

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 The ACT 1 Group, Inc. dba ATIMS (Advanced Technology Information Management Systems), with an address at 9638 Topanga Canyon Place, Suite B, Chatsworth, CA 91311 (hereafter "**Contractor**" or "**ATIMS**") wherein Contractor agrees to provide and County agrees to accept the services specified herein.

WHEREAS, Contractor represents that it is specially trained, skilled, experienced, and competent to perform the special Jail Management System ("**JMS**") 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

Jeffrey Warren, Lieutenant, at phone number 805-681-4239, is the representative of County and will administer this Agreement for and on behalf of County. Felix Rabinovich, Vice President, at phone number 818-709-5885 x446618, 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: Jeffrey Warren, Lieutenant
Santa Barbara County Sheriff's Office
4436 Calle Real
Santa Barbara, CA 93110, Fax. 805-681-4216

To Contractor: Felix Rabinovich, Executive Vice President
The ACT 1 Group, Inc. dba ATIMS
9638 Topanga Canyon Place, Suite B
Chatsworth, CA 91311, Fax. 818-709-5111

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, Statement of Work attached hereto and incorporated herein by reference.

4. TERM

Contractor shall commence performance on January 25, 2017 and end performance upon completion, but no later than January 24, 2022 unless otherwise directed by County or unless earlier terminated.

5. COMPENSATION OF CONTRACTOR

In full consideration for Contractor's services, Contractor shall be paid for performance under this Agreement in accordance with the terms of Exhibit B, Payment Terms attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by County and which is delivered to the address given in Section 2 NOTICES above following completion of the increments identified in Exhibit B. Unless otherwise specified in Exhibit B, payment shall be net thirty (30) days from presentation of invoice.

6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that Contractor (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to County and not as an officer, agent, servant, employee, joint venturer, partner, or associate of County. Furthermore, County shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its work and function. However, County shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions hereof. Contractor understands and acknowledges that it shall not be entitled to any of the benefits of a County employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, 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 the direct payment of Contractor's employees' wages and for Contractor's compliance with Social Security withholding and all other wage and hour regulations. 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 services of whatsoever nature, which Contractor delivers to County pursuant to this Agreement, shall be performed 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 negligent 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.

Contractor agrees to Exhibit F, Debarment and Suspension, attached here to and incorporated herein by reference.

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. Contractor must promptly disclose to County, in writing, any potential conflict of interest. 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. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY; LICENSED SOFTWARE

Subject to the terms and conditions hereof, ATIMS hereby grants County a non-exclusive, non-transferable, limited, perpetual license to have up to the maximum number of concurrent user sessions, named users, employees, agents or contractors of County set forth in the ATIMS Cost Proposal Summary (the "Users") use the Licensed Software in machine-readable form (the "License"). Unless the context otherwise requires, all references herein to "County" shall include the Users, and County shall be liable for all acts and omissions of the Users with respect to the Licensed Software.

County may use the Licensed Software solely for County's internal business operations. Any other use of the Licensed Software (including without limitation timesharing, rental, leasing, facility management, provision of subscription services or service bureau usage) is strictly prohibited.

County shall not give, sell, lease, assign, sublicense or otherwise transfer, in whole or in part, this Agreement, the License, the Licensed Software, other ATIMS-provided materials, or any licenses or rights granted hereunder, except as approved by ATIMS in writing. If County grants a security interest in this Agreement, the License, the Licensed Software or any other ATIMS-provided materials, or any licenses or rights granted hereunder, the secured party shall have no right to use or transfer such materials.

The License granted hereunder is for the object code version of the Licensed Software only. County shall not permit anyone under County's direction or control to, reverse engineer, disassemble or de-compile the Licensed Software or attempt to do so. County may not modify, adapt, translate or create derivative works of the Licensed Software without ATIMS's express written consent. The Licensed Software is licensed as a single product. Embedded Programs may be used only in conjunction with the Licensed Software.

County shall not copy the Licensed Software or any part thereof, except for a single copy for inactive backup and archival purposes only and must include on all copies of the Licensed Software all copyright, government restricted rights and other proprietary notices or legends included on or in the Licensed Software as provided to County.

Notwithstanding anything to the contrary herein, County's access to and use of the Embedded Programs shall be and remain subject to all terms, conditions and licenses imposed by the manufacturers and/or third party licensors ("Licensors") of such Embedded Programs and County shall comply with same.

County shall permit ATIMS at any time upon reasonable notice to County, to audit County's use of the Licensed Software and Embedded Programs for compliance with the terms hereof and to report the results of such audit to ATIMS's Licensors.

County shall provide ATIMS with access to County's technical personnel, facilities, systems, databases, information, as well as security clearance as necessary for ATIMS to perform its obligations under this Agreement. County shall appoint a Project Manager to act as liaison between County and ATIMS.

Except as otherwise expressly provided herein, County and Users shall have sole responsibility for acquiring and maintaining their own County Environment. County hereby represents and warrants to ATIMS that (i) the County Environment meets or exceeds and at all times during the use of the Licensed Software shall meet or exceed the environment specifications set forth by ATIMS, and (ii) at all times during the use of the Licensed Software, County shall maintain in full force and effect maintenance, service and support agreements with all relevant third parties with respect to the County Environment and all components thereof. Due to volatility in the software and hardware market, the requirements are subject to reasonable change throughout the course of this Agreement. Except as otherwise provided in the Proposal, County shall be responsible for making any current and future modifications and/or upgrades to the County Environment necessary to remain in accordance with the then current requirements, and to successfully access or use the Licensed Software. ATIMS reserves the exclusive right to revise the requirements for the County Environment.

