

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM
3.4
(ID # 7827)

MEETING DATE:
Tuesday, October 2, 2018

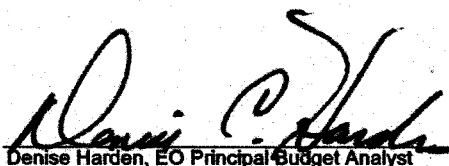
FROM : EXECUTIVE OFFICE:

SUBJECT: EXECUTIVE OFFICE: Approval of Contract with Sherpa Government Solutions for Implementation of Budget Formulation & Management System, All Districts [\$2,186,199; 100% RDA Capital Improvement Fund] 4/5ths Vote

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve the agreement with Sherpa Government Solutions for implementation, hosting, maintenance and support of their Budget Formulation and Management (BFM) system for a term of five years in an amount not to exceed \$2,186,199, with the option to extend the agreement in five year increments subject to Board approval of any such extensions; and,
- 2) Approve and direct the Auditor-Controller to make the budget adjustments on Schedule A.

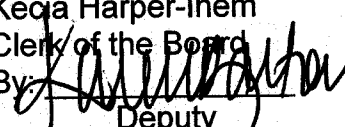
ACTION: 4/5 Vote Required, Policy


Denise Harden, EO Principal Budget Analyst 9/27/2018

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: October 2, 2018
xc: EO, Auditor

Keaja Harper-Ihem
Clerk of the Board
By: 
Deputy

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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$349,448	\$935,739	\$2,186,199	\$204,671
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS: RDA Capital Improvement Fund Available Fund Balance 100%			Budget Adjustment: Yes	
			For Fiscal Year: 18/19 - 22/23	

C.E.O. RECOMMENDATION: APPROVE

Summary

Background

The current county budget system (BASE), was built in-house by county staff using PeopleTools in 2009. The application resides on county servers and is maintained by the Riverside County Information Technology Department (RCIT). The system is administered by the County Executive Office, which combines data extracted from the system together with narrative content emailed separately from departments to compile the budget book and other reports using Microsoft Excel, Access, and Word. The process is iterative, laborious, and time consuming. The limitations of the system, and the effort required to manage budget data and content, constrain the county's ability to do the financial planning and budgetary analysis expected. Replacing BASE with a modern system built specifically for government budgeting, reporting, and analysis will enable the county to more efficiently and cost-effectively do the financial planning and performance management necessary to achieve our financial objectives.

Issues

The Board increasingly asks for long-range modeling and forecasting regarding labor costs, pension costs, capital planning, and revenues. This capability will be increasingly important as the county moves forward with more complex multi-year financial planning. However, the current budget system does not have the capacity to do long-range forecasting of either revenue or expense, and the personnel module would require significant costly modifications to enable this.

The Board has also raised expectations regarding the sophistication of both the form and content of budget reports and publications. The current budget system does not have the capacity for departments to input narratives or performance metrics, which has become a focus of the new budget format. This limits our ability to move to more efficient publication methods that entail centralized, uniform content management, and adding this capacity to the current budget system would add further cost.

The county's current budget system was custom built in-house using a version of PeopleTools no longer supported by Oracle or most PeopleSoft programmers.

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Consequently, forward planning for continuity of application support in future years as existing staff age out would likely be challenging and expensive.

The BASE system's outdated user interface is not as user-friendly or intuitive as more contemporary systems. This limits users' ability to navigate the system efficiently and prepare budgets most effectively. In addition, the BASE system is only accessible within the county's intranet, limiting access of an increasingly mobile workforce.

The county's current budget system also does not handle all the data processing and narrative content required to produce the budget, necessitating significant staff time to manipulate data for publication in off-line applications such as Microsoft Access, Excel, and Word. Since the BASE system was not designed to provide comprehensive content management, analytics and modeling, ad hoc reporting, or publishing, substantial off-line time and effort are required of Executive Office staff for data management and manipulation. Modifying the system to more efficiently meet those growing needs would be both costly and resource intensive.

Proposal

To address these issues, the Executive Office worked with the Purchasing Department to initiate a request for proposals (RFP) for a comprehensive new budget system encompassing not only budget preparation, but a broad range of analytics and reporting through to complete document publication into multiple media. As discussed in more detail below, Purchasing received 12 responses to the RFP. A comprehensive review of those proposals concluded Sherpa Government Solutions' Budget Formulation and Management system (BFM) and suite of proposed third party applications will best meet the county's requirements.

Sherpa Government Solutions focuses solely on developing budget and financial management applications exclusively for government agencies. The application originated from a group of California county budget staff seeking to address the specific needs of county budgets. The company has 20 years experience developing and implementing budget applications for a range of government clients, including California counties such as Orange County, San Diego County, Santa Clara County, Contra Costa County, San Luis Obispo County. In addition, they are currently implementing their system in San Mateo County, and were recently selected by Sacramento County. Of all the proposals received, Sherpa's is the only budget solution that delivers the legally required state budget schedules out-of-the-box. As proposed, Sherpa's recommended solution includes an all-inclusive suite of applications that cover budget modeling, preparation, analytics, publication, and ongoing budget management.

Advantages

Sherpa's system offers a number of advantages over the county's existing BASE system as well as the other proposals reviewed. Sherpa's BFM was designed from the ground up as a comprehensive government budgeting system, not a modification of private sector "business planning" tools. In addition, the application is designed, implemented, maintained, and supported by functional experts in government budgeting with specific knowledge in California county budgeting. The solution proposed is a fully integrated

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relational database system for seamless budget collaboration, information management, long-range forecasting and scenario modeling, budgetary and financial analysis and reporting, and document publication, substantially improving efficiency of the budget process.

BFM comes ready to configure for our county right out-of-the-box - no customization or modification of the application is required. Administration of the system requires minimal technical support, significantly reducing demand on our Riverside County Information Technology Department. Centralizing all content management within the BFM suite of applications, together with greater ease of administration, will free Executive Office staff to focus in greater depth on budget analysis and policy development.

The end user interface is streamlined and intuitive, which will significantly improve departments' user experience and maximize their efficient and effective use of the system. The BFM system also includes automated workflow, enabling a role-based budget review and approval system. BFM contains integrated performance management tools, with the potential to extend use of those tools to support the county's performance management initiative. In addition, robust forecasting and modeling tools could be put into use almost immediately, if we choose.

Conclusion

Sherpa's proposed solution provides a suite of applications that will enable the county to modernize our budget systems and processes for greater efficiency and effectiveness while also providing dedicated continuity of maintenance and support. Making the capital investment to implement the Sherpa solution will be more cost effective than modifying the county's existing system to meet evolving needs and maintaining qualified in-house staff necessary to support it.

Additional Fiscal Information

The initial period of performance for this agreement is five years beginning effective on signature by both parties and extending through October 31, 2023. This includes an implementation period of approximately 15 months, during which Sherpa will assist the county in configuring the system, developing analytic tools, constructing publications, and training county staff in use of the system. Following the initial term of the agreement, the county will have the option to extend the agreement in five-year increments for maintenance and support of the system.

The total potential five-year cost of the project as presented is **\$2.186 million**, as follows: \$412,040 in software licensing for the complete application suite, including BFM, SAP Business Objects (for analytics and reporting), PatternStream and PADS Document Management (for integrated publishing); \$979,475 in professional services for implementation and ongoing support; and \$604,484 for ongoing software maintenance, support, and hosting services.

Sherpa provided a quote totaling \$128,200 for the option of adding further SAP Business Objects licenses, depending on the level of user interest and needs for those analytic and reporting tools, which will be evaluated during implementation. In addition, Sherpa provided

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quotes on a sliding scale basis for the option of buying out the hosting contract and bringing the system on-premises at some point following implementation. Once the system is implemented and operating, RCIT will evaluate the cost/benefit of bringing the system onto county servers. For costing purposes, the maximum amount of \$62,000 necessary to buy out the hosting contract in the first year of operation is included in the grand total, but this would decline to zero in each successive year of this agreement until the hosting contract is renewed. If these options are not exercised, the total baseline amount of the project would be **\$1.996 million**. These project costs are summarized in the table below:

<i>Sherpa Budget & Formulation (BFM) Application Suite Cost Summary</i>						
	One-time Project Costs	FY 19/20	FY 20/21	FY 21/22	FY 22/23	Initial 5- year Cost
Software Licensing Costs	412,040	0	0	0	0	412,040
Professional Services	663,475	88,600	88,600	69,400	69,400	979,475
Maintenance, Support, and Hosting Costs	48,800	142,571	142,571	135,271	135,271	604,484
Baseline Grand Total	\$1,124,315	\$231,171	\$231,171	\$204,671	\$204,671	\$1,995,999
Optional Software Licensing Costs*	63,000	0	0	0	0	63,000
Optional Maintenance and Support Costs*	0	16,300	16,300	16,300	16,300	65,200
Optional Professional Services*	0	62,000	42,000	4,050	0	62,000
Grand Total with Options	\$1,187,315	\$309,471	\$289,471	\$225,021	\$220,971	\$2,186,199

** Optional items to be determined based on sizing and timing considerations during and after implementation.*

The total for professional services includes \$603,475 for implementation and \$316,000 for ongoing administrative support of the Executive Office during the initial years of operation. This assumes the need for such support will wane as all users develop skill with the new system. In addition, the total for implementation services includes \$110,100 for training by Sherpa of all system users. In contrast to the classic train-the-trainer model, this approach recognizes both the limited Executive Office staff time available, and the benefits of direct knowledge transfer from Sherpa's functional experts. Ongoing application support also includes annual training delivered by Sherpa. Also included is \$60,000 in contingency to cover currently unforeseen implementation needs.

While the project will kick off almost as soon as the agreement is signed, payments for implementation services will not be made until specific production deliverables are achieved. As currently scoped, the anticipated project plan assumes having the system

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ready for internal service departments to use the system beginning July 2019 to prepare FY 20/21 rate packages, with full rollout to all departments in January 2020. Thus, most of the implementation services will not be paid until those milestones are reached during FY 19/20.

Once all implementation costs are concluded, the ongoing annual baseline cost of maintenance, support, and hosting will be **\$204,671**. If more SAP Business Objects licenses are added, the cost for annual software maintenance would increase by \$16,300. A summary of the baseline costs, excluding optional items to be determined later, follows:

<i>Baseline Payment Schedule Summary</i>						
	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	Total
Total Software Licensing	221,850	190,190	0	0	0	412,040
Total Professional Services	0	88,600	88,600	69,400	69,400	316,000
Total Maintenance, Support & Hosting	48,800	142,571	142,571	135,271	135,271	604,484
Total Implementation Services	78,798	514,378	70,300	0	0	663,475
	\$349,448	\$935,739	\$301,471	\$204,671	\$204,671	\$1,995,999

Regarding funding of this project, the county receives tax increment revenue from several city successor agencies pursuant to certain pass-through agreements that require those pass-through payments be deposited and used for capital projects. Since implementation of a system of this size is considered a capital project, the Executive Office recommends using a residual amount of this pass-through to cover licensing and implementation of this new system, as well as maintenance and support in its early years. Recovery of the ongoing costs through a modest rate could be explored in the future.

Contract History and Price Reasonableness

At the request of the Executive Office, the Purchasing Department issued a Request for Proposal (RFP) with a detailed scope of services, among the requirements of which was that the proposed system produce the budget schedules required by the California State Controller's Office. Purchasing sent notifications to all known vendors and contacts registered in the county database totaling over 830 individuals and/or companies as well as advertised on the county Purchasing's Internet site. In response, 12 proposals were received in mid-February 2018.

The proposals were reviewed by an evaluation team consisting of personnel from the Executive Office, Information Technology Department, Department of Public Social Services, Flood Control and Water Conservation District, and Sheriff's Department. All 12 proposals were reviewed and scored by an evaluation team based on the bidder's overall responsiveness to the requirements of the scope of service, technical capability and project methodology, overall cost to the county, references, and financial status. Responses ranged in cost from \$853,632 to

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\$4,224,211 over a 5-year period. Scripted vendor product demonstrations by the top five vendors were conducted and ranked by the evaluation team. Additionally, references and best and final offers with the top two vendors were requested and evaluated. The evaluation team unanimously concluded Sherpa Government Solutions to be the best value system to meet the county's comprehensive set of budgeting, analytic, and publishing needs.

Sherpa's cost proposal was competitive with the next ranked proposal, particularly considering foreseeable costs of substantial additional work necessary to build the state budget schedules in the other proponent's system. The costs for additional professional services to aid the Executive Office with expert document design and construction, training, and user support in the initial years of the system are quite favorable in comparison to the cost of hiring additional qualified staff with comparable expertise.

Licensing and implementing Sherpa's BFM system will be more cost effective than the sizable investment necessary to modify the county's existing budget system to achieve similar functionality. Once implemented, ongoing application maintenance and support provided by Sherpa will free the RCIT BASE team from maintaining the budget system so they can focus on other technology initiatives, and will provide seamless continuity of application development and maintenance. In addition, the Executive Office will receive dedicated ongoing development and support solely focused on this application at less cost than maintaining the necessary technical expertise in-house long-term.

ATTACHMENT A: SCHEDULE A. BUDGET ADJUSTMENTS

ATTACHMENT B: AGREEMENT WITH SHERPA GOVERNMENT SOLUTIONS

**ATTACHMENT C: RIVERSIDE COUNTY INFORMATION TECHNOLOGY
PROCUREMENT FORM**

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ATTACHMENT A

Schedule A: FY 18/19 Budget Adjustments

Increase appropriations:


31540-1100100000-521640	Maintenance – software	\$ 48,800
31540-1100100000-546280	Capitalized software	<u>300,648</u>
	Total	349,448


Anticipated use of restricted fund balance:

31540-1100100000-321158	Restricted for RDA capital improvements	349,448
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Sandy Armijo 9/26/2018


Teresa Summers, Director of Purchasing 9/26/2018


Don R. Kent, Assistant CEO-County Finance Officer 9/27/2018


Gregory P. Priamos, Director County Counsel 9/26/2018


Jim Smith, Chief Technology Officer 9/26/2018



RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM

H11 Number:	PR2018-07512		
Requested Purchase:	Sherpa Government Solutions Budget Formulation & Management System		
Department/Agency:	Executive Office		
Primary Contact/Phone:	Denise Harden	Alternate Contact/Phone:	Stephanie Persi/
Purchase Request Type:			
Describe Requested Purchase:	Countywide government budgeting & publication system.		
Terms:	Is this a Multi Year Contract?: True Length of Contract: 5 Start Date: 9/30/2018 End Date: 10/31/2023 12:00:00 AM Special Terms and Conditions: Allows renewal of agreement in five-year increments Start Date: On signature of both County and Sherpa (tentatively September 2018) End Date: October 31, 2023		
Business Needs Addressed:	Budget preparation, analysis, forecasting & modeling, centralized content development & collaboration, workflow, central data management, streamlined document publication.		
Are there other county systems that provide the same functionality?	No		
Business Criticality:	Run the Business, Grow the Business, Transform the Business		
Business Impact:	Support Current Operations, Reduce Expenses, Improve Customer Service, Improve Operational Efficiencies		

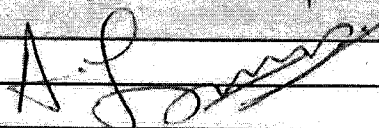
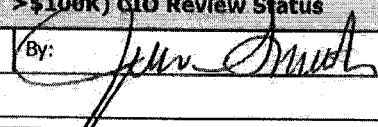

Current Cost Itemization (Include all the year 1 cost)							
Item Description	Purchase Type	Vendor	Quantity	Unit Cost	Sub_Total	Item Tax	Total Cost
Software Licensing Costs	Software	Sherpa	1	\$412,040.00	\$412,040.00		\$412,040.00
Professional Services	Professional Services	Sherpa	1	\$979,475.00	\$979,475.00		\$979,475.00
Maintenance, Support, and Hosting Costs	Software	Sherpa	1	\$604,484.00	\$604,484.00		\$604,484.00
Optional Software Licensing Costs	Software	Sherpa	1	\$63,000.00	\$63,000.00		\$63,000.00
Optional Maintenance and Support Costs	Software	Sherpa	1	\$65,200.00	\$65,200.00		\$65,200.00
Optional Professional Services	Professional Services	Sherpa	1	\$62,000.00	\$62,000.00		\$62,000.00

Annual Costs				
				\$2,186,199.00
Item Description	Payment Type	Terms (in Years)	Payment amount	Total Annual Payments

Accounting String						
To be completed for pass-thru purchases that will be processed by RCIT Only						
%Billed	Accounts (6 digits)	Dept.ID (6 -10 digits)	Program (5 digits)	Class (5 digits)	Grant (9 digits)	Customer Project Code (10 digits)



RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM

Department Head or Authorized Designee Signature: Denise Harden		Date:
RCIT Review (Standard purchases and renewals < \$25000) - Administrative Review Status		
Recommended:	By:	Date:
Denial Explanation:		
ACIO Review - ACIO Review Status		
Recommended: YES	By: 	Date: 9/14/2018
Denial Explanation:		
CIO Review (Purchases and renewals > \$100K) CIO Review Status		
Recommended: Yes	By: 	Date: 9/14/18
Denial Explanation:		
TSOC Review (Purchases and renewals > \$100K) TSOC Review Status		
Recommended: Yes	By: 	Date: 9/18/18
Denial Explanation:		

SOFTWARE SERVICE AGREEMENT

for

Budget Formulation & Management System

between

COUNTY OF RIVERSIDE

and

SHERPA GOVERNMENT SOLUTIONS, LLC.



10.2.18 3.4

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This Agreement is made and entered into this _____ day of _____, 2018, by and between **SHERPA GOVERNMENT SOLUTIONS, LLC**, (herein referred to as "Sherpa" or "CONTRACTOR"), a Colorado corporation, and the **COUNTY OF RIVERSIDE**, a political subdivision of the State of California, (herein referred to as "COUNTY"), whereby the parties agree as follows:

1. Definitions

These definitions apply to the entire Agreement, subsequent Amendments, and Change Orders, unless modified in an Amendment. If any definition contains a substantive provision conferring rights and/or obligations upon a Party, then effect shall be given to the substantive provision.

1.1 "Acceptance" means the Deliverable demonstrates to the County's satisfaction that the Deliverable conforms to and operates according to the Acceptance Criteria, and if required, has successfully completed Acceptance Testing, and for Deliverables not requiring Acceptance Testing that the Deliverable conforms to the Acceptance Criteria or the County's requirements.

1.2 "Acceptance Certificate" means a written instrument by which the County notifies Contractor that a Deliverable has been Accepted or Accepted with exceptions, and Acceptance Criteria have been met or waived, in whole or in part.

