/Administrator/Conservator Bureau (Public Guardian) operates under the authority and direction according to the California Probate Code and as appointed by the courts in the provision of the following services that include but are not exclusive to: individual assessments, fiscal management, location of housing, establishment/eligibility of government and private benefits, coordination of care, targeted case management visitations, and overall individual client support.

To track the fiduciary and case management services provided, Public Guardian staff utilize the PG-ProWeb solution developed by Panoramic Software, Inc. The approval of this recommended action will enable continuity of tracking the services provided and meet reporting requirements to the Superior Court.

While this work is not directly in support of a Health Department strategic initiative, it is in support of one or more of the ten essential public health services, specifically: 1. Monitor health status to identify and solve community health problems and 7. Link people to needed personal health services and assure the provision of health care when otherwise unavailable.

OTHER AGENCY INVOLVEMENT:

The office of County Counsel and the Auditor-Controller have reviewed and approved this Agreement as to legal form and fiscal provisions, respectively.

FINANCING:

Funding for this agreement is included in the Health Department’s Public Guardian Bureau

(4000-HEA008-8118) FY 2020-21 Requested Budget. Subsequent renewals to the software subscription will be included in the FY 2021-22 and FY 2022-23 Requested budgets.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Check the related Board of Supervisors Strategic Initiatives:

Economic Development:

- Through collaboration, strengthen economic development to ensure a diversified and healthy economy.

Administration:

- Promote an organization that practices efficient and effective resource management and is recognized for responsiveness, strong customer orientation, accountability and transparency.

Health & Human Services:

- Improve health and quality of life through County supported policies, programs, and services; promoting access to equitable opportunities for healthy choices and healthy environments in collaboration with communities.

Infrastructure:

- Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results.

Public Safety:

- Create a safe environment for people to achieve their potential, leading businesses and communities to thrive and grow by reducing violent crimes as well as crimes in general.

Prepared by: Sarah House, Departmental Information Systems Manager, 4531

Approved by: Elsa Jimenez, Director of Health, 4526

Attachments:

Agreement is on file with the Clerk of the Board

4/13/20

| | |
|------------------------------------|----------------|
| ROUTING FORM – RQN #: *5956 | Date: 03/31/20 |
|------------------------------------|----------------|

AGREEMENT
 AMENDMENT
 BOARD REPORT FOR PRE-APPROVAL

Vendor Name: Panoramic Software, Inc.

Vendor Code: VS *2548

Title/Brief Description of Document: web based software subscription, database hosting, technical support and maintenance for Public Guardian.

Originating Dept: Health

Dept Contact WITH Phone #: Frances Stevens, x4532

This Agreement or Amendment requires Board Approval: Yes No

AGREEMENT TYPE

| | |
|---|--|
| <input type="checkbox"/> RQNSA – Standard Agreement | <input type="checkbox"/> RQNNS – Non-Standard Agreement |
| <input type="checkbox"/> RQNPB – Pre-Board Standard Agreement | <input type="checkbox"/> RQNBN – Non-Standard Board Agreement |
| <input checked="" type="checkbox"/> RQNIT – IDT Standard Agreement | <input type="checkbox"/> RQNIN – IDT Non-Standard Agreement |
| <input checked="" type="checkbox"/> Insurance & Endorsement Attached | <input checked="" type="checkbox"/> VDR & Non-Resident State Forms Verified |

| ROUTING AND APPROVALS* | | | | |
|---|--|-------------------|---|---------------|
| <i>Each Approving Authority is requested to forward the Service Contract to the next Approving Authority in the order listed herein. Thank you.</i> | | | | |
| | Approving Authority: | Approval Initials | Comments: | Date Reviewed |
| 1st | ITD (for all ITD related contracts) | DS PP | okay | 4/21/2020 |
| 2nd | County Counsel (required) | DS CM | okay | 4/22/2020 |
| 3rd | Risk Management (non-standard insurance and/or indemnity provisions) | | N/A | |
| 4th | Auditor-Controller (required) | DS BM | N/A | 4/22/2020 |
| 5th | Contracts/Purchasing (required) | DS DRW | Review Only - thanks! | 4/22/2020 |
| | Return to Originating Department Instructions | | Please Call Frances Stevens, x4532. DocuSign | Thanks! |