Prior to any installation and/or operation of the Licensed Software, County shall provide ATIMS with advanced written confirmation, on a form and/or in a manner reasonably prescribed by ATIMS, that the County Environment, as installed, configured, tested and prepared for ATIMS, meets and/or exceeds the environment specifications.

County shall be solely responsible for the supervision, management, operation and control of the use of the Licensed Software, including without limitation: (i) establishing adequate backup plans in the event of a computer or software failure or disaster, (ii) implementing sufficient procedures to provide adequate security and accuracy of data; (iii) informed use of output of data and (iv) security maintenance and password distribution. To the extent ATIMS provides County advice with respect to the foregoing as part of the Services or otherwise, County acknowledges and agrees that ATIMS shall not be liable in any manner for such advice or any actions taken or not taken by any party as a result of or in reliance on such advice.

County shall be solely responsible for ensuring that performance of its obligations and exercise of its rights (including without limitation its use of the Licensed Software) under this Agreement comply with all applicable present and future federal, state and local laws, rules, regulations and orders (collectively, "Laws"), including without limitation all present and future Laws relating to the privacy of individually identifiable medical, financial or other information.

Licensee agrees to promptly report to ATIMS any increases in the number of actual named people using the Licensed Software, from the date of this Agreement.

In connection with the Licensed Software, ATIMS shall provide County with the Project Management, Installation, Training and any other services set forth in the Proposal.

From time-to-time during the term hereof, Licensee may desire to have ATIMS perform certain additional services (“Additional Services”). ATIMS shall perform such Additional Services agreed to in writing by the parties’ subject to the terms and conditions hereof.

Except as otherwise provided in this section, County shall be solely responsible for installation of the Licensed Software.

ATIMS and its Licensors own all right, title and interest (including but not limited to all copyrights, patents, trademarks, trade names, trade secrets and other proprietary rights) in and to the Licensed Software and all components, reproductions, modifications or derivative works thereof, in whole or in part. ATIMS may utilize all ideas, suggestions, feedback, improvements, data, reports or the like that County provides to ATIMS with respect to the Licensed Software without any obligation to County. County shall not publish any results of any benchmark tests run on the Licensed Software or any portion thereof.

Although copyrighted, the Licensed Software is unpublished and contains proprietary and confidential information of ATIMS and its Licensors. County agrees to maintain the Licensed Software in confidence and to use its best efforts to protect the confidentiality of the Licensed Software.

12. NO PUBLICITY OR ENDORSEMENT

Contractor shall not use County’s name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Contractor shall not use County’s name or logo in any manner that would give the appearance that County is endorsing Contractor. Contractor shall not in any way contract on behalf of or in the name of County. Contractor shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning County or its projects, without obtaining the prior written approval of County.

13. COUNTY PROPERTY

All of County’s property, documents, and information provided for Contractor’s use in connection with the services shall remain County’s property (collectively, “County Property”), and Contractor shall return any such County Property 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 or for business records and audit purposes as set forth in section 14 below. Contractor shall not disseminate any County Property without County’s prior written consent except in the normal course of business to its legal advisors, accountants, and other retained consultants who are bound by professional and ethical duties of confidentiality.

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.

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. Despite any other provision in this Agreement, Contractor may subcontract its services to County under this Agreement to subcontractors already performing services for County through Contractor prior to the execution of this Agreement or specifically named elsewhere in this Agreement or its Exhibits.

19. TERMINATION

A. By County. County may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, whether for County's convenience, for non-appropriation of funds, or because of the failure of Contractor to fulfill the obligations herein.

1. **For Convenience.** County may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, Contractor shall, as directed by County, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on County from such winding down and cessation of services.
2. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal,

state or County governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then County will notify Contractor of such occurrence and County may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, County shall have no obligation to make payments with regard to the remainder of the term, except for expenses incurred by Contractor prior to the notice of termination that Contractor cannot legally cancel.

3. **For Cause.** Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County may, at County's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, Contractor shall immediately discontinue all services affected (unless the notice directs otherwise) and notify County as to the status of its performance. The date of termination shall be the date the notice is received by Contractor, unless the notice directs otherwise.
- B. **By CONTRACTOR.** Should County fail to pay Contractor all or any part of the payment set forth in Exhibit B, Contractor may, at Contractor's option terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment. Contractor may terminate this Agreement for its convenience upon one hundred twenty (120) days written notice to County.
- C. Upon termination, Contractor shall deliver to County all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by Contractor that was made for delivery to County in performing this Agreement, whether completed or in process, except such items as County may, by written permission, permit Contractor to retain. Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to County such financial information as in the judgment of County is necessary to determine the reasonable value of the services rendered by Contractor. In the event of a dispute as to the reasonable value of the services rendered by Contractor, the decision of County shall be final. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.

20. 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.

21. 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.

22. 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.

23. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

24. NO WAIVER OF DEFAULT

No delay or omission of a party 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.

25. 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.

26. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

27. COMPLIANCE WITH LAW

Contractor shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

28. CALIFORNIA LAW AND JURISDICTION

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

29. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

30. AUTHORITY

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

31. SURVIVAL

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

32. PRECEDENCE

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, all of which are incorporated by reference, the provisions of the numbered sections shall prevail over the provisions in the Exhibits.

In the event of conflict between the provisions contained in the Exhibits, which are all incorporated herein by reference, the conflict shall be resolved by giving precedence to the Exhibits in the following order:

Exhibit A	Statement of Work (SOW)
Exhibit B	Payment Terms
Exhibit C	Indemnification and Insurance Requirements
Exhibit D	Project Schedule (The parties agree that tasks, duration, and/or dates may be adjusted by written agreement.)
Exhibit E	HIPAA Business Associate Agreement
Exhibit F	Debarment and Suspension Certification
Exhibit G	Project Deliverables
Exhibit H	Support Agreement

33. BUSINESS ASSOCIATE

The parties agree to the terms and conditions set forth in Exhibit E - HIPAA Business Associate Agreement (BAA), attached hereto and incorporated herein by reference.