1.3 "Acceptance Criteria" means functionality and performance requirements determined by the County, based upon the Specifications, which must be satisfied prior to County's Acceptance of a Deliverable, or the System. County and Contractor shall agree upon written Acceptance Criteria.

1.4 "Acceptance Date" means the date on which the County issues an Acceptance Certificate for the System or a Deliverable.

1.5 "Acceptance Test" means the evaluation and testing method, procedures, or both, that are used to determine whether or not the System or a Deliverable requiring Acceptance Testing performs in accordance with the Acceptance Criteria.

1.6 "Access" means the ability to gain entry to the System for the purpose of Use.

1.7 "Addendum" refers to an amendment or modification to the RFP (Request for Proposals).

1.8 "Affiliates" means, for Contractor, any individual, association, partnership, corporation or other entity controlling, controlled by, or under common control. The term "control" means the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract, agreement or otherwise.

1.9 "Agreement" means the Master Terms and Conditions including all exhibits, attachments and schedules and their constituent parts listed in the Order of Precedence or incorporated by reference.

1.10 "Agreement Price" means the not-to-exceed price agreed upon by the Parties for all Products and Services.

1.11 "Amendment" means a written document required to be signed by both Parties when in any way altering the Master Terms and Conditions of the Agreement or substantially altering a Statement of Work.

- 1.12 “BFM” means Contractor’s proprietary Budget Formulation and Management (BFM) solution.
- 1.13 “Board of Supervisors” refers to the County of Riverside Board of Supervisors.
- 1.14 “Business Day” means a twenty-four hour day, excluding weekends and County holidays, beginning at midnight and ending at midnight twenty-four hours later.
- 1.15 “Calendar Day” means a twenty-four hour day, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later.
- 1.16 “Change Order” means a document, agreed and signed by both Parties, that changes an existing Statement of Work.
- 1.17 “Configuration” means the use of administrative functions provided in the Software to adapt the Software to County-specific requirements, revisions or modifications to the Software to enhance features and functionality but which do not include changes to the source code, or in the case of Equipment, adapting the Equipment to County Specifications.
- 1.18 “Coverage Hours” means those hours specified in this Agreement during which Contractor is to provide Maintenance.
- 1.19 “County” shall mean the County of Riverside.
- 1.21 “Customization” means any modification to or adaptation of Equipment, or in the case of Software, any new or modified code, prepared, created, or developed by Contractor at the County’s request, or by the County in conjunction with or as authorized by Contractor.
- 1.22 “Deliverable(s)” means the Products or Services or documents or tangible work products described in the Statement of Work to be provided to the County by Contractor under this Agreement.
- 1.23 “Delivery of Products” means a Product has been received at the location specified in this Agreement.
- 1.24 “Documentation” means User manuals and other written materials in any form that describe the features or functions of the Products and System, including but not limited to published specifications, online instructions and help, marketing materials, technical manuals, and operating instructions provided by Contractor to the County, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Agreement.
- 1.25 “Equipment” means any hardware, machinery, device, tool, computer, computer component, computer system, including add-ons, or peripherals of tangible form together with the necessary supplies for upkeep and maintenance, and other apparatus necessary for the proper implementation and operation of the System, to be provided to the County by Contractor under this Agreement.
- 1.26 “Error” means any defect, problem, condition, bug, or other partial or complete inability of a Product or component thereof to operate in accordance with the applicable Specifications.
- 1.27 “Final Acceptance” means the County has determined that the complete System and/or all Deliverables have successfully completed Acceptance Testing, which demonstrates to the County’s satisfaction that the System and/or all Deliverables conform to and operate according to the Acceptance Criteria, applicable

Documentation, and Contractor's representations; and that for Deliverables not requiring Acceptance Testing, that the Deliverables conform to the Acceptance Criteria or the County's specified requirements.

1.28 "Force Majeure Event" means an exceptional and unavoidable occurrence beyond the reasonable control of the affected Party, such as riots, epidemics, war, government regulations, labor disputes, fire, natural phenomena, or other causes beyond such Party's reasonable control.

1.29 "Functional Requirements" shall mean the final agreed upon business and technical requirements as defined in Exhibit A-Scope of Work of this Agreement and delivered under the Statement of Work. Such requirements must be fully traceable to the models described in the Statement of Work.

1.30 "Go Live" means the initiation of the System, or a portion or phase thereof, into full production mode after the successful completion of Acceptance Testing and the business users can fully utilize the Software to perform normal business operations.

1.31 "Hosting" means Contractor's provision of remote Access to, and Use of, Software not resident on the County's servers.

1.32 "Hosting Provider" means Amazon Web Services (AWS), Contractor's Subcontractor, which will enable the Contractor to make its Website and Software Accessible via the Internet for County Use.

1.33 "HRMS" refers to the Countywide Human Resource Management System.

1.34 "Illicit Code" means (a) any hidden files in Software, programming, or other item delivered to the County; (b) any Software, programming, or other item delivered to the County that can replicate, transmit, or activate itself without the knowledge and control of an authorized County employee; (c) any Software, programming, or other item delivered to the County that can alter, damage or erase any data or computer programs without the knowledge and control of an authorized County employee; (d) any Software, programming, or other item delivered to the County that contains any key, node lock, time-out or other function, restricts or may restrict use or access to any programs or data (including those based on residency on a specific hardware configuration, frequency or duration of use or any other limiting criteria. It is "Illicit Code" whether implemented by electronic, mechanical or other means.

1.35 "Intellectual Property Rights (IPR)" means any patent rights, copyrights, trade secrets, trade names, service marks, trademarks, trade dress, moral rights, know-how and any other similar rights or intangible assets to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations, or reissues of the foregoing now or hereafter in force.

1.36 "Interface" means software, hardware, or a device to enable communication between separate computer systems, software programs, hardware, devices, or a User.

1.38 "Key Personnel" means the specific individuals identified in Section 6.0 of Exhibit A to fill Key Positions.

1.39 "Key Position" means a job position critical to the success of the Project as identified in Section 6.2 of Exhibit A of this Agreement.

1.40 "Maintenance" means Services provided by Contractor to the County to keep the System conforming to the Specifications and to respond to requests by the County.

- 1.41 “Maintenance Fee” means the fee paid by the County for Maintenance.
- 1.42 “Maintenance Period” means the time period when Contractor provides Maintenance to the County.
- 1.43 “Maintenance Request” means a request from the County to Contractor for Maintenance or technical support.
- 1.44 “Malware” means any virus, Trojan horse, spyware, or other program routine or data designed to erase, disable or otherwise harm any hardware, software, or data.
- 1.45 “Manufacturer’s Warranty” means a written statement to the County from Contractor or passed through Contractor from a third party, that one or more Products manufactured by the third party and provided by Contractor will operate at the required Specifications, functionality and performance level.
- 1.46 “Manufacturer’s Warranty Period” means the time period during which a Manufacturer’s Warranty is valid and enforceable by the County.
- 1.43 “Master Terms and Conditions” means the body of text from the preamble through the signature page of this Agreement.
- 1.44 “Material Breach” means any breach of this Agreement that causes, caused, or may cause substantial harm to the non-breaching Party or substantially deprives the non-breaching Party of the benefit it reasonably expected under this Agreement.
- 1.45 “Module” means a standalone piece of code within the Software that typically provides specific and cohesive functionality.
- 1.46 “Object Code” means the Software in a machine-readable form that is not convenient to human understanding of the program logic, and that can be executed by a computer using the appropriate operating system without compilation or interpretation. Object Code specifically excludes source code.
- 1.47 “Open Source Software” means any computer program for which the license provides the rights to Access and Use the program, view and change the source code, distribute exact copies, distribute modified copies and frees parties from any obligation to pay license fees or royalties.
- 1.48 “Operating System Software” means any computer program product that is installed on, and is a component integral to the function of, the Equipment.
- 1.46 “Product(s)” means Software, Equipment, and supplies.
- 1.47 “Production Environment” means that portion of the System including all sub-systems that is used for day-to-day operations by the Users of the System.
- 1.48 “Project” means the overall delivery of the System and all related Services including, without limitation, design, development, integration, implementation, testing, support and Maintenance, any of which Contractor may be providing in whole or in part.
- 1.49 “Professional Services” means the work tasks to be performed by Contractor as defined throughout this Agreement.

- 1.50 "Proposal" means Contractor's response to the County's RFP referenced on page one of this Agreement.
- 1.51 "RFP" means Request for Proposal.
- 1.52 "Redundant System" means the System or Software used in a non-production environment such as development, training, testing, or on a mirrored server for purposes of back up, archive, and disaster recovery purposes.
- 1.53 "Repair(s)" means to fix, patch, reprogram, or replace the System, or a component thereof, to eliminate Errors to the County's satisfaction.
- 1.54 "Resolution Time" means the time elapsed between the response to a Maintenance Request and the time the Maintenance Request is resolved to the satisfaction of the County.
- 1.55 "Response Time" means the time elapsed between the time of notification to Contractor of a Maintenance Request, and the time Contractor acknowledges receipt of the County's request.
- 1.56 "SAP BOBJ (BOBJ)" means SAP's proprietary Business Objects Third Party Software Module.
- 1.57 "Services" means both ordinary and professional services performed by Contractor under this Contract.
- 1.58 "Sherpa" means Sherpa Government Solutions, LLC.
- 1.59 "Software" means Budget Formulation and Management (BFM), the object code version of Contractor's proprietary and licensed computer program, along with any firmware, applications, Operating System Software, or Modules thereof, which are components of the System and are licensed by Contractor to County pursuant to this Agreement, including, without limitation, any custom Software or Customization, Updates, Upgrades and any related Documentation.
- 1.60 "Specifications" means the most current cumulative statement of capabilities, functionality, and performance requirements for the System and its components as set out in the Acceptance Criteria, Change Orders, the Statement of Work, Documentation, Contractor's representations, Contractor's Proposal and Proposal Clarifications, and the County's Request for Proposals.
- 1.61 "Statement of Work" (SOW) means the written detailed specifications of the Product(s) and Services(s) to be delivered to the County by Contractor, including any Change Orders, subject to the terms and conditions of this Agreement.
- 1.62 "Subcontractor" means any person or entity under the control of Contractor, other than an employee of Contractor, utilized by Contractor to perform all or part of this Agreement.
- 1.63 "System" means the operational combination of all Products to be provided by Contractor to County under this Agreement.
- 1.64 "Term" means the period of time that this Agreement is in effect.
- 1.65 "Test Environment" means those isolated portions of the System that replicate the Production Environment and are used to test to failure all proposed changes to the Production Environment, including new

Software, without impacting the Production Environment to ensure when the Updates, Upgrades, Configurations, Customizations, changes, or new Software is applied to the Production Environment there will be no adverse impact to the System or its Users.

1.66 “Third Party Software” means SAP BOBJ and any other software that a party other than Contractor owns and that is provided to County by Contractor under this Agreement as part of the Software or System, which Contractor is authorized to license, or sublicense, or resell to the County subject to the original developer’s standard provisions.

1.67 “Update” means a change, modification, or enhancement to the Product(s) that improves performance or efficiency, but does not alter core functionality.

1.68 “Upgrade” means a change, modification, or enhancement to the Product(s) that Contractor makes available from time to time, which incorporates major new features or increases the core functionality and may be considered a new version. Software Upgrades may include Error correction, bug fixes, additions to, or patches to the Software.

1.69 “Use” means the County’s licensed operation of the Software.

1.70 “User” means any person employed or working on behalf of the County, its Departments, Divisions, Offices, Directors, and any person or entity under Agreement or authorized by the County to provide it with services and to use the County’s resources in whole or in part, in the course of assisting the County.

1.71 “Warranty” means the statements to the County from the Contractor as detailed in Sections Attachment I.

1.72 “Website” means the Internet portal developed and maintained by Contractor and that provides Users with online Access to the Software.

2. Order of Precedence

2.1 In the event there is a conflict or ambiguity between the terms and conditions of one portion of this Agreement with another portion of this Agreement, the conflict or ambiguity will be resolved in accordance with the order of precedence below. This order of precedence designates which portion of the Agreement takes precedence over the other for purposes of interpretation. Hyperlinks contained herein will not supersede or alter the Master Terms and Conditions. For the avoidance of doubt, no other terms and conditions will override the Parties’ obligations in the Confidentiality, Indemnification, or Choice of Law provisions in these Master Terms and Conditions. In this Agreement the order of precedence shall be:

- 2.1.1. Amendments
- 2.1.2. Master Terms and Conditions
- 2.1.3. Exhibit A, Statement of Work
- 2.1.4. Change Orders
- 2.1.5. Exhibit B, Payment Provisions

- 2.1.6. Exhibit C, Sample Forms: Change Request Form, Remote VPN Access Form, Acceptance Action/Change Log, Acceptance Certificate, Milestone Acceptance Certificate
- 2.1.7. Contractor's Proposal, which is incorporated by reference herein
- 2.1.8. County RFP #PUARC-1600, which is incorporated by reference herein
- 2.1.9. Contractor's hyperlinked files
- 2.1.10. County's hyperlinked files

3. Description of Services

3.1 CONTRACTOR shall provide all services as outlined and specified in the Scope of Work contained in Exhibit A; at the prices stated in the Payment Provisions contained in Exhibit B; the Product Warranty and Maintenance Provisions contained in Attachment I; the Acceptance and Acceptance Testing criteria contained in Attachment II; and the SAP Software License and Support Agreement contained in Attachment III.

3.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

3.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

3.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

4. Period of Performance

This Agreement shall be effective upon signature of this Agreement by both parties and continue in effect through October 31, 2023, unless terminated earlier. This Agreement may be renewed in five-year increments by written amendment approved by both the Board and CONTRACTOR. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter. The Board of Supervisors is the only authority that may obligate the COUNTY for a non-cancelable multi-year agreement.

5. Compensation

5.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of the Payment Provisions contained in Exhibit B. Maximum

payments by COUNTY to CONTRACTOR pursuant to the first five-year term of this Agreement shall not exceed \$2,186,199 USD including all baseline as well as optional expenses specified in Exhibit B or as formally amended pursuant to the terms of this Agreement. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

5.2 No price increases will be permitted during the first year of this Agreement (if applicable). All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. Annual increases shall not exceed the Consumer Price Index - All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas, and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

5.3 CONTRACTOR shall be paid only in accordance with invoices submitted to COUNTY by CONTRACTOR pursuant to the payment schedules contained in Exhibit B, and COUNTY shall pay those invoices within thirty (30) working days from the date of receipt of each invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. For this Agreement, invoices shall be prepared in duplicate and both the originals and duplicate copies of those invoices sent to:

**County Budget Coordinator
Riverside County Executive Office
4080 Lemon Street 4th Floor, Mail Stop #1020
Riverside, CA 92501**

5.3.1 Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number (EOARC-20810-001-10/23); quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.

5.3.2 Invoices shall be rendered in arrears in accordance with the payment schedules contained in Exhibit B.

5.4 In the event that the COUNTY issues payments via electronic fund transfers through the Automated Clearing House (ACH) network. To initiate payment of invoices, the CONTRACTOR shall execute the County's standard ACH Vendor Payment Authorization Agreement. Upon verification of the data provided, the ACH Vendor Payment Authorization Agreement will authorize the COUNTY to deposit payment directly into specified CONTRACTOR accounts with specified financial institutions. All payments shall be made in United States currency.

5.5 The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made, and invoices shall be rendered in arrears. In the State of California, per Government Codes, Section 926.10 Government agencies are not allowed to pay excess interest and late charges. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing and this Agreement shall be deemed terminated, have no further force, and effect.

6. **Delivery**

6.1 The CONTRACTOR shall ship Products freight and insurance prepaid; F.O.B. the COUNTY's designated location at the time indicated herein. Shipments will be complete and partial shipments will be avoided unless the County agrees in writing to the partial shipment in advance of such a shipment. The risk of loss or damage in transit shall be upon CONTRACTOR until a Product is received by the COUNTY at the delivery site. Delivery of Products shall not be deemed complete until an Acceptance Certificate has been issued by the COUNTY.

6.2 The CONTRACTOR shall use best efforts to deliver Product(s) and/or Services(s) on time, in accordance with the scheduled delivery date as set forth the Statement of Work contained in Exhibit B of this Agreement and any applicable Amendments or Change Orders thereto.

7. **Alteration or Changes to the Agreement**

7.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or their designee are the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

7.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have

notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, they may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance under the Agreement even if there has been a change.

7.3 The COUNTY and CONTRACTOR can agree to make changes, at any time, to the Statement of Work in the form of a Change Order as per the Sample Forms contained in Exhibit C. CONTRACTOR agrees to timely alter the delivery of Products and/or Services accordingly. If such changes materially increase or decrease CONTRACTOR's obligations, the Parties shall execute an Amendment to this Agreement, and if the amount of such adjustment is not calculable as a function of hours or tasks, the Parties shall negotiate in good faith a modified price. Change order(s) must not exceed the agreed maximum compensation of the Agreement unless the Agreement is modified by written amendment accordingly by an authorized COUNTY representative.

8. Termination

8.1 COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

8.2 COUNTY may, upon five (5) days written notice terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement, or fails to make progress that may endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

8.3 After receipt of the notice of termination, CONTRACTOR shall:

8.3.1 Stop all work under this Agreement on the date specified in the notice of termination;
and,

8.3.2 Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

8.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement.

8.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever

to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

8.6 Software Code - Inclusion of Illicit Code shall be considered a Material Breach of this Agreement and no notice or cure period will apply. In addition to any other remedy available to it under this Agreement with respect to any such Material Breach, the COUNTY reserves the right to pursue any civil and/or criminal penalties available to it against CONTRACTOR, including without limitation the Computer Fraud and Abuse Act, Deceptive Trade Practices & Consumer Protection Act, the Computer Crimes Law and any other remedy at law or equity.

8.7 Void Assignment - In the event that CONTRACTOR assigns its obligations under this Agreement to a third party in a manner other than as set forth in this agreement, the COUNTY shall have the option to terminate this Agreement without any notice or cure period or further obligation to CONTRACTOR or the assignee, and promptly receive a refund for fees paid for Products delivered and/or Services performed by the third party.

8.8 Survival of License - Termination of this Agreement for any reason other than for Material Breach by the COUNTY shall not result in termination of any perpetual Software license granted hereunder.

8.9 If the Agreement is federally or State funded, CONTRACTOR cannot be debarred from the System for Award Management (SAM). CONTRACTOR must notify the COUNTY immediately of a debarment. Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central Contractor Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epls.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

8.10 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

9. Transition

In the event the COUNTY replaces the System or any component of the System, CONTRACTOR shall make reasonable efforts to assist the COUNTY in the transition or migration to the new system, including but not limited to knowledge transfer from experienced personnel; cooperation with the COUNTY on development of a transition plan; the provision of Documentation and non-proprietary technical information, training and work materials, and reports; and the retrieval and migration of COUNTY data stored within the System in a format acceptable to the COUNTY.

