

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Alcatel-Lucent USA Inc. with an address at 600 Mountain Avenue, Murray Hill, NJ 07974 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, County has requested Contractor to provide Services to the County; and

WHEREAS, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. DESIGNATED REPRESENTATIVE

Carl Thornton at phone number (805) 681-5581 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Jay Sungu at phone number (559) 360-7971 is the authorized representative for CONTRACTOR. Changes in designated representatives shall be made only after advance written notice to the other party.

2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To COUNTY:	Carl Thornton, General Services/Communications, 4568 Calle Real Bldg C, Santa Barbara CA, 93110, Fax: (805) 681-5610
To CONTRACTOR:	Alcatel-Lucent USA Inc., Attn: Contract Management, 601 Data Drive, Plano, TX 75075

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. SCOPE OF SERVICES

CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference. CONTRACTOR and COUNTY agree that this Agreement shall be used in lieu of a purchase order.

4. TERM

CONTRACTOR shall commence performance on October 22, 2014 and end performance upon completion, but no later than June 30, 2015 unless otherwise directed by COUNTY or unless earlier terminated.

unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

7. STANDARD OF PERFORMANCE

CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by CONTRACTOR without additional compensation.

8. DEBARMENT AND SUSPENSION

CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. TAXES

CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. CONFLICT OF INTEREST

CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

11. LICENSED MATERIALS

11.1 COUNTY shall use all Licensed Materials in accordance with this Section 11. The term "Licensed Materials" refers to software and/or documentation. Upon delivery of any Licensed Material and subject to COUNTY's payment of the applicable fees for such Licensed Material and compliance with the other terms and conditions of this Agreement, CONTRACTOR grants to COUNTY, and COUNTY accepts, a personal, nonexclusive, nontransferable license to use the portions of the Licensed Material for which activation has been authorized by CONTRACTOR, solely on or with the single unit or arrangement of Equipment for which the Licensed Material was delivered, for COUNTY's internal use in the United States.

notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY.

13. COUNTY PROPERTY AND INFORMATION

All of COUNTY's property, documents, and information provided for CONTRACTOR's use in connection with the services shall remain COUNTY's property, and CONTRACTOR shall return any such items whenever requested by COUNTY and whenever required according to the Termination section of this Agreement. CONTRACTOR may use such items only in connection with providing the services. CONTRACTOR shall not disseminate any COUNTY property, documents, or information without COUNTY's prior written consent.

14. RECORDS, AUDIT, AND REVIEW

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

15. INDEMNIFICATION AND INSURANCE

CONTRACTOR agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

16. NONDISCRIMINATION

COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

17. NONEXCLUSIVE AGREEMENT

CONTRACTOR understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

18. NON-ASSIGNMENT

CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

20.2. Except for a claim for personal injury proximately caused by CONTRACTOR, CONTRACTOR's liability for any claim arising out of this Agreement will be limited to actual, provable direct damages not to exceed \$1,000,000.00; and IN NO EVENT WILL CONTRACTOR'S CUMULATIVE LIABILITY FOR ALL CLAIMS, LOSSES, DAMAGES AND EXPENSES OF COUNTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED \$2,000,000.00.

21. SECTION HEADINGS

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

22. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

23. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

24. EXPORT CONTROL

The Parties acknowledge that Products, Licensed Materials and Confidential Information may be subject to the export laws and regulations of the United States, the European Union and/or other countries (cumulatively, "Export Laws"). COUNTY shall not use, distribute, export, re-export, transfer, or transmit the Products, Licensed Materials or Confidential Information (even if incorporated into other items) in violation of the Export Laws. If requested by CONTRACTOR, COUNTY will sign written assurances and other export-related documents as may be required for CONTRACTOR to comply with the Export Laws.

25. NO WAIVER OF DEFAULT

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

26. ENTIRE AGREEMENT AND AMENDMENT

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

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Agreement for Services of Independent Contractor between the County of Santa Barbara and Alcatel-Lucent USA, Inc.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: *C. Lenzi*
Deputy Clerk

COUNTY OF SANTA BARBARA:

By: *S. Davani*
Chair, Board of Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:

General Services

By: *Math Pouth*
Department Head

CONTRACTOR:

Alcatel-Lucent USA Inc.

