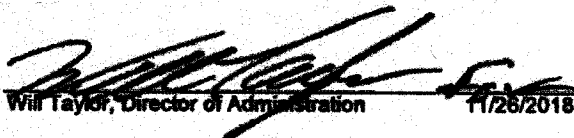**MEETING DATE:**
Tuesday, December 4, 2018

FROM : SHERIFF-CORONER-PA:

SUBJECT: SHERIFF-CORONER-PA: Approve the Master Software License and Services Agreement with Miller Mendel, Inc. for the eSOPH Background System Without Seeking Competitive Bids for Five (5) Years, and Authorize the Chairman of the Board of Supervisor to Execute the Agreement on behalf of the County, [All Districts], [$156,622 First Year Cost]; [$780,021 Five Year Total; Total includes up to $70,911 in Additional Compensation]; 100% General Fund

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Master Software License and Services Agreement with Miller Mendel, Inc., for the eSoph Background System Software for five years through December 30, 2023 for a total aggregate amount of $709,110, without seeking competitive bids for $156,622 for the first fiscal year, and $138,122 for annual license renewals starting year two (2), and authorize the Chairman of the Board of Supervisor to execute said Agreements on behalf of the County;

2. Authorize Purchasing Agent, in accordance with Ordinance 459, based on availability of fiscal funding, and as approved by County Counsel to increase the number of licenses and change to the scope of services/work that do not change the substantive terms of the Agreement, including amendments to the compensation provision that do not exceed the sum total of ten (10) percent of the annual contract amount.

ACTION: Policy

Will Taylor, Director of Administration   11/26/2018

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Jeffries, 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:	December 4, 2018
xc:	Sheriff, Purchasing

Kecia Harper-Ihem
Clerk of the Board
By_____
Deputy

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	$ 156,622	$ 138,122	$ 780,021	$138,122
NET COUNTY COST	$ 156,622	$ 138,122	$ 780,021	$138,122
SOURCE OF FUNDS: 100% General Fund			Budget Adjustment: No	
			For Fiscal Year: 18/19 – 23/24	

C.E.O. RECOMMENDATION: Approve

BR 19-21

BACKGROUND:

Summary

The Riverside County Sheriff's Personnel Bureau conducts approximately 2,300 background investigations per year. Currently, the background investigations require use of hard-copy printed forms and questionnaires. These forms are mailed to and from applicants and references using email, when applicable, or standard U.S. Mail. The collected forms and questionnaires are individually sorted, classified, and bound into folders. This system is time, cost, and labor intensive.

To meet the increased hiring needs of the Department, the background investigation process must run as quickly and efficiently as possible. Implementing new technology is key to efficiency. Changing from a paper-based system to a completely electronic digital application system will streamline and expedite the hiring process and save on labor and supply costs.

The Sheriff's Department is seeking to implement the electronic Statement of Personal History (eSOPH) background investigation system. eSOPH is a browser based, feature rich, case management software application designed to electronically conduct all steps of the background investigation process, from the acceptance of background information from the applicant to the hiring of the applicant. eSOPH is expandable, customizable to meet the Department's needs/requirements, and managed locally by the Sheriff's Department Personnel Bureau. Miller Mendel, Inc. is the sole vendor and developer of eSOPH, and there are 13 law enforcement agencies in California, and 30 law enforcement agencies nationwide, currently using this system. Forty of these law enforcement agencies procured the software without seeking competitive bids.

Impact on Residents and Businesses

Citizens of Riverside County will benefit from the increased numbers of deputies and other staff hired by the Sheriff's Department. Modernizing the background investigation process, eliminates/minimizes the delays and costs associated with the paper-based system, and reduces the processing time before new applicants are hired. The software's key patented features and ability to streamline the process will allow the Sheriff's Department to hire staff at a faster rate, which will result in increased public safety, and a higher overall quality of service provided by the Sheriff's Department at a lower cost.

Contract History and Price Reasonableness

There is a one-time setup fee of $18,500 which includes implementation, administration and end user training. The annual license fee of $138,122 includes 2,300 entries and covers software upgrades, updates, and maintenance and technician support. Pricing for the eSOPH system is calculated per entry into the system (each applicant is considered one entry). There is no limit to the number of investigators and/or supervisors using the system, the department is charged per entry (applicant).

Currently, there are thirteen (13) government agency's using the eSOPH background system. Each contract price is based on the highest paid Investigators hourly rate within a department. The Sheriff's Department current hourly rate for a Lead Investigator is $56.89. After negotiations, Miller Mendel, Inc. has agreed to use a median rate between two Investigator classifications for the Riverside County Sheriff's Department, at a rate of $52.22. This is an approximate of 9% reduction in cost.

Attachment:

Approved RCIT H-11
Vendor's Sole Source Justification letter
Approved Sole Source Justification
Milller Mendel Software-License and Service Agreement   4 copies

.

Misley Wang, Supervising Accountant	11/16/2018	Paul A. Angulo, County Auditor-Controller	11/16/2018
Teresa Summers, Director of Purchasing	11/20/2018	Ryan Carter, Principal Management Analyst	11/27/2018
Gregory P. Priamos, Director County Counsel	11/15/2018	Jim Smith, Chief Technology Officer	11/20/2018

Date:	September 18, 2018
From:	Will Taylor, Director of Administration
To:	Board of Supervisors
Via:	Lieutenant Steve DaSilva, Personnel Bureau Commander
Subject:	Sole Source Procurement; Request for Background Investigation Software Service

The below information is provided in support of my Department requesting approval for a sole source. (*Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole or single source.*)

1. **Supplier being requested:** eSOPH (Miller Mendel, Inc.)

2. **Vendor ID:** 222212

3. ☐ **Single Source**   ☒ **Sole Source**
(*Single Source - is a purchase of a commodity or service without obtaining competitive bids although more than one source is available*)

(*Sole Source - is a purchase of a commodity or service that is proprietary or no other vendor is qualified or willing to meet the county specified requirements*)

4. **Have you previously requested and received approval for a sole or single source request for this vendor for your department?** (*If yes, please provide the approved sole or single source number*).

☐ **Yes**   ☒ **No**
SSJ#_____

4a. Was the request approved for a different project?

☐Yes   ☒ No

5. **Supply/Service being requested:**
The department is requesting to purchase the use of a background investigation system for use in processing 2,300 applicant background investigations per year. eSOPH (Electronic Statement of Personal History) is a system specifically designed for processing public safety background investigations.

6. **Unique features of the supply/service being requested from this supplier.** (*If this sole source request is due to proprietary software or machinery, or hardware, provide a supporting letter from the manufacturer. If this is a single source request provide an explanation of how this provides the best value for the County by selecting this vendor.*)

    The eSOPH system is the invention of Tyler Miller and licensed for use to Miller Mendel, Inc. Miller holds intellectual property rights under U.S. Patent No. 9070098 issued June 30,2015, and U.S. Patent No. 10043188 issued August 7, 2018. The system will allow the Sheriff's Department to process background investigation more efficiently than the current process.

    The eSOPH system is completely customizable to fit the exact needs of the Sheriff's Department. Specific questionnaires, forms, and waivers used by the Sheriff's Department can be added and utilized within the system. The eSOPH system extracts all reference information from questionnaires the applicant completed online. The system then automatically differentiates between the type of each reference (i.e. friend, co-worker, supervisor, etc.). Based on the type of reference, eSOPH will send the appropriate reference questionnaire/letter to each listed reference.

    The eSOPH system automatically locates law enforcement agencies and courts near where an applicant or a reference lives/lived. eSOPH extracts addresses the applicant and listed references have lived and allows the investigator to set a radius around those addresses. The system will then automatically locate names and contact information for all the law enforcement agencies and courts within the set radius around those addresses.

    The eSOPH system includes a database with over 22,000 law enforcement agencies. The system is continuously updated as other agencies using the eSOPH system to add to its database and has a networking feature that allows background investigators to see if their applicant is currently (or has been) in the background investigation process with other law enforcement agency's whom use the eSOPH system. Background investigators can then contact that agency and obtain permission to review the applicant's information from the other agency within the eSOPH system. The system also uses the California Peace Officer Standards and Training (POST) Personal History Statement (PHS) as its base questionnaire.

7. **Reasons why my department requires these unique features from the vendor and what benefit will accrue to the county:**

    The Sheriff's Department must adhere to California Peace Officer Safety and Training (POST) guidelines regarding background investigations. One of the requirements is to use the POST Personal History Statement (PHS) questionnaire. The eSOPH system uses this PHS for its base questionnaire. In addition to the POST PHS, the Sheriff's Department also uses a customized Personal Information Questionnaire (PIQ) for all background investigations. Because the eSOPH system is completely customizable, the department specific PIQ can be created and continued to be used.

    During a background investigation, law enforcement queries must be sent to any agency and/or court having jurisdiction over where an applicant lives or has lived. The eSOPH system automatically locates these entities, complete with name(s) and contact information for custodians of record. This is important because, without this system, background investigators must manually search and locate all the agencies/courts surrounding the addresses (past and present) listed for applicants and some references, which can take several hours per case file. Because the eSOPH program does this automatically, this feature alone can reduce background investigation processing time.

Equally important, different reference questionnaires/letters are used for different types of references. For example, the reference questionnaire/letter sent to a coworker differs from the letter sent to a supervisor. The eSOPH system automatically sorts references by type which saves background investigators time because they do not have to sort through each applicant background packet to separate references into categories. Background packets normally include 25+ references per applicant with some containing many more.

Furthermore, if a background investigator discovers the applicant is currently involved in a background investigation with another agency (or was in the past), the background investigator must contact that agency and review the applicant's file/information. The background investigator must drive to that agency and look at the applicant's file. If the other agency is using the eSOPH system, the background investigator could view the file via the eSOPH and circumvent the need to drive to that agency. This will save the Sheriff's Department labor time, and costs associated with gas and vehicle maintenance and help in reducing applicant processing time.

8. **Period of Performance:**   From: November 1, 2018 to December 30, 2023
   (total number of 5 years)

   Is this an annually renewable contract?   ☐ No   ☒ Yes
   Is this a fixed-term agreement: ☒ No   ☐ Yes
   (A fixed- term agreement is set for a specific amount of time; it is not renewed annually. Ensure multi-year fixed-term agreements include a cancellation, non-appropriation of funds, or refund clause. If there is no clause(s) to that effect, then the agreement must be submitted to the Board for approval. No exemptions shall apply.)

9. **Identify all costs for this requested purchase.** In addition, please include any single or sole source amounts previously approved and related to this project and vendor in the section designated below for current and future fiscal years. You do not need to include previous fiscal year amounts. If approval is for multiple years, ongoing costs must be identified below. If annual increases apply to ongoing costs such as CPI or other contract increases, provide the estimated annual cost for each consecutive year. If the annual increase may exceed the Purchasing Agent's authority, Board approval must be obtained. (Note: ongoing costs may include but are not limited to subscriptions, licenses, maintenance, support, etc.)