10. Ownership/Use of Contract Materials and Products

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY. The material, reports or products may be used by the COUNTY for any purpose that the COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of the COUNTY.

11. Intellectual Proprietary Rights

Except Customizations, all trademarks, service marks, patents, copyrights, trade secrets, and any other IPR or proprietary rights in or related to the Product or Service are and will remain the exclusive property of CONTRACTOR or its designees. COUNTY shall not decompile, disassemble, or otherwise reverse engineer the Software.

12. Conduct of Contractor

12.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

12.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

12.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

13. Inspection of Service; Quality Control/Assurance

13.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by

CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

13.2 CONTRACTOR shall establish adequate procedures for self-monitoring, quality control, and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time, upon reasonable notice to the CONTRACTOR.

14. Product(s) and Service(s) Warranties

14.1 No Third Party Conflict or Infringement - As of the Effective Date, CONTRACTOR warrants the Software and all other components of the System, and the execution and performance of this Agreement, shall not contravene the terms of any contracts with third parties or any third-party Intellectual Property Right; and, as of the Effective Date of this Agreement, there are no actual or threatened legal actions with respect to the matters in this provision. CONTRACTOR agrees to promptly notify the COUNTY, in writing, if during the Term of the Agreement, a potential third party conflict or infringement of third party Intellectual Property Rights arises.

14.2 Conformance with Specifications - CONTRACTOR warrants that the Products shall operate generally in conformance with the Specifications outlined in the RFP.

14.3 System Compatible - CONTRACTOR warrants that the System is compatible with COUNTY's existing data files and systems.

14.4 No Material Defects or Malware/Illicit Code - CONTRACTOR warrants that the material of the medium in which a Product is free of any defect, and the Software is free of any Illicit Code.

14.5 Documentation Explains Use - CONTRACTOR warrants that the Documentation to be produced for and delivered to COUNTY pursuant to this Agreement shall explain the operation of the Software in terms understandable by COUNTY Users of reasonable technical competence.

14.6 All Necessary Materials - CONTRACTOR warrants that it has informed the COUNTY of all requirements for the System and that except as set forth herein, no other software, interfaces, applications, or

other products and/or services are required to be used in conjunction with the System in order for the System to operate in accordance with the Specifications.

14.7 Industry Standards - CONTRACTOR warrants that the Products and all other components of the System are compliant with generally accepted industry standards. CONTRACTOR warrants that the Services performed under this Agreement will meet the standards of skill and diligence normally employed by persons performing the same or similar services.

14.8 Assignment of Manufacturers' Warranties - In all cases where Products are covered by a Manufacturer's Warranty, CONTRACTOR will provide the COUNTY with all Manufacturer's Warranties. CONTRACTOR will assign to the COUNTY any Manufacturer's Warranty applicable to any respective Product. Notwithstanding the foregoing, CONTRACTOR shall be held responsible by COUNTY for correction to or replacement of the System or any of its components during the period of Warranty and Maintenance.

14.9 No Waiver of Warranties or Representation - Delivery of Products shall not be construed to represent Acceptance, nor shall Delivery of Products relieve CONTRACTOR from its responsibility under any representation or warranty. If the COUNTY makes a payment for a Product prior to Final Acceptance, the payment does not grant a waiver of any representation or warranty by CONTRACTOR.

15. Software License Specific Provisions

15.1 Application - The Provisions in this section shall apply to all Software. These Provisions shall cover any Third Party Software supplied by CONTRACTOR and its Subcontractors, except where specifically excluded. The terms in this section supersede and prevail over any embedded, "click-wrap," "shrink-wrap," or hyperlinked terms of license for the Software.

15.2 Grant of License - CONTRACTOR hereby grants the COUNTY a non-exclusive, enterprise wide, subscription-based, named User license to Access, Use, and benefit from the Software. Except as otherwise expressly provided in this Agreement, CONTRACTOR grants this license without restriction.

15.3 Third Party Software - CONTRACTOR shall be responsible for effecting licensure for the COUNTY of all Third Party Software, including SAP BOBJ, which is required for the System provided by CONTRACTOR under this Agreement. CONTRACTOR shall acquire the SAP BOBJ licenses on the COUNTY's behalf, and in the COUNTY's name. CONTRACTOR shall be responsible for all license payments to SAP, and the COUNTY shall be responsible for all payments passed through from the CONTRACTOR.

15.4 Substitution or Modification of Products at No Charge - In the event that CONTRACTOR substitutes or modifies the Products, CONTRACTOR shall ensure that the new or modified Products shall

conform in all aspects to the Specifications. Such substitutions or modifications shall in no way degrade the performance or functionality of the Products, and shall not result in additional cost to the COUNTY.

15.5 Documentation Explains Use - The Documentation shall explain the operation of the System in terms understandable by COUNTY personnel of reasonable technical competence.

15.6 Copies - COUNTY may reproduce the Software and Documentation, provided that each copy thereby produced shall be marked with CONTRACTOR's proprietary markings as delivered to the COUNTY. Unlimited copies of Software may be used: (1) for testing, including testing within a COUNTY lab, or other lab as agreed to between the Parties; (2) on a mirrored server for purposes of redundancy, back up, archive, and disaster recovery purposes; (3) for migration to another platform; and (4) in such manner as may be necessary to facilitate the continuation of the COUNTY's governmental operations.

15.7 IP Ownership, Data Ownership.

15.7.1 CONTRACTOR shall retain all ownership rights and Intellectual Property Rights in pre-existing or independently developed Software and all Documentation.

15.7.2 CONTRACTOR's Subcontractor shall retain all ownership rights and Intellectual Property Rights in pre-existing or independently developed Third Party Software and all related Documentation.

15.7.3 COUNTY shall retain all ownership rights in all data the COUNTY transfers, uploads, exports, or otherwise inputs into the Software. Title to all tangible personal property shall vest in the COUNTY upon delivery.

15.8 Infringement Indemnity - CONTRACTOR shall, at its own expense, save, hold harmless, and defend the COUNTY, its directors, officers, employees, and agents from and against any and all claims, demands, suits, and actions, and indemnify the COUNTY, its directors, officers, employees, and agents from any damages, liabilities, losses, costs, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged misappropriation, violation, or infringement by the Software of any proprietary right or Intellectual Property Right of any person whatsoever. The COUNTY agrees to notify CONTRACTOR of the claim and gives CONTRACTOR sole control of the defense of the claim and negotiations for its settlement or compromise.

15.9 Consent on Settlements - No settlement that prevents the COUNTY's continuing Use of the Software shall be made without the COUNTY's prior written consent. If any third party claim causes the COUNTY's Use of the Software to be endangered, restricted or disrupted, CONTRACTOR shall: (1) cause the Software to be replaced, at no additional charge, with compatible, functionally equivalent, and non-infringing Software; (2) cause the Software to be modified to avoid the infringement; (3) obtain a license for

the COUNTY to continue using the Software and pay any additional fee required for such license; or (4) if, after CONTRACTOR uses all due diligence or standard of care none of the foregoing alternatives is possible, in addition to other remedies set forth herein CONTRACTOR will terminate the license and refund to the COUNTY license fees actually paid by the COUNTY and any direct damages documented by the COUNTY for the affected Software and Documentation.

15.10 Security - CONTRACTOR shall provide immediate notification to the COUNTY's Chief Information Security Officer and the COUNTY's Project Manager of any security breach or compromise that affects COUNTY data or systems. CONTRACTOR shall also provide notification to the COUNTY's Chief Information Security Officer and Project Manager of any incident or security compromise relating to System integrity such as a computer virus.

15.11 Personally Identifiable Information - CONTRACTOR providing or having access to data containing personally identifiable information must maintain and demonstrate compliance with applicable laws and regulations. Specifically, CONTRACTOR must develop, implement and maintain reasonable safeguards to protect the security, confidentiality, and integrity of the personal information, including disposal of the data. CONTRACTOR must also provide immediate notification to the COUNTY of a data security breach and in cooperation with the COUNTY, provide notice to affected consumers. The COUNTY may request confirmation that the CONTRACTOR's filtering functionality in the Software has successfully stripped out any PII in either the Software or the Third Party Software.

15.12 CONTRACTOR's Remote Access - Should remote access to COUNTY systems or networks be required, CONTRACTOR will follow all COUNTY policies regarding remote access including completion of a Remote VPN Access Form. The Remote VPN Access Form is available upon request.

15.13 CONTRACTOR's County E-mail Address - If the COUNTY furnishes CONTRACTOR with County-provided e-mail addresses for CONTRACTOR employees or Subcontractors working on the Project, all communications shall take place on such COUNTY e-mail addresses and not be moved, copied, or forwarded to private e-mail addresses.

15.14 Compliance with Industry Security Standards - CONTRACTOR shall provide to the COUNTY's agent annual confirmation and evidence of compliance with industry standards for information security controls related to the agreement scope of services. CONTRACTOR will reasonably accommodate periodic and announced site and security control inspections and process reviews.

15.15 Incident Response - In the event CONTRACTOR becomes aware of a confirmed or suspected security incident involving the unauthorized disclosure or theft of Data, CONTRACTOR shall: (1) notify The COUNTY immediately; (2) cooperate in any investigation; (3) promptly take reasonable measures to prevent

further unauthorized access or use of COUNTY Data; (4) cooperate with the COUNTY's notification to affected individuals if such notification is required by applicable law or regulation; and, (5) perform all such other acts, or cooperate with the COUNTY's performance of all such other acts, that are required with respect to such security incident by applicable law or regulation, including but not limited to the Consumer Identity Theft Protection Act. CONTRACTOR shall provide assistance as reasonably requested by the COUNTY for any additional requirements related to a security incident.

15.16 Indemnification for Fines and Penalties - CONTRACTOR shall indemnify the COUNTY for any fines or penalties by government or regulatory agencies or financial institutions, and any fees incurred by the COUNTY due to CONTRACTOR's data or security breach, including but not limited to consumer notification, consumer credit reports, and credit monitoring for potentially affected consumers up to one year, shall be paid directly or reimbursed to the COUNTY by CONTRACTOR.

15.17 Internet Protocol (IP) Address Restrictions - CONTRACTOR shall ensure that the Hosting Provider restricts access to the servers to certain IPs via both the operating system firewall and Hosting Provider's own external firewall. No one from outside these specific IP addresses shall be able to access the server. If an IP address changes, once notified CONTRACTOR shall block the old address and add the new one. In cases where there are additional needs, a site-to-site VPN may be established to limit access. Access CONTRACTOR's Hosting monitor shall be restricted to a few designated accounts. The Hosting Provider's identification of the CONTRACTOR's Hosted account on behalf of the COUNTY shall be identified only by a set of ID numbers, rather than a group name. CONTRACTOR shall require Hosting Provider to provide monitoring run in the background of the System to identify any suspicious behavior.

16. Product Warranty and Maintenance Provisions

Terms and conditions regarding product warranty and maintenance provisions are contained in Attachment I.

17. Acceptance and Acceptance Testing

Terms and conditions regarding acceptance and existence testing are contained in Exhibit A and Attachment II.

18. Independent Contractor/Employment Eligibility

18.1 The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-

employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

18.2 CONTRACTOR warrants that it shall make its best effort to fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees performing work under this Agreement meet the citizenship or alien status requirement set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, for the period prescribed by the law.

18.3 An Ineligible Person shall be any individual or entity who is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal health care programs; or has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

18.4 CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement. CONTRACTOR shall not hire or engage any Ineligible Person to provide services directly relative to this Agreement. CONTRACTOR shall screen all current Covered Individuals within sixty (60) days of execution of this Agreement to ensure that they have not become Ineligible Persons unless CONTRACTOR has performed such screening on same Covered Individuals under a separate agreement with COUNTY within the past six (6) months. Covered Individuals shall be required to disclose to CONTRACTOR immediately any debarment, exclusion or other event that makes the Covered Individual an Ineligible Person. CONTRACTOR shall notify COUNTY within five (5) business days after it becomes aware if a Covered Individual providing services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an Ineligible Person.

18.5 CONTRACTOR acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person, CONTRACTOR

shall remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Agreement.

18.6 CONTRACTOR shall notify COUNTY within five (5) business days if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened. Such individual or entity shall be promptly removed from participating in any activity associated with this Agreement.

19. Payment of Taxes/Contractor Shall Withhold

The CONTRACTOR shall, at its own expense, timely: (1) pay all salaries, wages, and other compensation to its employees; (2) withhold, collect, and pay all applicable federal, state, and local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance and any other taxes or charges in connection with its employees; and (3) provide and pay for workers compensation insurance and any statutory or fringe benefits to employees. The CONTRACTOR shall be solely responsible for all such obligations for its employees. The CONTRACTOR shall also ensure that any Subcontractor shall comply with the foregoing obligations for its employees. The COUNTY shall have no duty to pay or withhold such obligations.

20. Subcontract for Work or Services

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

21. Disputes

21.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

21.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

22. Security Requirements for Personnel

If required by the COUNTY, CONTRACTOR shall conduct a criminal history/records check of all personnel that will have access to COUNTY information, systems, or payments and ensure ongoing security requirements for personnel are maintained.

23. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. CONTRACTOR warrants that it has all necessary licenses, permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside, and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

24. Use by Other Political Entities

The CONTRACTOR agrees to extend the same pricing, terms, and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

25. Non-Discrimination

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

26. Records and Documents

26.1 CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

26.2 If an audit discloses that payments to CONTRACTOR were in excess of the amount to which CONTRACTOR was entitled, then CONTRACTOR shall repay the amount of the excess to the COUNTY. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices.

27. News Release and Public Announcements

The CONTRACTOR shall not use the COUNTY seal or other representations of the COUNTY in its external advertising, marketing, website, or other promotional efforts, nor shall CONTRACTOR issue any news release or public announcements pertaining to this Agreement or the Project without the express written approval of the COUNTY. Such approval may be withheld in the COUNTY's sole discretion.

28. Confidentiality

28.1 The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

28.2 The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph.

29. Administration/Contract Liaison

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

30. Notices

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE

County Finance Director
Riverside County Executive Office
4080 Lemon Street, 4th Floor, Mail Stop #1020
Riverside, CA 92504

CONTRACTOR

David Farrell, Managing Partner
Sherpa Government Solutions, LLC
2990 Osceola Street
Denver, CO 80212

31. Force Majeure

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of Nature, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

32. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form DE 542 to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of this Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

33. Hold Harmless/Indemnification

33.1 CONTRACTOR shall indemnify and hold harmless the COUNTY, its agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim or damage whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any

other element of any kind or nature. CONTRACTOR shall defend the Indemnitees at its sole expense including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such acts, omissions or services.

33.2 With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR indemnification to Indemnitees as set forth herein.

33.3 CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

33.4 The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

34. Insurance

34.1 Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

A. Workers' Compensation

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

B. Commercial General Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional

Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability

If vehicles or mobile equipment is used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

D. Professional Liability CONTRACTOR shall maintain Professional Liability Insurance providing coverage for the CONTRACTOR's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If CONTRACTOR's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either: (1) an Extended Reporting Endorsement (also, known as Tail Coverage); or (2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or (3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items (1), (2), or (3) will continue as long as the law allows.

E. General Insurance Provisions - All lines

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer, such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence, each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the Country's Risk Manager, CONTRACTOR'S carriers shall either: (1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or (2) procure a bond that guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the COUNTY with either: (1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein; and (2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the COUNTY prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the COUNTY receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate(s) of Insurance and certified original copies of endorsements and, if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services, or, there is a material change in the equipment to be used in the performance of the scope of work, or the term of this Agreement, including any extensions thereof, exceeds five (5) years, the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

F. Technology Errors and Omissions; Cyber Liability

CONTRACTOR shall maintain liability insurance covering acts, errors, or omissions, including negligent acts, arising out of the performance or failure to perform professional services related to the Products and Services under this Contract. CONTRACTOR shall maintain insurance that shall cover any and all claims and losses with respect to data, network risks, and infringement of Intellectual Property Rights. Such insurance shall include limits of coverage of not less than \$1,000,000 written on a per occurrence basis. If coverage is written on a claims-made basis, coverage shall remain in effect for not less than four (4) years following the date of termination or expiration of this Contract. Evidence of coverage must be sent to the COUNTY for three years following termination or expiration of this Contract.

35. General

35.1 CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

35.2 Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

35.3 In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option, the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

35.4 CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement or consented to in writing by an authorized representative of COUNTY.

35.5 CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

35.6 Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

35.7 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

35.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

35.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

35.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).


35.11 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

35.12 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY OF RIVERSIDE, a political subdivision of the State of California

SHERPA GOVERNMENT SOLUTIONS, LLC

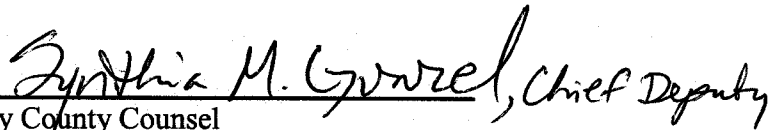
By: 
Chuck Washington, Chair
Board of Supervisors

By: 
Name: David Farrell
Title: Managing Member

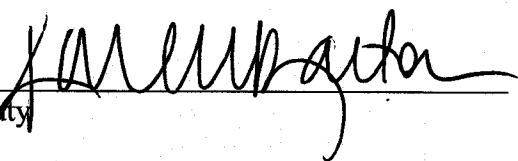
Dated: 10/2/18

Dated: 10/15/2018

APPROVED AS TO FORM:
Gregory P. Priamos
County Counsel

By: , Chief Deputy
Deputy County Counsel

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: 
Deputy

**Exhibit A
Statement of Work**

1. Overview

1.1 This Statement of Work (SOW) identifies obligations of Sherpa Government Solutions, LLC (hereinafter "Sherpa" or "Contractor") and the County of Riverside (hereinafter "County") associated with the implementation of Sherpa's Budget Formulation and Management (BFM) System for the County. Sherpa and County agree to this SOW as describe herein, which shall be governed by the terms and conditions of the Agreement of which this SOW is a part.

1.2 The requirements stated in this Exhibit A are not intended to relieve Sherpa of requirements stated elsewhere in the Agreement of which this exhibit is a part.

2. Background/Objectives

2.1 The County seeks to replace its existing budget system (BASE) with an integrated hosted software solution intended to support all County budgeting functions and related business process across multiple departments and/or agencies.

2.2 This SOW details the Budget Formulation and Management system project, which has the objective of providing the County a fully integrated solution that leverages innovative technology to increase productivity and business process efficiencies.

