

PERSONAL SERVICES AGREEMENT BETWEEN THE COUNTY OF SHASTA AND THE RUSHMORE GROUP OF SOUTH DAKOTA, LLC

This agreement is entered into between the County of Shasta, a political subdivision of the State of California, through its Health and Human Services Agency ("County"), and The Rushmore Group of South Dakota, LLC, a South Dakota limited liability company ("Consultant"), (collectively, the "Parties" and individually a "Party"), to purchase, development, and support of a Case Review System (CRS) for CalFresh, CalWORKs, Medi-Cal, and General Assistance programs which will ensure objective and measurable case reviews while supporting the gathering of accurate, valid and complete data for use in management reports that allow for the evaluation of identified errors and will also help increase the timely issuance of benefits to our clients.

Section 1. DEFINITIONS.

For the purposes of this agreement, the following definitions shall apply:

- A. **CalFresh** means a federal nutrition program that helps people with low or no income purchase healthy food. Benefits are issued on an Electronic Benefits Transfer (EBT) card that can be used at most grocery stores and farmers' markets. CalFresh was formerly known as Food Stamps and is also known as the Supplemental Nutrition Assistance Program (SNAP).
- B. **CalWORKs** means the California Work Opportunity and Responsibility to Kids (CalWORKs) program is a time-limited program that provides financial assistance to eligible needy families with (or expecting) children to help pay for housing, food, utilities, clothing, medical care, and other necessary expenses. CalWORKs is the California version of the federal Temporary Assistance to Needy Families (TANF) program.
- C. **Medi-Cal** means a program that provides quality health care coverage to qualifying residents of California with income and resources below established limits. Medi-Cal is the California version of the federal Medicaid/Medicare programs.
- D. **General Assistance** means a County program that provides three months of cash assistance to eligible, employable adults and provides longer-term assistance to eligible adults who are temporarily disabled or who are awaiting Supplemental Security Income (SSI) approval.
- E. **Acceptance** means the Software shall be considered accepted for all purposes ("Acceptance") upon the earlier of :
 - (1) notification by County that the Software is in compliance by delivering the signed Acceptance; or
 - (2) expiration of the Test Period (As defined in sub-section FF of this section.) if County fails to notify Consultant of any material nonconformity, material meaning any Priority 1 or Priority 2 Error, during that period.
- F. **Compliance Update** means a change made to the Software to reflect a mandated change in an applicable Law.

- G. **Computer System** means a functional unit, consisting of one or more computers and associated software, that uses common storage for all or part of a program and also for all or part of the data necessary for the execution of the program, executes user-written or user-designated programs, and performs user-designated data manipulation, including arithmetic and logic operations. Consultant may from time to time and at the sole discretion of Consultant, incorporate Customizations into the Software as "Enhancements".
- H. **Database Software** means relational database management systems (RDMSZ), such as Microsoft SQL Server, Oracle or similar Third-Party Software that is utilized by the Software to store County data on a disk subsystem as part of the operation of the Software.
- I. **Designated Processor** means the computer-processing device that provides the primary control for the interpretation and execution of the Software and is designated in **Exhibit A** or, if not so identified, on which the Software is initially installed or, if a software activator device is required, the computer processing device within which the software activator is properly installed. The County is receiving an enterprise class site license that does not restrict the County to a limited number of users. As such, the County may install the Software on an unlimited number of Designated Processors, so long as those processors remain auditable and reported to Consultant. The County may also consider Virtual Machine Software (VMWare) a viable option as a Designated Processor.
- J. **Documentation** means any standard operator and user manuals, product specifications, glossary, index, training materials, and other similar materials generally made available and provided by Consultant to County in a hard-copy or electronic format for use with the Software.
- K. **End User** means the County, or any employee(s), affiliate(s) agent(s) representative(s) or any other person under the direction or control of the County that uses the Software to perform certain functions or tasks as required by the County.
- L. **Enhancement** means any modification or addition that, when made or added to the Software, changes its utility, efficiency, functional capability or application.
- M. **Error** means any failure of the Software to conform in any material respect to the functional specifications contained in the Documentation or as defined in **Exhibit A** and **Exhibit B**.
- N. **Error Corrections** means a modification or an addition that, when made or added to the Software, establishes material conformity of the Software to the Documentation, or a procedure or routine that, when implemented in the regular operation of the Software, eliminates the adverse effect on County of such nonconformity.