Description:	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	Total
One-time Costs:						
Admin training/set up	$10,000	$0	$0	$0	$0	$10,000
End user training	$8,500	$0	$0	$0	$0	$8,500
Ongoing Costs:						
Entries into eSOPH	$120,106	$120,106	$120,106	$120,106	$120,106	$600,530
Administrative support	$18,016	$18,016	$18,016	$18,016	$18,016	$90,080
Previous SSJ Approved Amounts:	$0	$0	$0	$0	$0	$0
Total Costs	$156,622	$138,122	$138,122	$138,122	$138,122	$709,110

*Cost reflects a five-year agreement for 2,300 entries at $52.22. per entry.
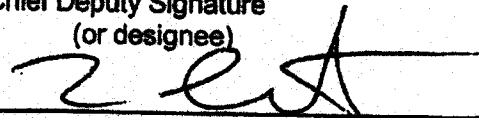
10. Price Reasonableness: *(Explain why this price is reasonable or cost effective – were you provided government discounted pricing? Is this rate/fee comparable to industry standards?)*

There is a one-time setup fee of $18,500 which includes implementation, administration and end user training. The annual license fee of $120,106 includes 2,300 licenses and covers software upgrades, updates, and maintenance and technician support. Pricing for the eSOPH system is calculated per entry into the system (each applicant is considered one entry). There is no limit to the number of investigators and/or supervisors using the system, the department is charged per entry (applicant).

Currently, there are thirteen (13) government agency's using the eSOPH background system. Each contract price is based on the highest paid Lead Investigators hourly rate within a department. The Sheriff's Department current hourly rate for the Lead Investigator is $56.89. After negotiations, Miller Mendel, Inc. has agreed to use a median rate between two investigator classifications for the Riverside County Sheriff's Department, at a rate of $52.22. This is an approximate of 9% reduction in cost.

The price being charged to the Sheriff's Department ($52.22) is comparable to the industry standard. For example, the eSOPH rate for the California Highway Patrol is $55 per entry, the Orange County Sheriff's Department rate will be $54.14 (after their contract is finalized), and the Ventura County Sheriff's Department rate is $50.71 per entry.

11. Projected Board of Supervisor Date (if applicable): October 23, 2018
(Draft Form 11s, service agreement and or quotes must accompany the sole source request for Purchasing Agent approval.)

Chief Deputy Signature (or designee)	Print Name	Date
	Kevin Vest	10/3/18
Assistant Sheriff Signature (or designee)	Print Name	Date
	Will Taylor	10/3/18
Department Head Signature (or designee)	Print Name	Date

The section below is to be completed by the Purchasing Agent or designee.

Purchasing Department Comments:

(Approve)   Approve with Condition/s   Disapprove

Condition/s:

_____

_____

_____

_____

_____

Not to exceed:

☐ One-time $_____

☒ Annual Amount $_____ / per fiscal year through _____ (date)
   (If Annual Amount Varies each FY)
   FY 18/19 : $ 156,622
   FY 19/20 : $ 138,122
   FY 20/21 : $ 138,122
   FY 21/22 : $ 138,122
   FY 22/23 : $ 138,122

_____   10/11/18   19-063
Purchasing Agent   **Date**   _____
                                              Approval Number
                                              (Reference on Purchasing Documents)

MillerMendel
INGENUITY IN TECHNOLOGY

**Re: eSOPH sole source documentation**

To Whom it May Concern:

eSOPH ("electronic Statement of Personal History") is a Software as a Service ("SaaS") application specifically designed for processing public safety background investigations. It is the invention of Tyler Miller and licensed for use to Miller Mendel, Inc. (Miller's company). Miller was granted U.S. Patent No. 9070098 on June 30, 2015 and U.S. Patent No. 10043188 on August 7, 2018. These patents claim inventive functionality of electronic reference checks, including the locating of law enforcement agencies based on a current or former residential address of the applicant. The patents also claim the inventive functionality that allows our clients to view aspects of the applicant's history, including whether the applicant has ever been entered into eSOPH by the agency before, or any other agency using eSOPH.

While the inventions mentioned above have already been granted patent status, there is a current proceeding with the USPTO to broaden the scope of similar claims to allow additional IP protections. These new claims will be independent of the claims referenced above.

The key claims in the issued 9070098 patent (see attached patent) are the independent claims 1 and 5. The difference between 1 and 5 is that claim 1 is a method claims that recites performance of certain steps. Claim 5 covers a non-transitory computer-readable medium that has instructions on it that when executed by a computer processor, performs the same steps as in claim 1. The key limitations in the independent claims 1 and 5 are: determining a reference "class" (type) of the first reference based on the program data regarding the first reference; selecting a first reference set of electronic documents based on the reference class (type) of the first reference; and generating a suggested reference list of one or more law enforcement agencies and/or courts *within a predefined radius around the applicant's residential address(es)*.

The key claims in the issued 10043188 patent (see attached patent), are the independent claims 1, 5 and 9. The difference between 1 and 5 is that claim 1 is a method claims that recites performance of certain steps. Claim 5 covers a non-transitory computer-readable medium that has instructions on it that when executed by a computer processor, performs the same steps as in claim 1. Claim 9 covers a system that performs the steps recited in Claim 1. The key limitations in the independent claims 1, 5 and 9 are: determining a reference class (type) of the reference source based on the reference set of program data; selecting a reference set of electronic documents based on the reference class (type) of the reference source; and generating a suggested reference list of one or more law enforcement agencies based on an applicant residential address(es).
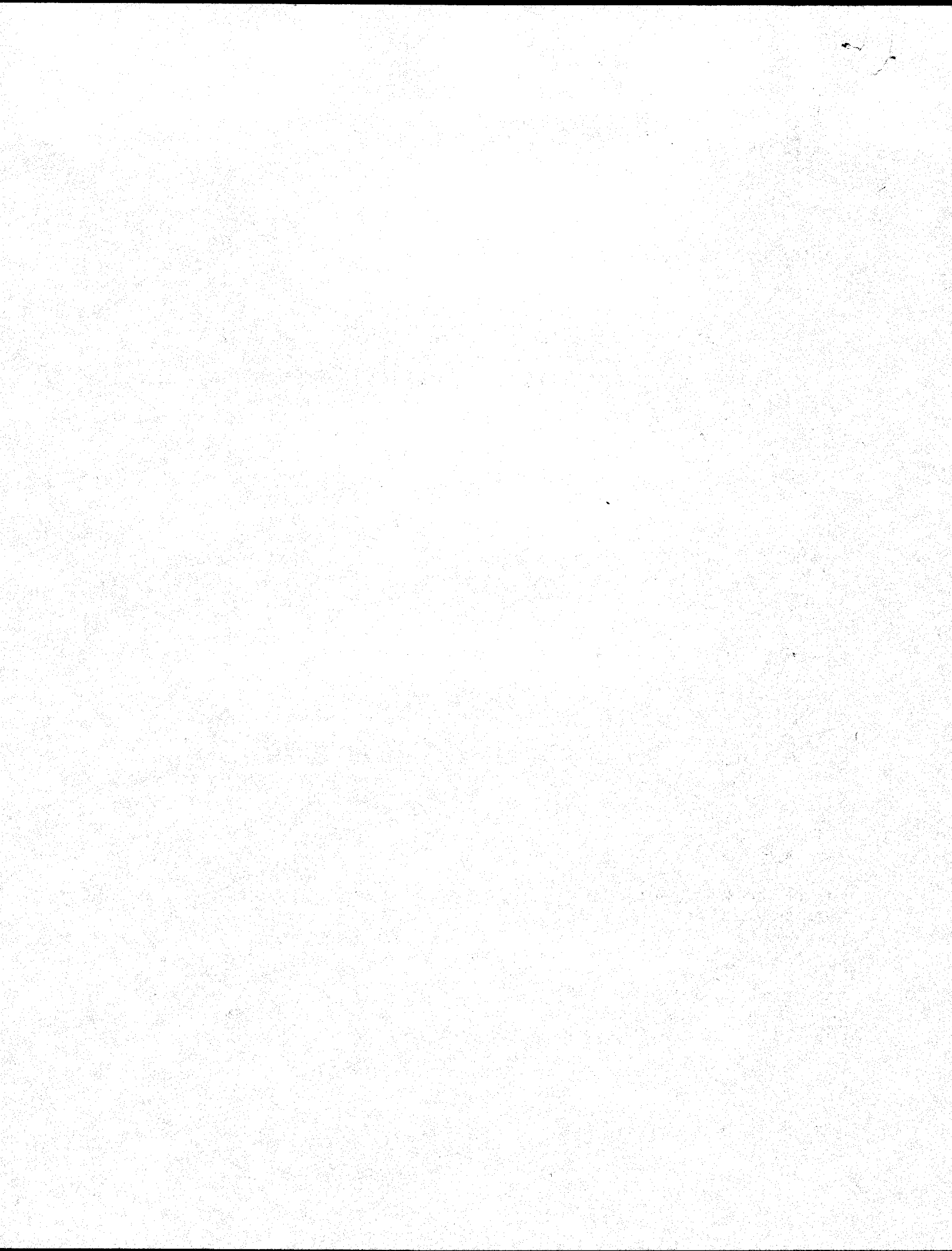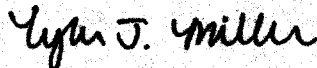
If you ask your personnel conducting background investigations to identify the most time consuming and tedious aspects of public safety background investigations, they will undoubtedly tell you, it's the reference checks. eSOPH's reference check system is repeatedly cited by agencies using eSOPH as the most beneficial aspect of the system; it notably reduces the time it takes to complete reference checks, by weeks.

When competing with other public safety agencies in the hiring of top candidates and filling vacancies quicker, this time savings equates to substantial, positive financial impact to those agencies using eSOPH.

The eSOPH features under patent allowed many city, county and state government agencies to *sole source* MMI's eSOPH Software as a Service (SaaS).

If there are any questions, please do not hesitate to contact me.