2.3 The BFM solution shall be compatible with the County's financial and human resources management applications, including installation, support, and related items.

2.4 The software will be able to perform payroll cost projections; manage position control; calculate internal service charge cost allocations; operating, grant, and capital planning budget preparation; and provide both standard reports and state-required budget schedules.

2.5 The BFM solution will be managed and administered by the Riverside County Executive Office, and allow individual departments input of decision packages, operating budgets, capital budgets, performance measurements, budget narratives, and related notes and annotations.

3. Summary Statement of Work

Sherpa will fully implement, install, test, configure, deploy, warrant, maintain, support, and thereby deliver to County it's hosted BFM system and suite of products. Sherpa will transition the County's existing users from BASE onto BFM. Sherpa will train the County on the use and care of the BFM and suite of products as defined in this Agreement. Sherpa's training must prepare and enable the County to operate the BFM. Sherpa will maintain and support the BFM and related suite of implemented products. Sherpa will provide products and professional services to enable the County to achieve a flexible, efficient, effective, and intuitive budget system that is compliant with all applicable laws and regulations. Sherpa's suite of products subject to implementation under this Agreement includes the following:

- Budget Formulation Management (BFM)
- SAP Business Objects Enterprise, Standard edition
- PatternStream Publishing (includes FrameMaker and Frame Script)
- PADS Document Management Software (includes Adobe FrameMaker Server)

4. Requirements

Requirements for the countywide budget management system are defined and contained in the Scope of Services of RFP #PUARC-1600, incorporated by reference herein.

5. Assumptions

5.1 County will be responsible for the availability, scheduling, quality, and timeliness of the work its resources perform.

5.2 When necessary, both County and Sherpa's designated employee will be accessible in a timely fashion for meetings with the other parties' project team members for all project meetings.

5.3 All the Functional and Operational/Infrastructure Requirements that Sherpa responded will be satisfied by Sherpa's current integrated solution.

5.4 All the Functional Requirements and Operational/Infrastructure Requirements that Sherpa responded and identified by the County as "Needed by Go-Live", will be satisfied as part of Sherpa's integrated solution and will be delivered within the Agreement period of the appropriate project phase.

5.5 Sherpa will provide all the functionalities of their integrated solution that were demonstrated during the Scripted Vendor Demo.

6. County and Sherpa Key Personnel

6.1 **Contact Information** - To facilitate the constant progress of the BFM project, access to and interaction with the necessary individuals is essential. The following contact information is to be provided to the Executive Office Project Administrator by Sherpa.

- Project Leads Contact information
- Emergency Contact information
- Other contact Information as required

6.2 **Key Positions and Personnel** - For the period of performance until Final Acceptance has been completed, the Parties have identified Key Positions and Key Personnel as set forth in the table below, along with the percentage of their time to be allocated to the County's Project until Go Live has occurred. The County will identify its Key Personnel during kickoff, and may elect to assign alternate team members or roles during the course of the project.

Name	Title/Role	% of Time
David Farrell	Project Manager	20
Steven Magida	Quality Assurance	5
Ted Lewis	Technical Lead	10
Kate Williams	Knowledge Transfer, Training, Interfaces, and County Support	10
Bryan Reed	Configuration Lead	25

Name	Title/Role	% of Time
John Kohls	Functional Lead	50

Name	Title	Description
Functional Staffing		
TBD	System Administrator	The individual who will administer the system should also lead the project or be heavily involved with the project. This person, if possible, can also serve as the County project manager. The preferred skill set is intimate knowledge of most operating budget processes, at a level where most project decisions can be made by this individual.
TBD	Backup System Administrator	On most projects this individual will lead, the personnel cost forecasting portion or capital budgeting portion of the project and will learn the entire system in order to serve as a backup system administrator in event of turnover. There is similar time commitment to the System Administrator.
TBD	Budget SMEs	There will be targeted workshops on processes such as capital, revenue, budget management, public works, and publishing that will required additional staff to participate. Generally, each area will have 2-4 workshops over the course of the Implementation Analysis as well as occasional participation in configuration review and testing.
TBD	Report Developers	For sustainment, Budget SMEs will be trained along with system administrators in how to build their own reports, add chart of accounts, and other common functions that can be distributed beyond the system administrators. Selected department users will also be given access to develop their own queries/reports.

Name	Title	Description
TBD	Departments	Departments can be involved to help with early acceptance testing. Specific department processes are usually not included in the first rollout of workshops.
Technical Staffing		
	Database Administrator	
TBD		
TBD		

7. Substitution of Key Personnel

7.1 Sherpa shall make no substitutions of Key Personnel unless the substitution is necessitated by law, illness, death, resignation, or termination of employment. Sherpa shall notify the County within ten (10) Calendar Days after the occurrence of any of these events.

7.2 Any substitutions or replacements of Key Personnel require the written approval of the County. Sherpa shall provide the County with the maximum possible period of notice of substitution or replacement of Key Personnel in order to allow for background screening, fingerprint checks, and other investigation as may be required.

7.3 For any proposed substitute or replacement Key Personnel, Sherpa shall provide the following information to the County: a detailed explanation of the circumstances necessitating the proposed substitution or replacement, a complete resume for the proposed substitute(s), and any additional information requested by the County. Proposed substitutes or replacements should have qualifications comparable to or better than those of the persons being replaced. No change in Agreement prices may occur as a result of substitution or replacement of Key Personnel.

8. On-Site Staffing

8.1 **Overview.** The BFM project is a key business initiative for the County. In order to ensure that success of the project, several key project deliverables will require Sherpa team members to be on-site at County. During all project phases, Sherpa must provide the necessary personnel to ensure these key project deliverables are completed as the highest quality standards. All Sherpa staff and contractors will abide by the posted rules and regulations of the County while working on-site at any County facility, and will further comply with the reasonable direction of County staff and security personnel. In the event that any Sherpa personnel or contractor working on-site does not have the required level of skill to perform the Services for which he or she has been designated, or engages in willful misconduct or unprofessional behavior, the County may request that Sherpa remove such personnel or contractor and provide a suitable replacement.

8.2 **Sherpa On-Site Staffing.** The on-site weeks and hours included in the Agreement for the Sherpa staff members are listed below are included in the pricing as defined in Exhibit B-Payment Provisions. Sherpa performs work in the most advantageous location but will make team members available for required project management or steering committee meetings. Whenever possible, business activities such as workshops will be scheduled adjacent to project management meetings to limit trips and travel time. For activities such as workshops and end user training, on-site is the most effective mechanism. For

knowledge transfer, configuration reviews, support, testing, and many other activities, off-site is often more effective. Note that David Farrell, Bryan Reed, and John Kohls will be authorized to act on Sherpa's behalf and may attend project management meetings.

Sherpa On-Site Staffing Table	Weeks On-Site
Business Process Workshops (includes kickoff meeting)	2-4
Configuration Reviews	2-4
End User Training (3 trainings)	3-8

10. Location of Work

10.1 Sherpa shall perform project work at the following County office locations for project management activities, meetings, installation, rollouts, etc. Other County work locations may be determined as necessary and appropriate during the course of implementation to suite the specific needs of meetings, installations, rollouts, training, etc. The County at its sole discretion may add, close, or relocate any County office, and in such event will notify Sherpa of these changes in advance.

County Executive Office
 County Administrative Center (CAC) - Downtown Riverside
 4080 Lemon Street, 4th Floor
 Riverside, CA 92502

10.2 **Work at Sherpa Offices.** Sherpa at its discretion may perform any project task not necessary to be performed on-site at any Sherpa office location.

11. Travel Expenses

11.1 The Agreement is a not to exceed contract between Sherpa and County. The work to be performed by Sherpa pursuant to this Agreement shall be completed only at the price or prices stated in Exhibit B of the Agreement for the scope of services defined herein, to be paid by County. That is, the price or prices shall remain unchanged unless formally amended, regardless of the amount of staff hours required of Sherpa or the other costs Sherpa must incur to correctly accomplish the work.

11.2 County shall reimburse Sherpa for travel expenses identified in the Payment Provisions in Exhibit B, regardless of the actual amounts incurred by Sherpa in performing the Service hereunder. Sherpa will be responsible for paying all expenses related to traveling from Sherpa location to County and in between County locations.

11.3 All of Sherpa's expenses, including all travel expenses and fees for Professional Services related to this Agreement, are included in prices stated in this Agreement.

11.4 If the Sherpa Project Manager's on-site hours exceed the agreed upon hours, County will pay for on-site travel expenses as detailed the Payment Provisions in Exhibit B.

12. County Information Security Program

It is the policy of the County to protect County Information in accordance with all applicable laws, governmental regulation and accepted best practices to minimize information security risk and ensure the right information is available to the right people at the right time. To achieve this goal, the County Board of Supervisors authorizes the County Information Security Officer (CISO) to develop and maintain the County Information Security Program and requires all County Departments to comply. Sherpa is also required to comply with the County Information Security Program. The following information can be located on the County website <https://www.rivcocob.org/board-policies/>. County Board of Supervisor Information Security Policy A-58 is located at <https://www.rivcocob.org/boardpolicies/policy-a/POLICY-A58.pdf>.

13. Trusted Systems

Sherpa's BFM suite of products must meet the Trusted Systems requirements as documented in and required by County Policy A-68 located at <https://www.rivcocob.org/wp-content/uploads/2013/05/A-68-Rescinded-3-3-of-05.24.16.pdf>.

14. Retention and Archiving Policies

Sherpa's BFM suite of products must allow for flexible retention policies and archiving for all application data as documented in and required by County Policy A-43 located at <https://www.rivcocob.org/wp-content/uploads/2013/05/A-43-05.24.16.pdf>.

15. County Travel Policy

Sherpa must comply as applicable with the County Travel Policy as required by and documented in County Policy D-1 located at <https://www.rivcocob.org/boardpolicies/policy-d/POLICY-D01.pdf>.

16. Project Management

Sherpa and the Executive Office will jointly manage the overall project via a mutually agreed upon methodology. During the Project Initiation Phase, Sherpa will develop a high-level Project Management Plan that encompasses the entire body of work for the project using the agreed upon methodology defined in this SOW. This will be supported by rolling task plans that outline at a more detailed level what work is scheduled to be completed. Upon the approval of the Executive Office, the Project Management Plan shall be committed to in writing by both parties. Sherpa will not deviate from the approved Project Management Plan without approval from the Executive Office.

17. High Level Project Management Plan

The table below identifies some of the major implementation activities.

Project initiation	11/01/18
Pilot analytics and modeling	03/01/19
Produce FY 19/20 State schedules ¹	05/01/19
System ready / administrative rollout	07/01/19
ISF departmental training	07/15/19
ISF pilot rollout for FY 20/21 budget & rate cycle	08/01/19

Start other departmental training (2 months)	08/01/19
Training 2 (200 Users, Departmental quarterly / performance)	08/30/19
Full administrative rollout for FY 20/21 budget cycle	11/01/19
Full departmental rollout for FY 20/21 budget cycle	12/31/19
Training 3 (400 users, Departmental budgeting)	01/15/20
Publication Services (Design / Additional Documents)	12/31/19
Recommended Budget Book	05/15/20
Final Budget Book	10/15/20

¹ This task is dependent on the data being available in a reasonable format for loading into BFM. If data is problematic, this may be pushed to 5/1/2020.

18. Responsibility Matrix, Deliverables, and Project Schedule

Below is a Responsibility Matrix, Deliverables and Project Schedule. Dates are approximate. The “Who” fields represents responsibility, when blank, it is an informational gathering task or joint effort.

#	Deliverable or Task Name	Description and Metrics of Acceptance	Who?	Appx Start	Appx End
1	Implementation Kick-off		County & Sherpa	10/3/2018	10/31/2018
2	Sherpa VPN Access / Access to BASE / tables provided	Depending on what is possible, Sherpa will be granted access to BASE. Sherpa would like to start this process prior to project start to gain familiarity with the system, budget process, and reporting. Sherpa will work with the County to identify list of table exports required in conversion	County	11/1/2018	11/15/2018
3	BFM Environment Established	Can log in to the County’s hosted site	Sherpa	11/15/2018	11/15/2018
4	BASE Conversion	All BASE data and chart of accounts are converted. Reports and BFM are used to verify results	Sherpa with County testing	11/15/2018	11/30/2018

#	Deliverable or Task Name	Description and Metrics of Acceptance	Who?	Appx Start	Appx End
5	Advanced Report Training	Delivery of Advanced Report training completed for project team members who will make standard reports.	Sherpa with County attendees (2-3 people typically)	2/1/2019	3/1/2019
6	Go Live	Analytics		3/1/2019	3/1/2019
7	Financials and Human Resources Management System Interfaces	Design, configure and test interfaces with financial system and human resources management system. Determine how interfaces will be staged.	Sherpa and County Project Team	1/15/2019	3/30/2019
8	State Schedules	Recommended Schedules.	Sherpa with County support	3/1/2019	5/1/2019
9	End User Training Documents - ISF	Templates are provided by Sherpa. As part of testing, these documents are created by the County to ensure a complete solution. The guide may be updated with budget policies later than the shown end date.	Sherpa with County support	4/1/2019	7/15/2019
10	End User Training Documents - Quarterly and Performance	Templates are provided by Sherpa. As part of testing, these documents are created by the County to ensure a complete solution. The guide may be updated with budget policies later than the shown end date.	Sherpa with County support	4/1/2019	8/1/2019
11	ISF departmental training		Sherpa with County support	7/15/2019	8/1/2019
12	Go Live	ISF Pilot		8/1/2019	8/1/2019
13	Training 2 (200 Users, Departmental quarterly / performance)		Sherpa with County support	8/1/2019	8/30/2019

#	Deliverable or Task Name	Description and Metrics of Acceptance	Who?	Appx Start	Appx End
14	Go Live	Quarterly processes and performance		9/1/2019	9/1/2019
15	Workshops	On-site workshops to create initial designs (iterative). This is extended to potentially cover workshops for functionality being implemented in the Fall of 2019.	Sherpa and County Project Team	11/15/2018	10/1/2019
16	Final Schedules	Final/adopted schedules	Sherpa with County support	10/1/2019	10/15/2019
17	Iterative Design and Review	Budget forms and reports will be designed, configured and tested with iterative testing by both Sherpa and County. Testing checklists are used.	Sherpa and County Project Team	11/15/2018	11/1/2019
18	End User Training Documents - Departmental Budgeting	Templates are provided by Sherpa. As part of testing, these documents are created by the County to ensure a complete solution. The guide may be updated with budget policies later than the shown end date.	Sherpa with County support	4/1/2019	11/1/2019
19	Department Review and Testing	The County will host sessions with selected Department users to test functionality and provide feedback. In some cases, such as with internal services, they may be the primary designers and testers. This is done iteratively as certain forms, reports and processes are completed.	County with Sherpa support	3/1/2019	11/15/2019
20	End-to-End testing	Tests are performed to ensure the end-to-end process is complete.	County with Sherpa support	10/1/2019	11/15/2019

#	Deliverable or Task Name	Description and Metrics of Acceptance	Who?	Appx Start	Appx End
21	Go Live	Full department rollout		12/31/2019	12/31/2019
22	Publications	Recommended book.	Sherpa with County support	11/15/2019	5/15/2020
23	Final Publication Support	Final/Adopted book	County with Sherpa support	9/15/2020	10/15/2020

19. Implementation Methodology

Sherpa shall utilize a budget system implementation methodology as defined below.

19.1 **Establish the BFM Environment.** BFM will be installed prior to the first workshop. This will allow for rapid configuration and prototyping to accompany the workshops. The reporting environment is established concurrently with all design, conversion and configuration activities. This allows for more efficient data verification and is aligned with our knowledge transfer strategy. Sherpa will show the project team how to run and interact with the reports delivered, as well as how to create new reports.

19.2 **Visioning and high-level process overview.** Visioning workshops will ensure that the success factors for driving this project are well known. It is the intent to find out what works well to preserve and what the biggest improvements the County is looking to make. Sherpa's high-level process overview workshops will walk the team through the major steps in the budget process. At each step of the process, Sherpa will identify potential opportunities for improvement. Following these workshops, Sherpa will be able to refine the workshop schedule and identify process changes and major Business Process Reengineering (BPR) prospects.

19.3 **Reports and Publications Review.** Sherpa will conduct small workshops to identify the source of every field in all required documents in the second week of the project. This is done early since reports must drive the system configuration, otherwise the solution may result in preventable manual intervention and rework later in the project. The outcome is the beginning of the data dictionary, elements of the budget form, and master data design. Note that reporting is constantly evolving; once the County understands our system capabilities additional data and reporting may be added to the environment.

19.4 **Begin the System Administration Guide.** Sherpa takes a slightly different approach to documentation during the Implementation Analysis phase. Instead of a design document, Sherpa will immediately begin work on the Budget System Implementation Guide. There are several reasons for this. A design document set up as a deliverable becomes outdated the minute it is signed off. Budget systems and processes are fluid and need to be accommodating of change. Sherpa will instead focus on a deliverable that not only outlines the design, but also does so in a manner that is useful to the County. Sherpa's Implementation Guide is very detailed, training users on system navigation (all fields, click by click) and how BFM will specifically be configured for the County. This document will be delivered at the end of the Implementation Analysis phase, but it is important to note that it is a living, breathing document that will be updated for the duration of BFM at the County.

19.5 **Chart of Accounts Review.** The initial workshops establish the chart of accounts required, tracing back to required reports and publications. Sherpa will then load BFM with County chart of accounts elements, master data, and hierarchies so prototypes will use realistic County examples. The County will immediately get into BFM, test the results, and even reload the data to test Sherpa's procedures.

19.6 **Design Workshops.** Sherpa will provide to the County a list of proposed workshops prior to starting the project and additional information requested. The County will be able to provide feedback and refinement based on their specific knowledge of the budget process, statutes, and administrative procedures. Sherpa, coordinating with the County's project management team, will schedule workshops at least 2 weeks in advance for internal team meetings and 3 weeks in advance if department or other personnel will be involved. Sherpa will work around the busy months to minimize competition for time.

20. **Data Conversion**

20.1 In parallel to design workshops, Sherpa will begin converting data into BFM. A one-time conversion will be performed by Sherpa to transition data from the legacy system to BFM. The most commonly used method is that data is extracted from the legacy system into flat files, and during the implementation the project team will upload those files using Sherpa's internal interface processes. Sherpa will always take the simplest approach here. If the existing reports or extracts can be used, Sherpa will always do so and may rarely require any changes to these data sources. While most conversions require some level of customization, even for source systems that Sherpa has worked with in the past, whenever possible Sherpa will make the customization needed on the transformation step in BFM. Sherpa will have also deployed direct connection methods where Sherpa will read the legacy system directly via ODBC or direct database connections. In those cases, the manipulation of flat files is avoided but it is rare that external systems allow this connection.