- O. **Installation** means all preparation, processing and other tasks necessary to install the Database Software, Software or Third-Party Software on the Designated Processor to make it operational.
- P. **Installation Sequence #1** means the initial installation of the pre-configured CRS.
- Q. **Installation Sequence #2** means the second and final installation of the CRS, pursuant to **Exhibit A-1**.
- R. **Law** means any applicable state, county or local statute, law, ordinance or code.
- S. **Minimum Requirements** means the minimum requirements for the Computer System as set forth in **Exhibit A**. The Software may operate on a Computer System that is below the Minimum Requirements, but such operation is not warranted by Consultant.
- T. **Notice of Completion** means: (a) if Consultant is to provide implementation services, a written notice from Consultant stating that Installation and implementation of all Software and/or Third-Party Software at County's site has been completed, the Test Period has commenced upon County's receipt of Notice of Completion, and that the Software is available for Acceptance.
- U. **Ordinary Use** means usage of the system that is consistent with normal commercial customs and usages for a computer software system within the State of California.
- V. **Project Schedule and Project Schedules** shall mean the calendar project schedules from **Exhibit A**.
- W. **Release** means a Version of the Software denoted by the number to the left of the decimal point (as compared to a change in the number to the right of the decimal point). For example, 4.x and 4.1 are the same Release; 4.x and 5.x are two different Releases. Releases include major Enhancements and the incorporation of any Version developed after the Release immediately preceding the most current Release.
- X. **Third-Party Software** means a component developed to be either freely distributed or sold by an entity other than the vendor of the Case Review System.
- Y. **Acceptance Testing** means the software testing where a system is tested for acceptability. . The purpose of this test is to evaluate the system's compliance with the business requirements.
- Z. **System Configuration** means the process of configuring the system and making any specialized customizations to the software for the County. .

AA. **Software** means the software program(s) (in object code format only) identified in **Exhibit A** and **Exhibit A-1** and includes Error Corrections, Compliance Updates and new Versions and Releases of such program(s) that may be provided under this Agreement. The term "Software" excludes any Third-Party Software.

BB. **Test Period** means the 30 days period following (a) County's receipt of the Notice of Completion or (b) in the case where County requests or causes a material delay in the performance of implementation services, the date set forth in the Project Schedule for commencement of Acceptance Testing. After Consultant provides the Notice of Completion, the County may submit in writing to Consultant any Errors it believes exist within the Software. Consultant will correct any reproducible Priority 1 and Priority 2 Errors, as defined below in **Definition of Error Levels, (Exhibit D)**, attached and incorporated herein, prior to Acceptance by the County, as defined above and set forth in Section 1.E ("Acceptance"). If no Priority 1 or Priority 2 Errors exist, or if they have been fully resolved, then Consultant will provide a Deliverable Acceptance Statement (DAS) to be executed by County to memorialize Acceptance.

CC. **Version** means a new Version of the Software that includes minor Enhancements, Error Corrections and/or Compliance Updates, which is indicated by a different number to the right of the decimal point (e.g., "4.1" and "4.2" represent different Versions of Release "4").

DD. **Documented Defect** means a flaw in the software that can cause the software to fail to perform its required function.

Section 2. RESPONSIBILITIES OF CONSULTANT.

A. Pursuant to the terms and conditions of this agreement and in consideration of the compensation hereinafter set forth, Consultant shall provide:

- (1) **Software Installation (Exhibit A), attached and incorporated herein,**
- (2) **System Development and Training (Exhibit A-1), attached and incorporated herein,**
- (3) **Annual Software License and Support Services (Exhibit B), attached and incorporated herein,**
- (4) **Warranties – Consultant Responsibilities (Exhibit C), attached and incorporated herein, and**
- (5) **Definition of Error Levels (Exhibit D).**

B. Consultant shall comply with the provisions of **Medi-Cal Privacy and Security Agreement between the California Department of Healthcare Services and the County of Shasta, Health and Human Services Agency (HHSA), (Exhibit E)**, attached and incorporated herein.

C. As required by Government Code section 7550, each document or report prepared by Consultant for or under the direction of County pursuant to this agreement shall contain the numbers and dollar amount of the agreement and all subcontracts under the agreement relating to the preparation of the document or written report. If multiple

documents or written reports are the subject of the agreement or subcontracts, the disclosure section may also contain a statement indicating that the total agreement amount represents compensation for multiple documents or written reports. Consultant shall label the bottom of the last page of the document or report as follows: department name, agreement number, and dollar amount. If more than one document or report is produced under this agreement, Consultant shall add: "This [document or report] is one of [number] produced under this agreement."

- D. Monitor and prohibit unauthorized access to the County Computer System through the County installed and maintained Communications Equipment.

Section 3. RESPONSIBILITIES OF COUNTY.

County shall:

- A. Compensate Consultant as prescribed in Sections 4 and 5 of this agreement and monitor the outcomes achieved by Consultant.
- B. Comply with all obligations and requirements set forth in Sections 1E(a)d(1) and 1E(a)d(2), **Exhibit B**.
- C. Monitor Consultant's performance to assure compliance with the terms, conditions and specifications of the agreement.
- D. County shall install and periodically update a computer virus program to protect its Computer System and database from computer viruses that may from time-to-time be transmitted or downloaded. Consultant shall not be responsible for any computer virus and expressly disclaims any liability for loss or damage caused by any computer virus on County's computer platform or database.
- E. County shall protect the security of its Computer System and to prohibit unauthorized access to the Computer System. Consultant shall not be responsible for any security breach and expressly disclaims any liability for loss or damage caused by the unauthorized access to County's Computer System, caused solely by the County.