34. PATENT AND COPYRIGHT INDEMNITY

Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("**Contractor Products**") provided to County under this Agreement infringe any patent, copyright or other proprietary right of a third party. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and

amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. A claim, suit or assertion regarding such Losses is an "Infringement Claim."

Procedure: County will: (1) notify Contractor promptly of such Infringement Claim; (2) permit Contractor to defend, compromise, or settle the Infringement Claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.

- A. If Contractor is obligated to defend County pursuant to this section 34 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.
- B. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
- C. Notwithstanding this section 34, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.

Despite anything to the contrary in this Agreement, Contractor shall have no liability for any Infringement Claim based upon (1) County's alteration of Contractor Products if in its altered form it infringes upon any presently existing third party patent, copyright or other proprietary right; or (2) the use of Contractor Products in combination with other material not provided by Contractor when such use in combination infringes upon any presently existing third party patent, copyright or other proprietary right.

35. OTHER AGENCIES

Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this Agreement. Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.

36. EXTENSION

This Agreement may be extended for two (2) additional one (1) year terms by mutual agreement of County and Contractor.

37. SIGNATORY

By signing this Agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

38. OWNERSHIP OF ATIMS APPLICATION

County acknowledges that at all times Contractor shall retain title to, ownership of and all applicable patents, copyrights and trade secrets in any and all ATIMS Application (including all Derivative Works, Maintenance Modifications, Enhancements and Documentation with respect thereto) and any ATIMS Confidential Information (including all proprietary information pertaining to the design, engineering and use thereof). Upon County's acceptance of any ATIMS Application in accordance with the Statement of Work and County's payment of all amounts due hereunder with respect thereto, Contractor will grant to the County a limited right to use the ATIMS Application, pursuant to the terms and conditions herein.

39. THIRD PARTY SOFTWARE

Contractor may provide to County certain third-party software applications in the quantities requested by County pursuant to this Agreement (the "Third-Party Software"). The right to use any such Third-Party Software may be granted to County under this Agreement or pursuant to a separate software license agreement with the developer of such Third-Party Software. Contractor represents that, prior to the installation of any Third-Party Software on the system, copies of any license agreement relating to such Third-Party Software will be provided to County. If so stated in the Statement of Work, Contractor will integrate such Third-Party Software into the system and such Third-Party Software will constitute an ATIMS Application for purposes of this Agreement. If County requires additional licenses or sublicenses beyond what is specified in this Agreement, County shall be responsible for any additional costs associated with obtaining such additional licenses and the costs and fees associated with integration of such additional Third-Party Software into the system. County shall have no right to the Source Code with respect to any Third-Party Software.

40. COUNTY CONFIDENTIAL INFORMATION

All County Confidential Information (as defined Section 70) shall be held in strict confidence by Contractor, and Contractor shall not, without County's prior written consent, (a) disclose such information to any person or entity other than to Contractor's employees or consultants legally bound to abide by the terms hereof and having a need to know such information in connection with Contractor's performance of its obligations hereunder, or (b) use such information other than in connection with the performance of its obligations hereunder. Contractor understands and agrees that the unauthorized use or disclosure of County Confidential Information may irreparably damage County. In the event of Contractor's breach or threatened breach of any of the provisions in this section, County shall be entitled to seek an injunction obtained from any court having appropriate jurisdiction restraining Contractor from any unauthorized use or disclosure of any County Confidential Information.

41. ATIMS CONFIDENTIAL INFORMATION

All ATIMS Confidential Information (as defined in Section 70) shall be held in strict confidence by County, and County shall not, without Contractor's prior written consent, (a) disclose such information to any person or entity other than to County's employees or consultants legally bound to abide by the terms hereof and having a need to know such information in connection with County's performance of its obligations hereunder, or (b) use such information other than in connection with the performance of its obligations hereunder. County understands and agrees that ATIMS Confidential Information constitutes a valuable business asset of Contractor, the unauthorized use or disclosure of which may irreparably damage Contractor. In the event of County's breach or threatened breach of any of the provisions in this section, Contractor shall notify County and be entitled to seek an injunction obtained from any court having

appropriate jurisdiction restraining County from any unauthorized use or disclosure of any ATIMS Confidential Information.

42. CONFIDENTIALITY EXCLUSIONS

Notwithstanding sections 40 and 41, neither County Confidential Information nor ATIMS Confidential Information shall include information which the recipient can demonstrate by competent written proof (a) is now, or hereafter becomes, through no act or failure to act on the part of the recipient, generally known or available or otherwise part of the public domain; (b) is rightfully known by the recipient without restriction on use prior to its first receipt of such information from the disclosing party as evidenced by its records; (c) is hereafter furnished to the recipient by a third party authorized to furnish the information to the recipient, as a matter of right and without restriction on disclosure; or (d) is the subject of a written permission by the disclosing party to disclose.