20.2 **County & Sherpa Responsibilities for Extract, Transform and Load (ETL).** County to provide expertise in source systems, including the ability to define requirements for extraction. If new extractions are required, the County is responsible for technical expertise in the source County systems. The County will work alongside Sherpa to test conversions using the system and verification reports. Sherpa shall configure BFM to map to incoming data. Configure the imports including any transformations required. Import data. Perform initial tests to confirm success. Provide verification reports including exceptions (data loaded that does not have a valid organization in the system, etc.).

20.3 **Historical Data and Data Storage Limits.** There are no limits to how much historical data can be loaded into BFM. There are no data limits. The hosted solution assumes a large database and usage.

21. **Production of Final Design**

The final design is presented in Sherpa's Implementation Guide document. By the end of the Implementation Analysis, this document shall be a blend of configuration, conversions, and other work that has already been completed as well as designs for work yet to be completed. Regardless of how successful knowledge transfer has been and how much exposure the County has to BFM by this time, there will be new ideas that are brought to the table or changes requested well after this sign-off. Sherpa shall coordinate with the County project management team to consider these changes against key deliverable dates and if the schedule is not at risk, many of these changes can be accommodated.

22. **Agency Group Program**

This consists of one or two people from selected bureaus coming in for a brief demonstration followed by hands-on use of the system at various points in the process. This begins the process of user acceptance for the department users and may provide valuable feedback.

23. Reporting Solution

BFM reporting is built for public sector budgeting. From a data access perspective, any field to which data is associated can be reported on, with users seeing business language and not technical language. This results in nearly unlimited reporting capabilities. A user can drop and drag elements on/off the report, and have hundreds of variations available within minutes with automatic drill down capabilities. Users will have access to a series of reports organized by folders (similar to Windows Explorer) that are assigned to security roles. All reports also use dimensional security that is set up in BFM, so if a user has access to only one bureau that is all they can see on any report. Reports with County data are available within a week of project start.

24. Customization, Interfaces, Data Conversion, and Reporting/Application Updates

Sherpa shall lead the BFM configuration and will transfer knowledge iteratively throughout the project. A series of reports will be assigned to the County project staff, starting with low complexity and ending with higher complexity reports. Since report demands including ad hoc queries are a constant part of any budget process, it is critical the team is proficient in report development. Since this is a functional task, the County will quickly pick up how to create reports or modify existing reports.

25. User Manual and End User Training

The project team will generate specific training materials and exercises for the County. Training is performed just-in time. Users need to be in the system immediately after the training to engrain what they learn.

26. System Rollout and Go Live Support

Sherpa shall develop a cutover plan and will support the County through the rollout process. Sherpa has designed BFM for simple cutover. Automated processes in BFM will clear out training or test data and ready the system without manual steps. It is a thirty-minute process.

27. Post Implementation Support

Sherpa shall provide post-implementation support. Successful knowledge transfer and training is critical to a successful implementation, but support is still required to help with unanticipated issues. Critical components of our support model:

27.1 Sherpa's implementation team is the primary support contact after go-live. This is critical to high-level support, as those Sherpa team members will the County's specific configuration and processes, and can quickly resolve any questions or issues.

27.2 Sherpa's support desk is staffed by the same experienced people that do our implementations. Sherpa's team is located in all U.S. time zones, so extensive support hours are available. 24X7X365 support can be accommodated during critical budget periods.

28. Initial Work

Sherpa and the County will review the budget process, current policies and statutory requirements, and requirements. The joint team will:

28.1 Immerse into the BFM software immediately; demonstrate and start using the software on day 1. The software was designed to be user-friendly and self-educable.

28.2 Apply BFM Configuration and Playback approach. Initiate configuration during and immediately following workshops. Project team members will observe and participate in the configuration. Seeing it in action early in the project enhances learning, acceptance, and the ability of the team to identify,

review and select alternative approaches. The project team will become familiar with the software and can provide feedback very early in the project instead of waiting until formal testing, which is too late in the process to solicit opinions and configuration design changes without adding project risk. When the project team is familiar with the software, workshops are more effective as the ability of project members to analyze alternatives is enhanced.

28.3 Promote knowledge transfer through informal review sessions and formal training. For example, the Sherpa team will initially load the chart of accounts then project team will follow the system administration guide (jointly developed) to practice loading the chart of accounts and test the results. A successful activity is to train the County on a specific process, and then as part of the initial testing the County creates training documentation for end users; this ensures that the process is complete and fully functional while creating needed documentation.

29. **Transparency**

When configured, the system will mimic the budget process. Sherpa will work with the County to ensure that there are no service interruptions or degradation in service during budget production.

30. **Training Requirements**

30.1 County to receive Full Training Onsite.

- Training is computer-based
- Training will use a production environment or an exact copy of production data
- County budget office staff will attend sessions with Sherpa to answer policy questions and at their discretion may lead any training classes.

30.2 Anticipated Users for Training:

- ISF training round: 30 users
- Quarterly Reporting and Performance Measure: 200 users
- Full Department Rollout training: 400 users

30.3 Expected average classroom size up to 20 people.

30.4 Sherpa shall work with the project team to create a custom training program specifically for the County. Sherpa's team and other required subject matter experts shall develop a comprehensive training plan and schedule. The plan will result in a program with the following attributes:

- Legacy Budget System data conversion
- Form configuration
- Personal Cost Forecasting (PCF) configuration
- Security configuration
- Chart of Accounts Structure, financial system and human resources management system master data and chart field conversion
- Report design and writing queries
- Creating test scripts, testing application, following-up on possible issues
- Writing and reviewing System Administration Guide
- Training end-users
- Setting the application for live-use and production

31. Training Materials

Materials shall be coupled with budget instructions. End user training is 2-3 hours. System Administration training is done over the course of the project; for example, Sherpa loads some chart of accounts data, then trains the administrator on how to make future changes. Training materials include:

- BFM System administration guide
- End user training (created with the County)
- Business Objects administration guide
- Business Objects report development guide
- Quick Reference guides
- Video guides

32. Configuration

32.1 There are no minimum requirements for workstations. BFM works on any Windows-based machine on Internet Explorer.

32.2 **System Changes.** BFM is designed for public sector budgeting and by its nature, constant change. There is no work required by County IT for any changes. County functional administrators in the budget office can make required configuration changes. Adding a new field, for example, takes about 30 seconds and is immediately available for data entry. A new workflow is defined in the system and can take from one minute to 10 minutes. Anything required by the County is also supported by Sherpa. Any custom report can be made by budget staff and are supported by the Sherpa team if they have questions on how to approach certain types of reports.

32.3 **Fault Recovery.** The "system" is a collection of SQL server databases and application code. Utilizing transaction logs and various backup techniques in SQL server the County can achieve any level of fault recovery. As long as there is a good backup available, the system can be restored back to any point in time. At the application level, when users are making changes to the configuration of important data structures, individual restore points are automatically created to preserve the current state of the data before the changes are made. In those cases, the known "safe" state would be available for recovery if a problem arises. These built in protections usually prevent the need of a database level restore to resolve a problem. There is a unique transactional design to the core system that allows every user action to be tracked. This tracking provides both a transactional audit and a capability to go back in time as needed to determine a specific point in time when something happened. From an application code perspective, the County's last upgrade is preserved before any updates. If there are issues, the prior code release can be immediately restored.

33. Acceptance Test Plan

33.1 **Unit and Integration Testing.** Sherpa shall perform all initial unit and integration testing. Sherpa shall test to ensure all interfaces and conversions are working as designed, configuration is tested, and the end-to-end processes are successful. Sherpa conducts two rounds internally. Sherpa's functional team tests, followed by Sherpa's knowledge transfer/training lead, to ensure the system performs for end users. Immediately after Sherpa unit testing is completed for a given module, Sherpa will move to County testing. The County will see any configuration as soon as it has been vetted by the Sherpa team; this continues County knowledge transfer and ensures that any changes that the County may want to make are identified early in the process and do not wait for formal testing later in the project. Sherpa shall conduct short training sessions for each module then let the County into the system to conduct both positive and negative tests. This process provides invaluable feedback and knowledge transfer that can be applied to

future configuration efforts. It is critical not to wait until traditional User Acceptance periods; these are typically too late in the project to allow for key changes to be made. As the County performs unit testing, they often fine tune final acceptance test scripts.

33.2 **Acceptance Testing.** Formal End-To-End integrated system testing is completed late in the process. Since the product has been tested and used throughout the entire configuration process, acceptance testing is really more of a training program for new users. Project team members get the opportunity to test integration multi-process touch points to ensure the system is working as originally intended. As noted prior, Sherpa will have the budget office and department users using the system as part of our Agency Program / standard testing process. Having this take place early in the project is critical to project success.

34. **Acceptance of Project Deliverables**

34.1 Budget processes are continuously undergoing some level of change. Sherpa's approach to a dynamic set of processes is to provide software that meets this challenge and to create a solution where user interaction changes over time. Most output on this project are system configuration and reports, which do not require formal sign-off (you may have 100 reports; each one is tested and 'migrated' to production when reviewed). Listed below are the deliverables that require formal sign-offs:

- Budget form configuration (testing of each form is confirmed)
- Personnel Cost Forecasting Configuration
- Publishing Design
- End-to-end testing
- Training completed
- Publishing complete

34.2 The Administrative Guide is the critical component for system design, and on-going use is not a deliverable since it will be a living, breathing document. Preparing the guide and keeping it current is the responsibility of both County and Sherpa.

35. **Solution Installation / Data Migration**

Installation is performed by Sherpa. Sherpa shall convert any existing data as defined by the County then create reports for the County to confirm the migration was successful.

36. **Systems Integration/Interoperability**

36.1 BFM will integrate with a number of other systems. It is critical that the BFM integrates with existing systems to maintain current service levels. The current systems with which the BFM must integrate include, but are not limited to:

- PeopleSoft Financials
- Human Resources Management System
- BASE
- Jaggaer
- Laserfiche, the document management system
- Active Directory - Single Sign-on
- Service Now - Asset Management

36.2 In the event the County discontinues use of any of the above systems, Sherpa will be notified by the County. Sherpa will be required to identify any issues that may arise in discounting the use of any integrated system(s). Both parties will work together to ensure the BFM solution remains operational due to any discounted used of existing systems. The County may also request integration of systems (new or existing) not listed above with the BFM solution. Requests received after full implementation and acceptance may be integrated at an additional cost, and Sherpa will be required to provide the County a cost estimate of the integrations based on the professional services rates listed in Exhibit B-Payment Provisions. Approval by the County is required prior to commencement of work and may require a change order or amendment to the agreement.

37. Reporting

37.1 The BFM must have the ability to create reports from Position Control FTE worksheet by department based upon the needs of the County, department or individual business units. BFM has position and salary forecasting reports. The reports present salaries, supplemental pays, benefits, and FTE's by position, employee, and job code. Reports can be sorted, filtered and aggregated by Organization, Fund, Program, Project, etc. Users with appropriate licenses may utilize any BFM standard report and modify the information. Additional information can be added, retracted, aggregated, or filtered as required. All data can be directed to Excel or Third Party Tool. Users can drill down on the reports to detail including:

- Specific Benefits (Health Insurance, Statutory Benefits, Retirement, etc.)
- Salaries and Wages including shift differential, special pays, incremental adjustments, etc.
- Costs per period (pay-period, month, quarter, year)
- FTE's and Position Counts
- Allocation – impact of split funding

37.2 **Budget-to-Actual Tracking and Effect on Fund Balance.** BFM has standard reporting capabilities that present the impact of budget development and budget to actual on Fund Balance. BFM reports calculate Fund Balance and Net County Costs in real-time. In addition to this report, BFM produces the California State Schedules that break down the changes in Fund Balance.

37.3 **Standard Reports.** The following standard reports are included and produced by the BFM solution.

- Personnel Costing Reports
- California State Schedules

37.4 **Configuration of Reports.** Sherpa shall configure the exact reports required by the County. There is no limitation on the configuration of reports, and this Statement of Work includes custom reporting requirements as needed. Sherpa's BFM includes the California State Controller's budget schedules built as a module for the application.

38. Software Security Features

38.1 **System Compatibility with Antivirus Products.** With the use of the BFM solution there are no know compatibility issues with Symantec Endpoint Protection, Norton, McAfee, MS Forefront and other major antivirus products.

38.2 Integration with Microsoft Active Directory. BFM has an auto sign-on capability where when a user is signed on to their Windows environment's Active Directory Sherpa utilizes Windows Authentication to automatically login the user into BFM. From BFM, the user can automatically sign into the reporting environment. Therefore, the BFM has true Single Sign-on, starting with the user logging into their Active Directory. For the purposes of security within BFM, user accounts must still be maintained in both Active Directory and within BFM by a System Administrator. In the auto sign-on mode, duplicate password maintenance is not required, only that the account must exist with the proper security configuration.

38.3 Role Security. Security is all performed by functional system administrators. BFM security provides access to the application driven by user codes and passwords; and functions and features are driven by roles and groups that are assigned to users. The roles and groups provide varying levels of access to menus, budget stages, actions and dimension, or codes, within the application. The role-based security provides flexibility and ease of use in defining and maintaining access levels. Each user profile will be assigned a unique Userid, attributes, password management, and assigned to the following roles and groups that are defined during the project:

Menu Role: Menu Roles control what a user can access in the system. The menu structure displayed to the user will be based on the menu roles assigned; if you do not have access to a menu item it will not appear. County may average five roles.

Stages Role: Budget stages control access to different phases of the budget cycle. Stages are assigned to each budget form definition, so security can vary from form definition to form definition. County may average seven roles.

Actions Role: Actions control what button actions a user can execute in the system. Each button in the system can be established as an action and role security can control who has authority to execute the button action. County may average four roles.

Dimension Security Groups: A Dimension in BFM refers to chart of accounts data used to create a budget, such as org, fund, and account. Each dimension has Security Group(s) that can be created and codes can be assigned to control user access to the specified dimension code. County may average 40-60 roles.

38.4 Internal Application Security and Authentication Process. Users can be assigned the roles and changes to roles immediately affect all users assigned to a role. When users sign in to BFM they are presented with a login page, there they have to enter a user id and password combination. The password is a protected field not visible on the screen. The password is stored using 128 bit encryption on a field in the database. The entered password is encrypted and compared to that stored value. IIS can also be configured to use Windows Authentication and BFM can provide a single sign experience allowing users to authenticate to BFM based on them signing into their local workstations. In this environment, the user ids can be the user's active directory ID. BFM security can be also setup in the active directory or linked to other single sign-on options.

39. Software Upgrades and New Releases

39.1 Sherpa software is driven by its clients. Each year, and on an informal basis throughout the year, clients propose items that they would like added to their configuration or to the software in general. Sherpa strives to continuously improve our software while not affecting current installations. No software is ever complete. Our overall direction in development is to add functionality to enhance the software while also proactively developing based on new underlying software dependencies, such as browsers. Sherpa maintains a development list that is prioritized by the following, with Critical/Serious items taking precedence over this order:

- 1) Current clients- on-going projects
- 2) Current clients – live
- 3) Internal development

39.2 **Software Update Cost.** There is no cost for periodic updates to software other than the annual maintenance fees that must be maintained.

39.3 **Installation of Upgrades and New Releases.** Contents shall be installed by Sherpa based on the County’s schedule.

39.4 **Release Schedules.** The BFM software has two major releases per year. The County will have the option to take the upgrade when available. Release notes detailing the new functionality are available to itemize what is included in the updates. Sherpa shall perform all of the necessary steps to apply upgrades as part of standard support including initial testing. The twice-annual release schedule will repeat. It is possible for additional releases to be made available in addition to scheduled releases. Sherpa must provide the future release schedules when available throughout the term of the agreement,

Sherpa Release Schedule:

Release	Date
4.2.5	7/1/2018
4.2.6	11/1/2018
4.2.7	7/1/2019
4.2.8	11/1/2019

39.5 **Upgrades Applied by Sherpa.** County configuration is stored as data in the County database and is not impacted by upgrades. Any County specific code, which is rare, is stored in County folders and are not impacted by upgrades. No upgrades are included in the purchase price; these are supplied as part of our annual maintenance fees.

40. Disaster Recovery

Sherpa is responsible for all disaster recovery activities for hosted solutions. For system issues that require a data restore, a full restore can be selected at 8-minute intervals going back 48 hours. Daily, weekly, and monthly backups are made for additional assurances. In event of hardware failure, the backed-up production databases will be restored to a secondary environment to serve as production until production is recovered within 24 hours. Corrupted servers can be restored from an image, which greatly reduces some of the complexity. AWS uses the RDS configuration for databases that allow for extensive failover options. There is no hot backup of this budget application, meaning immediate failover is not available.

41. Budget Book Publication

The County must comply and remain current with the State of California County Budget Act and the requirements of the California State Controller’s *County Budget Guide*, therefore when implemented the system must also be capable of meeting State requirements and remain current with any changes in law or

the State Controller's requirements. The most current edition of the *County Budget Guide* can be found on the California State Controller's Office website at <https://www.sco.ca.gov>.

42. Budget Book Publishing Subcontractor

Sherpa has on subcontractor, Finite Matters, Ltd, (FML) for budget book publishing. All work is coordinated and managed by Sherpa, and Sherpa is solely responsible for all deliverables and outcomes. FML's roles include:

- Install publishing software
- Train County on how to run the budget book
- Create budget book templates
- Incorporate Sherpa data (Sherpa provides data queries)
- Test book output
- Support book publishing

43. Maintenance and Support Service

Maintenance and Support Services for the Software shall be provided by Sherpa and subject to the County's renewal of its Agreement with Sherpa to provide Maintenance and Support Services and payment of the relevant fees pursuant to Payment Provisions in Exhibit B of this Agreement. The following table outlines the Service Level required by Sherpa for both hardware and software.

Service Level Criteria Table			
1	Availability	Seven days a week, 24 hours per day Hosted solutions have an uptime of 99.99% outside of scheduled maintenance.	Seven days a week, 24 hours per day outside of schedule maintenance.
2	Initial Response	Response within 4 hours of notification of a malfunction at either the central or remote site	Immediate telephone response from qualified technical support personnel. Dial-in support and overnight replacement tapes or CDs for minor repairs. For hosted or on-premise solutions, changes required can be made online and do not require CD's or tapes. Sherpa makes all required changes.
3	Major Repair	All repair parts available within an 8 hour period from the determination of the cause	Repair or replacement within 8 hours for all critical functions. The project team assigned to the County includes a Technical Lead (in this case the product Architect) who can make these updates.
4	Guaranteed Operations	Any hardware malfunction will be corrected in no more than 24 hours or a full capability backup site will be activated. Sherpa has multiple AWS locations that can be used as backups in case of a site malfunction.	Sherpa will provide both technical and functional support necessary to meet all critical processing cycles.