* If one of the approving authorities has an issue with the document and will not sign, the document shall be returned immediately to the originating department's key contact person identified herein along with a brief written explanation regarding the issue. Once that issue is corrected, the originating department shall restart the routing process again from the beginning by resubmitting the document through the approval process. The original Routing Form should be included for reference.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESSOWNERS LIABILITY SPECIAL BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

| SUMMARY OF COVERAGES | Limits | Page |
|--|---------------------|------|
| 1. Additional Insured by Contract, Agreement or Permit | Included | 1 |
| 2. Additional Insured – Broad Form Vendors | Included | 2 |
| 3. Alienated Premises | Included | 3 |
| 4. Broad Form Property Damage – Borrowed Equipment, Customers Goods and Use of Elevators | Included | 3 |
| 5. Incidental Malpractice (Employed Nurses, EMT's and Paramedics) | Included | 3 |
| 6. Personal and Advertising Injury – Broad Form | Included | 4 |
| 7. Product Recall Expense | Included | 4 |
| Product Recall Expense Each Occurrence Limit | \$25,000 Occurrence | 5 |
| Product Recall Expense Aggregate Limit | \$50,000 Aggregate | 5 |
| Product Recall Deductible | \$500 | 5 |
| 8. Unintentional Failure to Disclose Hazards | Included | 6 |
| 9. Unintentional Failure to Notify | Included | 6 |

This endorsement amends coverages provided under the Businessowners Coverage Form through new coverages and broader coverage grants. This coverage is subject to the provisions applicable to the Businessowners Coverage Form, except as provided below.

The following changes are made to **SECTION II – LIABILITY:**

1. Additional Insured by Contract, Agreement or Permit

The following is added to **SECTION II – LIABILITY, C. Who Is An Insured:**

Additional Insured by Contract, Agreement or Permit

a. Any person or organization with whom you agreed in a written contract, written agreement or permit to add such person or organization as an additional insured on your policy is an additional insured only with respect to liability for “bodily injury”, “property damage”, or “personal and advertising injury” caused, in whole or in part, by your acts or omissions, or the acts or omissions of those acting on your behalf, but only with respect to:

- (1) "Your work" for the additional insured(s) designated in the contract, agreement or permit;

(2) Premises you own, rent, lease or occupy; or

(3) Your maintenance, operation or use of equipment leased to you.

b. The insurance afforded to such additional insured described above:

(1) Only applies to the extent permitted by law; and

(2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.

(3) Applies on a primary basis if that is required by the written contract, written agreement or permit.

(4) Will not be broader than coverage provided to any other insured.

(5) Does not apply if the “bodily injury”, “property damage” or “personal and advertising injury” is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.

- c. This provision does not apply:
- (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal injury and advertising injury".
 - (2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
 - (3) To any lessor of equipment:
 - (a) After the equipment lease expires; or
 - (b) If the "bodily injury", "property damage", "personal and advertising injury" arises out of sole negligence of the lessor
 - (4) To any:
 - (a) Owners or other interests from whom land has been leased if the "occurrence" takes place or the offense is committed after the lease for the land expires; or
 - (b) Managers or lessors of premises if:
 - (i) The "occurrence" takes place or the offense is committed after you cease to be a tenant in that premises; or
 - (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
 - (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.
 This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the rendering of or failure to render any professional services by or for you.
- d. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION II – LIABILITY, D. Liability and Medical Expense Limits of Insurance**:

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

1. Required by the contract, agreement or permit described in Paragraph a.; or
2. Available under the applicable Limits of Insurance shown in the Declarations.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations

e. All other insuring agreements, exclusions, and conditions of the policy apply.

2. Additional Insured – Broad Form Vendors

The following is added to **SECTION II – LIABILITY, C. Who Is An Insured**:

Additional Insured – Broad Form Vendors

- a. Any person or organization that is a vendor with whom you agreed in a written contract or written agreement to include as an additional insured under this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.
- b. The insurance afforded to such vendor described above:
 - (1) Only applies to the extent permitted by law;
 - (2) Will not be broader than the insurance which you are required by the contract or agreement to provide for such vendor;
 - (3) Will not be broader than coverage provided to any other insured; and
 - (4) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto
- c. With respect to insurance afforded to such vendors, the following additional exclusions apply:
 The insurance afforded to the vendor does not apply to:
 - (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reasons of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement;
 - (2) Any express warranty unauthorized by you;

- (3) Any physical or chemical change in the product made intentionally by the vendor;
 - (4) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instruction from the manufacturer, and then repackaged in the original container;
 - (5) Any failure to make such inspection, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the sale of the product;
 - (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 - (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor;
 - (8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (a) The exceptions contained within the exclusion in subparagraphs (4) or (6) above; or
 - (b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
 - (9) "Bodily injury" or "property damage" arising out of an "occurrence" that took place before you have signed the contract or agreement with the vendor.
 - (10) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
 - (11) Any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
- d. With respect to the insurance afforded to these vendors, the following is added to **SECTION II – LIABILITY, D. Liability and Medical Expense Limits of Insurance:**