43. CONFIDENTIALITY EXCEPTIONS

Notwithstanding Paragraphs 40 and 41, disclosure of County Confidential Information or ATIMS Confidential Information shall not be precluded if:

- A. Such disclosure is in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; provided, however, that County shall give notice to Contractor of pending legal action that might give rise to such a court or governmental order to the extent practicable so that Contractor may obtain a protective order requiring that the information to be disclosed be used only for the purposes for which the order was issued;
- B. Such disclosure is necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary for such purpose;
- C. The recipient of such confidential information received the prior written consent to such disclosure from the disclosing party, but only to the extent permitted in such consent; or
- D. Such disclosure is in response to a request for information under the Federal Freedom of Information Act or the California Public Records Act (Gov. Code §6250, et seq.), but only to the extent that such disclosure is required under such acts. When a request is made, County will provide Contractor with a copy of the request. If County believes disclosure is required under such acts, County will comply with the request; however, Contractor may take such actions as it deems necessary to protect, limit or defend production or disclosure.

44. SERVICES PERFORMANCE WARRANTY

Contractor represents and warrants that the services and all defined deliverables furnished hereunder by Contractor will (i) meet the acceptance or completion criteria, as modified by any approved change order; (ii) be substantially free from all material defects; (iii) perform in accordance with the requirements set forth in Exhibit A; and (iv) with respect to any modifications, customizations or changes made to the system by Contractor as part of the services, perform in accordance with the technical, functional or other requirements set forth in, or as otherwise delivered in accordance with Exhibit A, and/or any change order, for a period of twelve (12) months following the completion of the "Total System Integration Validation" task in Exhibit A.

45. SERVICES PERFORMANCE WARRANTY REMEDY

Contractor shall reply to a notification of warranty violation within five (5) business days of receiving that notification. To the extent practicable, Contractor shall supply a problem identification and resolution plan for the warranty violation after consulting with County and attempting to ascertain the cause of the

purported warranty issue within five (5) business days of receiving notification. Contractor will dedicate resources to work with County to promptly resolve the warranty issue with the intent to resolve the warranty issue within ten (10) business days after submitting the problem identification and resolution plan. Contractor will satisfactorily resolve the warranty issue within no more than twenty (20) business days after being notified of warranty violation, unless said violation is preventing County from the productive use of the system, in which case, Contractor shall satisfactorily resolve the violation as soon as practical, but in no event will such satisfactory resolution be delivered more than fifteen (15) business days after being notified of warranty violation. If Contractor cannot fix the violation within fifteen (15) calendar days after being notified of warranty violation that prevents productive use of the system, Contractor shall provide County with a plan to fix the violation, including a time estimate for the fix and shall continue to make its best efforts to fix the violation. Further, County may require Contractor to provide a Contractor Vice President to participate in an on-site meeting to develop a resolution plan to correct the warranty default. If County is not satisfied with such resolution plan, County may escalate the dispute to the Contractor Vice President's next level supervisor.

46. SYSTEM FUNCTIONALITY WARRANTY

Contractor represents and warrants that all Contractor-provided and/or Contractor-recommended third-party hardware and/or software, including the JMS technology and all components thereof,

- A. Is compatible and will operate with one another and with County's hardware, software and network environment, as such environment is substantially described in the Statement of Work;
- B. Shall function properly and in accordance with the applicable specifications (i.e., the functional requirements and design documents) separately and as a fully integrated system; and
- C. When operated together will not cause any material delays, defects, or problems with the system, subject to any capacity constraints of County's current communications network environment.

Contractor further warrants that the functionality that is identified as "baseline" will be delivered to County by Contractor to the maximum extent possible without modification to the software or the source code, or extensive workarounds. Additionally, Contractor warrants that the modifications to the software performed by Contractor hereunder will not detract from or otherwise interfere with the full functionality of the system as described in the Statement of Work, except as may be otherwise contemplated in such specifications or Statement of Work, for a period of twelve (12) months following the completion of the "Total System Integration Validation" task in Exhibit A.

47. SYSTEM FUNCTIONALITY WARRANTY REMEDY

Contractor shall reply to a notification of warranty violation within five (5) business days of receiving that notification. To the extent practicable, Contractor shall supply a problem identification and resolution plan for the warranty violation after consulting with County and attempting to ascertain the cause of the purported warranty issue within five (5) business days of receiving notification. Contractor will dedicate resources to work with County to promptly resolve the warranty issue with the intent to resolve the warranty issue within ten (10) business days after submitting the problem identification and resolution plan. Contractor will satisfactorily resolve the warranty issue within no more than twenty (20) business days after being notified of warranty violation, unless said violation is preventing County from the productive use of the system, in which case, Contractor shall satisfactorily resolve the violation as soon as practical, but in no

event will such satisfactory resolution be delivered more than fifteen (15) business days after being notified of warranty violation. If Contractor cannot fix the violation within fifteen (15) business days after being notified of warranty violation that prevents productive use of the system, Contractor shall provide County with a plan to fix the violation, including a time estimate for the fix and shall continue to make its best efforts to fix the violation. Further, County may require Contractor to provide a Contractor Vice President to participate in an on-site meeting to develop a resolution plan to correct the warranty default. If County is not satisfied with such resolution plan, County may immediately escalate the dispute to Contractor Vice President's next level supervisor.

48. TITLE WARRANTY; PATENTS AND ROYALTIES

Contractor warrants that it holds title and/or copyright to all ATIMS Application software and its associated modules licensed and delivered pursuant to this Agreement. Contractor also warrants that the ATIMS Application software does not willfully infringe the intellectual property of any third party. The compensation paid by County to Contractor specified herein is deemed to include all royalties or license fees arising from the use of any design, device or materials or other component of such ATIMS Application specified in the Project Deliverables that are covered by patent, trademark or copyright, and Contractor expressly warrants that by executing this Agreement, County is entitled to use each such component without infringing upon any patent, trademark or copyright. Contractor represents that it has secured all necessary licenses, sublicenses, consents or approvals to use all components of the ATIMS Application specified in the Project Deliverables, including, without limitation, all software, and to license, sublicense or resell such components under Contractor's name. Contractor covenants to defend, indemnify and hold harmless the County from any loss, claim or liability relating to trade names, licenses, franchises, patents or other means of protecting interests in any ATIMS Application components of the system specified in the Project Deliverables to the extent that the loss, claim or liability is not caused by the negligence of County or its Users in their use of the Licensed Software or is not caused by their material breach of the terms of this Agreement relating to the Licensed Software.