Section 4. COMPENSATION.

- A. Consultant shall be paid:
 - (1) a maximum of \$148,000 for Software Installation of the CRS described in **Exhibit A**;
 - (2) a maximum of \$2,000 for System Development and Training described in **Exhibit A-1**; and
 - (3) a maximum of \$27,000 for the Annual License and Support Services described in **Exhibit B**, per anniversary year.
- B. In no event whatsoever shall maximum compensation paid to Consultant during the term of this agreement exceed \$177,000.
- C. Consultant's violation or breach of agreement terms may result in fiscal penalties, withholding of compensation, or termination of agreement.

Section 5. BILLING AND PAYMENT.

- A. Consultant shall submit to HHS Business and Support Services, Attn: Accounts Payable, P.O. Box 496005, Redding, CA 96049-6005, a billhead or invoice regularly used in the conduct of business of the Consultant along with any supporting documentation:
- (1) upon completion of services of this agreement, \$148,000 pursuant to Section 4.A.(1);
 - (2) upon completion of services of this agreement, \$2,000 pursuant to Section 4.A.(2);
 - (3) by subsequent anniversary year, March 27, 2018 of this agreement, pursuant to Section 4.A.(3), the payment of \$27,000; and
 - (4) County shall make payment within 30 days of receipt of Consultant's correct and approved billhead or invoice.
- B. Should County, or the state or federal government, disallow any amount claimed by Consultant, Consultant shall reimburse County, or the state or federal government, as directed by County, or the state or federal government, for such disallowed cost.

Section 6. TERM OF AGREEMENT.

- A. The term of this agreement shall start on March 28, 2017 and shall end March 27, 2019.
- B. Notwithstanding the foregoing, County shall not be obligated for payments hereunder for any future County fiscal year unless or until County's Board of Supervisors appropriates funds for this agreement in County's budget for that County fiscal year. In the event that funds are not appropriated for this agreement, then this agreement shall end as of June 30 of the last County fiscal year for which funds for this agreement were appropriated. For the purposes of this agreement, the County fiscal year commences on July 1 and ends on June 30 of the following year. County shall notify Consultant in writing of such non-appropriation at the earliest possible date.

Section 7. TERMINATION OF AGREEMENT.

- A. If Consultant materially fails to perform Consultant's responsibilities under this agreement to the satisfaction of County, or if Consultant fails to fulfill in a timely and professional manner Consultant's responsibilities under this agreement, or if Consultant violates any of the terms or provisions of this agreement, then County shall have the right to terminate this agreement for cause effective immediately upon the County giving written notice thereof to Consultant. If termination for cause is given by County to Consultant and it is later determined that Consultant was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph B of this section.
- B. County may terminate this agreement without cause on 30 days written notice to Consultant.
- C. County may terminate this agreement immediately upon oral notice should funding cease or be materially decreased during the term of this agreement.

- D. County's right to terminate this agreement may be exercised by the County Executive Officer, the County's HHSA Director or any HHSA Branch Director designated by the HHSA Director.
- E. Should this agreement be terminated, Consultant shall promptly provide to County any and all finished and unfinished reports, data, studies, photographs, charts, and other documents prepared by Consultant pursuant to this agreement.
- F. In the event this agreement this agreement is terminated prior to the end of its term pursuant to this Section 7, Consultant shall refund to County a pro-rata share of County's payment made to Consultant pursuant to Section 4.A.(1) and Section 4.A.(2). The amount refunded to County shall be calculated by dividing that fiscal year payment by 365 and then multiplying the number of calendar days remaining in the current County fiscal year.
- G. If this agreement is terminated, Consultant shall only be paid for services satisfactorily completed and provided prior to the effective date of termination.

Section 8. ENTIRE AGREEMENT; AMENDMENTS; HEADINGS; EXHIBITS/APPENDICES.

- A. This agreement supersedes all previous agreements relating to the subject of this agreement and constitutes the entire understanding of the Parties hereto. Consultant shall be entitled to no other benefits other than those specified herein. Consultant specifically acknowledges that in entering into and executing this agreement, Consultant relies solely upon the provisions contained in this agreement and no others.
- B. No changes, amendments, or alterations to this agreement shall be effective unless in writing and signed by both Parties. However, minor amendments that do not result in a substantial or functional change to the original intent of this agreement and do not cause an increase to the maximum amount payable under this agreement may be agreed to in writing between Consultant and the HHSA Director or any HHSA Branch Director designated by the HHSA Director, provided that the amendment is in substantially the same format as the County's standard format amendment contained in the Shasta County Contracts Manual (Administrative Policy 6-101).
- C. The headings that appear in this agreement are for reference purposes only and shall not affect the meaning or construction of this agreement.
- D. If any ambiguity, inconsistency, or conflict exists or arises between the provisions of this agreement and the provisions of any of this agreement's exhibits or appendices, the provisions of this agreement shall govern.