The most we will pay on behalf of the vendor for a covered claim is the lesser of the amount of insurance:

- 1. Required by the contract or agreement described in Paragraph a.; or
- 2. Available under the applicable Limits of Insurance shown in the Declarations;

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

3. Alienated Premises

SECTION II – LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage k. Damage to Property, paragraph (2) is replaced by the following:

- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises and occurred from hazards that were known by you, or should have reasonably been known by you, at the time the property was transferred or abandoned.

4. Broad Form Property Damage – Borrowed Equipment, Customers Goods, Use of Elevators

- a. The following is added to **SECTION II – LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage, k. Damage to Property:**

Paragraph (4) does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations.

Paragraph (3), (4) and (6) do not apply to "property damage" to "customers goods" while on your premises nor to the use of elevators.

- b. For the purposes of this endorsement, the following definition is added to **SECTION II – LIABILITY, F. Liability and Medical Expenses Definitions:**

- 1. "Customers goods" means property of your customer on your premises for the purpose of being:

- a. Worked on; or

- b. Used in your manufacturing process.

- c. The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured whether primary, excess, contingent or on any other basis.

5. Incidental Malpractice – Employed Nurses, EMT's and Paramedics

SECTION II – LIABILITY, C. Who Is An Insured, paragraph 2.a.(1)(d) does not apply to a nurse,

emergency medical technician or paramedic employed by you if you are not engaged in the business or occupation of providing medical, paramedical, surgical, dental, x-ray or nursing services.

6. Personal Injury – Broad Form

a. **SECTION II – LIABILITY, B. Exclusions, 2. Additional Exclusions Applicable only to “Personal and Advertising Injury”**, paragraph e. is deleted.

b. **SECTION II – LIABILITY, F. Liability and Medical Expenses Definitions, 14.** "Personal and advertising injury", paragraph b. is replaced by the following:

b. Malicious prosecution or abuse of process.

c. The following is added to **SECTION II – LIABILITY, F. Liability and Medical Expenses Definitions, Definition 14.** "Personal and advertising injury":

"Discrimination" (unless insurance thereof is prohibited by law) that results in injury to the feelings or reputation of a natural person, but only if such "discrimination" is:

(1) Not done intentionally by or at the direction of:

(a) The insured;

(b) Any officer of the corporation, director, stockholder, partner or member of the insured; and

(2) Not directly or indirectly related to an "employee", not to the employment, prospective employment or termination of any person or persons by an insured.

d. For purposes of this endorsement, the following definition is added to **SECTION II – LIABILITY, F. Liability and Medical Expenses Definitions:**

1. "Discrimination" means the unlawful treatment of individuals based upon race, color, ethnic origin, gender, religion, age, or sexual preference. "Discrimination" does not include the unlawful treatment of individuals based upon developmental, physical, cognitive, mental, sensory or emotional impairment or any combination of these.

e. This coverage does not apply if liability coverage for "personal and advertising injury" is excluded either by the provisions of the Coverage Form or any endorsement thereto.

7. Product Recall Expense

a. **SECTION II – LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage,**

o. Recall of Products, Work or Impaired Property is replaced by the following:

o. Recall of Products, Work or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

If such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it, but this exclusion does not apply to "product recall expenses" that you incur for the "covered recall" of "your product".

However, the exception to the exclusion does not apply to "product recall expenses" resulting from:

(4) Failure of any products to accomplish their intended purpose;

(5) Breach of warranties of fitness, quality, durability or performance;

(6) Loss of customer approval, or any cost incurred to regain customer approval;

(7) Redistribution or replacement of "your product" which has been recalled by like products or substitutes;

(8) Caprice or whim of the insured;

(9) A condition likely to cause loss of which any insured knew or had reason to know at the inception of this insurance;

(10) Asbestos, including loss, damage or clean up resulting from asbestos or asbestos containing materials; or

(11) Recall of "your products" that have no known or suspected defect solely because a known or suspected defect in another of "your products" has been found.

b. The following is added to **SECTION II – LIABILITY, C. Who Is An Insured**, paragraph 3.b.:

"Product recall expense" arising out of any withdrawal or recall that occurred before you acquired or formed the organization.