In case an ATIMS Application delivered under this Agreement has not been modified by County or combined with other material not provided by Contractor, and is held to be infringing and its use is enjoined, Contractor, at its option and expense, shall:

- A. Secure for County the right to continue using such ATIMS Application by suspension of any injunction or by procuring any necessary license or sublicense for County; or
- B. Modify such component so that it becomes non-infringing without prejudice to any other rights of County. The preceding is dependent upon County promptly notifying Contractor in writing of the allegation. Contractor shall make such defense by counsel of its choosing and County shall cooperate with said counsel. These covenants shall survive the termination of this Agreement and are in addition to any other rights or remedies of County specified in this Agreement or otherwise provided by law.

49. PASS-THRU WARRANTY

Warranty coverage for third party products shall be passed through to the County as specified in Exhibit A. To the extent it has been authorized to do so, Contractor shall take all reasonable steps to assist County in coordinating technical support under any warranty arrangement with respect to any third party products.

50. OBSOLESCENCE

For any equipment specified in the Project Deliverables and provided by Contractor under this Agreement that is no longer available due to model changes or other reasons beyond the reasonable control of Contractor, Contractor shall, for the duration of this Agreement and at no additional cost to County, provide equipment of same or better quality, performance and capacity.

51. WARRANTY DISCLAIMER

EXCEPT AS STATED ABOVE, CONTRACTOR DISCLAIMS (TO THE EXTENT PERMITTED BY LAW) ALL WARRANTIES ON ANY AND ALL ATIMS APPLICATION AND PRODUCTS, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS OF PURPOSE. THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND REPRESENTS THE FULL AND TOTAL OBLIGATION AND/OR LIABILITY OF CONTRACTOR. CERTAIN LIMITATIONS SET FORTH IN THIS DISCLAIMER MAY NOT APPLY IN SOME JURISDICTIONS.

52. PROMPT NOTIFICATION OF DEFECT

Contractor shall notify County of any known defects or malfunctions in any software application or hardware component supplied under this Agreement which are likely to cause imminent failure of the system or any portion thereof as soon as practicable but of all known defects at least once per quarter.

53. CORRECT INSTALLATION

Contractor warrants and represents that it shall properly install the software and/or equipment for which County contracts with Contractor for installation services and which meet Contractor's specifications for replacement or add-on equipment at County sites and that these new components shall then perform in such environment in accordance with the specifications contained in Exhibit A and any mutually agreed upon in writing detailed design documentation. In the event that the system or any portion thereof, does not perform in accordance with the specification covered in Exhibit A and any mutually agreed upon in writing detailed design documentation after the installation of add-on or replacement software or hardware components, Contractor shall correct, at its expense, all affected portions of the system to ensure the proper performance of the system in County's operating environment.

54. STANDARD OF CARE

County relies upon the professional ability of Contractor and representations regarding the type of work to be performed as a material inducement to entering into this Agreement. Contractor shall perform the professional services hereunder in accordance with the industry standards of those engaged in providing JMS services. Contractor agrees that the acceptance of Contractor's work by County shall not operate as a waiver or release of said obligation of Contractor. The absence, omission, or failure to include in this Agreement, items which are normally considered to be a part of generally accepted professional procedure or which involve specialized professional judgment appropriate to the type of work to be performed under this Agreement shall not be used as a basis for submission of inadequate work or incomplete performance.

55. DOCUMENTATION

Contractor shall provide current and accurate Documentation with respect to each ATIMS Application, including, without limitation, user materials for each ATIMS Application, as prescribed in the Statement of Work. It is the intent of the parties that the user materials be written in a manner so that

County personnel may utilize the materials as a reliable resource for understanding the JMS's operations. Such user materials are not intended as substitution for training classes, but as reference material.

56. DELIVERY AND INSTALLATION

Contractor shall assume responsibility for delivery, unpacking, uncrating and installing all hardware and software specified in the Exhibit A at County sites. Following installation of the hardware, Contractor shall test all hardware in accordance with the manufacturer's standard installation diagnostic procedures, if any. Contractor shall install and configure all hardware and software in accordance with the Exhibit A. County agrees to allow Contractor personnel reasonable access to County's site and facilities (telephone, facsimile, parking, etc.) during normal business hours and at other times as agreed. County understands and agrees that on-site Contractor personnel may need to work Saturdays and Sundays during the installation period and will have the work areas accessible to them on those days as required.

57. EQUIPMENT STAGING

Certain materials to be delivered by Contractor under this Agreement shall be received by Contractor and will remain in Contractor's possession at its development facility for programming and system integration work by Contractor prior to delivery to County. Payment for such materials shall be due and payable by County upon their receipt by Contractor at Contractor's development facility, subject to the following:

- A. The amount to be paid by County for such deliverable goods shall be as indicated in the Exhibit B.
- B. Contractor will notify County in writing of Contractor's receipt of such deliverable goods at a Contractor development facility. Within five (5) business days of such notice of delivery, County shall verify the delivery of goods by either
 1. Acceptance of Contractor's certification of goods received and receipt of a copy of the packing list(s), or
 2. A physical on-site inspection at County's expense. County's failure to verify the goods within such 5-day period shall waive County's right to object to or reject such goods.