Sincerely,

Tyler J. Miller

Tyler Miller
President & CEO

Enclosed: Patent "US9070098 Miller – 06.30.2015"
              Patent "US10043188 Miler – 08.07.2018"

RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM

H11 Number	PR2018-07648
Requested Purchase	eSOPH SaaS Application (Electronic Statement of Personal History)
Department/Agency	Sheriff
Primary Contact/Phone	ERIK LUE	**Alternate Contact/Phone**	Teresa McGuire/
Purchase Request Type	
Describe the Requested Purchase	eSOPH (Electronic Statement of Personal History) is a SaaS (Software as a Service) application specifically designed for processing public safety background investigations. eSOPH is currently utilized by 13 law enforcement agencies in CA. The Sheriff's Department will be presenting a Form 11 to the BOS to enter a 5 Year agreement with Miller Mendel Inc.. Financial Data over the next five FYs is as follows: FY18/19 $155,622 FY19/20 - FY22/23 $138,122 per FY. Total cost $709,110.
Terms	Is this a Multi Year Contract?: True Length of Contract: 5 Start Date: 11/1/2018 End Date: 12/30/2023 12:00:00 AM Special Tems and Conditions:
Business Need Addressed	eSOPH will address 2,300 applicant background investigations per year. The system is customizable and can incorporate the Sheriff's Personal History Statement questionnaire and Personal Information Questionnaire. eSOPH can extract data from these questionnaires to help build the background investigation. eSOPH automatically locates the agency and/or court having jurisdiction over where the applicant lives or has lived, which normally is conducted manually and can take several hours per case. eSOPH automatically differentiates between reference questionnaire/letters sent to co-workers versus a supervisor and can categorized them accordingly. Background packets normally include 25+ references per applicant. Background investigators must determine if an applicant is involved in a background investigation with another agency (or was in the past). Background investigators must drive to the other agency to review the applicant's file. If both agencies (currently 13 agencies in CA) are using eSOPH, then the applicant's file can be shared electronically. eSOPH will reduce labor hours associated with each background investigation, reduce travel time, reduce fuel consumption, reduce vehicle maintenance. eSOPH will modernize the background investigation process and will reduce background investigation timelines, increase background productivity, improve the hiring rate, which will lead to increased public safety and a higher overall quality of service provided by the Sheriff's Department.
Are there other county systems that provide the same functionality?	Unknown
Business Criticality	Run the Business, Grow the Business, Transform the Business
Business Impacts	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
eSOPH Setup/Training - Initial Year	Services/Consulting - New	Miller Mendel Inc.	1	$18,500.00	$18,500.00		$18,500.00
eSOPH - Annual SaaS License	Software - New Purchase	Miller Mendel Inc.	1	$120,106.00	$120,106.00		$120,106.00
eSOPH - Anuual Maintenance and Support	Software - New Purchase	Miller Mendel Inc.	1	$18,016.00	$18,016.00		$18,016.00

Annual Costs   *TOTAL $156,622.00*

Item Description	Payment Type	Term (in Year)	Payment amount	Total Annual Payments
eSOPH (Electronic Statement of Personal History)		5.00	$138,122.00	5
		Subtotal Annual Costs:		$690,610.00

RIVERSIDE COUNTY INFORMATION TECHNOLOGY PROCUREMENT FORM

Accounting String						
To be completed for pass-thru purchases that will be processed by RCIT Only						
Vending	Accounts (6 digits)	Dept ID (8 -10 digits)	Program (5 digits)	Class (5 digits)	Grant (9 digits)	Customer Project code (10 digits)

Department Head or Authorized Designee Signature: Lt. Adam Vallejo	Date: 10/12/2018 12:11 PM

RCIT Review (Standard purchases and renewals < $250K) - Administrative Review Status

Recommended:	By:	Date:
Denial Explanation:		

ACIO Review - ACIO Review Status

Recommended: YES	BY: Louis Arul-Doss	Date: 10/17/2018
Denial Explanation:		

CIO Review (Purchases and renewals >$100K) CIO Review Status

Recommended: Yes	By: _[signature]_	Date: 10/24/18
Denial Explanation:		

TSOC Review (Purchases and renewals >$100K) TSOC Review Status

Recommended: YES	By: _[signature]_	Date: 11/7/2018
Denial Explanation:		

MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT

This Master Software License and Services Agreement (this "**Agreement**") is made and entered into on the last date signed below ("**Effective Date**") between **Miller Mendel, Inc.**, a Washington corporation with an address at 1425 Broadway, #430, Seattle, WA 98122 ("**MMI**"), and Riverside County, by and through the Riverside County Sheriff's Department, with an address at 4095 Lemon Street, Riverside, CA 92501 ("**Client**"). MMI and Client may each be referred to individually as a "**Party**" or collectively as the "**Parties.**"

BACKGROUND

A.   MMI is a technology company with a principal market in offering software-as-a-service solutions to governmental and private entities;

B.   Client desires to license and use MMI's software system known as the "eSOPH" or "electronic Statement Of Personal History." The eSOPH System (defined below) is a web-based software system designed and developed to assist with pre-employment background investigations. The eSOPH System allows Client to manage pre-employment background investigations of persons who apply for employment with Client.

C.   MMI is willing to allow Client and its Applicants to use the eSOPH System in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties, each intending to be legally bound hereby, do promise and agree as follows:

AGREEMENT

1.   **DEFINITIONS.** Except for the terms defined below, all initially capitalized terms used in this Agreement will have the meanings described within the text of this Agreement. As used herein, the following terms have the following defined meanings:

1.1   *"Applicant"* means a registered end-user that accesses the eSOPH System at the request of a Client to input or upload data or documents for the purpose of Client's management of one or more pre-employment background investigations.

1.3   *"Applicant Data"* means any data transmitted by Applicant to the eSOPH System.

1.4   *"Authorized User"* means any user, excluding Applicant(s), who accesses the eSOPH System on behalf of Client and meets the criteria set forth in Section 2.2 (Authorized User Designation). For Clients within California and participating in the California Commission on Police Officer Standards and Training ("POST"), "Authorized User(s)" also includes Authorized Users from POST.

1.5   *"Available"* means that the eSOPH System is: (a) available and accessible for use via the web-based interface provided by MMI, provided that Client has an operational Internet connection and all compatible hardware and software, including web browsers, required to access and use the eSOPH System; and (b) functioning in substantial compliance with the Master Agreement and the Documentation.

1.6   *"Availability"* shall have the meaning described in Section 2.14 (Availability Standards).

1.7   *"Client"* means the entity stated in the first paragraph at the top of this page, licensed to use the eSOPH System in accordance with the terms and conditions of this Agreement.

1.8   *"Client Data"* means all data and other information uploaded or transmitted to or keyed into the eSOPH System by Client or an Applicant.

1.9   *"Client Specific Terms"* means the terms and conditions specific to Client included in a Quote.

DEC 0 4 2018 *3.4B*

1.10 *"Defect"* means a failure of eSOPH System to substantially conform to the functional specifications set forth in the Master Agreement or the Documentation.

1.11 *"Designated User"* means any of the Authorized Users listed in the most current Exhibit A (Designation Form), designated by Client pursuant to Section 2.6 as authorized to contact MMI for Support Services pursuant to Section.

1.12 *"Documentation"* means any training materials, product descriptions, technical descriptions, flow charts, or other written or other tangible documentation provided or made available to Client by MMI that describes or depicts the functionality of the eSOPH System.

1.13 *"Entry"* has the meaning ascribed to it in Section 2.3.2.

1.14 *"eSOPH System"* means MMI's "electronic Statement Of Personal History" web-based software system designed and developed to assist with pre-employment background investigations, and all related Software. The eSOPH System allows MMI's clients to manage pre-employment background investigations of persons who apply for employment and volunteer positions with Client.

1.15 *"Intellectual Property Rights"* means all intellectual property rights throughout the world, whether existing under intellectual property, unfair competition or trade secret laws, or under statute or at common law or equity, including but not limited to: (i) copyrights, trade secrets, trademarks, trade names, patents, inventions, designs, logos and trade dress, "moral rights," mask works, rights of personality, publicity or privacy, and any other intellectual property and proprietary rights; and (ii) any registration, application or right to apply for any of the rights referred to in this clause; and (iii) any and all renewals, extensions and restorations thereof, now or hereafter in force and effect.

1.16 *"License Term"* shall have the meaning given in Section 4.1 (Term).

1.17 *"License Year"* shall mean the twelve (12) month period following the Effective Date and the twelve (12) month period following each anniversary of the Effective Date.

1.18 *"Primary Administrative User"* means an Authorized User of Client's choosing who is authorized to grant initial eSOPH System login and password credentials to another Authorized User to access and use the eSOPH System and either (a) has completed an initial training session provided by MMI on or around the Setup Date or (b) is a successor designated by Client and qualifies in accordance with Section 2.6 (Primary Administrative Users).

1.19 *"Quote"* means the written quotation delivered by MMI to Client, prior to entering this Agreement, for all License Fees, Setup Fees and Support Services and other costs and fees agreed by the Parties, applicable during the License Term. Each Quote agreed by the Parties is hereby incorporated into this Agreement, and the terms of the current Quote are hereby made material terms of this Agreement which shall supersede any conflicting prior terms.

1.20 *"Renewal Term"* shall have the meaning given in Section 4.2 (Renewal). "License Term" may be used interchangeably with "Renewal Term", and the terms shall be interpreted to have the same effect and application, unless expressly stated otherwise.

1.21 *"Security Incident"* means an unauthorized third party gaining access to Client Data in MMI's storage, possession, or care if it was accessed in unencrypted readable form and either (a) it creates a substantial risk of harm to Client or any individual(s) or (b) applicable law requires notification to individuals' whose personal information was accessed.

1.22 *"Services"* means, collectively, the provision of the eSOPH System in accordance with the Section 2.9 (Support Services), related professional services, and any other services to be provided by MMI to Client pursuant to this Agreement.

1.23 *"Service Credit"* means a credit or refund issued pursuant to Section 2.14.2 (Uptime Guarantee; Remedies for Excessive Downtime) for failure to meet the Availability standards set forth in Section 2.14 (Availability Standards).

1.24 *"Setup Date"* means the day of activation and setup of Client's access to the eSOPH System, which will occur on the first day of training unless otherwise specified and agreed to in writing by the Parties.

1.25 *"Software"* means the eSOPH System, related proprietary software owned by MMI, and any third-party software required to operate the eSOPH System, all in machine readable, object code form, together with all enhancements, modifications, corrections and amendments thereto.

1.26 *"Software Fees"* means fees paid for Entries, licensing fees for access to the eSOPH System, and any fees paid for maintenance and support allocable to a given calendar month. Such fees that are paid on an annual basis shall be pro-rated (e.g., fees paid for a License Term shall be divided by 12 to determine the monthly amount) Software Fees allocable to a given month. Software Fees excludes fees paid for professional services (e.g., training, customization, set-up, or installation) and fees paid for corrective work outside the scope of the Support Services described in Section 2.9 (Support Services).

1.27 *"Support Request"* means a written request for resolution of a Defect submitted by Client to MMI.

1.28 *"Support Services"* means the support and maintenance services described in Section 2.9 (Support Services).

1.29 *"Total Authorized Cost"* shall have the meaning given in Section 3.6 (Total Contract Cost Authorized).

2. eSOPH SYSTEM LICENSE AND SUPPORT SERVICES

2.1 **License Grant.** MMI hereby grants to Client a revocable, limited license to access and use the eSOPH System commencing on the Setup Date and for the remainder of the License Term in accordance with the terms and conditions of this Agreement. MMI will provide the eSOPH System to Client in accordance with the Quote for the then-current License Term and terms of this Agreement (or any applicable successor Agreement).

2.2 **Authorized User Designation.** Client shall designate all current Primary Administrative Users of the eSOPH System in accordance with Section 2.6 (Primary Administrative Users). A current Primary Administrative User may grant access to additional Authorized Users. Client shall ensure its Authorized Users' compliance with the terms of this Agreement, and Client assumes and accepts all responsibility and all liability for each of Client's Authorized Users, and any user whom the Client, or Client's Authorized Users, grants eSOPH System access, including all their acts or omissions while accessing and using the eSOPH System and/or any information obtained through such access and use.