Service Level Criteria Table			
5	Documentation	As part of ongoing maintenance, automatically send any updates to the technical manuals	As part of ongoing maintenance, automatically send any updates to the technical and functional manuals
6	Testing, Conversion, Modifications, Installation, etc.	Ensure that these areas are properly preformed and documented, etc.	Follow-up to any related issue regarding these areas. Sherpa has a multi-tiered approach to testing. Sherpa will test all baseline changes in our test environment. Sherpa copies County Production environment to Development environment to ensure the proper data is in the Development environment, then migrates to the County Development environment, where it goes through a screen-by-screen test of all user functions to ensure the County environment is not impacted. Once migrated to Production, a final test on critical end user screens.

44. Change Management/Control

44.1 As a result of comparing expected and planned results with actual project results, change requests may be issued which may expand, adjust, or reduce project or product scope. Changes can affect project management planning, project documents, and deliverables. Changes many include, but are not limited to the following:

44.1.1 Corrective action: A documented change of direction for executing project work to bring expected future performance of the project work efforts in line with the project management plan.

44.1.2 Preventative action: A documented change in direction to perform an activity that can reduce the probability of negative consequences associated with the project risks.

44.2. Change Control, Change Request and the Change Control Process

44.2.1 **Change Control.** Change is expected on any budgeting technology project. For minor changes, the project team will agree to the changes and make them informally. If a change affects key timelines, such as go-live dates, or project cost, the Change Control Process will be used. Change Control is the process of reviewing changes requests, approving change and managing changes to the deliverables, organization, project documents and the project management plan. Change Control is performed from the inception of the project through the project's completion. The Change Control process is comprised of the following activities:

- Identification of need for change
- Documenting the Change
- Submitting the Change Request
- Reviewing, approving, or denying change requests promptly. Delays in approvals can delay the project schedule, budget or the opportunity to implement change.
- Managing the approved changes once they have been approved.

- Coordinating the synergy of changes across the entire project (e.g. a proposed change may also affect cost, risk, quality, and staffing).
- Communicating the approved change and the impact of the change to all employees.

44.2.2 Change Request (Exhibit C - Sample Forms) A change request is a written request submitted to the Executive Office Project Managers recommending a change in the product, Professional Services, specific work products or any combination of the three from those originally defined in the this Agreement and the initial project plan. Based upon scope or cost impact, change requests may require additional approval from the Change Control Board. The Change Control Board may be composed of the Executive Office Manager, Project Managers and/or members of the Executive Steering Committee Member or IT Technical Teams. Changes may be requested by any project team member (EO or Sherpa) and must be approved by Sherpa or the affected area before being submitted to the Project Managers. Sherpa must estimate the cost and time effects once the change request has been authorized by the County. Cost and Time impact may be estimated as zero. The Project Managers will review the change request for the following:

- Estimated Time Impact
- Estimated Cost Impact
- Detailed Business Case
- Detailed description/reason of proposed change
- Business Requirements for proposed change
- Any available design Documentation
- User Acceptance Testing Criteria

The Project Managers will review and discuss the changes request with the requestor(s) and Sherpa. The Project Managers will approve or deny the change in writing on the Change Request Form. If the changes is not feasible for any reason, the Change Request will be rejected and sent back to the requestor. The request may need additional information or rework on the business case or the time and cost estimate. Approved Change Requests require new or revised activity sequences, schedule dates, resource requirements, budget requirements and analysis of risk alternatives that could result in changes to the Project Management Plan or other project management plans/documents.

44.2.3 Change Delivery. Sherpa will not provide any Professional Services, Software, Hardware, materials, or related items that cause EO to incur additional expenses beyond those stated in this Agreement unless the Change Request has been approved as a written amendment to this Agreement. Notwithstanding the foregoing, to the extent that the EO has been expressly authorized by the County of Riverside Board of Supervisors to approve Change Requests that fall within a specific criterion, then a Change request may be authorized with the advance written approval of the EO. Except as specifically stated in this Agreement, EO personnel have no authority to order or direct any changes to this Agreement. Failure of Sherpa to secure proper advanced approval in writing for any additional Professional Services, Software, Hardware, materials or related items beyond those specifically stated in this Agreement will constitute a waiver by Sherpa of any claim for additional compensation related to such items; and such items will be deemed to be included in the costs stated in this Agreement.

45. Optional On-Premises Transition

Hosting is provided by Sherpa using Amazon Web Services reserved instances. The reservations are for 3 years to provide cost savings to the County, and the cost to move from the hosted solution to on-

premises is identified under the options in the Payment Provisions contained in Section 2 of Exhibit B. The costs fluctuate based on the cycle of reserved instances. The County will provide Sherpa 60 days' notice to coordinate such a move. Once the date is agreed to, Sherpa will work with the County to perform installations on their local environment, then at a given point, the hosted solution will be decommissioned and data ported to the local environment. Depending on the amount of data, this will take between 2 and 48 hours.

**Exhibit B
Payment Provisions**

1. General

This Exhibit identifies payment provisions, pricing details, and milestone acceptance procedures for Software and Services provided to the County under the terms of the Agreement. These fees include all licensing fees for Sherpa's BFM Software and proposed Third Party Software, as well as professional services to be delivered under this Agreement.

2. Total Projected Project Cost

The total fees for the first five-year term of this Agreement are **not to exceed \$2,186,199 USD**, broken down for both baseline items as well as optional items as listed in the tables below. The parties may negotiate extension or renewal of the Maintenance and Support Agreement for an additional five-year period, including fees associated therewith. SAP Business Objects costs were quoted for an initial bulk purchase prior to October 1, 2018, and may be requested based on the proposed schedule.

Sherpa Budget Management & Formulation (BFM) Application Suite						
Licensing, Implementation, Maintenance & Support Costs						
	One-time Project Costs	Year 1	Year 2	Year 3	Year 4	Initial 5-year Cost
Budget Formulation & Management (BFM)	132,850					
SAP Business Objects Enterprise, Standard edition (100 named)	89,000					
SAP Business Objects (+50 concurrent licenses)	110,000					
PatternStream Publishing (includes FrameMaker and Frame Script)	16,371					
PADS Document Management Software (includes Adobe FrameMaker Server)	63,819					
Total Software Licensing	\$412,040	\$0	\$0	\$0	\$0	\$412,040
Professional Services						
<u>Project implementation</u>						
Project initiation	7,850					
Installation	1,890					
Gap Analysis	43,800					
Configuration and Unit Testing	155,800					
Report Development	44,300					
Data Migration/Analysis/Interfaces	47,865					
System Testing	44,670					
<u>Publication</u>						
Publications	70,300					
Publication Services (Design / Additional Documents)	54,000					

Sherpa Budget Management & Formulation (BFM) Application Suite						
Licensing, Implementation, Maintenance & Support Costs						
	One-time Project Costs	Year 1	Year 2	Year 3	Year 4	Initial 5-year Cost
State Schedules (Recommended and Final)	22,900					
Training						
Training materials	13,500					
Initial application training	27,600					
Training 2 (200 Users, Departmental quarterly reporting & performance metrics)	29,400					
Training 3 (400 users, Departmental budgeting)	39,600					
Full System Administration		88,600	88,600	69,400	69,400	
10% Contingency	60,000					
Total Professional Services	\$663,475	\$88,600	\$88,600	\$69,400	\$69,400	\$979,475
Budget Formulation & Management (BFM)						
Budget Formulation & Management (BFM)	-	31,884	31,884	31,884	31,884	
SAP Business Objects (100 users, named)	17,500	17,500	17,500	17,500	17,500	
SAP Business Objects (50 concurrent licenses)	-	34,737	34,737	34,737	34,737	
PatternStream	-	3,150	3,150	3,150	3,150	
PADS Document Management Software	-	12,600	12,600	12,600	12,600	
Software Hosting (aWS)-Annual Subscription (includes all OS/DBMS licensing)	31,300	31,300	31,300	24,000	24,000	
Annual on-site user training	-	11,400	11,400	11,400	11,400	
Total Maintenance, Support, and Hosting	\$48,800	\$142,571	\$142,571	\$135,271	\$135,271	\$604,484
Baseline Grand Total	\$1,124,315	\$231,171	\$231,171	\$204,671	\$204,671	\$1,995,999
Optional Software Licensing Costs (To Be Determined As Needed As A Condition)						
SAP Business Objects (+100 named users)	63,000					
Total Optional Software Licensing	\$63,000	\$0	\$0	\$0	\$0	\$63,000
Optional Maintenance and Support Costs (To Be Determined)						
SAP Business Objects (+100 named users)	-	16,300	16,300	16,300	16,300	
Total Optional Maintenance and Support	\$0	\$16,300	\$16,300	\$16,300	\$16,300	\$65,200
Optional Professional Services (To Be Determined)						
Transition Cost from Hosting to On-Premise	NA	62,000	42,000	4,050	NA	
Total Optional Professional Services	\$0	\$62,000	\$42,000	\$4,050	\$0	\$62,000
Hardware						
Total Hardware	\$0	\$0	\$0	\$0	\$0	\$0
Grand Total with Options	\$1,187,315	\$309,471	\$289,471	\$225,021	\$220,971	\$2,186,199

3. Payment Schedule

3.1 Payment for Implementation Costs. Payment for Professional Services related to project implementation will be made once the deliverables for each Milestone set forth below have been accepted by the County:

Sherpa Budget Management & Formulation (BFM) Application Suite					
Implementation Services Payment Schedule					
	Milestone Date	FY 18/19	FY 19/20	FY 20/21	Total Amount
Project initiation	11/01/18	7,850	-	-	7,850
Pilot analytics and modeling*	03/01/19	48,048	-	-	48,048
Produce FY 19/20 State schedules*	05/01/19	22,900	-	-	22,900
System ready / administrative rollout	07/01/19	-	-	-	-
ISF departmental training	07/15/19	-	-	-	-
ISF pilot rollout for FY 20/21 budget & rate cycle	08/01/19	-	-	-	-
Start other departmental training (2 months)	08/01/19	-	96,095	-	96,095
Training 2 (200 Users, Departmental quarterly / performance)	08/30/19	-	29,400	-	29,400
Full administrative rollout for FY 20/21 budget cycle	11/01/19	-	-	-	-
Full departmental rollout for FY 20/21 budget cycle	12/31/19	-	235,283	-	235,283
Training 3 (400 users, Departmental budgeting)	01/15/20	-	39,600	-	39,600
Publication Services (Design / Additional Documents)	12/31/19	-	54,000	-	54,000
Recommended Budget Book	05/15/20	-	60,000	-	60,000
Final Budget Book	10/15/20	-	-	10,300	10,300
10% Contingency		-	-	60,000	60,000
Total Implementation Services		\$78,798	\$514,378	\$70,300	\$663,475

* Tentative milestones for potential pilot rollout of certain components.

3.2 Licensing, Maintenance and Support Services. Maintenance and Support Services cover all Software modules, third party modules, and Third Party Software will be made annually based on the payment schedule tables below:

Sherpa Budget Management & Formulation (BFM) Application Suite						
Licensing, Maintenance & Support Payment Schedule						
	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	Total
<i>November Annual Billing</i>	11/01/18	11/01/19	11/01/20	11/01/21	11/01/22	
Software Licensing Costs (To Be Determined As Of 10/30/18)						
Budget Formulation & Management (BFM)	132,850	-	-	-	-	
SAP Business Objects Enterprise, Standard edition (100 named)	89,000	-	-	-	-	
Total Software Licensing	\$221,850	\$0	\$0	\$0	\$0	\$221,850
Professional Services						
Full System Administration	-	88,600	88,600	69,400	69,400	
Total Professional Services	\$0	\$88,600	\$88,600	\$69,400	\$69,400	
Maintenance, Support, and Hosting Costs						
Budget Formulation & Management (BFM)	-	31,884	31,884	31,884	31,884	
SAP Business Objects (100 users, named)	17,500	17,500	17,500	17,500	17,500	
Software Hosting (aWS)-Annual Subscription (includes all OS/DBMS licensing)	31,300	31,300	31,300	24,000	24,000	
Annual on-site user training	-	11,400	11,400	11,400	11,400	
Total Maintenance, Support, and Hosting	\$48,800	\$92,084	\$92,084	\$84,784	\$84,784	\$402,536
Total Baseline November Payment	\$ 270,650	\$ 180,684	\$ 180,684	\$ 154,184	\$ 154,184	\$940,386
Optional Software Licensing Costs (To Be Determined As Of 10/30/18)						
SAP Business Objects (+100 named users)	-	63,000	-	-	-	
Total Optional Software Licensing	\$0	\$63,000	\$0	\$0	\$0	\$63,000
Optional Maintenance and Support Costs (To Be Determined)						
SAP Business Objects (+100 named users)	-	16,300	16,300	16,300	16,300	
Total Optional Maintenance and Support	\$0	\$16,300	\$16,300	\$16,300	\$16,300	\$65,200
Optional Professional Services (To Be Determined)						
Transition Cost from Hosting to On-Premise	-	62,000	42,000	4,050	-	
Total Optional Professional Services	\$0	\$62,000	\$42,000	\$4,050	\$0	\$108,050
Total November Payment with Options	\$270,650	\$321,984	\$238,984	\$174,534	\$170,484	\$1,176,636
July Annual Billing						
		07/01/19	07/01/20	07/01/21	07/01/22	
Software Licensing Costs						
PatternStream Publishing (includes FrameMaker and Frame Script)	-	16,371	-	-	-	
PADS Document Management Software (includes Adobe FrameMaker Server)	-	63,819	-	-	-	
SAP Business Objects (+50 concurrent licenses)	-	110,000	-	-	-	

Sherpa Budget Management & Formulation (BFM) Application Suite						
Licensing, Maintenance & Support Payment Schedule						
	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	Total
Total Software Licensing	\$0	\$190,190	\$0	\$0	\$0	\$190,190
PatternStream	-	3,150	3,150	3,150	3,150	
PADS Document Management Software	-	12,600	12,600	12,600	12,600	
SAP Business Objects (50 concurrent licenses)	-	34,737	34,737	34,737	34,737	
Total Maintenance and Support	\$0	\$50,487	\$50,487	\$50,487	\$50,487	\$201,948
Total July Payment	\$0	\$240,677	\$50,487	\$50,487	\$50,487	\$392,138
Fiscal Year Grand Total	\$270,650	\$562,661	\$289,471	\$225,021	\$220,971	\$1,568,774

**Exhibit C
Sample Forms**

*****The remainder of this page left intentionally blank*****

Change Request Form

Project Name	PUARC-1600 CBMS	Reference Number	
Priority		Date Requested	
Requestor		Date Required	

Change Request Description		
1.		
2.		
3.		
Reason for Request		
Business Requirements		
1.		
2.		
3.		
Recommended Change		
1.		
2.		
3.		
Impact Analysis (to be completed by Contractor)		
Estimated Cost:	Estimated Hours:	Deliverable Date:
Describe Impact to any other project deliverable:		
Decision		
<input type="checkbox"/> Approved		<input type="checkbox"/> Rejected
<input type="checkbox"/> Approved with modifications		<input type="checkbox"/> Deferred
Approvals:		
Sherpa Project Manager:		RCIT Project Manager:
EO Project Manager:		

Remote VPN Access Form

Riverside County Enterprise Information Systems Security Policy Remote Access Agreement

I have read, understand and am fully aware of the terms of the County of Riverside Enterprise Information Systems Security Policy, especially as applied to remote users of the County's information systems; and I agree to comply with the terms of this policy. I also agree to remain informed of and comply with future revisions to the policy.

As a remote user of the County's information systems, you will have unique access to sensitive resources that are connected through the County network. To assure security throughout the entire County network, it is critical that all remote users actively support and fully comply with the measures described in the Enterprise Information Systems Security Policy. Failure to comply can place the entire County network at serious risk; and remote users who fail to comply will be subject to disciplinary action.

Remote users of the County's information systems shall at all times act in accordance with all applicable laws and County policies, rules or procedures. Remote users shall not use County information systems in an improper or unauthorized manner.

Remote User Name: _____

Signature: _____

Date: _____

Responsible Manager Approval Authority

Name and Title: _____

Signature: _____

Date: _____

This form shall be retained in department, district or agency files.

Acceptance Actions/Change Log

PUARC-1600 Countywide Budget Management System- Acceptance Action/Change Log

Log #	Date	Specification/Milestone	Revision#	Action/Change Description	Current Owner	Status	Notes, Resolution, Decision	Target Date	Close Date	Approved By
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
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20										
21										
22										
23										
24										
25										

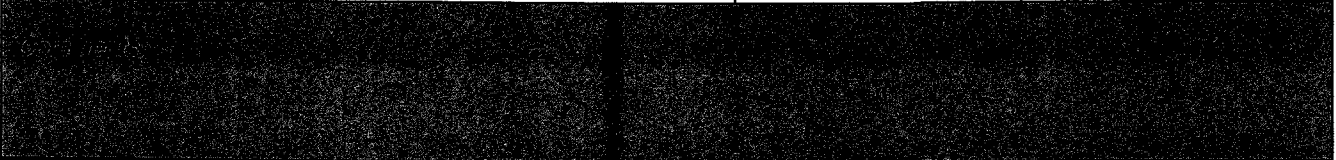
Acceptance Certificate

Project Name	PUARC-1600 CBMS	Reference Number	
Priority		Date Requested	
Requestor		Date Required	

Summary of Acceptance Required	

Deliverables Control	Status
1. Business Specifications Completed Date:	
1. Technical Specifications Completed Date:	
2. Development Completed (includes testing) Date:	
3. User Acceptance Testing Completed Date:	
4. Development Review Meeting Date:	
6.	

Schedule Impact & Scope of Work		
	Date Approved	Implementation Phase
Business Owner Name		
Business Owner Name		
Business Sponsor Name		



Decision	
<input type="checkbox"/> Approved	<input type="checkbox"/> Rework Required
<input type="checkbox"/> Approved with changes	<input type="checkbox"/>

Approvals:	
Sherpa Project Manager:	RCIT Project Manager:
EO Project Manager:	

Milestone Acceptance Certificate

Project Name	PUARC-1600 CBMS	Reference Number	
Priority		Date Requested	
Requestor		Date Required	

This certificate confirms acceptance of the following Milestone as defined in the Statement of Work executed as part of the Budget Formulation & Management System Agreement.