58. CONTRACTOR CAUSED DELAYS

Time is of the essence in the performance of this Agreement; therefore, the parties shall adhere to the go-live cutover date in the most recent County-approved Project Schedule, Exhibit D. The "go-live cutover date" is the date in the Project Schedule when the final data cut is delivered to the JMS, the interfaces are turned on, and the new system is operable and running for County to use. If such event is in jeopardy of not being achieved in accordance with the most recent County-approved Project Schedule, Contractor shall inform County in writing of the potential delay no less than thirty (30) days prior to the scheduled event. Contractor's written notification of the potential delay shall include a proposed recovery plan for County's consideration and approval.

59. COUNTY CAUSED OR COUNTY'S THIRD PARTY VENDOR CAUSED DELAYS

County acknowledges that the go-live cutover date set forth in the Project Schedule for completion of the services to be provided by Contractor under this Agreement depend, in part, upon the timely fulfillment of County's Responsibilities. Should the County solely cause a delay, an extension of time equivalent to the delay will be added to the go-live cutover date. Such changes will be implemented pursuant to a project change order.

60. STATUS REPORTS

Contractor shall submit, in a format mutually agreeable to both parties, written monthly reports on the status of the work so that County is kept fully informed of its progress. County shall designate in writing, from time to time, its project director or other representative to whom required reports shall be directed. The reports shall be submitted to County so that they are received by County no later than the fifth day (5th) of each calendar month. Contractor agrees to supply monthly on-site meetings with the Project Team which may be waived with the approval of the County Project Manager.

61. VERIFICATION OF BACKGROUND

Contractor agrees that any employee, agent, subcontractor or consultant having access to any installation site or to any records or information relating, pertaining to or included in County's system shall be required to provide their name, date of birth and driver's license number and, at County's expense, shall submit to fingerprinting and a "California Identification Search" in order to verify the person's status and fitness to perform under this Agreement. The County's Sheriff will have sole discretion on whether to approve or disapprove any Contractor employee. Delays associated with the subjective rejection of a Contractor employee will constitute an excusable Contractor delay. Delays associated with the rejection of a Contractor employee related to the identification of active warrants, investigative wants, or probation and/or parole mandates will constitute a Contractor caused delay. Approved Contractor employees or agents agree to notify County in writing should they be arrested, detained, investigated or convicted of any crime during the term of this Agreement.

62. PERMITS AND LICENSES

Except with respect to permits, licenses, fees and notices imposed or required by County's site preparation to be completed by County as required by this Agreement, and except with respect to those which are referenced in the Statement of Work as the responsibility of County, Contractor shall procure all permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the services to be performed by Contractor hereunder, including a valid County of Santa Barbara business license.

63. FORCE MAJEURE

Neither party shall be responsible for delays caused by acts of God or of the public enemy, fire, terrorism, floods, tidal waves, earthquakes, epidemics, strikes, labor disputes, shortage of materials and freight embargoes, power failures or spikes, provided that the party desiring to invoke this clause shall notify the other party in writing of the cause or causes of the delay within ten (10) business days of the beginning of such cause or causes and shall exercise due diligence in attempting to avoid any delays and/or the impacts of any delays. A delay caused by a shortage of materials shall not be excused unless the party seeking to invoke this clause furnishes documentary proof that it has diligently made every best effort to obtain such materials from all known sources.

64. NO THIRD PARTY BENEFICIARIES

This Agreement is not intended to create any right in or for the public, or any member of the public, any subcontractor, supplier or any other third party, or to authorize anyone not a party to this Agreement to maintain a suit to enforce or take advantage of its terms. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

65. NONDISCRIMINATION STANDARDS

Contractor shall not discriminate in its performance under the Agreement either directly or indirectly on the grounds of race, color, religion, sex, age, national origin, or other prohibited grounds in its employment practices, and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or other prohibited grounds.

66. STAFF APPROVAL

Within ten (10) business days of execution of this Agreement, Contractor shall designate in writing a single individual to act as the project manager (the "Contractor Project Manager"). The Contractor Project Manager shall be knowledgeable regarding the nature, implementation and use of the JMS, and shall have sufficient prior working experience with the implementation and use of the JMS, including its hardware and software components, so that the Contractor Project Manager can serve as a resource and guide to County in the implementation and use of the JMS. The Contractor Project Manager shall ensure Contractor's compliance with, and shall coordinate appropriate schedules in connection with, Contractor's obligations hereunder. Contractor shall use its best efforts to maintain the same Contractor Project Manager for the duration of this Agreement. However, Contractor may change the individual designated hereunder by providing County with ten (10) business days' advance written notice designating the new individual authorized to act as the Contractor Project Manager. Notwithstanding the foregoing, Contractor has the right to appoint a temporary Contractor Project Manager in connection with short-term unavailability, sick leave or reasonable vacations provided that it notifies County in writing of any such temporary appointments. Within ten (10) business days of the execution of this Agreement, County shall designate in writing a single individual to act as the County's project manager (the "County Project Manager"). The County Project Manager shall ensure County's compliance with, and shall coordinate appropriate schedules in connection with, County's obligations hereunder. County shall use its best efforts to maintain the same County Project Manager for the duration of this Agreement. However, County may change the individual designated hereunder by providing Contractor with advance written notice designating the new individual authorized to act as the County Project Manager. Notwithstanding the foregoing, County has the right to appoint a temporary County Project Manager in connection with short-term unavailability, sick leave or reasonable vacations provided that it notifies Contractor in writing of any such temporary appointments. Contractor Project Manager and County Project Manager shall be accessible by telephone or by electronic pager throughout the duration of this Agreement. Prior to go-live cutover date of the JMS, Contractor Project Manager shall be available eight (8) hours per day five (5) days per week, excluding holidays and weekends. From time to time it may be necessary to adjust those hours to support specific project goals and objectives. Such adjustments shall be made as agreed to by both parties. During any Reliability Testing period described in the Statement of Work with respect to any ATIMS Application, Contractor Project Manager must be available on a twenty-four (24) hour basis, seven (7) days per week. If County should desire that Contractor replace its Project Manager or any other personnel assigned to assist the project, such request shall be made in writing, include County's basis for the request, and delivered in accordance with this Section. Contractor's compliance with such requests shall not be unreasonably withheld. Time required to replace a Contractor employee (at County's request) shall not constitute a Contractor caused delay so long as such replacement occurs within ten (10) business days.