2.2.1 **Outside Agency Access.** THIS TERM APPLIES ONLY IF CLIENT IS WITHIN THE STATE OF CALIFORNIA: At Client's written request, MMI may grant system access for designated external auditor(s) or reviewing entities ("Outside Agency"). The access will allow the Outside Agency to access certain eSOPH Client Data within the specific Client's eSOPH system. Such requests are subject to MMI's approval of the Outside Agency. MMI reserves the right to decline such requests at its sole discretion. Client shall be solely responsible for ensuring compliance with all applicable legal requirements for the Outside Agency's access, to include necessary authorizations and waivers. Granting Outside Agency access to Client's eSOPH system may be subject to additional fees, as reflected in a Quote provided to Client. If a fee applies, the designated User(s) from the Outside Agency will be added into the eSOPH System per Client's request after a purchase order is received by MMI for the applicable fees. After MMI has added the Outside Agency User's access to the eSOPH System for Client's account, the User will have access to view Client's Data on designated Applicants. Client may revoke an Outside Agency's or specific Outside Agency User's access by submitting a written request to MMI.

2.2.2 Outside Agency Access: Limitation of Liability. THIS TERM APPLIES ONLY IF CLIENT IS WITHIN THE STATE OF CALIFORNIA: For any Outside Agency granted access pursuant to Client's written request, Client shall be solely responsible for all acts, errors, omissions and/or any damage or harm arising from or related to the Outside Agency's access to the eSOPH system, and MMI shall have no liability to Client relating to such access, including but not limited to any delay in MMI terminating such access after receiving Client's request to terminate the Outside Agency's access.

2.3 Set-Up and Use of the eSOPH System.

2.3.1 Upon execution of this Agreement by both parties and MMI's receipt of a purchase order issued by Client in accordance with Section 3 (Fees and Payments), MMI will commence work with Client to establish Client's account on the eSOPH System and provide in-person setup and training for Client's access and use of the eSOPH System.

2.3.2 For each Applicant, an Authorized User (with appropriate permission levels set in the eSOPH System), must create an entry method into the eSOPH System for the Applicant. One method is by entering the Applicant's legal name and other identifying information into the eSOPH System. This is considered an "Entry." An Authorized User, may then grant access to the eSOPH System to the Applicant, who may use it to submit information to assist Client in executing its background investigation of such Applicant. The second entry method is for an Authorized User, to create an access code within the eSOPH System. The access code, if given out to Applicants, will allow those Applicants with the access code to access the system with no further data entry by any Authorized User. The Applicant(s) then has/have access to the eSOPH System to submit information to assist Client in executing its background investigation of such Applicant(s). Each Applicant who accesses the system via the access code option will also be considered an "Entry". Any Authorized Users may access and use the eSOPH System for the purpose of adding information, and accessing and reviewing information submitted by Applicant(s). Any Authorized User, including Applicants, must be capable of entering into legally binding agreements.

2.3.3 If Client desires to have Users under the age of 18 access and use the eSOPH System, Client will, at Client's sole expense and risk, provide a legally sufficient release agreement to be executed by the minor's legal guardian(s), prior to the minor's access to the eSOPH System. The release must include language legally sufficient to hold MMI harmless and release MMI of all liability. Client agrees it is solely responsible, and will retain all executed release agreements, and will provide MMI a fully legible copy of the requested release agreement(s), if so requested by MMI, within five calendar days of MMI's request. Client is solely responsible for researching and complying with all laws regarding a minor's access to and use of the eSOPH System. Client agrees to defend, indemnify and hold MMI harmless from all claims and damages relating to a minor's use of the eSOPH system.

2.4 Restrictions on Use.

2.4.1 Except as expressly permitted below, Client (including its Authorized Users) is strictly forbidden from entering at any time fictitious data (e.g., names, social security numbers, addresses, phone numbers or other data) into the eSOPH System for "testing," "training," or any other purpose. MMI reserves the right to invoice Client at MMI's then-standard hourly rate, for the removal of any fictitious data entered by any Authorized User. MMI will provide to Client a "fake" applicant name and the other information necessary to conduct training and testing with its Authorized Users, at Client's request. MMI will remove the "fake" applicant from the eSOPH System, after requested by Client, at completion of Client's testing or training.

2.4.2 Client may use the eSOPH System only to aid in pre-employment background investigations for those Applicants who have applied for employment or a volunteer position within the Client's specific government agency (e.g., state government, township, county, city, and village). Client may not use the eSOPH System on behalf of other government agencies or entities. MMI reserves the right to invoice Client all fees equivalent to if the other entity were a direct Client of MMI. Client agrees to pay the fees in accordance with Section 3 (Fees and Payments).

2.5 **Acknowledgment of Ownership and Limited License Rights.** As between MMI and Client, MMI is the sole and exclusive owner of the eSOPH System (including all updates), Documentation, and all Intellectual Property Rights associated therewith. The eSOPH System is licensed not sold, to Client. Client shall have only the rights specifically granted by MMI under this Agreement. No additional rights are granted or may be inferred. Client shall not: (i) make any modifications to any portion of the eSOPH System to which it is not intended to have access, via the user interface; (ii) attempt to reverse engineer, disassemble, reverse translate, decompile, decode or copy any portion of the eSOPH System; (iii) remove any patent, trademark, service mark or copyright notices which MMI places on the eSOPH System; or (iv) take any other actions inconsistent with the limited rights granted by this Agreement.

2.5.1 Client shall immediately notify MMI of any activity to which it becomes aware which may constitute infringement or attempted infringement of MMI's rights in and to the eSOPH System, including violations of intellectual property law(s). Client shall provide MMI with all reasonable assistance necessary or desirable for MMI to protect any of its rights, including without limitation its Intellectual Property Rights, in connection with the eSOPH System and agrees, upon written request from MMI, to furnish any and all records and information regarding the party suspected of infringement.

2.6 **Primary Administrative Users.** Client shall designate one person as their Primary Administrative User ("PAU") in writing to MMI, and Client may designate additional Authorized Users authorized to contact MMI for Support Requests pursuant to Sections 2.9 (Support Services) and 2.10 (Support Request Requirements). Client must designate the current PAU and any Authorized Users authorized to contact MMI for Support Requests using the Designation Form attached hereto as Exhibit A, which is hereby incorporated into this Agreement. As detailed below, the persons designated in Exhibit A are the only representatives of Client authorized to submit support requests to MMI, and they are responsible for troubleshooting all Authorized User and Applicant issues prior to submitting support requests to MMI. Client is responsible for maintaining a current and accurate list of the designated Primary Administrative User(s) with MMI, and must notify MMI within 48 hours of any change in a Primary Administrative User or designated Authorized User by delivering to MMI an updated and properly signed Designation Form (Exhibit A). Client shall be responsible for training replacements for any of Client's PAU's. If Client requests MMI provide replacement training, such training shall be provided at MMI's then-standard rates for training. Client shall pay MMI's then standard hourly rate for support and assistance provided to Primary Administrative User's necessitated from Client's failure to designate a properly trained person for a Primary Administrative User position.

2.7 **System Updates.** The eSOPH System may be updated on an as-needed basis by MMI or MMI contracted service providers. Client may need to update its Internet browsers, connections, Internet service, and some hardware from time to time to permit ongoing compatibility with the eSOPH System.

2.8 **Sample Forms.** The scope, content, format and other details of information and materials requested from Applicants through eSOPH as well as the forms and fields used to collect such information are within the exclusive control of Client and its Authorized Users. Any default or sample forms or fields provided or pre-loaded on the eSOPH System ("Sample Forms") are provided by MMI "as is" with no warranty of any kind, express or implied. If Client uses such Sample Forms, Client does so at Client's own risk, and Client is solely responsible for evaluating such Sample Forms' suitability for Client's purposes and making any necessary or appropriate changes, including without limitation changes required for compliance with laws and regulations that apply to Client.

2.9 **Support Services.** MMI shall provide the following services (the "Support Services") with respect to the eSOPH System:

2.9.1 MMI will use its commercially reasonable efforts to: (i) maintain the eSOPH System so that it operates without Defects; (ii) host and make the eSOPH System Available at all times excluding Scheduled Downtime; and (iii) cure or minimize the adverse impact of any Defect as soon as is reasonably practicable after such Defect is reported in accordance with this Section 2.9 (Support Services).

2.9.2 Subject to Client's maintaining suitable environments and systems that are compatible, MMI shall provide, install, and implement, as they become available, any bug fixes of the eSOPH System that are provided by MMI free of additional charge to all licensees of the eSOPH System.

2.9.3 *Excluded Services.* The Support Services do not include any of the following: (a) configuration of other applications required to access eSOPH System, including, but not limited to Client's internet service, operating systems, firewalls, or networking components; (b) Client's ongoing training needs; (c) any version upgrades of Client's 3rd party software used in connection with the eSOPH System; (d) enhancements, modifications, or customization to the eSOPH System performed at the Client's request and not intended to resolve a Defect; (e) any version or release of the eSOPH System that MMI may issue as a separate edition, including an alternative or premium version of eSOPH System for which additional fees may be required to access; or (f) resolution of Defects caused by any of the events described in Section 2.13 (Exclusions), below.

2.9.4 *MMI Support Hours.* MMI will provide email support between the hours of 09:00 and 17:00 Pacific Time, Monday through Friday, excluding holidays.

2.10 **Support Request Requirements.** Client must comply with all of the following requirements as a condition to receiving Sport Services:

2.10.1 Attempted Resolution by Designated Users. Client's Designated User(s) shall act as the first line of support to troubleshoot any Defects experienced by Applicants and Authorized Users. Only when the Designated User(s) cannot resolve the Defect should a Support Request be submitted to MMI. If a Defect is reported to MMI that the PAU, based on the initial training provided by MMI concurrent with setup of Client's account to access the eSOPH Platform, should have been able to resolve without MMI's assistance, MMI may refer such Defect back to Client's PAU for resolution.

2.10.2 Submission by Designated Users. All Support Requests must be submitted by and through one of the Designated Users on Client's most current Designation Form (Exhibit A). MMI is not required to respond to or resolve any Support Request that is submitted by a person other than a current Designated User.

2.10.3 Information Required in Support Request. Each Support Request must include the following information, at a minimum ("Minimum Required Information"):

(a)   Client's reasonable, good faith classification of the priority (High, Medium, or Low) of the reported Defect in accordance with the priority levels and definitions contained in Section 2.12 (Resolution Targets and Priority Levels), below, with explanation;

(b)   Names of Applicants, References and Authorized Users involved with clear notation of their title;

(c)   Date and time of each occurrence;

(d)   Computer operating system used by party experiencing the defect;

(e)   Name of internet browser and version;

(f)   Specific steps to allow MMI personnel to recreate the issue;

(g)   Exact wording of any error message received, URL or name of page it was received on, or a screen shot of the error;

(h)   A description of all steps previously completed to resolve the defect; and

(i)   If MMI has permission to contact the party directly, if needed. Include contact information.

2.10.4 *Additional Information.* In addition to the Minimum Required Information listed above, Client shall promptly provide MMI with such other information, files, and records related to the Defect that MMI reasonably requests.