By: *Pat Dowd*
Authorized Representative

Name: Patrick Dowd

Title: Senior Contract Manager

"Signed with permission by Jay Sungu on behalf of Pat Dowd"

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: *Brian [Signature]*
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

Robert W. Geis, CPA
Auditor-Controller

By: *Kate [Signature]*
Deputy

APPROVED AS TO FORM:

Risk Management

By: *Pat [Signature]*
Risk Management

This is a true certified copy of the original document on file or of record in my office. It bears the seal and signature, imprinted in purple ink, of the Clerk of the Board of Supervisors.



Mona Miyasato
Clerk of the Board, Santa Barbara County, California
Date 10/24 by Deputy: *C. Lenzi*

EXHIBIT B

PAYMENT ARRANGEMENTS Compensation Upon Completion

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR shall be paid a total contract amount, including cost reimbursements, not to exceed \$ 159,284.52.
- B. Payment for services and /or reimbursement of costs shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in EXHIBIT A as determined by COUNTY.
- C. Upon completion of the work detailed in EXHIBIT A and/or delivery to COUNTY of item(s) specified therein, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed. This invoice or claim must cite the assigned Board Contract Number. COUNTY DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and/or the item(s) delivered and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.
- D. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions) Insurance** appropriate to the CONTRACTOR'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
3. **Notice of Cancellation** – CONTRACTOR will notify COUNTY in advance of any cancellation.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
6. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
7. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.

EXHIBIT C1

INFRINGEMENT INDEMNITY

- A. Subject to the conditions and exceptions stated below, CONTRACTOR: (a) shall defend COUNTY against any claim, action or proceeding brought against COUNTY alleging an infringement or misappropriation of any United States patent, copyright, trade secret or other intellectual property right of any third party (other than an affiliate of COUNTY) because of use, consistent with CONTRACTOR's specifications, of any Equipment manufactured by CONTRACTOR or Software owned by CONTRACTOR (a "Claim") and provided to COUNTY under this Agreement; and (b) shall indemnify COUNTY against, and hold COUNTY harmless from, any and all costs and damages assessed against COUNTY in a final judgment on such Claim, if: (i) COUNTY gives CONTRACTOR prompt written notice of the Claim, (ii) COUNTY grants to CONTRACTOR the sole authority to assume the defense, and the sole right to settle the Claim, through counsel chosen by CONTRACTOR, and (iii) COUNTY furnishes all information and assistance requested by CONTRACTOR and reasonably cooperates with CONTRACTOR to facilitate the defense and settlement of the Claim.
- B. If COUNTY's use of any Product is enjoined as a result of any Claim, is subject to a Claim, or in CONTRACTOR's opinion is likely to be enjoined or to be subject to a Claim, then, at its expense, CONTRACTOR may: (a) procure for COUNTY the right to continue to use the Product; or (b) replace or modify the Product with a functionally-equivalent or better Product so that COUNTY's use is not subject to a Claim. If CONTRACTOR determines that it cannot accomplish either of the foregoing in a commercially reasonable manner, then, upon CONTRACTOR's request, (c) COUNTY shall deliver the Product to CONTRACTOR, and (d) CONTRACTOR shall promptly credit to COUNTY the Price of the Product less a reasonable allowance for use.
- C. CONTRACTOR has no obligations under this Exhibit C with respect to a Claim to the extent that it: (a) arises from adherence to design modifications, specifications, drawings or written instructions which COUNTY directs CONTRACTOR to follow, (b) relates to uses of any Product in combination with any item not provided directly by CONTRACTOR, if use of the Product alone would not have resulted in such infringement, (c) relates to the use of any Product in a manner not contemplated by this Agreement, or (d) relates to a modification of any Product by any person other than CONTRACTOR. Furthermore, COUNTY shall defend CONTRACTOR against any such Claim, and indemnify CONTRACTOR against, and hold CONTRACTOR harmless from, any and all costs and damages incurred by CONTRACTOR arising from any such Claim.
- D. The rights and remedies set forth in this Exhibit C are COUNTY's exclusive rights and remedies with respect to third party claims of infringement and misappropriation.