67. RESOLUTION OF DISPUTES PRIOR TO SYSTEM ACCEPTANCE

The parties to this Agreement shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this section:

- A. If either party (the “Disputing Party”) disputes any provision of this Agreement, or the interpretation thereof, or any conduct by the other party under this Agreement, that party shall bring the matter to the attention of the other party at the earliest possible time in order to resolve such dispute.
- B. If such dispute is not resolved by the employees responsible for the subject matter of the dispute within ten (10) business days, the Disputing Party shall deliver to the first level of representatives below a written statement (a “Dispute Notice”) describing the dispute in detail, including any time commitment and any fees or other costs involved.
- C. Receipt by the first level of representatives of a Dispute Notice shall commence a time period within which the respective representatives must exercise their best effort to resolve the dispute. If the respective representatives cannot resolve the dispute within the given time period, the dispute shall be escalated to the next higher level of representatives in the sequence as set forth below.
- D. If the parties are unable to resolve the dispute in accordance with the escalation procedures set forth below, the parties may assert their rights under this Agreement.

<u>Escalation Timetable (Business Days)</u>	<u>Contractor Representative</u>	<u>County Representative</u>
0 to 5th	Project Manager	Project Manager
5th to 10th	Manager Of Project Management	Steering Committee Chairperson
11th to 15th	VP	Undersheriff

- E. Notwithstanding the fact that the parties may be attempting to resolve a dispute in accordance with the informal dispute resolution procedures set forth herein, the parties agree to continue without delay all their respective responsibilities under this Agreement that are not affected by the dispute.
- F. Notwithstanding the foregoing, either party may, before or during the exercise of the informal dispute resolution procedures set forth herein, apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of such informal dispute resolution procedures.

68. SOURCE CODE ESCROW

County and escrow agent, Iron Mountain Intellectual Property Management (IMIPM), shall execute an escrow service agreement and hereby agrees to pay the escrow fees as beneficiary of the agreement. Within seven (7) days of the go-live cutover date, Contractor shall deposit the ATIMS Source Code (defined below) for safekeeping with IMIPM. The ATIMS Source Code deposited with IMIPM will be a snapshot of all ATIMS Source Code maintained by Contractor to the ATIMS application software (and any updates or fixes thereto) that County has licensed from Contractor in a format acceptable to County (“ATIMS Source Code”).

As beneficiary of the escrow service agreement, County will have access to ATIMS Source Code for all of County’s current and subsequent versions of the licensed ATIMS application software. After the go live completion date, Contractor will make a deposit of the updated ATIMS Source Code with the escrow agent once every six months.

Despite anything to the contrary in the Agreement, County shall only have access to the relevant ATIMS Source Code in the event Contractor becomes unable to, or otherwise fails to, maintain the licensed ATIMS application software during the warranty period or during the maintenance period, or if Contractor decides to stop support of the software, or Contractor becomes bankrupt. Upon County taking possession of the ATIMS Source Code, County hereby also agrees as follows:

- A. County accepts full and total responsibility for the safekeeping of the ATIMS Source Code. County agrees that such Source Code shall be subject to the restrictions of transfer, sale, and reproduction placed on the software itself as stated in this Agreement.
- B. County agrees that any unauthorized release of the ATIMS Source Code by County will cause irreparable harm to Contractor. Therefore, County agrees to compensate Contractor for any and all damages Contractor suffers, to include reasonable attorney's fees, resulting directly or indirectly from, but not limited to, the mishandling, misuse, or theft of the ATIMS Source Code, regardless of intent, or the absence thereof, by County, its employees, former employees, agents and third-party associates if so ordered by the court. Notwithstanding the foregoing, County agrees that Contractor is entitled to an immediate injunction to stop any further alleged or actual disclosure.
- C. No license under any trademark, patent, copyright, or any other intellectual property right, is either granted or implied by the disclosure of the ATIMS Source Code to County. Contractor's disclosure of the ATIMS Source Code to County shall not constitute any representation, warranty, assurance, guarantee or inducement by Contractor to County of any kind, and, in particular, with respect to the non-infringement of trademarks, patents, copyrights, or any other intellectual property rights, or other rights of third persons or of Contractor.
- D. Furthermore, Contractor will not be liable for any consequences related to the use of ATIMS Source Code modified by County.

69. LIMITATION OF LIABILITY

Contractor's total liability for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause shall not exceed the amount paid under this Agreement. In addition, to the maximum extent permitted by applicable law, neither Contractor or County nor any of their respective officers, directors, employees, agents, or affiliates shall have any liability for any indirect, consequential, special or incidental damages, damages for loss of profits or revenues, whether in an action in contract or tort, even if such a party has been advised of the possibility of such damages.