- c. The following is added to **SECTION II – LIABILITY, D. Liability and Medical Expenses Limits of Insurance:**

Product Recall Expense Limits of Insurance

- a. The Limits of Insurance shown in the SUMMARY OF COVERAGES of this endorsement and the rules stated below fix the most that we will pay under this Product Recall Expense Coverage regardless of the number of:

- (1) Insureds;
- (2) "Covered Recalls initiated; or
- (3) Number of "your products" withdrawn.

- b. The Product Recall Expense Aggregate Limit is the most that we will reimburse you for the sum of all "product recall expenses" incurred for all "covered recalls" initiated during the policy period.

- c. The Product Recall Each Occurrence Limit is the most we will pay in connection with any one defect or deficiency.

- d. All "product recall expenses" in connection with substantially the same general harmful condition will be deemed to arise out of the same defect or deficiency and considered one "occurrence".

- e. Any amount reimbursed for "product recall expenses" in connection with any one "occurrence" will reduce the amount of the Product Recall Expense Aggregate Limit available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.

- f. If the Product Recall Expense Aggregate Limit has been reduced by reimbursement of "product recall expenses" to an amount that is less than the Product Recall Expense Each Occurrence Limit, the remaining Aggregate Limit is the most that will be available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.

g. Product Recall Deductible

We will only pay for the amount of "product recall expenses" which are in excess of the \$500 Product Recall Deductible. The Product Recall Deductible applies separately to each "covered recall". The limits of insurance will not be reduced by the amount of this deductible.

We may, or will if required by law, pay all or any part of any deductible amount, if applicable. Upon notice of our payment of

a deductible amount, you shall promptly reimburse us for the part of the deductible amount we paid.

The Product Recall Expense Limits of Insurance apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for the purposes of determining the Limits of Insurance.

- d. The following is added to **SECTION II – LIABILITY, E. Liability and Medical Expense General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit:**

You must see to it that the following are done in the event of an actual or anticipated "covered recall" that may result in "product recall expense":

- (1) Give us prompt notice of any discovery or notification that "your product" must be withdrawn or recalled. Include a description of "your product" and the reason for the withdrawal or recall;
- (2) Cease any further release, shipment, consignment or any other method of distribution of like or similar products until it has been determined that all such products are free from defects that could be a cause of loss under this insurance.

- e. For the purpose of this endorsement, the following definitions are added to **SECTION II – LIABILITY, F. Liability and Medical Expenses Definitions:**

1. "Covered recall" means a recall made necessary because you or a government body has determined that a known or suspected defect, deficiency, inadequacy, or dangerous condition in "your product" has resulted or will result in "bodily injury" or "property damage".

2. "Product recall expense(s)" means:

- a. Necessary and reasonable expenses for:

- (1) Communications, including radio or television announcements or printed advertisements including stationary, envelopes and postage;

- (2) Shipping the recalled products from any purchaser, distributor or user to the place or places designated by you;
 - (3) Remuneration paid to your regular "employees" for necessary overtime;
 - (4) Hiring additional persons, other than your regular "employees";
 - (5) Expenses incurred by "employees" including transportation and accommodations;
 - (6) Expenses to rent additional warehouse or storage space;
 - (7) Disposal of "your product", but only to the extent that specific methods of destruction other than those employed for trash discarding or disposal are required to avoid "bodily injury" or "property damage" as a result of such disposal,
you incur exclusively for the purpose of recalling "your product"; and
- b. Your lost profit resulting from such "covered recall".
- f. This Product Recall Expense Coverage does not apply:

- (1) If the "products – completed operations hazard" is excluded from coverage under this Coverage Part including any endorsement thereto; or
- (2) To "product recall expense" arising out of any of "your products" that are otherwise excluded from coverage under this Coverage Part including endorsements thereto.

8. Unintentional Failure to Disclose Hazards

The following is added to **SECTION II – LIABILITY, E. Liability and Medical Expenses General Conditions:**

Representations

We will not disclaim coverage under this Coverage Part if you fail to disclose all hazards existing as of the inception date of the policy provided such failure is not intentional.

9. Unintentional Failure to Notify

The following is added to **SECTION II – LIABILITY, E. Liability and Medical Expenses General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit:**

Your rights afforded under this Coverage Part shall not be prejudiced if you fail to give us notice of an "occurrence", offense, claim or "suit", solely due to your reasonable and documented belief that the "bodily injury", "property damage" or "personal and advertising injury" is not covered under this Policy.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.