<Milestone Description>

Approved deliverables included in this milestone

Please list each deliverable

1.	9.
2.	10.
3.	11.
4.	12.
5.	13.
6.	14.
7.	15.
8.	

Decision

Approved
 Not-Approved
 Approved with changes

Approvals:

Sherpa Project Manager:	RCIT Project Manager:
EO Project Manager:	

Attachment I**1. Product Warranty and Maintenance Provisions**

These provisions shall apply to all Maintenance Services. These provisions shall cover any Third Party Software supplied by Contractor as a component of the System. Should any ambiguities or conflicts arise between this SECTION 8 and any other terms within this Contract, this Section shall prevail in matters of Maintenance.

2. Maintenance Term

The County's obligation to pay for Maintenance commences on the date of Final Acceptance, unless otherwise required to begin earlier pursuant to the terms of Third Party licensing agreements. The prices for annual Maintenance are set forth in the Payment Provisions in Exhibit B. Where necessary, prices for Maintenance shall be pro-rated to ensure that Maintenance periods will co-term with this Agreement.

3. Optional Maintenance

If the County suspends or discontinues Use of the System, in whole or in part, the County may elect to suspend or discontinue Maintenance and payment of Maintenance Fees for the portion of the System not used.

4. Hosted Environment

Contractor shall provide through its Hosting Provider a hosted environment that meets or exceeds the following minimum Specifications.

4.1 Dedicated servers consisting of:

- 4.1.1 Server 1: Database / RDS xlarge, 32gb memory (2 databases)
- 4.1.2 Server 2: Application xlarge, 32gb memory (2 environments)
- 4.1.3 Server 3: Reporting xlarge, 32gb memory

4.2 No additional costs shall be incurred for excessive throughput, VPN usage, Direct Connect, and additional environments unless those costs are specifically identified in the Provisions for Payment in Exhibit B.

5. Services Included

Contractor shall keep the System, and all individual components thereof, conforming to the Specifications and respond to requests by the County. Maintenance shall include the following:

5.1 **Hosting Availability.** Contractor shall Subcontract Hosting through their Hosting Provider AWS US West (Oregon). Contractor commits to enforcing a Website availability of at least 99.99%, 24 hours a day, seven days a week, 365 days a year ("24x7x365").

5.2 **Location of County Data.** All County data shall at all times be stored, load balanced and backed up only at datacenters within the boundaries of the United States.

5.3 **Backups and Retention.** Contractor shall ensure that all servers with County data are backed up nightly and kept for two (2) months in the form of instance snapshots. Contractor shall take special snapshots of certain critical data, such as the recommended and final budgets, and store those indefinitely. Snapshots shall be stored within the region they are created with high redundancy. For all non-database servers, if an instance goes down Contractor shall recreate the instance from the most appropriate snapshot. In the event of corrupted data on the database server, the most recent uncorrupted snapshot shall be restored to a new server. Data shall be recovered to five (5) minutes prior to the corruption. Contractor shall then create a backup of the restored database and refresh the corrupted database on the primary

database server. This process shall take no more than four (4) hours. In the absolute worst case scenario where the data center is no longer allowing Relational Database Service (RDS), Contractor shall switch to a region has the RDS service running and bring a database online there.

5.4 Scheduled Maintenance. Maintenance on the database server shall be managed by the Hosting Provider. Contractor shall ensure this maintenance will occur at least once every three (3) months. The Hosting Provider shall schedule a maintenance window to apply the Updates, and should Contractor choose to apply Updates earlier by restarting the server. This will require some downtime. Scheduled Maintenance windows shall last no longer than thirty (30) minutes. Maintenance on the non-database servers shall occur on the first Sunday of every month. The System shall search for Updates and apply security and other crucial Updates. It is possible to delay these Updates, if necessary, and the County may request a delay if needed. In the case of Windows based servers, windows Updates require a reboot and this will make the System unavailable during the reboot timeframe, but no longer than the thirty (30) minute Maintenance window. After the reboot, the System shall restart automatically.

5.5 Screen Response Time. For simple Website transactions, such as data insert and update transactions, Contractor commits to a Website response time where once a request is received by the Contractor's Software, the System will initiate a response, within 1 to 2 seconds for data view and editing transactions and within 6-10 seconds for reporting transactions. Response time commitments shall not apply to delays caused by factors outside of the Contractor's reasonable control. This screen response time period shall only measure the amount of time the Contractor's Software takes to process a command once that command is issued through keystroke depression and is received through the Internet and the Contractor's Hosting Provider.

5.6 Contractor Provided Software Maintenance. Maintenance and support are provided for the lifespan of the Product, renewable on an annual basis. Contractor's standard Maintenance package provided to the County as part of this Agreement includes direct access to the consultants that worked on the Project, and support with generating new complex reports. Additionally, County shall not have to log incidents or new functionality requests through a Maintenance Request. Contractor's Key Persons shall understand County's exact implementation and Configuration and shall readily provide this support without requiring a Maintenance Request introducing layers of documentation and explanation. Contractor's Software Maintenance shall comprise of:

5.6.1 Access to the Key Persons who implemented and configured the Software provided to the County.

5.6.2 Direct access to the team of Contractor's employees designated to Repair Errors, support, and Maintain the System. Services provided by this team shall include, but not be limited to:

5.6.2.1 Preventive. Maintenance shall include the development, release and installation of Updates and Upgrades, and performance monitoring, evaluation, or use of diagnostic applications or tools.

5.6.2.2 Repair. Within the time specified in the table below, Contractor shall Repair all Products for which an Error has been identified by Contractor or the County in Maintenance Requests. A workaround or patch that eliminates the symptoms of the particular Error reported, but impairs the County's operations, shall be deemed an interim Repair and cannot last longer than seven (7) Calendar Days, unless otherwise mutually agreed in writing by both Parties.

5.6.2.3 Replacement. Contractor shall replace defective Products that cannot be repaired. Replacement Products shall include all current Software versions and any Updates and Upgrades.

5.6.3 Contractor shall provide the latest version of the Software, along with all enhancements, Updates, Upgrades, and any new functionality at no additional cost.

5.6.4 Support with annual rollover.

5.6.5 Support for complex reporting.

5.6.6 Upgrades. Installation of all Software upgrades. Contractor shall, within the Response and Resolution Periods provide all Software-specific technical support.

5.6.7 Coverage Hours. Standard Support Hours: Sherpa support is available from 6:00 AM to 6:00 PM Pacific Time, Monday through Friday. After hours support is provided whenever needed 24x7x365. If after hours support is scheduled in advance, a specific Key Person from County's implementation project shall be available. If not scheduled in advance, the County can contact the support email or phone number provided and after-hours support shall be provided:

Support Email: support@sherpagov.com

5.6.8 All communications provided shall be in English.

6. **Error Priority**

The following categories shall apply to a Maintenance Request by the County:

Table A: Definitions of Priority Levels

Priority Level	Description
1 Critical	Critical incidents are defined as incidents that prevent the County from functioning, or are Errors with no workaround.
2 Serious	Serious incidents are defined as incidents that have workarounds but are either too complex to be sustained or have a significant User impact. Serious incidents shall be applied as Service Packs as soon as they are resolved.
3 Low	Low Criticality Incidents. Low criticality incidents do not affect system usage or are cosmetic Low criticality incidents are generally released as part of regular release schedule.

7. **Response and Resolution Time**

Contractor shall respond to a Maintenance Request from County within the times specified in this Contract. Such Response Times shall be measured from the time the County requests Maintenance. Contractor shall provide Maintenance as outlined in this Section under the Response and Resolution Times set forth for specific priority levels in the table below.

Table B: Error Response and Resolution Commitments

Level	Response Time	Resolution Time	Status Update
1	2 hours	1 Business Day	Every 2 hours or as otherwise agreed
2	4 hours	3 Business Days	Every 8 hours

Level	Response Time	Resolution Time	Status Update
3	24 hours	10 Business Days or with the Contractor's next scheduled Update	As requested by the County.

8. Issue Reporting and Tracking

8.1 For all Errors and other identified issues in a Maintenance Request, the County will speak directly to the Key Persons on the County's Project team. If the Project team cannot resolve the issue immediately, they shall reach out directly to the appropriate Contractor team members to resolve the issue or Error. Critical and Serious Errors shall be immediately assigned to Contractor's Technical Manager.

8.2 Alternatively, Maintenance Requests can be entered directly into the Software's Maintenance Request system or an email or call may be made to Contractor's Support helpdesk. Contractor Support helpdesk contact information may be found in Section 8.5.6.7 above. System Issues are tracked in the BFM Request system, entered by either the consultant team or the County.

9. Software Updates, Upgrades, Release Cycle, and Enhancements

9.1 The annual Software release schedule is as follows:

9.1.1 July 1

9.1.2 November 1

9.2 Software Updates shall be applied by Contractor based on the County-defined schedule. Contractor shall conduct regression tests on the Software to ensure all functionality implemented for the County is functioning as designed. The County can choose to when to take the latest Software release at its discretion.

9.3 If Contractor plans to modify, Update, or Upgrade the Software in a manner that will cause it to no longer conform to the Specifications Contractor shall provide the County at least one year's notice prior to making any such modifications, Updates, or Upgrades and agrees to develop an alternative solution that will meet the Specifications.

10. Software Change Requests

These requests are for additional Configuration and/or Customization of the Software that occur after Final Acceptance. All such requests shall be made in accordance with Agreement Section 3.4.

10.1 **Small Changes:** For small changes, County shall contact the Key Persons from the Project's implementation team. If Contractor determines the change request is low-impact, then the change it will be made within one (1) week. If Contractor determines the change is high-impact, then Contractor shall schedule the change it at an appropriate time, but no later than the next scheduled release or Update to the Software.

10.2 **Medium Changes:** Shall follow procedure as Small Changes identified in the section above, but these changes may take from one (1) to three (3) weeks to implement.

10.3 **Large Changes:** There are two categories of large changes:

10.3.1 If the change is applicable to both the requesting County and Contractor's other customers, or considered by Contractor to be a change to add functionality currently absent in the Software, then the large change request shall be added to Contractor's current development schedule.

10.3.2 If the change is County-specific Configuration, unusable by Contractor's other customers, or Customization, then Sherpa will estimate the cost (if any) for the system change and discuss implementation options with the County.

10.3.3 The County acknowledges that the Contractor's product manager and technical manager approve all new functionality. In some cases, change requests may be modified by Contractor to make the request Configurable and usable by multiple customers of the Contractor. County may review these changes.

10.3.4 Contractor's determination of change request prioritization shall be based on how critical a change request is to the County as well as the request's applicability to Contractor's other customers.

11. On-Going Support

As part of the Maintenance Services provided, Contractor shall make available a staff member who is thoroughly trained on the County's-specific Configurations and interfaces. County shall receive on-going access to the Key Persons from the original Project implementation team as well as additional trained support and Maintenance staff. The Contractor's Maintenance and support lead shall also be trained on the County's specific Configuration and participate in testing and training activities.

Contractor on-going support and Maintenance responsibilities include but are not limited:

- 11.1 All technical Upgrades
- 11.2 Annual rollover support
- 11.3 Report development support
- 11.4 Upgrade testing
- 11.5 System change support (adding new budget forms, changing processes)

12. Training

At the County's request, Contractor shall provide training to the County in connection with Upgrades or major Repairs that change the functional operation of the System or any Software or Equipment component whether Repair or alteration is a permanent or interim modification. Training shall be provided at no cost to the County and a time and location convenient to the County. Training may be provided by web meeting at the Contractor's discretion.

13. Other Standard Services

Contractor shall, at no additional cost to the County, provide other standard Services that Contractor offers at no cost to its other customers.

14. Maintenance Remedies

14.1 **Failure to Meet Response and Resolution Times. (09/17)** In the event Contractor fails to meet the Response and Resolution Times or the requirements for timely status updates within Table 8B for Level 1 or 2, or other timelines as mutually agreed by Contractor and the County, the Maintenance Fees for one month (or one-twelfth (1/12th) of the annual Maintenance Fees) shall be refunded to the County.

14.2 **Remedies Not Exclusive.** In addition to any other remedies provided for in this Agreement or at law or in equity, the County shall have the right to obtain one or more of the following non-exclusive remedies in the event of any failure of Contractor to meet Maintenance obligations: (a) suspension of

payment obligations for Maintenance accruing during the period for which Contractor did not meet Maintenance obligations; (b) a refund of all Maintenance Fees paid by the County to Contractor for the period during which Contractor did not meet Maintenance obligations; and (c) notice to Contractor of Material Breach.

Attachment II
Acceptance and Acceptance Testing

1. Right to Perform Acceptance Testing

Prior to Accepting Deliverables or the System, the County shall have the right to perform Acceptance Testing, or for Deliverables not requiring Acceptance Testing, the County shall have the right to evaluate the Deliverable(s) to ensure they meet Acceptance Criteria. Contractor shall cooperate with the County in the development of Acceptance Criteria and the Acceptance Test Plan that shall codify and set forth the location, date, and other specifications of the test. Acceptance Testing may occur in one or more phases, depending on the integration of contingent products, scalability, performance tuning or other measurable features or milestones.

2. Procedure and Timetable

Unless otherwise specified:

2.1 The County shall commence Acceptance Testing within a reasonable amount of time after receipt of a Deliverable.

2.2 Contractor shall provide, at no additional cost, reasonable and appropriate support, assistance, and consultation in order to facilitate Acceptance Testing.

2.3 County will make all reasonable efforts to complete Acceptance Testing within the time period specified within the Project schedule mutually agreed upon by the Parties in writing. If an Acceptance Test is successful the County shall issue an Acceptance Certificate, a sample of which is attached in Exhibit C.

3. Failure of Acceptance Test

3.1 The County will notify Contractor if a Deliverable or a portion of a Deliverable fails to pass an Acceptance Test and will specify in reasonable detail the identified failures and possible reasons for failure. After County's notification, Contractor shall correct the failure within ten (10) Business Days and notify the County that the correction has been completed. After Contractor's correction notification, the County shall perform a second Acceptance Test. If the Deliverable or portion of the Deliverable fails to pass the second Acceptance Test, the County shall notify Contractor in writing, and the County may, in its sole discretion: (a) terminate this Agreement with no further liability; (b) require Contractor to replace the Deliverable or defective portion of the Deliverable at no additional cost to the County, (c) require Contractor to make further corrections to prepare for retesting again; (d) Accept the Deliverable at a reduced cost to be negotiated between the Parties; or (e) issue an Acceptance Certificate for an "Acceptance with Exception(s)."

3.2 If the County issues an Acceptance Certificate for an "Acceptance with Exception(s)" the County will list the exception(s) and the date for Contractor's correction of the Error(s). If Error(s) are corrected by the listed date(s) the County agrees to commence further Acceptance Testing of the Deliverable or affected portion(s). If the Deliverable passes the Acceptance Tests, the County will issue an Acceptance Certificate.

3.3 If a Deliverable fails a second or subsequent Acceptance Test (or in the event of a single Acceptance Test, the Acceptance Test) in no event shall there be an increase to the original price agreed to by the Parties for the Deliverable.

4. County Acceptance of Failure

If the County elects to accept a Deliverable, the System, or any combination of Products even with the failure(s), then the County may request that Contractor issue a refund to the County in an amount equal to a percentage of the full fee value of the Deliverable or System that the Parties mutually determine represents the loss of functionality.

5. Revocation of Acceptance

The County shall have the right to revoke "Acceptance with Exception(s)" if the County granted an "Acceptance with Exception(s)" based on Contractor's commitment to correct the Error within a reasonable period of time, but the Error has not been so corrected. The County shall also have the right to revoke Acceptance if the County accepted the Deliverable without discovery of the Error, and the Acceptance was reasonably induced by Contractor's assurances or by the difficulty of discovery of the Error before Acceptance. Revocation is effective only if it occurs within a reasonable time after the County discovers or should have discovered the reasons for revocation.

6. Termination Based on Failure of Acceptance

If the System fails to pass the Final Acceptance Test(s), the County may terminate this Contract. Contractor shall refund all costs paid for the System or any combination of Products and Services in U.S. Dollars within fifteen (15) Calendar Days of the date of receipt of notice of termination. The refund shall be in cash and not in the form of future credits from Contractor.

7. No Waiver

Acceptance shall not relieve Contractor from its responsibility under any Warranty. Payment for Products or the System or any portion thereof does not constitute Acceptance nor does it constitute a waiver of any Warranty applicable to the County.

8. Acceptance Form

The acceptance form made part of this agreement under section "Sample Forms" of this agreement shall be used to process all acceptances as a result of the scope of works, approved change orders, or amendments as made part of this agreement.

Attachment III
SAP Software License and Support Agreement



(SAP- CARMSOFT 3-8-2012 FINAL)
SOFTWARE LICENSE AND SUPPORT AGREEMENT
General Terms and Conditions
("GTC")

1. DEFINITIONS.

- 1.1 **"Add-on"** means any development using SAP APIs that adds new and independent functionality, but does not modify existing SAP functionality.
- 1.2 **"Agreement"** means these GTCs, any Order Form referencing these GTCs, and the Use Terms and Schedules referenced by these GTCs and/or such Order Forms. All such components are integral to the agreement, and collectively are referred to herein as the "Agreement".
- 1.3 **"API"** means SAP's application programming interfaces, as well as other SAP code that allow other software products to communicate with or call on SAP Software (for example, SAP Enterprise Services, BAPIs, Idocs, RFCs and ABAP or other user exits) provided under this Agreement.
- 1.4 **"Affiliate"** mean any legal entity in the Territory in which the Licensee, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights. Any such legal entity shall be considered an Affiliate for only such time as such equity interest is maintained.
- 1.5 **"Business Partner"** means a legal entity that requires access to the Software in connection with Licensee's internal business operations, such as customers, distributors and/or suppliers of Licensee.
- 1.6 **"Confidential Information"** means, with respect to SAP, all information which SAP protects against unrestricted disclosure to others, including but not limited to: (a) the Software and Documentation and other SAP Materials, including without limitation the following information regarding the Software: (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the Software; (ii) benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats; and (iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the Software; (b) the research and development or investigations of SAP; (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies; and (d) any information about or concerning any third party (which information was provided to SAP subject to an applicable confidentiality obligation to such third party). With respect to Licensee, "Confidential Information" means all information which Licensee protects against unrestricted disclosure to others and which (i) if in tangible form, Licensee clearly identifies as confidential or proprietary at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), Licensee identifies as confidential at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary within thirty (30) calendar days of any such disclosure.
- 1.7 **"Documentation"** means SAP's documentation which is delivered or made available to Licensee with the Software under this Agreement.
- 1.8 **"Intellectual Property Rights"** means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.
- 1.9 **"Modification"** means (i) a change to the delivered source code or metadata; or (ii) any development, other than a change to the delivered source code or metadata, that customizes, enhances, or changes existing functionality of the Software including, but not limited to, the creation of any new application program interfaces, alternative user interfaces or the extension of SAP data structures; or (iii) any other change to the Software (other than an Add-on) utilizing or incorporating any SAP Materials (defined below).
- 1.10 **"Professional Services Schedule"** means the terms and conditions governing SAP's delivery of professional services, attached hereto and made a part hereof.
- 1.11 **"SAP Materials"** means any software, programs, tools, systems, data, or other materials made available by SAP to Licensee in the course of the performance under this Agreement including, but not limited to, the Software and Documentation, as well as any information, materials or feedback provided by Licensee to SAP relating to the Software and Documentation.
- 1.12 **"SAP Support"** means SAP's then-current SAP support offering specified in the applicable Order Forms and made available to Licensee as stated in the applicable SAP Support Schedule incorporated into the Agreement (also available at www.sap.com/company/legal/index.com) as of the effective date of the first Software Order Form issued under these GTCs. Such SAP Support Schedule is incorporated herein by reference. For the avoidance of doubt, such SAP Support Schedule shall apply to all Order Forms issued under these GTCs unless otherwise agreed by the parties.