Section 9. NONASSIGNMENT OF AGREEMENT; NON-WAIVER.

Inasmuch as this agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate, or sublet any interest herein without the prior written consent of County. The waiver by County of any breach of any requirement of this agreement shall not be deemed to be a waiver of any other breach.

Section 10. EMPLOYMENT STATUS OF CONSULTANT.

- A. Consultant shall, during the entire term of this agreement, be construed to be an independent contractor, and nothing in this agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow County to exercise discretion or control over the professional manner in which Consultant performs the work or services that are the subject matter of this agreement; provided, however, that the work or services to be provided by Consultant shall be provided in a manner consistent with the professional standards applicable to such work or services. The sole interest of County is to insure that the work or services shall be rendered and performed in a competent, efficient, and satisfactory manner. Consultant shall be fully responsible for payment of all taxes due to the State of California or the federal government that would be withheld from compensation if Consultant were a County employee. County shall not be liable for deductions for any amount for any purpose from Consultant's compensation. Consultant shall not be eligible for coverage under County's workers' compensation insurance plan nor shall Consultant be eligible for any other County benefit. Consultant must issue W-2 and 941 Forms for income and employment tax purposes, for all of Consultant's assigned personnel under the terms and conditions of this agreement.

Section 11. INDEMNIFICATION.

To the fullest extent permitted by Law, Consultant shall indemnify and hold harmless County, its elected officials, officers, employees, agents, and volunteers against all claims, suits, actions, costs, expenses (including, but not limited to, reasonable attorney's fees of County Counsel and counsel retained by County, expert fees, litigation costs, and investigation costs), damages, judgments, or decrees arising from the work or the provision of services undertaken pursuant to this agreement by Consultant, or by any of Consultant's subcontractors, any person employed under Consultant, or under any subcontractor, or in any capacity, except when the injury or loss is caused by the sole negligence or intentional wrongdoing of County. Consultant shall also, at Consultant's own expense, defend the County, its elected officials, officers, employees, agents, and volunteers, against any claim, suit, action, or proceeding brought against County, its elected officials, officers, employees, agents, and volunteers, arising from the work or the provision of services undertaken pursuant to this agreement by Consultant, or any of Consultant's subcontractors, any person employed under Consultant, or under any Subcontractor, or in any capacity. Consultant shall also defend and indemnify County for any adverse determination made by the Internal Revenue Service or the State Franchise Tax Board and/or any other taxing or regulatory agency and shall defend, indemnify, and hold harmless County with respect to Consultant's "independent contractor" status that would establish a liability on County for failure to make social security deductions or contributions or income tax withholding payments, or any other legally mandated payment. The provisions of this paragraph are intended to be interpreted as broadly as permitted by applicable law. This provision shall survive the termination, expiration, or cancellation of this agreement.

Section 12. PATENT AND COPYRIGHT INDEMNITY.

Consultant shall not provide County with any product or design that violates or infringes any registered United States patent, copyright, trade secret or other intellectual property right. If County promptly notifies Consultant in writing of any third party claim against County that any Software or other item provided to County by Consultant infringes any patent, copyright, trade secret or other intellectual property right of any third party, Consultant shall, to the fullest extent permitted by law, indemnify and hold harmless County, its elected officials, officers, employees, agents, and volunteers against all claims, suits, actions, costs, expenses (including but not limited to reasonable attorney's fees of County Counsel and counsel retained by County, expert fees, litigation costs, and investigation costs), damages, judgments or decrees arising from any product or design provided by Consultant to County that violates or infringes any registered United States patent, copyright, trade secret or other intellectual property right. Consultant shall also, at Consultant's own expense, defend the County, its elected officials, officer, employees, agents, and volunteers, against any claim, suit, action or proceeding brought against the County, its elected officials, officer, employees, agents, and volunteers, arising from allegation, claim, or assertion, any product or design provided by Consultant to County violates or infringes any registered United States patent, copyright, trade secret or other intellectual property right. Consultant shall not indemnify County, however, to the extent the alleged infringement is caused by (1) County's modification of the Software or item, (2) use of the Software or item other than in accordance with the Documentation or this agreement, (3) County's failure to use acceptable non-infringing corrections or enhancements made available by Consultant, or (4) information, specifications or materials provided by County or any third party. If any Software or other item is, or in Consultant's reasonable opinion is likely to be held to be infringing, Consultant shall at its expense and option: (a) procure the right for County to continue using it; or (b) replace or modify it so that it becomes non-infringing while giving equivalent performance. If Consultant is initially unable to perform either option (a) or (b), for a period not to exceed 180 days, Consultant may require County to stop using the potentially infringing System or portion thereof, until Consultant can perform either option (a) or (b), providing; however, Consultant supplies County with an alternate means by which County may obtain equivalent performance.