70. DEFINITIONS

For purposes of this Agreement, the following capitalized terms shall be defined as set forth herein:

- A. **"Acceptance"** shall mean County's written acceptance of the totality of the ATIMS solution, including all applications, interfaces, and services following the completion of all functional, performance and reliability tests.
- B. **"As-Built Specifications"** shall mean, with respect to any ATIMS Application, the specific ATIMS functionality as created specifically for County, including any configurable functionality and any customized functionality.
- C. **"ATIMS Application"** shall mean Contractor's software including JMS technology and Contractor's mobile products, and all modules corresponding thereto developed by Contractor and delivered to County under this Agreement and in accordance with the As-Built Specifications relating thereto, including all Maintenance Modifications thereto, all Derivative

Works thereof, and all related Documentation. D. **"ATIMS Confidential Information"** shall mean any and all ATIMS Application and all other software applications developed by Contractor, whether or not licensed to County, as well as any written information disclosed by Contractor to County under this Agreement, including, but not limited to, any trade secrets, confidential knowledge, data, information relating to Contractor's products, processes, designs, formulas, methods, developmental or experimental work, improvements, discoveries, plans for research, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, suppliers and customers, information obtained through contact with Contractor's customers, or proprietary information of Contractor's customers.

- E. **"Contractor Project Manager"** shall be knowledgeable regarding the nature, implementation and use of the JMS, and shall have sufficient prior working experience with the implementation and use of the JMS, including its hardware and software components, so that the Contractor Project Manager can serve as a resource and guide to County in the implementation and use of the JMS. The Contractor Project Manager shall ensure Contractor's compliance with, and shall coordinate appropriate schedules in connection with, Contractor's obligations hereunder.F. **"County Confidential Information"** shall mean all County data and other written information of a confidential nature clearly labeled by County as being confidential.
- G. **"County Project Manager"** shall ensure County's compliance with, and shall coordinate appropriate schedules in connection with, County's obligations hereunder.H. **"County Property"** shall mean all of County's property, documents, and information provided for Contractor's use in connection with the services.
- I. **"Contractor Products"** shall mean Contractor materials, services, hardware or software provided to County.
- K. **"Documentation"** shall mean, with respect to any ATIMS Application, those customary instructions, manuals, materials, guides, and diagrams (e.g., for training, reference, configuration, user, system administration, technical and/or support) pertaining to and furnished with such ATIMS Application.
- L. **"Data Migration Services"** means the process following Data Conversion Services of migrating and/or merging the County's readable data and/or data files into the County's existing "live" ATIMS System.
- M. **"Embedded Programs"** means all third party software, modules, products, interfaces, data files and/or other files and programs provided by ATIMS as part of or in connection with its proprietary software.
- N. **"Error"** shall mean, with respect to any ATIMS Application, a defect in the ATIMS Application that prevents such ATIMS Application from functioning in accordance with the product documentation.
- O. **"Fees"** means the Licensed Software Fees, the Project Management, Installation and Training Fees, the annual Support Services Fees and any Additional Services Fees, each as defined herein and/or otherwise noted in the Cost Proposal and herein referred to as the "Proposal". These fees include all fees associated with Data Conversion and/or Data Migration Services, as may be separately referenced in the Proposal.
- P. **"Go-Live Cutover Date"** shall mean the date in the Project Schedule when the final data cut is delivered to the JMS, the interfaces are turned on, and the new system is operable and running for County to use.
- Q. **"Licensed Software"** means (i) the Software, (ii) the Documentation, (iii) the Embedded Programs, (iv) the Updates, (v) the Work Product and (vi) all instructions, manuals, diagrams and other materials, in whatever medium or format, pertaining to the foregoing.

- R. **"Maintenance Modifications"** shall mean, with respect to any ATIMS Application, a computer software change to correct an error in, and integrated into, such ATIMS Application, but that does not alter the functionality of such ATIMS Application and that is provided to County after County's acceptance of such ATIMS Application in accordance with the Statement of Work. Maintenance Modifications are provided at no additional cost during the warranty period or any extended support period.
- T. **"Object Code"** shall mean computer programs assembled or compiled from Source Code in magnetic or electronic binary form on software media, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse-compiling, or reverse-engineering.
- V. **"Software"** means ATIMS's proprietary software applications described in the Proposal, together with any software previously provided by ATIMS to County.
- W. **"Source Code"** shall mean computer programs written in higher-level programming languages, sometimes accompanied by English language comments. Source Code is intelligible to trained programmers and may be translated to Object Code for operation on computer equipment through the process of compiling. **"ATIMS Source Code"** is Source Code owned by ATIMS or its Licensors.
- X. **"Third-Party Products"** shall mean all software and hardware components specified in the Project Deliverables and delivered by Contractor under this Agreement for integration into the system other than the ATIMS Application.
- Z. **"Work Product"** means inventions, discoveries, software, or other works of authorship and other proprietary materials or work product developed by ATIMS, its employees, agents or contractors in the course of ATIMS's performance of any services regardless of any participation, assistance or cooperation by County, its employees, agents or contractors in connection therewith.

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: _____
Deputy Clerk

COUNTY OF SANTA BARBARA:

Joan Hartmann, Chair
Board of Supervisors

By: _____
Chair, Board of Supervisors

Date: _____

**RECOMMENDED FOR APPROVAL:
SHERIFF'S OFFICE**

By:  _____
Department Head
Bill Brown
Sheriff-Coroner


**CONTRACTOR:
THE ACT 1 GROUP, INC. dba ATIMS**

By:  _____
Authorized Representative
Name: Felix Rabinovich
Title: Executive Vice President

**APPROVED AS TO FORM:
Michael C. Ghizzoni
County Counsel**

By:  _____
Deputy County Counsel

**APPROVED AS TO ACCOUNTING FORM:
Theodore A. Fallati, CPA
Auditor-Controller**

By:  _____
Deputy

**APPROVED AS TO FORM:
Risk Management**

By:  _____
Risk Management