SAP Confidential
 General Terms and Conditions sAPUS.v.5-2011

1.13 "Software" means (i) any and all software products licensed to Licensee under this Agreement as specified in Software Order Forms hereto, all as developed by or for SAP, SAP AG, Business Objects Software Limited and/or any of their affiliated companies and delivered to Licensee hereunder; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective support agreement and (iii) any complete or partial copies of any of the foregoing.

1.14 "Software Order Form" means the order form for the Software and related SAP Support ordered by Licensee thereunder, including information on Software, SAP Support, fees, and other information necessary for the delivery of such items to Licensee. The Software Order Form does not include fees for professional services, which shall be billed under separate statements of work in accord with the Professional Services Schedule.

1.15 "Territory" means the world except for those countries prohibited by United States' export laws, and further subject to Section 12.4 of the STC.

1.16 "Third Party Software" means (i) any and all software products and content licensed to Licensee under this Agreement as specified in Software Order Forms hereto, all as developed by companies other than SAP, SAP AG, Business Objects Software Limited and/or any of their affiliated companies and delivered to Licensee hereunder; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective SAP Support Schedule and (iii) any complete or partial copies of any of the foregoing.

1.17 "Use" means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

1.18 "Use Terms" means, with regard to Software specified in a Software Order Form, metric definitions and product-specific terms described in the Agreement or applicable Order Form.

2. LICENSE GRANT

2.1 License

2.1.1 Subject to Licensee's compliance with all the terms and conditions of this Agreement, SAP grants to Licensee a non-exclusive, perpetual (except for subscription based or term licenses) license to Use the Software, Documentation, and other SAP Materials at specified site(s) within the Territory to run Licensee's and its Affiliates' internal business operations (including customer back-up and passive disaster recovery) and to provide internal training and testing for such internal business operations and as further set forth in the Software Order Form, unless terminated in accordance with Section 5 herein. This license does not permit Licensee (without being limited specifically to such restrictions) to: (i) use the SAP Materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training) other than to Affiliates (subject to Section 2.2); (ii) lease, loan, re-sell, sublicense, or otherwise distribute the SAP Materials, other than distribution to Affiliates (subject to Section 2.2); (iii) make any Use of or perform any acts with respect to the SAP Materials other than as expressly permitted in accordance with the terms of this Agreement; or (iv) use Software components other than those specifically identified in the Software Order Form, even if it is also technically possible for Licensee to access other Software components. Business Partners may Use the Software only through screen access and solely in conjunction with Licensee's Use and may not Use the Software to run any of Business Partners' business operations.

2.1.2 Licensee agrees to install the Software only on information technology devices (e.g., hard disks or central processing units) identified by Licensee pursuant to this Agreement and that has been previously approved by SAP in writing or otherwise officially made known to the public as appropriate for Use or interoperation with the Software (the "Designated Unit"). Licensee must hold the required licenses as stated herein and in the applicable Order Forms, for any individuals that Use the Software, including employees or agents of Affiliates and Business Partners. Use may occur by way of an interface delivered with or as a part of the Software, a Licensee or third-party interface, or another intermediary system.

2.1.3 The terms and conditions of this Agreement relative to "Software" apply to Third Party Software except as otherwise stated in the Software Use Rights Schedule, a Schedule, an Order Form, or an Amendment.

2.2 Affiliate Use. Affiliates' Use of the Software, Documentation and other SAP Materials to run their internal business operations as permitted under Section 2.1.1 is subject to the following: (i) the Affiliate agrees to be bound by the terms herein in the form of Schedule A ("Affiliate Use Agreement") attached hereto; and (ii) a breach of such Affiliate Use Agreement by Affiliate shall be considered a breach by Licensee hereunder. If Licensee has an affiliate or subsidiary with a separate agreement for SAP software licenses and/or support services with SAP AG, any SAP AG affiliate (including SAP) or any other distributor of SAP software, the Software shall not be used to run such affiliate's or subsidiary's business operations and such affiliate or subsidiary shall not receive any support services under this Agreement even if such separate agreement has expired or is terminated, unless otherwise agreed to in writing by the parties.

2.3 Outsourcing Services. With SAP's prior written consent, Licensee may permit services providers to access the Software solely for the purpose of providing facility, implementation, systems, application management or disaster recovery services to Licensee in connection with the business of Licensee for which the Software is herein licensed provided: (i) Licensee and such services provider execute a written agreement that includes provisions regarding such services provider's compliance with the terms of this Agreement prior to such access, including without limitation non-disclosure of SAP Confidential Information; (ii) Licensee shall hold the required licenses as stated in the Use Terms for all employees of such services provider authorized to access the Software; (iii) such services provider shall be permitted to Use the Software solely to install and configure the Software in accordance with the business of Licensee as set forth herein (or in the case of a disaster recovery vendor, to provide disaster recovery services only); (iv) under no circumstances may such services provider Use the Software to operate or provide processing services to Licensee or any other party, or in connection with such services provider's own business operations; (v) Licensee shall be responsible for any additional Software, migration tools, or third party software needed to effect such transition. Upon SAP request, Licensee shall provide written confirmation to SAP that items (i)-(iv) are fulfilled.

3. VERIFICATION. SAP shall be permitted to audit (at least once annually and in accordance with SAP standard procedures, which may include on-site and/or remote audit) the usage of the SAP Materials, provided that SAP abides by applicable facility access and security requirements. Licensee shall cooperate reasonably in the conduct of such audits. In the event an audit reveals that (i) Licensee underpaid license fees and/or SAP Support fees to SAP and/or (ii) that Licensee has used the Software in excess of the license quantities or levels stated in the Software Order Form, SAP may be entitled to recover such underpaid fees and/or for such excess usage based on SAP List of Prices and Conditions Software and Support governing use in effect at the time of the audit. SAP reserves all rights at law with respect to both Licensee's underpayment of License fees or SAP Support fees and usage in excess of the license quantities or levels.

4. PRICE, PAYMENT, AND DELIVERY.

4.1 Fees. Licensee shall pay to the named reseller on behalf of SAP license fees for the Software and fees for SAP Support on the terms in Software Order Forms hereto. Fees for consulting services will be paid as set forth in the GSA Proposal.

4.3 Delivery of the Software and SAP Support. SAP will deliver the Software and SAP Support by making it available for electronic download through the SAP Service Marketplace (<http://service.sap.com/sap>) to Licensee. Risk of loss passes at the time of such electronic delivery. Licensee agrees not to request any physical delivery of Software or SAP Support and should it occur that any such delivery will be rejected by Licensee.

5. TERM.

5.1 Term. This Agreement and the license granted hereunder shall become effective as of the date first set forth in the first Software Order Form issued under these GTCs, and shall continue in effect thereafter unless this Agreement is terminated upon the earliest to occur of the following: (i) thirty days after Licensee gives SAP written notice of Licensee's direction to terminate this Agreement, for any reason, but only after payment of all license and SAP Support fees then due and owing; or (ii) immediately after SAP prevails on any FAR 52.233-1-related claim submitted to Licensee's Contracting Officer for Licensee's material breach of any provision of the Agreement. For the avoidance of any doubt, termination of the Agreement shall strictly apply to all licenses under the Agreement, its appendices, schedules, addenda and order documents and any partial termination of the Agreement by Licensee shall not be permitted in respect of any part of the Agreement, its appendices, schedules, addenda, order documents.

5.2 End of Term Duties. Upon any termination hereunder, Licensee and its Affiliates shall immediately cease use of all SAP Materials and Confidential Information. Within thirty (30) days after any termination, Licensee shall irretrievably destroy or upon SAP's request deliver to SAP all copies of the SAP Materials and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Licensee must certify to SAP in writing that it has satisfied its obligations under this Section 5.2. Licensee agrees to certify in writing to SAP that it and each of its Affiliates has performed the foregoing. Sections 3, 4, 5.2, 6, 7.2, 8, 9, 10, 12.4, 12.5, 12.6 and 12.8 shall survive such termination. In the event of any termination hereunder, Licensee shall not be entitled to any refund of any payments made by Licensee. Termination shall not relieve Licensee from its obligation to pay fees that remain unpaid.

6. INTELLECTUAL PROPERTY RIGHTS.

6.1 Reservation of Rights. The SAP Materials, and all Intellectual Property Rights embodied in the foregoing, shall be the sole and exclusive property of SAP, SAP AG (the parent company of SAP) or its or their licensors, subject to any rights expressly granted to Licensee in Section 2 and 6.3 herein. Except for the rights set forth in Section 6.3 herein, Licensee is not permitted to modify or otherwise make derivative works of the Software. Any such unauthorized works developed by Licensee, and any Intellectual Property Rights embodied therein, shall be the sole and exclusive property of SAP or SAP AG.

6.2 Protection of Rights. Licensee shall not copy, translate, disassemble, or decompile, nor create or attempt to create the source code from the object code of the Software in any manner. Reverse engineering of the Software and other SAP Materials is prohibited. Licensee is permitted to back up data in accordance with good information technology practice and for this purpose to create the necessary backup copies of the Software. Backup copies on transportable discs or other data media must be marked as backup copies and bear the same copyright and authorship notice as the original discs or other data media. Licensee must not change or remove SAP's copyright and authorship notices.

6.3 Modifications/Add-ons.

6.3.1 Conditioned on Licensee's compliance with the terms and conditions of this Agreement, Licensee may make Modifications and/or Add-ons to the Software in furtherance of its permitted use under this Agreement, and shall be permitted to use Modifications and Add-ons with the Software in accordance with the license grant to the Software set forth in Section 2.1.1(a) herein. Licensee shall comply with SAP's registration procedure prior to making Modifications or Add-ons. All Modifications and all rights associated therewith shall be the exclusive property of SAP and SAP AG. All Add-ons developed by SAP (either independently or jointly with Licensee) and all rights associated therewith shall be the exclusive property of SAP and SAP AG. Licensee agrees to execute those documents reasonably necessary to secure SAP's rights in the foregoing. All Add-ons developed by or on behalf of Licensee without SAP's participation ("Licensee Add-on"), and all rights associated therewith, shall be the exclusive property of Licensee subject to SAP's rights in and to the Software; provided, Licensee shall not commercialize, market, distribute, license, sublicense, transfer, assign or otherwise alienate any such Licensee Add-ons. SAP retains the right to independently develop its own Modifications or Add-ons to the Software, and Licensee agrees not to take any action that would limit SAP's sale, assignment, licensing or use of its own Software or Modifications or Add-ons thereto.

6.3.2 Any Modification developed by or on behalf of Licensee without SAP's participation or Licensee Add-on must not (and subject to other limitations set forth herein): enable the bypassing or circumventing any of the restrictions set forth in this Agreement and/or provide Licensee with access to the Software to which Licensee is not directly licensed; nor permit mass data extraction from

Software to any non-SAP software, including use, modification saving or other processing of data in the non-SAP software; nor unreasonably impair, degrade or reduce the performance or security of the Software; nor render or provide any information concerning SAP software license terms, Software, or any other information related to SAP products.

6.3.3 Licensee covenants, on behalf of itself and its successors and assigns, not to assert against SAP or its affiliated companies, or their resellers, distributors, suppliers, commercial partners and customers, any rights in any Modifications developed by or on behalf of Licensee without SAP participation or Licensee Add-ons, or any other functionality of the SAP Software accessed by such Modification developed by or on behalf of Licensee without SAP participation or Licensee Add-on.

7. PERFORMANCE WARRANTY.

7.1 **Warranty.** SAP warrants that the Software will substantially conform to the specifications contained in the Documentation for six months following delivery. The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect is caused by a Modification or Add-on (other than a Modification or Add-on made by SAP and which is provided through SAP Support or under warranty), Licensee or third-party software. SAP does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors that do not materially effect such performance, or that the applications contained in the Software are designed to meet all of Licensee's business requirements. Provided Licensee notifies SAP in writing with a specific description of the Software's nonconformance within the warranty period and SAP validates the existence of such nonconformance, SAP will, at its option: a) repair or replace the nonconforming Software, or b) refund the license fees paid for the applicable nonconforming Software in exchange for a return of such nonconforming Software. This is Licensee's sole and exclusive remedy under this warranty.

7.2 **Express Disclaimer.** SAP AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED. This disclaimer does not apply to any warranties expressly provided in a SAP contract with the U.S. Government.

B. INDEMNIFICATION.

8.1 **Infringement and Defense of Licensee.** SAP shall defend Licensee against claims brought against Licensee in the Territory by any third party alleging that Licensee's use of the Software, in accordance with the terms and conditions of this Agreement, constitutes a direct infringement or misappropriation of a patent claim(s), copyright or trade secret rights, and SAP will pay damages finally awarded against Licensee (or the amount of any settlement SAP enters into) with respect to such claims. This obligation of SAP shall not apply if the alleged infringement or misappropriation results from use of the Software in conjunction with any other software, an apparatus other than a Designated Unit, failure to use an update promptly provided by SAP if such infringement or misappropriation could have been avoided by use of the update, or malicious activities. This obligation of SAP also shall not apply if Licensee fails to timely notify SAP in writing of any such claim and fails to cooperate in the defense and any settlement of any such claim. Licensee shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to SAP. SAP expressly reserves the right to cause such defense of any claim(s) in the event the Software is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. SAP may settle or mitigate damages arising from any claim or potential claim, by substituting alternative substantially equivalent non-infringing programs and supporting documentation for the Software. Licensee shall not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Software that is prejudicial to SAP's rights.

8.2 THE PROVISIONS OF THIS SECTION 8 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF SAP AND ITS LICENSORS TO LICENSEE, AND IS LICENSEE'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. The provisions of this Section 8 shall not impair nor prejudice the rights of the United States in accordance with 28 U.S.C. 1498.

9. LIMITATIONS OF LIABILITY.

9.1 **Not Responsible.** SAP and its licensors will not be responsible under this Agreement (i) if the Software is not used in accordance with the Documentation; or (ii) if the defect or liability is caused by Licensee, a Modification or Add-on (other than a Modification or Add-on made by SAP which is provided through SAP Support or under warranty), or third-party software. SAP AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM INHERENTLY DANGEROUS USE OF THE SOFTWARE AND/OR THIRD-PARTY SOFTWARE LICENSED HEREUNDER.

9.2 **Exclusion of Damages; Limitation of Liability.** ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION OR DEATH OR PERSONAL INJURY ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM SHALL SAP, ITS LICENSORS OR LICENSEE BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE PAID LICENSE FEES FOR THE SOFTWARE DIRECTLY CAUSING THE DAMAGES OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ATTORNEYS' FEES, COURT COSTS, INTEREST OR EXEMPLARY OR PUNITIVE DAMAGES. The provisions of this Agreement allocate the risks between SAP and Licensee. The license fees reflect this allocation of risk and the limitations of liability herein.

9.3 The provisions of this Section 9 shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this contract under any federal fraud statute, including the False Claims Act (31 USC 3729 to 3733).

10. CONFIDENTIALITY.

10.1. Use of Confidential Information. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other shall remain the property of the disclosing party and shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the other, each party: (a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than its bona fide individuals whose access is necessary to enable it to exercise its rights hereunder. As used herein "Reasonable Steps" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. Confidential Information of either party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder.

10.2. Exceptions. The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (b) has become generally available to the public without breach of this Agreement by the receiving party; (c) at the time of disclosure, was known to the receiving party free of restriction; (d) the release is required under applicable law or Court order; or (e) the disclosing party agrees in writing is free of such restrictions.

10.3. Publicity. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Licensee agrees that SAP may use Licensee's name in customer listings.

11. ASSIGNMENT. Neither party may, without the other party's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the SAP Materials or SAP Confidential Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation.

12. GENERAL PROVISIONS.

12.1. Severability. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

12.2. No Waiver. If either party should make any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

12.3. Counterparts. This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

12.4. Regulatory Matters. The Software, Documentation and SAP Materials are subject to the export control laws of various countries, including without limit the laws of the United States and Germany. Licensee agrees that it will not submit the Software, Documentation or other SAP Materials to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export the Software, Documentation and SAP Materials to countries, persons or entities prohibited by such laws. Licensee shall also be responsible for complying with all applicable governmental regulations of the country where Licensee is registered, and any foreign countries with respect to the use of the Software, Documentation or other SAP Materials by Licensee and/or its Affiliates.

12.5. Governing Law; Limitations Period. This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws of the US federal government without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and United States law, rules, and regulations, United States law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act as enacted shall not apply. Licensee must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

12.6. Notices. All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of SAP and Licensee at the addresses first set forth in any Software Order Form. Where in this section 12.6 or elsewhere in this Agreement written form is required, that requirement can be met by facsimile transmission, exchange of letters or other written form.

12.7. Force Majeure. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

12.8. Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between SAP and Licensee with respect to SAP software license and support, and all previous representations, discussions, and writings are merged in, and superseded by this Agreement and the parties disclaim any reliance on any such representations, discussions and writings. This Agreement may be modified only by a writing signed by both parties. This Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Licensee to SAP. This Agreement shall prevail over any additional, conflicting or inconsistent terms and conditions which may appear in any disclosure and user agreement included in the Software. Signatures sent by electronic means (facsimile or scanned and sent via e-mail) shall be deemed original signatures. This Agreement does not create any partnership, joint venture or principal and agent relationship.

12.9 Hierarchy. The following order of precedence shall be applied in the event of conflict or inconsistency between provisions of the components of this Agreement, exclusive of the U.S. Government contract to which it may be included: (i) the Software Order Form; (ii) the Schedules; (iii) the Use Terms; and (iv) the GTC.