Section 13. INSURANCE COVERAGE.

- A. Without limiting Consultant's duties of defense and indemnification, Consultant and any subcontractor shall obtain, from an insurance carrier authorized to transact business in the State of California, and maintain continuously during the term of this agreement Commercial General Liability Insurance, including coverage for owned and non-owned automobiles, and other insurance necessary to protect the County and the public with limits of liability of not less than \$1 million combined single limit bodily injury and property damage; such insurance shall be primary as to any other insurance maintained by County.
- B. Consultant and any subcontractor shall obtain and maintain continuously required Workers' Compensation and Employer's Liability Insurance to cover Consultant, subcontractor, Consultant's partner(s), subcontractor's partner(s), Consultant's

employees, and subcontractor'(s') employees with an insurance carrier authorized to transact business in the State of California covering the full liability for compensation for injury to those employed by Consultant or subcontractor. Each such policy shall be endorsed to state that the Workers' Compensation carrier waives its right of subrogation against the County, its elected officials, officers, employees, agents, and volunteers which might arise in connection with this agreement. Consultant hereby certifies that Consultant is aware of the provisions of section 3700 of the Labor Code, which requires every employer to insure against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and Consultant shall comply with such provisions before commencing the performance of the work or the provision of services pursuant to this agreement.

- C. Consultant shall obtain and maintain continuously a policy of Errors and Omissions coverage with limits of liability of not less than \$1 million.
- D. Consultant shall require subcontractors to furnish satisfactory proof to County that liability and workers' compensation and other required types of insurance have been obtained and are maintained similar to that required of Consultant pursuant to this agreement.
- E. With regard to all insurance coverage required by this agreement:
 - (1) Any deductible or self-insured retention exceeding \$25,000 for Consultant or subcontractor shall be disclosed to and be subject to approval by the County Risk Manager prior to the effective date of this agreement.
 - (2) If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, Consultant or subcontractor shall maintain such insurance coverage with an effective date earlier or equal to the effective date of this agreement and continue coverage for a period of three years after the expiration of this agreement and any extensions thereof. In lieu of maintaining post-agreement expiration coverage as specified above, Consultant or subcontractor may satisfy this provision by purchasing tail coverage for the claims-made policy. Such tail coverage shall, at a minimum, provide the insurance coverage required hereunder for claims received and reported three years after the expiration date of this agreement.
 - (3) All insurance (except workers' compensation and professional liability) shall include an endorsement or an amendment to the policy of insurance which names *Shasta County, its elected officials, officers, employees, agents, and volunteers as additional insureds* and provides that coverage *shall not be reduced or canceled without 30 days written prior notice certain to the County*. Any available insurance proceeds in excess of the specified minimum limits and coverage pursuant to the terms of this agreement shall be applicable to the Additional Insured. The additional insureds coverage shall be equal to Insurance Service Office endorsement CG 20 10 for on-going operations, and CG 20 37 for completed operations.
 - (4) Each insurance policy (except for workers' compensation and professional liability policies), or an endorsement thereto, shall contain a "separation of insureds" clause which shall read:

“Separation of Insureds.

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
 - b. Separately to each suit insured against whom a claim is made or suit is brought.”
- (5) Consultant shall provide the County with an endorsement or amendment to Consultant’s policy of insurance as evidence of insurance protection before the effective date of this agreement.
 - (6) The insurance coverage required herein shall be in effect at all times during the term of this agreement. In the event any insurance coverage expires at any time during the term of this agreement, Consultant shall provide, at least 20 days prior to said expiration date, a new endorsement or policy amendment evidencing insurance coverage as provided for herein for not less than the remainder of the term of this agreement or for a period of not less than one year. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided and a renewal endorsement or policy amendment is not provided within 10 days of the expiration of the endorsement or policy amendment in effect at inception of this agreement, County may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.
 - (7) If the endorsement or amendment does not reflect the limits of liability provided by the policy of insurance, Consultant shall provide County a certificate of insurance reflecting those limits.
 - (8) Any of Consultant’s Excess Insurance shall contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the County.

Section 14. NOTICE OF CLAIM; APPLICABLE LAW; VENUE.