2.10.5 *Access to Systems.* Subject to Client's applicable security requirements, Client shall provide MMI with access to and use of all systems and environments determined necessary by MMI to provide timely Support Services pursuant to these terms. If Client is unable to provide access, the Parties agree MMI may decline to fix the defect if a reasonable alternative is not available to MMI.

2.11 Response Times. MMI shall provide an initial response acknowledging each complete and validly submitted Support Request no later than 1 business day after it is received.

2.12 Resolution Targets and Priority Levels. MMI will prioritize resolution of Defects according to their severity, and not necessarily based on the order in which they were reported. Defects reported in Support Requests shall be classified using the priority levels and definitions set forth in the Table 2.12 (Priority Levels), below. Although Client is required to propose a priority level in its Support Request, MMI may reclassify the priority level of a Defect in its sole reasonable discretion, and such determination by MMI shall be final and controlling. MMI shall use its best commercially reasonable efforts to cure Defects within the target resolution times set forth in Table 2.12 (Priority Levels), which periods of time shall commence when a Support Request containing all Minimum Required Information is submitted. MMI shall have no obligation to respond to or resolve a Support Request (other than notifying Client that the Support Request is incomplete) unless and until all Minimum Required Information is provided. "Priority Levels" are defined in the following Table 2.12 (Priority Level

TABLE 2.12

PRIORITY LEVELS

Priority	Description	Target Resolution Time
High: Complete outage or severe impact to Client's business function	A Defect is High priority if it (a) prohibits utilization of some or all functionality of the eSOPH System by all or most Authorized Users or Applicants; (b) has a serious potential impact to Client's business (e.g., an impacted business function is halted completely); *and* (b) no reasonably effective workaround is available.	24 hours
Medium: Partial outage or a workaround available	A Defect is Medium priority if it has a moderate impact on Client's business or it has a potentially serious impact but a reasonably effective workaround is available. For example, a Defect would have Medium priority if it only a small group of Authorize Users or Applicants are affected, or an impacted business function is not halted completely but is merely inconvenienced, or the issue can otherwise be circumvented by a reasonably effective and available workaround (e.g., use of a different web browser), other work functions can be completed in the meantime.	3 Business Days
Low: Cosmetic Issue, cosmetic defect	A Defect is Low priority it is merely cosmetic or has a negligible impact to Client's business functions, or other work functions can be completed in the meantime.	10 Business Days

2.13 Exclusions. MMI shall not be responsible for resolving and expressly disclaims liability and responsibility for lack of Availability or Defects to the extent caused by any of the following:

2.13.1 Client's negligence, abuse, misapplication, misconfiguration, or misuse of eSOPH System, including use of the eSOPH System in violation of the Master Agreement or any written instructions provided by MMI to Client from time to time;

2.13.2 Use of eSOPH System with any hardware, operating system version or network environment that is not supported by MMI, or other problems resulting from defects in Client's or a third party's software or hardware; or

2.13.3 Problems with Client and/or its Authorized Users' telecommunications systems, Client and/or its Authorized Users' internet service provider, or the public internet to the extent affecting internet performance on a general basis (e.g., such as a regional outage), natural disasters, denial of service attacks, acts of terrorism, labor strikes, any other force majeure event, or any other event reasonably beyond MMI's control.

2.14 Availability Standards

2.14.1 *Scheduled Downtime.* MMI shall strive to avoid and minimize disruptions to the availability and functioning of the eSOPH System. The eSOPH System may be unavailable for scheduled backup and system maintenance ("**Scheduled Downtime**") during off-peak hours between the hours of 22:00 and 03:00 am PST (the "**Maintenance Window**"). On a limited and discretionary basis, MMI may adjust the Maintenance Window to occur between the hours of 19:00 and 03:00 am Pacific Time by providing Client with at least 24 hours' notice posted on the log-in screen of the eSOPH System. MMI shall use its best commercially reasonable efforts to schedule all planned downtime during such Maintenance Window. If emergency maintenance must be performed on the eSOPH System which, in MMI's sole discretion, cannot wait until the normal Maintenance Window, MMI will promptly notify Client of such lack of Availability (in advance, if possible) and undertake reasonable commercial efforts to minimize the impact and duration of any such maintenance activity. Any such downtime for maintenance occurring outside the Maintenance Window shall not be deemed Scheduled Downtime for purposes of calculating the Availability percentage described in Section 2.14.3, below.

2.14.2 *Uptime Guarantee; Remedies for Excessive Downtime.* MMI shall provide Availability of the eSOPH System at least 99% of the time, excluding Scheduled Downtime and lack of Availability caused by the events described in Sections 2.13 and 2.14.3. In the event the Availability of the eSOPH System falls below 99% in any calendar month, MMI will issue to Client a service credit ("**Service Credit**") in the form of additional Entries equal to the percentage of Entries purchased by Client for the calendar month (Entries per current License Term divided by the total months in the respective License Term) set forth in the table below corresponding to the actual Availability of the Software. To receive Service Credits, Client must submit a written request to MMI within fifteen (15) days after the end of the calendar month in which the eSOPH System failed to achieve 99% Availability, or Client's right to receive Service Credits with respect to such unavailability will be waived by Client. The remedies stated in this Section are Client's sole and exclusive remedies and MMI' sole and exclusive obligations for service interruption or lack of Availability.

2.14.3 Availability is measured by the following formula: $x = (n - y) * 100 / n$

where: "x" is the Availability percentage; "n" is the total number of hours in the given calendar month minus Scheduled Downtime; and "y" is the total number of downtime hours exclusive of Scheduled Downtime and downtime caused by the events set forth in Section 2.13 (Exclusions) in the given calendar month.

TABLE 2.14
DOWNTIME FEE CREDIT

Availability	Percentage of Monthly Software Fees Credited
> 99.0%	0%
95.0% - < 99%	3%
90.0% - < 95.0%	5%
80.0% - < 90.0%	10%

3. FEES AND PAYMENT.

3.1 License, Setup and Support Fees. Client will pay to MMI the amounts for the applicable License Term or Renewal Term in accordance with this Section 3 (Fees and Payments) for the duration of the applicable License Term or Renewal Term. All payments made to MMI by Client will be in USD.

3.1.1 *Client Set-up.* Upon receipt of this fully executed Agreement and Client's purchase order, MMI will begin the set-up process of Client on the eSOPH System in accordance with the terms of the Agreement. If Client requests the setup date and time be changed from what was originally stated by Client, Client is responsible for reimbursing MMI for all costs MMI incurs in making the travel arrangement adjustments. Additionally, Client will also be responsible for paying a $200.00 travel arrangement change fee to MMI. MMI will provide records showing the costs MMI incurred.

3.1.2 *License and Support.* Client shall be invoiced annually for Support Fees as set forth in Table 3.2 (License Term Fees and Credits).

3.1.3 *Additional Training.* After the initial training (up to two days/16 hours) has been completed, additional training requested by Client will be billed to Client at a rate of $200.00 USD per hour. Additional *onsite* training will be billed at a minimum of 8 hours, plus travel, meal and lodging expense accommodations which are reasonable under government agency standards and practices. Requests must be received by MMI in writing from the Primary Administrative User on file with MMI, or higher supervisor. MMI reserves the right to charge $200.00 USD per hour for all off-site/remote training, with a one-hour minimum.

3.1.4 *Corrective Services.* MMI reserves the right to Invoice Client $200.00 USD per hour for any corrective services Client requests. Corrective Services are typically services needed by Client from MMI to correct a mistake made by Client's Authorized Users, which cannot be corrected by Client through the User Interface. Requests must be received by MMI in writing from the Primary Administrative User on file with MMI, or higher supervisor. A one-hour minimum will be charged for Corrective Services performed by MMI, which do not require travel. Corrective Services which requires MMI to travel will be billed at $200.00 USD per hour, with an eight (8) hour minimum charge, plus all costs and expenses.

3.1.5 *Entries.*

(a) Client will be invoiced for Entries, as listed in Table 3.2 (License Term Fees and Credits) immediately following MMI adding the Entries to the Client's account. Client may purchase additional Entries one time at the then-current rate during the active License Term without incurring an administrative fee. Entries added thereafter during a given License Term will automatically incur an additional twenty percent (20%) administrative fee in addition to the per-Entry fee. If the purchase is for 300 or more Entries, the administrative fee will be waived.

(b) Client may carry over Entries from a prior License Year which were paid for but not used to the following License Year, but only when eligible. To be eligible, MMI must receive full payment of any outstanding balances and a written request for the used Entries to carry over the new License Year. The written request must be received by MMI at least five (5) business days prior to the current License Year's expiration.

(c) *Fixed-Price Entries.* Client may elect to purchase an agreed number of Entries at an agreed fixed price for future License Years as listed in Table 3.2 (License Term Fees and Credits), below, in which case Client shall be obligated to pay the annual invoices for the agreed number of Entries (listed in Table 3.2) as they come due each License Year, for the duration of the License Term or any Renewal Term, as applicable.

(d) *Non-Fixed-Price Entries.* If Client does not elect to purchase an agreed number of Entries for future License Years, then pricing of Entries will be subject to MMI's then-standard rate for Entries.

3.1.6 *Data Storage Overage.* Data storage used in in excess of the "Storage Credit" listed in Table 3.2 (License Term Fees and Credits), or in an accepted Quote, will be invoiced at the price listed on the most current Quote Client has accepted for the applicable License Year. Invoicing intervals for Data Storage fees

will be set at the discretion of MMI, but not more often than every three (3) months. Data storage is calculated by the space used by Client on the main production system(s) only; space used for backups is not invoiced. Due to time zone differences, data usage calculations may vary by up to three hours. Client may *not* carry over credit for Data Storage not used during a License Year. Archive data storage used by Client (subject to availably) will be invoiced at the price listed on the most current Quote Client has accepted.

   3.1.7 *Fee for Designated Users.* The fee paid for Support Services defined in Sections 2.9 through 2.14 shall obligate MMI only to provide support as defined to the persons designated in the current Designation Form (Exhibit A) and paid for by the Client. Fees for Support Services will be listed in a Quote accompanying a Quote for Entries for the License Year.

   3.1.8 *Fee for Fax Service.* Each page faxed from the System will be incur a charge. The charge per outbound page shall be listed on the Quote requested by and prepared for Client. There will be no charge for inbound pages. Client must indicate below if they desire the fax service to be enabled for their Authorized Users. If the service is not enabled, the outbound fax service will be unavailable; no charges for the fax service will be incurred. Please mark one: [   ]   Fax service **enabled**.   [   ]   Fax service disabled.

  3.2   **Invoices; Payment**. Invoices shall be issued in accordance with the payment terms set forth in this Agreement. All pre-approved expenses and other charges, if applicable, will be listed on the invoice as a separate item. The Parties agree the terms and conditions of this Agreement will supersede any conflicting or additional terms set forth in any purchase order documents. Unless otherwise provided in this Agreement, Client will pay the undisputed amounts of any invoices within thirty (30) days of the invoice date.