1. **SECTION I – PROPERTY**, if two or more of this coverage part's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.
2. **SECTION II – LIABILITY**, it is our stated intent that the various Coverage Parts, forms, endorsements or policies issued to the named insured by us, or any company affiliated with us, do not provide any duplication or overlap of coverage for the same claim, "suit", "occurrence", offense, accident, "wrongful act" or loss. We will not pay more than the actual amount of the loss or damage.

If this Coverage Part and any other Coverage Part, form, endorsement or policy issued to the named insured by us, or any company affiliated with us, apply to the same claim, "suit", occurrence, offense, accident, "wrongful act" or loss, the maximum Limit of Insurance under all such Coverage Parts, forms, endorsements or policies combined shall not exceed the highest applicable Limit of Insurance under any one Coverage Part, form, endorsement or policy.

This condition does not apply to any Excess or Umbrella Policy issued by us specifically to apply as excess insurance over this policy.

G. Liberalization

If we adopt any revision that would broaden the coverage under this policy without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this policy.

H. Other Insurance

1. SECTION I – PROPERTY

If there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But, we will not pay more than the applicable Limit of Insurance of **SECTION I – PROPERTY**.

2. SECTION II – LIABILITY

If other valid and collectible insurance is available to the insured for a loss we cover under **SECTION II – LIABILITY**, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in paragraph **c.** below.

However, if you agree in a written contract, written agreement, or written permit that the insurance provided to any person or organization included as an Additional Insured under this Coverage Part is primary and non-contributory, we will not seek contribution from any other insurance available to that Additional Insured which covers the Additional Insured as a Named Insured except:

- (1) For the sole negligence of the Additional Insured; or
- (2) When the Additional Insured is an Additional Insured under another liability policy.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is Property Insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to **SECTION II – LIABILITY, Exclusion g. Aircraft, Auto or Watercraft**; and
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under **SECTION II – LIABILITY** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the

insured's rights against all those other insurers.

- c. When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
 - (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (2) The total of all deductible and self-insured amounts under all that other insurance.
- d. We will share the remaining loss, if any, with any other insurance that is not described in this provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations for this Coverage.

e. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable Limit of Insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable Limit of Insurance to the total applicable limits of insurance of all insurers.

- f. When this insurance is excess, we will have no duty under Business Liability Coverage to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so; but we will be entitled to the insured's rights against all those other insurers.

I. Premiums

- 1. The first Named Insured shown in the Declarations:
 - a. Is responsible for the payment of all premiums; and
 - b. Will be the payee for any return premiums we pay.
- 2. The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation or anniversary of the effective date of this policy, we will compute the

premium in accordance with our rates and rules then in effect.

- 3. With our consent, you may continue this policy in force by paying a continuation premium for each successive one-year period. The premium must be:
 - a. Paid to us prior to the anniversary date; and
 - b. Determined in accordance with paragraph 2. above.

Our forms then in effect will apply. If you do not pay the continuation premium, this policy will expire on the first anniversary date that we have not received the premium.

- 4. Undeclared exposures or change in your business operation, acquisition or use of locations may occur during the policy period that is not shown in the Declarations. If so, we may require an additional premium. That premium will be determined in accordance with our rates and rules then in effect.

J. Premium Audit

- 1. This policy is subject to audit if a premium designated as an advance premium is shown in the Declarations. We will compute the final premium due when we determine your actual exposures.
- 2. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- 3. The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.

K. Transfer of Rights of Recovery Against Others to Us

- 1. Applicable to **SECTION I – PROPERTY Coverage:**

If any person or organization to or for whom we make payment under this policy has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

- a. Prior to a loss to your Covered Property.
- b. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
 - (1) Someone insured by this insurance;
 - (2) A business firm:
 - (a) Owned or controlled by you; or
 - (b) That owns or controls you; or
 - (3) Your tenant.

You may also accept the usual bills of lading or shipping receipts limiting the liability of carriers.

This will not restrict your insurance.

2. Applicable to **SECTION II – LIABILITY** Coverage:

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair such rights. At our request, the insured will bring “suit” or transfer those rights to us and help us enforce them.

We waive any right of recovery we may have against any person or organization with whom you have a written contract, permit or agreement to waive any rights of recovery against such person or organization because of payments we make for injury or damage arising out of your ongoing operations or “your work” done under a contract with that person or organization and included in the “products-completed operations hazard”.

This condition does not apply to Medical Expenses Coverage.

L. Transfer of Your Rights and Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured. If you die, your rights and duties will be transferred to your legal representative but only while that legal representative is acting within the scope of their duties as your legal representative. Until your legal representative is appointed, anyone with proper temporary custody of your property will have your rights and duties but only with respect to that property.