- A. If any claim for damages is filed with Consultant or if any lawsuit is instituted concerning Consultant’s performance under this agreement and that in any way, directly or indirectly, contingently or otherwise, affects or might reasonably affect County, Consultant shall give prompt and timely notice thereof to County. Notice shall be prompt and timely if given within 30 days following the date of receipt of a claim or 10 days following the date of service of process of a lawsuit. This provision shall survive the termination, expiration, or cancellation of this agreement.
- B. Consultant recognizes the mandatory standards and policies relating to energy efficiency in the state energy conservation plan (Title 24 of the California Code of Regulations).
- C. Any dispute between the Parties, and the interpretation of this agreement, shall be governed by the Laws of the State of California. Any litigation shall be venued in Shasta County.

Section 15. COMPLIANCE WITH LAWS; NON-DISCRIMINATION.

- A. Consultant shall observe and comply with all applicable federal, state, and local Laws, ordinances, and codes that relate to the work or services to be provided pursuant to this agreement.
- B. Consultant shall comply with mandatory standards and policies as required by Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 C.F.R., Part 60).
- C. Consultant shall comply with section 306 of the Clean Air Act (42 U.S.C. §1857(h), section 508 of the Clean Water Act (33 U.S.C. §1368), Executive Order 11738, and the regulations of the Environmental Protection Agency (40 C.F.R., Part 15).

Section 16. ASSURANCE OF COMPLIANCE WITH COUNTY NONDISCRIMINATION IN STATE AND FEDERALLY ASSISTED PROGRAMS.

- A. Consultant hereby agrees to comply with Titles VI and VII of the federal Civil Rights Act of 1964, as amended; Section 504 of the federal Rehabilitation Act of 1973, as amended; the federal Age Discrimination Act of 1975, as amended; the federal Food Stamp Act of 1977 as amended, and in particular section 272.6 thereof; Title II of the federal Americans with Disabilities Act of 1990, as amended; the Unruh Civil Rights Act, California Civil Code, section 51, as amended; California Government Code, sections 11135 - 11139.5, as amended; California Government Code, section 12940, as amended; Chapter 7, of Division 5, or Title 1 of the California Government Code, commencing with section 4450, as amended; Title 22, California Code of Regulations, sections 98000 - 98413; Title 24, California Code of Regulations, section 3105; the Dymally-Alatorre Bilingual Services Act (California Government Code, sections 7290 - 7299.8), as amended; section 1808 of the Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996, as amended; and all other applicable federal and state Laws, as well as their implementing regulations (including title 45 of the Code of Federal Regulations (CFR) Parts 80, 84, and 91; 7 CFR, Part 15; and 28 CFR, Part 42), by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall, because of ethnic group identification, age, sex, color, disability, medical condition, national origin, race, ancestry, sexual orientation, marital status, religion, religious creed or political belief, be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under, any program or activity receiving federal or state financial assistance; and hereby gives assurance to immediately take any measures necessary to effectuate this Assurance of Compliance.
- B. This Assurance of Compliance is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and Consultant hereby gives assurance that administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of Chapter 21-100 of the California Department of Social Services (CDSS) Manual of Policies and Procedures will be prohibited.

- C. By giving this Assurance of Compliance, Consultant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of the aforementioned Laws, rules, and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books, and accounts as needed to ascertain compliance. If there are any violations of this Assurance of Compliance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with California Welfare and Institutions Code section 10605, or California Government Code sections 11135 – 11139.5, as amended, or any other Laws or regulations, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this Assurance of Compliance.
- D. This Assurance of Compliance is binding on Consultant as long as Consultant is receiving federal or state funding pursuant to the agreement in which this Assurance of Compliance is included.

Section 17. ACCESS TO RECORDS; RECORDS RETENTION.

- A. County, federal, and state officials shall have access to any books, documents, papers, and records of Consultant that are directly pertinent to the subject matter of this agreement for the purpose of auditing or examining the activities of Consultant or County. Except where longer retention is required by federal or state Law, Consultant shall maintain all records for five years after County makes final payment hereunder. This provision shall survive the termination, expiration, or cancellation of this agreement.
- B. Consultant shall maintain appropriate records to insure a proper accounting of all funds and expenditures pertaining to the work performed or the services provided pursuant to this agreement. Consultant shall maintain records providing information that account for all funds and expenses related to the provision of services provided pursuant to this agreement. Access to these records shall be provided to County during working days, 8:00 a.m. to 5:00 p.m. and at other times upon reasonable notice by County, and upon request of state and federal agencies charged with the administration of programs related to the work or services to be provided pursuant to this agreement.
- C. Consultant agrees to accept responsibility for receiving, replying to, and/or complying with any audit exception by appropriate federal, state, or County audit directly related to the provisions of this agreement. Consultant agrees to repay County the full amount of payment received for duplicate billings, erroneous billings, audit exceptions, or false or deceptive claims. Consultant agrees that County may withhold any money due and recover through any appropriate method any money erroneously paid under this agreement if evidence exists of less than full compliance with this agreement including, but not limited to, exercising a right of set-off against any compensation payable to Consultant.