   3.2.1   MMI shall provide a Quote for the next License Year prior to the expiration of the current License Year, based upon Client's requested level of Support Services, Entries and Data Storage Credit. If Client has not agreed to purchase Entries and Services at a fixed price for the next License Year, then the Quote will reflect the current License Year levels unless otherwise directed by Client. MMI must receive a purchase order for the Quote for the next License Year prior to the last day of the current License Year.

TABLE 3.2

LICENSE TERM FEES AND CREDITS

(Used for Multiyear Agreements only. See Quote for Single License Year Agreements.)

License Year	Fee for Entries	Fee for Support Services	Fee for Setup	Data Storage Credit (GB)
N/A				
N/A				
N/A				

  3.3   **Disputes**. Client will notify MMI of any disputed charges, in writing, within 15 days from the date of invoice. Any dispute must be reasonable given the terms of this Agreement. The written dispute will include the bases of the dispute and cite all term(s) of the Agreement that validate Client's bases for dispute. MMI and Client will attempt in good faith to resolve any dispute. If the Parties resolve the dispute, MMI will re-invoice for the agreed amount and payment will be due upon receipt of the invoice. If the Parties fail to resolve the dispute within thirty (30) days after the notice by Client, then MMI will consider all disputed amounts as immediately due and payable, and failure of Client to make payment shall be considered a "Failure to Pay" pursuant to Sections 3.4 and 3.5, below.

3.4   Interest on past due amounts. MMI may charge interest on any overdue invoices in the amount of 18% per annum or the maximum amount permitted by applicable law, whichever is less. Client shall also pay or arrange exemption from any taxes, charges, or other fees imposed on its use of the eSOPH System (other than taxes on MMI's income), including any applicable sales and/or use tax. If Client is a government agency and represents it is exempt from state or local sales or use tax, and it's later determined Client is not exempt from such tax, Client is responsible for paying or reimbursing MMI for all outstanding sales or use tax, including any penalties and interest.

3.5   Failure to Pay. If Client fails to pay any undisputed sums when due, MMI may, in its sole discretion, after fifty-nine (59) days from the date listed on the original invoice: (a) cease to perform any and all of its obligations under this Agreement; (b) if applicable, suspend or terminate any and all of Client's access to the eSOPH System, including access of its Authorized Users and Applicants, in whole or in part; and/or (c) exercise other remedies available to MMI.

3.6   Total Contract Cost Authorized. The total cost of this Agreement, including all payments from Client to MMI during the Term, excluding any subsequent Renewal, will not exceed **N/A** ("Total Authorized Cost"). In the event services (e.g. Data Storage or Support Service fees) requested or incurred by Client will result in costs greater than the Total Authorized Cost, then MMI shall notify Client as soon as MMI becomes aware. Client is responsible for adjusting its Total Contract Cost Authorized to cover any extra Data Storage or Support Services fees. MMI is not obligated under this Agreement to provide extra Data Storage or Support Services that would cause Client to exceed the Total Contract Cost Authorized, and Client shall remain obligated to pay excess costs for additional Data Storage and/or Support Services requested by Client's PAU or Designated Users.

4.   TERM, RENEWAL AND TERMINATION

4.1   Term. The term of this Agreement will commence as of the Effective Date and will continue through 12-monhts (a "License Term"), and as renewed pursuant to Section 4.2 (Renewal), unless terminated by one or both Parties in accordance with this Agreement, or terminated automatically by the terms of this Agreement. If no fixed License Term is provided, then the License Term and Renewal Terms shall be on a year-to-year basis, coextensive with the License Year.

4.2   Renewal. Except as written in Section 4.3, this Agreement shall automatically renew upon MMI's receipt of Client's purchase order for the next License Year. The purchase order must be based on a valid, non-expired Quote from MMI, and received by MMI prior to the last day of the License Year.

4.2.1   For fixed multi-year License Terms, in the absence of a newly-executed multi-year agreement then receipt of a purchase order from Client for the next License Year, received by MMI prior to the end of the final License Year of the current multi-year License Term, shall automatically renew this Agreement on a year-to-year basis upon the same terms of this Agreement and the Quote upon which Client's purchase order is based.

4.2.2   For purposes of clarity, so long as Client continues to timely pay invoices for Data Storage fees and any Support Services requested by Client, this Agreement shall continue in effect, including Renewals, and Client shall retain access to the data from its existing Applicant Entries. The amount invoiced for data storage overage shall be consistent with the amount(s) listed in the Quote for the prior License Year, unless MMI gives Client sixty (60) days' notice of a data storage price change. If Client does not pay the data storage fee(s) within fifty-nine (59) days from the date listed on the original invoice, MMI may terminate this Agreement and, at MMI's sole discretion, permanently delete Client's data and/or revoke Client's access to the eSOPH System.

4.3   Termination.

4.3.1   If this Agreement is not renewed in accordance with Section 4.2, it shall automatically terminate upon expiration of the then-current License Term.

4.3.2   Either Party may terminate this Agreement prior to expiration of a License Term without cause upon sixty (60) days prior written notice to the other Party, provided that:

(a)   If Client terminates this Agreement prior to expiration of the current License Term or current Renewal Term without cause, all fees for the remainder of the respective License Term or Renewal Term listed in Table 3.2 (License Term Fees and Credits) shall become due and payable. Client shall pay all such fees in addition to any balance already outstanding within thirty (30) days of receipt of invoice.

(b)   If MMI terminates this Agreement prior to expiration of the License Term or Renewal Term without cause, MMI will issue Client a refund for up to 25% of the remaining Entries, minus any outstanding charges owed by Client. MMI does not issue refunds in greater amounts, or for other circumstances, due to the upfront expenses MMI sustains from continuous maintenance of the eSOPH System.

4.3.3   MMI may terminate this Agreement immediately for cause upon any breach by Client of Section 2.4 (Restrictions on Use), or Section 2.5 (Acknowledgement of Limited Rights); or if Client or any of its Authorized Users violates MMI's Intellectual Property Rights.

4.3.4   Either Party may terminate this Agreement with cause upon thirty (30) days written notice to the other Party in the event the other Party: (a) becomes insolvent; (b) makes an assignment for the benefit of creditors; (c) files a voluntary bankruptcy petition; (d) acquiesces to any involuntary bankruptcy petition; (e) is adjudicated bankrupt; (f) ceases to do business; (g) or other reason amounting to any violation of law connected to the use of the eSOPH System.

4.3.5   Without limiting the Parties respective rights in Sections 4.3.3 and 4.3.4 above, either Party may terminate this Agreement with cause in the event that the other Party breaches this Agreement and the breaching Party does not cure such breach within thirty (30) days after receiving written notice of the breach and intent to terminate from the non-breaching Party. If either Party gives notice to the other for substantially the same breach three (3) times during a twelve (12) month period, the non-breaching Party may terminate this Agreement immediately with cause upon receipt of the third notice by the breaching Party.

4.3.6   A Party's termination of this Agreement under this Section 4.3 does not limit either Party from seeking other appropriate legal remedy for any breach.

4.4   **Effect of Termination**. In the event of termination hereunder, except as set forth in Section 4.3.2(b) above in the event MMI terminates without cause, Client shall have no right to a refund upon termination. Upon termination, MMI will not issue any refunds to Client for payments made pursuant to Section 3 of this Agreement, unless the reason for termination is an independent, sole act of MMI and also without cause. Client shall be obligated to pay in full upon Termination all invoices which were not disputed prior to the Termination. Client may continue to access the information for previously entered Applicants in the eSOPH System for a period of thirty (30) calendar days.

4.5   **Survival**. Where the context, nature, or express terms of any provision indicates intent that it shall survive termination or expiration of this Agreement, then it shall survive the same, including without limitation Sections 1 (Definitions), 2.4 (Restrictions on Use), 2.5 (Acknowledgement of Ownership and Limited License Rights), 3 (Fees and Payment), 4.3 (Termination), 5 (Data Access, Confidentiality and Security), 6 (Representations and Warranties), 7 (Limitation of Liability), 9 (Corrective Actions), 10 (Insurance), 11 (Notices) and 12 (General Terms and Conditions).

5.   DATA ACCESS, CONFIDENTIALITY AND SECURITY

5.1   **Authorized User Access Only.** Client is responsible for all use of its Authorized Users accounts on the eSOPH System. Client shall ensure that its Authorized User(s) properly control and limit access to the eSOPH System to Client's appropriate Authorized Users, and that Client's Authorized Users properly protect their logins, passwords and all other login credentials to prevent unauthorized access and misuse of Client Data, Applicant Data and any other information that may be accessed through the eSOPH System. Client is responsible for its own policy regarding Authorized Users changing their passwords, minimum password complexity requirements beyond what

is required by the eSOPH System, and which computer terminals may be used to access the eSOPH System by its Authorized Users, including any unattended devices or computers logged into the eSOPH System. Client shall ensure any previous Authorized User who no longer has a valid purpose to access the eSOPH System will have their eSOPH System login credentials disabled within the eSOPH System, without delay. Former Authorized Users who separate from their relationship with Client shall have their login credentials immediately disabled, without delay, by Client. Client will ensure that each Authorized User has unique login credentials; an Authorized User may not share or disclose its login credentials to any other person, even if such other person is also an Authorized User.

 5.2 **Two-Factor Authentication.** Client acknowledges the eSOPH System offers optional two-factor authentication using Google Authenticator. This service is automatically available to those Clients who desire a two-factor frontend login process.

 5.3 **Client's Sharing of Applicant Data.** The eSOPH System allows Client to externally share Applicant data and other information about Applicants from the eSOPH System. If Client or its Authorized User(s) share Applicant Data or other information about an Applicant with a third party, Client must: (i) possess valid, signed authorization from each Applicant whose Applicant Data or information is to be shared, legally adequate to authorize Client to share such Applicant Data or information, (ii) refrain from violating any law, policy, term or rule by sharing, transmitting or otherwise disclosing such Applicant Data or information, and (iii) keep the Applicant Data and information secure and private in accordance with any and all applicable privacy laws, and other legal requirement(s) and obligation(s).

 5.4 **MMI's Sharing of Basic Applicant Data.** Client acknowledges and understands a valuable part of the eSOPH System is the ability for Client to see if an Applicant has been entered into the eSOPH System by other MMI client(s). If Client enters an Applicant into the eSOPH System, the eSOPH System will disclose if any other MMI client has previously entered the same Applicant into the eSOPH System. "**Basic Applicant Data**" information produced to other MMI clients is limited to: Agency/entity name, position applied for, entered date, and closed date. The eSOPH System will also display the point of contact for any other agency(s) who have previously entered the Applicant into the eSOPH System. If Client purges their backgrounds from the eSOPH System, the Basic Applicant Data (as defined in this Section) will remain on the eSOPH System and be visible to other MMI clients. Further information regarding another agency's entry of an Applicant, must be gained through that agency's permission and their own internal process(es).

 5.5 **Security Incident.** In the event MMI learns of a Security Incident, MMI will make every effort to notify Client within 24-hours of learning of the breach. Notification will be made to the Client's Primary Administrative User or representative identified pursuant to Section 2.6 (Primary Authorized User), via telephone, and also email. Notifications will only be made when an actual Security Incident has occurred; if the data is encrypted, by industry standards, no Security Incident is considered to have occurred and no notification will be made. At the request of Client, and with Client's cooperation and assistance, MMI will work together with law enforcement and other personnel in connection with the unauthorized access into the eSOPH System. MMI takes the privacy and security of data seriously, and uses reasonable administrative, technical, and physical safeguards to protect the confidentiality and security of all Client Data. Clients are encouraged to review MMI's eSOPH Security Overview, which is updated as needed by MMI from time to time and is available upon request.

 5.6 **Ownership of Client Data.** Client owns all Client Data entered into the eSOPH System by its Authorized Users and its Applicants, including Applicant Data entered in response to the Client's request for information to process an Applicant's background investigation.

 5.7 **Post-Termination Retention of Data.** Without limiting Client's rights to Client Data and Applicant Data hereunder, MMI may retain and store the following data during and after the term of this Agreement: Applicant name, Applicant telephone number, Applicant mailing address, Applicant email address, Applicant year of birth, date the Applicant was entered into the eSOPH System, Applicant's background investigation close date, position Applicant has applied for with Client, and the legal agreements (e.g., MMI's Electronic Signature Agreement, Terms of Use and Privacy Policy) related to any Authorized User's or Applicant's use of the eSOPH System. MMI may retain such information and use it to comply with applicable law and the eSOPH System Terms

of Use and Privacy Policy and for the purposes described in Section 5.4 (MMI's Sharing of Basic Applicant Data). Other than as stated in this Agreement, MMI will not use such information for other purpose.

5.8 **Confidential Information.** In performance of this Agreement, the Parties may directly or indirectly disclose to each other confidential information, proprietary information, or confidential data ("**Confidential Information**"). "Confidential Information" shall include any data and/or information that is identified by either Party as confidential (either orally or in writing) or is of such a nature that a reasonable person would understand such information to be confidential, including, but not limited to, (a) trade secrets or confidential business information of either Party, including without limitation information about such Party's technology, financial information, and plans; and (b) personal information of employees, Applicants, and Authorized Users, including but not limited to, images, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, educational records or other information identifiable to a specific individual that relates to any of these types of information ("**Personally Identifiable Information**" or "**PII**").

5.9 **Exclusions from Confidential Information.** Notwithstanding the foregoing, Confidential Information shall not include information the receiving Party can prove by clear and convincing written contemporaneous evidence is: (1) publicly known through no fault or negligence of the receiving Party; (2) rightfully possessed by the receiving Party prior to disclosure by the disclosing Party; (3) rightfully obtained by the receiving Party from a third-party in lawful possession of such Confidential Information without obligation of confidentiality; (4) independently developed by the receiving Party without reference to or use of the disclosing Party's Confidential Information.

5.10 **Restrictions on Use and Disclosure.** Each party shall not use the other party's Confidential Information for any purpose other than performance of its obligations and exercise of its rights under this Agreement. Furthermore, each party shall not disclose the other party's Confidential Information to any third party except to such party's employees, contractors, and other representatives who (a) have a bona fide need to know such Confidential Information for purposes of performing this Agreement, (b) have been informed of the confidential nature of such information, and (c) have agreed in writing or are otherwise legally bound not to use or further disclose such information except as permitted by this Agreement.

5.11 **Disclosure Required by Law.** Notwithstanding the foregoing, Confidential Information may be disclosed by a receiving Party to the extent required to be disclosed by public disclosure law or a court order, subpoena, or similar legal requirement; or necessary to disclose to prevent severe physical injury to or loss of life of an individual; provided, however that the receiving Party shall notify the disclosing Party prior to such required disclosure promptly and sufficiently in advance to permit the receiving Party to contest or limit such required disclosure, including without limitation redaction of trade secret information prior disclosure.

5.12 **Public Records Request.** MMI acknowledges that Client, as a public entity, is at all times subject to state public records acts, as now existing or as amended. If Client receives a public records request for all or any portion of this Agreement, including any documents or materials provided to Client under this Agreement, generally such information will be a public record and must be disclosed to the public records requester.

5.13 **Storage and Encryption.** During the Term of this Agreement, MMI will store and maintain Client Data and Applicant Data for use and access by Client and its Authorized Users under the terms of this Agreement. MMI will ensure industry standard data encryption methods are in place for storage of Client Data and Applicant Data. The encryption shall meet or exceed HIPAA, and CJIS standards, as well as any other standards stated in MMI's eSOPH Security Overview documentation.

5.14 **CJIS Compliance; Background Checks.** MMI will comply with Criminal Justice Information Systems ("CJIS") rules and regulations as they may apply to Applicant and Client data. MMI shall ensure all employees and contractors of MMI granted access to Client Data satisfactorily complete a background check and meet the requirements set forth by CJIS for access to Client Data.

5.15 Backups. MMI shall record snapshot copies of Client Data hourly during the Term and shall record full backup copies of Client Data once per week. Backup copies are stored on both MMI's production server, to enable a quick restore if necessary, and remotely within Amazon Web Services GovCloud (US). Backup records that are older than one calendar week are automatically purged from MMI's production server. At least three months of backup copies are stored remotely and are automatically purged after three months. MMI uses proprietary software to monitor the automated tasks of Microsoft SQL.

5.16 Payment Card Data. If Client will request or have access to credit card information, Client represents that it is presently in compliance with, and will remain in compliance with, an approved version of the Payment Card Industry Data Security Standard, developed and published jointly by American Express, Discover Financial Services, JCB, MasterCard Worldwide and Visa International ("**Card Issuers**") or the PCI Security Standards Council (the "**Council**"), as applicable, for protecting individual numbers used to identify credit and debit card accounts and other personally identifiable information relating to the use of such credit and debit card accounts ("**Cardholder Information**"), as the same may be amended, updated, replaced or augmented by the Card Issuers and the Council (the "**PCI Standard**"). Client acknowledges that it may, in connection with performing its duties in accordance with this Agreement, have access to, or be provided, Cardholder Information. Client may not commit any act or omission that causes MMI to be in violation of the PCI Standard or to be fined, sanctioned or penalized by Card Issuers, the Council or any third party for the failure to properly protect, secure, maintain, use and store Cardholder Information. Client further acknowledges and agrees that, as between Client and MMI, all Cardholder Information is, and will remain, controlled by and the responsibility of Client. Client further acknowledges and agrees that Client is solely responsible for the security of Cardholder Information that it possesses or controls.

5.17 Acts or Omissions of Client. MMI shall have no responsibility or liability with respect to, and Client shall solely be responsible and liable for, any Security Incident and any loss, expense, damage, cost, or liability associated therewith, to the extent caused by or resulting from any act or omission of Client or Client's Authorized Users, employees, contractors (excluding MMI), or agents, including without limitation: (a) their loss of control of any device; (b) their failure to maintain the confidentiality of their log-in credentials; (c) their transmission of data via methods that are not secure; (d) any vulnerability in their environment, systems, hardware, software, or physical or administrative security safeguards or procedures; (e) their use of the eSOPH Platform in violation of this Agreement or any Documentation; (f) their failure to obtain adequate release(s), waiver(s), or legally or contractually required consent; (g) Client's failure to maintain hardware and software that are compatible with any updated or security patches released and implemented by MMI; (h) Client's declining to implement two-factor authentication as described in Sections 5.2 (Two-Factor Authentication).

6. REPRESENTATIONS AND WARRANTIES.

6.1 Client represents and warrants that:

6.1.1 Client has full right, power and authority to enter into and perform its obligations according to the terms of this Agreement;

6.1.2 To Client's knowledge, the Client Data does not and will not infringe or misappropriate any copyright, patent, trade secret, trademark, or other proprietary right held by any third-party and is free of any lien, claim, security interest or encumbrance; and

6.1.3 Neither Client nor any of its employees has received, offered or provided, nor will it receive, offer or provide, directly or indirectly, any gift, gratuity, favor, entertainment, loan or other thing of monetary value to any employee or agent of MMI as an inducement to do business with MMI. Client further warrants its Authorized Users have not, and will not engage in any collusion with any other potential supplier to secure this Agreement.

6.2 MMI represents and warrants that:

6.2.1 MMI has full right, power and authority to enter into and perform its obligations according to the terms of this Agreement;

6.2.2   To MMI's knowledge, the Software complies with all applicable national, state, and local laws and regulations and, to MMI's knowledge, does not contain any material that infringes, violates, or misappropriates the Intellectual Property Rights of any third party, and (ii) to the extent the Software contains any materials subject to third party rights, MMI has obtained any and all necessary clearances, releases, approvals, licenses, or consents from third parties and made any and all required payments to third parties (including without limitation to unions or guilds) so that Client and its Authorized Users can exercise the rights and licenses authorized under this Agreement;

6.2.3   For the Term of this Agreement, the eSOPH System will operate substantially in conformance with any written specifications contained in any Documentation and in this Agreement, including the Client Specific Terms of the Quote. MMI's sole obligation to Client and Client's sole remedy under this warranty is to correct the eSOPH System so it will perform within any represented specifications or refund the related license fee, whole or in part. This warranty is void if any unauthorized modifications are made to the eSOPH System or if the eSOPH System is not used in compliance with the terms of this Agreement; and

6.2.4   Except for the limited warranty provided in this Agreement, the eSOPH System and any other MMI products and services are provided "As Is" and MMI disclaims all warranties, express or implied, that may arise either by the Parties' agreements or by operation of law, including without limitation any warranty of merchantability or fitness for a particular purpose. MMI does not warrant the operation of the eSOPH System shall be error or "bug" free or that the eSOPH System will meet the requirements or expectations of Client, its Authorized Users or Applicants.

7.   MUTUAL INDEMNIFICATION; ASSUMPTION OF RISK.

7.1   Mutual Indemnification. Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party (the "Indemnified Party"), including each of the Indemnified Party's respective Affiliates officers, directors, shareholders, employees, representatives, agents, successors and assigns (each an "Indemnified Person"), from and against all claims by any third party asserted in any cause of action, and including any damages, penalty, cost or expense (including reasonable attorneys' and witnesses' fees and costs), to the extent such cause of action arises from (a) the Indemnifying Party's gross negligence or willful misconduct in performing any of its obligations under this Agreement, or (b) a material breach by the Indemnifying Party of any of its representations, warranties, covenants or obligations under this Agreement; PROVIDED, however, such indemnity shall not extend to claims arising from any breach of this Agreement or willful or negligent act by the Indemnified Party or an Indemnified Person of the Indemnified Party, and provided that: (i) the Indemnified Person promptly notifies the Indemnifying Party of the claim in writing; and, (ii) the Indemnified Person and Indemnified Party provide the Indemnifying Party with the assistance, information and authority necessary to perform the Indemnifying Party's obligations under this Section. The Indemnified Person shall be entitled to participate at its option and expense through counsel of its own selection, and may join in any legal actions related to any such claims, demands, losses, damages, costs, expenses and penalties. The Indemnifying Party shall not enter into any settlement which includes an admission of negligence or wrongdoing by any Indemnified Person, without the prior written consent of such Indemnified Person.