Section 18. COMPLIANCE WITH CHILD, FAMILY, AND SPOUSAL SUPPORT REPORTING OBLIGATIONS.

Consultant's failure to comply with state and federal child, family, and spousal support reporting requirements regarding Consultant's employees or failure to implement lawfully

served wage and earnings assignment orders or notices of assignment relating to child, family, and spousal support obligations shall constitute a default under this agreement. Consultant's failure to cure such default within 90 days of notice by County shall be grounds for termination of this agreement.

Section 19. LICENSES AND PERMITS.

Consultant, and Consultant's officers, employees, and agents performing the work or services required by this agreement, shall possess and maintain all necessary licenses, permits, certificates, and credentials required by the Laws of the United States, the State of California, the County of Shasta, and all other appropriate governmental agencies, including any certification and credentials required by County. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this agreement and constitutes grounds for the termination of this agreement by County.

Section 20. PERFORMANCE STANDARDS.

Consultant shall perform the work or services required by this agreement in accordance with the industry and/or professional standards applicable to Consultant's work or services.

Section 21. CONFLICTS OF INTEREST.

Consultant and Consultant's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property, or source of income that could be financially affected by or otherwise conflict in any manner or degree with the performance of the work or services required under this agreement.

Section 22. NOTICES.

A. Except as provided in sections 7.C. (oral notice of termination due to insufficient funding), any notices required or permitted pursuant to the terms and provisions of this agreement shall be given to the appropriate Party at the address specified below or at such other address as the Party shall specify in writing. Such notice shall be deemed given: (1) upon personal delivery; or (2) if sent by first class mail, postage prepaid, two days after the date of mailing.

If to County: Branch Director
 HHS Business and Support Services
 Attn: Contracts Unit
 P.O. Box 496005
 Redding, CA 96049-6005
 Phone: 530-245-6860
 Fax: 530-225-5555

If to Consultant: Chief Executive Officer
 The Rushmore Group, LLC
 316 S Coteau Street, Suite 100
 Pierre, SD 57501
 Phone: (605) 224-8899

Fax: (605) 224-8989

B. Any oral notice authorized by this agreement shall be given to the persons specified in Section 22.A. and shall be deemed to be effective immediately.

Section 23. AGREEMENT PREPARATION.

It is agreed and understood by the Parties that this agreement has been arrived at through negotiation and that neither Party is to be deemed the Party which created any uncertainty in this agreement within the meaning of section 1654 of the Civil Code.

Section 24. COMPLIANCE WITH POLITICAL REFORM ACT.

Consultant shall comply with the California Political Reform Act (Government Code, sections 81000, *et seq.*), with all regulations adopted by the Fair Political Practices Commission pursuant thereto, and with the County's Conflict of Interest Code, with regard to any obligation on the part of Consultant to disclose financial interests and to recuse from influencing any County decision which may affect Consultant's financial interests. If required by the County's Conflict of Interest Code, Consultant shall comply with the ethics training requirements of Government Code sections 53234, *et seq.*

Section 25. PROPERTY TAXES.

Consultant represents and warrants that Consultant, on the date of execution of this agreement, (1) has paid all property taxes for which Consultant is obligated to pay, or (2) is current in payments due under any approved property tax payment arrangement. Consultant shall make timely payment of all property taxes at all times during the term of this agreement.

Section 26. SEVERABILITY.

If any portion of this agreement or application thereof to any person or circumstance is declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal or state statute or regulation or County ordinance, the remaining provisions of this agreement, or the application thereof, shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this agreement are severable.

Section 27. CONFIDENTIALITY.

During the term of this agreement, both Parties may have access to information that is confidential or proprietary in nature. Both Parties agree to preserve the confidentiality of and to not disclose any such information to any third party without the express written consent of the other Party or as required by Law. This provision shall survive the termination, expiration, or cancellation of this agreement.

Section 28. CONFIDENTIALITY OF CLIENT INFORMATION.

Consultant shall comply with, and require all of Consultant's employees, volunteers, agents, and officers to comply with, the provisions of section 10850 of the Welfare and

Institutions Code, and of Division 19 of the California Department of Social Services Manual of Policies and Procedures. This provision shall survive the termination, expiration, or cancellation of this agreement to which the State Department of Social Services regulations apply.

Section 29. MEDI-CAL PERSONALLY IDENTIFIABLE INFORMATION.