Each Party shall be solely liable for third party claims arising from any willful or negligent act or failures to act, or the errors or omissions, of the Party's owners, officers, employees, agents or contractors. Excepting for the breach provisions of this Agreement, neither Party to this Agreement, nor any of such Parties' respective Affiliates, trustees, directors, officers, employees, fellows or agents shall be responsible or liable to the other Party for any injury, loss, or damage of any kind, including but not limited to indirect, special, incidental consequential, punitive damages or lost profits, relating to design, development, specification, manufacture, production or use of the eSOPH software and services or any part thereof. The limitations on liability of the previous sentence shall apply even though a Party may have been advised of the possibility of such injury, loss or damage. This paragraph shall not apply to an Indemnifying Party's obligation to indemnify an Indemnified Person under this Section or any obligations to maintain specific insurance requirements pursuant to any provision of this Agreement. Nothing

in this Agreement shall be construed to limit any remedies available to the Parties in law or equity. Notwithstanding the foregoing, either Party may seek injunctive relief at any time.

8.   NOTIFICATION OF THIRD-PARTY ACTION OR CLAIM. Client shall notify MMI of any third party lawsuit, action, and proceeding or claim brought or threatened by a third party against Client or its employee, subcontractor, or other representative or agent based in part on Client's or an Applicant's use of the eSOPH System, including without limitation (a) claims regarding privacy, security, collection, use, processing, or disclosure of Client Data collected through or stored by the eSOPH System, (b) and claims where it is reasonably likely that MMI will be named as a party or witness.

9.   CORRECTIVE ACTIONS. If all or any part of the Software is held, or MMI determines that it could be held, to infringe, wrongfully use or misappropriate any third-party intellectual property right, MMI at no cost to Client: (a) will procure for Client the right to continue using the eSOPH System in accordance with its rights under this Agreement; (b) replace the item with a substantially equivalent item that does not infringe, wrongfully use or misappropriate any third-party intellectual property rights; or (c) modify the item (without material loss of functionality) so that it no longer infringes, wrongfully uses or misappropriates any third-party intellectual property right. If MMI is unable to successfully accomplish any of the actions described above after using its commercially reasonable best efforts to accomplish each of them in a timely manner, then MMI will refund to Client a pro-rated amount of the license fees paid by Client hereunder in connection with the unused portion of its licensed rights to the eSOPH System under this Agreement. The remedies set forth in this Section 9 are Client's sole and exclusive remedy and MMI's sole obligation with respect to breach of the warranty contained in Section 6.2.2.

10.   INSURANCE.

10.1   Throughout the Term MMI, at its sole expense, will carry and maintain: (a) Commercial General Liability Insurance in the amount not less than $1,000,000 combined single limit per occurrence, $2,000,000 aggregate; (b) Stop Gap/Employer's Liability Insurance in the amount not less than $ 1,000,000 per incident; (c) Professional Liability Insurance in the amount not less than $1,000,000 per claim and in the aggregate; and (d) "Cyber" Insurance in the amount not less than $1,000,000 combined single limit occurrence, $2,000,000 aggregate. MMI will have Client added to the MMI Insurance policy and issue a certificate to Client at Client's request. If Client has requested to be added to the policy, MMI will provide to Client a new certificate, each year, if requested by Client.

10.2   Client represents it is self-insured or has appropriate insurance to fulfill and maintain its obligations and duties under this Agreement.

11.   NOTICES. All notices and requests in connection with this Agreement will be deemed given as of the day they are received either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed to MMI or Client at the following addresses:

For Miller Mendel, Inc., copy of Notice(s) to:

Mark Beatty
Rylander and Associates
406 W. 12th St.
Vancouver, WA 98660

For Client, copy of Notice(s) to:

County of Riverside, on behalf of its
Sheriff's Department "Client"
4095 Lemon Street, 2nd Floor
Riverside, CA 92501

12. GENERAL TERMS AND CONDITIONS.

12.1 **Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party, which such consent may not be unreasonably withheld. Subject to this Section 12.1, this Agreement will inure to the benefit of and be binding upon the heirs, successors, subcontractors, and assigns of the respective Parties.

12.2 **Compliance With Laws.** Each Party will, at its expense, obtain all permits and licenses, pay all fees, and comply with all federal, state and local laws, ordinances, rules, regulations, codes and orders applicable to its performance under this Agreement.

12.3 **Construction.** If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, then that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party.

12.4 **Governing Law.** This Agreement will be governed by, and construed in accordance with the laws of the state Client is located within, as applied to contracts performed therein but without reference to its choice of law rules, or the federal laws as applied to contracts performed with the United States government. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly disclaimed.

12.5 **Headings.** The headings and sections in this Agreement and any exhibit, are for convenience and will not be construed to define or limit any of the terms or affect the meaning or interpretation of this Agreement and any exhibit.

12.6 **Independent Contractor.** MMI and Client are independent contractors under this Agreement, and nothing in this Agreement may be construed to create a partnership, joint venture, franchise or agency or fiduciary relationship between them. Neither Party has any authority to enter into agreements or make any representations of any kind on behalf of the other Party.

12.7 **Nonexclusive Agreement.** It is expressly understood and agreed that this Agreement does not grant to Client any exclusive privileges or rights, and MMI may contract with other clients and customers.

12.8 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties agree that any facsimile copy, including those exchanged electronically as a .pdf, of a signed counterpart of this Agreement will be treated the same as a signed original of this Agreement.

12.9 **Entire Agreement.** This Agreement together with the Quotes and any exhibits attached hereto contains the entire understanding of the Parties with respect to the transactions and matters contemplated herein, supersedes all prior and contemporaneous agreements or negotiations between Client and MMI concerning the subject matter hereof, and cannot be amended except by a writing dated subsequent to this Agreement and signed by both Parties. To the extent the terms and conditions of this Agreement conflict with the terms and conditions of an exhibit, the terms and conditions of this Agreement will control. No course of dealing or usage of trade may be invoked to modify the terms and conditions of this Agreement.

12.10 **Copies Shall Be Considered Originals.** Any complete, legible signed copy of this Agreement shall be considered an original.

12.11 **Signing Authority.** Client represents and warrants the person executing this Agreement is a duly authorized officer or representative of the Client, and has full authority to execute this Agreement, including any amendment thereto, for and on behalf of Client. Client understands that it is fully responsible to

ensure the authority of its signatory under to this Agreement and is responsible for any actual or consequential damages incurred by MMI in the event of a breach of this Section by Client.

    12.12 COOPERATIVE AGREEMENT. The provisions of this Agreement will be extended to other city, county or state governmental entities within the state the Client is located, at then-current pricing. Governmental entities wishing to use this Agreement (hereinafter referred to as the "Cooperative Entity") will be responsible for obtaining a Quote specific to their entity, issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments in accordance with the Terms of this Agreement. To determine pricing for Cooperative Entities, MMI will use the then current pricing formula used for all Cooperative Entities within the state Client is located within. The Cooperative Entity wishing to use this Cooperative Agreement must execute with MMI a supplemental Agreement with at least one paragraph specifying they wish to use this Cooperative Agreement and agree to be bound by the terms of the Cooperative Agreement. The Agreement with the Cooperative Entity electing to use this Cooperative Agreement shall include language that MMI shall hold harmless and defend Client (as defined on the first paragraph of page 1 of this Agreement) from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this Cooperative Agreement. Failure to include such language will be considered a material breach of this Agreement and grounds for immediate Agreement termination. Cooperative Entities are responsible for obtaining all certificates of insurance and bonds required. MMI is responsible for providing each Cooperative Entity a copy of this Agreement upon request by the cooperative entity. Client makes no guarantee of usage by other users of this Agreement. The extension of the terms of this Agreement to other entities pursuant to this clause shall be subject to MMI's discretion as to whether MMI has capacity and ability to do so, including but not limited to personnel, management, equipment, technical and/or financial limitations.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective duly authorized representatives.

Miller Mendel, Inc.

By: _____

Name: __Tyler Miller_____

Title: __President & CEO_____

Date: __10 | 4 | 2018_____

Riverside County

By: _____

Name: _____CHUCK WASHINGTON_____

Title: ___CHAIRMAN, BOARD OF SUPERVISORS___

Date: ___DEC 0 4 2018_____

FORM APPROVED COUNTY COUNSEL

BY: _____ 10 / 10 / 18

   SUSANNA N. OH   DATE

ATTEST:

KECIA HARPER-IHEM, Clerk

By_____

              DEPUTY

EXHIBIT A

DESIGNATION FORM

The Client hereby designates the following person(s) as Client's Primary Administrative User, and any additional Authorized Users authorized to contact MMI for Support Services. This listing is a complete listing of all active designated persons, and completely replaces any prior listing.

PRIMARY ADMINISTRATIVE USER:

Name: _____

Title/Position: _____

Email: _____

Primary Phone: _____

ADDITIONAL DESIGNATED USERS AUTHORIZED BY CLIENT TO CONTACT MMI FOR SUPPORT SERVICES ██████████████

Name: _____

Title/Position: _____

Email: _____

Primary Phone: _____

Name: _____

Title/Position: _____

Email: _____

Primary Phone: _____

Name: _____

Title/Position: _____

Email: _____

Primary Phone: _____

MillerMendel
INGENUITY IN TECHNOLOGY

1425 BROADWAY, #430
SEATTLE, WA 98122
(206) 330-209

Tax ID: 27-1802751

TJM@MILLERMENDEL.COM

Riverside County (Sheriff's Department)
Accounts Payable
4095 Lemon St
RIVERSIDE CA 92501

QUOTE DATE	QUOTE EXPIRES	QUOTE NO.	CLIENT ID
Sep 13 2018	Oct 12 2018	93	RC501

Reference: eSOPH Background System

DESCRIPTION	QTY	PRICE	LINE TOTAL
Entry into the eSOPH system. Includes 34.5 GB of data storage credit for the license year.	2,300.00	52.22	120,106.00
Support to designated Primary Administrative User during License Term (15% of total price for Entries).	1.00	18,015.90	18,015.90
Two consecutive days, up to 8 hours per day ADMIN training & setup at client's site (first visit).	1.00	10,000.00	10,000.00
One day, up to 8 hours of END USER training at client's site (second visit).	1.00	8,500.00	8,500.00
	Subtotal:		156,621.90
	Discount:		
	Taxes:		0.00
	Total Due:		156,621.90

Terms:

1. Data storage used over the Storage Credit included will be invoiced at $15.00 per GB, per month.
2. Archive data storage used will be invoiced at $3.50 per GB, per month.
3. If the eSOPH outbound fax service feature is enabled at Client's request, each outbound page faxed will be invoiced at eleven (11) cents per outbound page. There is no charge for inbound (received) pages.
4. Invoices are Net 30 via Electronic Funds Transfer (EFT) or check payment to the address at the top of this invoice. Charge cards are not currently accepted.
5. Only Washington clients are subject to tax.
6. Other Terms and Conditions are set forth in MMI's MSLSA (licensing agreement).

Thank you for your business!