- A. Medi-Cal Personally Identifiable Information (PII) which is directly obtained in the course of performing an administrative function on behalf of Medi-Cal, such as determining Medi-Cal eligibility that can be used alone, or in conjunction with any other information, to identify a specific individual. PII includes any information that can be used to search for or identify individuals, or can be used to access their files, such as name, social security number, date of birth, driver's license number or identification number. PII may be electronic or paper.
- B. The Consultant may use or disclose Medi-Cal (PII) only to perform functions, activities or services directly related to the administration of the Medi-Cal program in accordance with Welfare and Institutions Code section 14100.2 and 42 Code of Federal Regulations section 431.300 *et seq.*, or as required by Law. Disclosures which are required by Law, such as a court order, or which are made with the explicit written authorization of the Medi-Cal client, are allowable. Any other use or disclosure of Medi-Cal PII requires the express approval in writing of the County. The Consultant shall not duplicate, disseminate or disclose Medi-Cal PII except as allowed in this Agreement.
- C. The Consultant agrees to the same privacy and security safeguards as are contained in the Medi-Cal Data Privacy and Security Agreement, attached hereto and incorporated by this reference as **Exhibit E**.
- D. When applicable, the Consultant shall incorporate the relevant provisions of **Exhibit E** into each subcontract or sub-award to subcontractors.

Section 30. SCOPE AND OWNERSHIP OF WORK.

All research data, reports, and every other work product of any kind or character arising from or relating to this agreement shall become the property of the County and be delivered to the County upon completion of its authorized use pursuant to this agreement. County may use such work products for any purpose whatsoever. All works produced under this agreement shall be deemed works produced by a contractor for hire, and all copyright with respect thereto shall vest in the County without payment of royalty or any other additional compensation. Notwithstanding anything to the contrary contained in this agreement, Consultant shall retain all of Consultant's rights in Consultant's own proprietary information, including, without limitation, Consultant's methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge, and experience possessed by Consultant prior to, or acquired by Consultant during the performance of this agreement and Consultant shall not be restricted in any way with respect thereto.

Section 31. USE OF COUNTY PROPERTY.

Consultant shall not use County premises, property (including equipment, instruments, and supplies), or personnel for any purpose other than in the performance of Consultant's obligations under this agreement.

/SIGNATURE PAGE FOLLOWS/

IN WITNESS WHEREOF, County and Consultant have executed this agreement on the dates set forth below. By their signatures below, each signatory represents that he/she has the authority to execute this agreement and to bind the Party on whose behalf his/her execution is made.

COUNTY OF SHASTA

Date: _____

DAVID A. KEHOE, CHAIRMAN
Board of Supervisors
County of Shasta
State of California

ATTEST:


LAWRENCE G. LEES
Clerk of the Board of Supervisors

By: _____
Deputy


Approved as to form:
RUBIN E. CRUSE, JR.
County Counsel

By:  3/10/17
Alan B. Cox
Deputy County Counsel

RISK MANAGEMENT APPROVAL

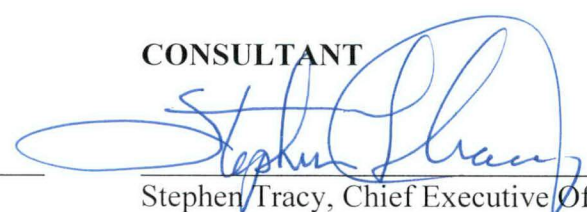
By:  03/13/17
James Johnson
Risk Management Analyst

**INFORMATION TECHNOLOGY
APPROVAL**

By:  3-12-2017
Tom Schreiber
Chief Information Officer

CONSULTANT

Date: 3/14/17


Stephen Tracy, Chief Executive Officer
The Rushmore Group of South Dakota, LLC

Tax I.D.#: ON FILE

Software Installation

Consultant's project team will work together with County staff, not only for normal verification or interpretation of the current task, but also to discuss and request feedback on the specifications and the project as a whole.

Section 1. Scheduling of Dates/Opt-Out

Program Schedule and Program Schedules to be implemented upon mutual agreement between County and Consultant once agreement is fully executed. Each party understands that any variation from the performance dates set forth in the Project Schedules within **Exhibit A** may adversely impact project milestones and completion dates, including, without limitation, the date of completion of the project.

Section 2. Prerequisites for Install

A. Deliverable 1 – Discovery

Within 15 days of execution of this agreement, Consultant will begin reviewing available information related to the County's existing case review process. The purpose of this activity is to develop a basic level of understanding of the processes employed by County in order to maximize the value of Consultant's time spent on-site. It is expected that Consultant's review will include, but not be limited to, the following items:

- (1) Description of the current case review systems.
- (2) Methodology used to establish the error-prone profile.
- (3) Copies of the management reports available through the CRS.
- (4) Review instruments and guides utilized in case reviewing.
- (5) Training materials for the CRS.
- (6) Facilitate and Conduct Workshops as follows:
 - (a) Program
 - (b) Quality Assurance
 - (c) Operations
- (7) Management
 - (a) Information Technology
 - (b) Training

B. Deliverable 2 – Create Functional Requirements Document

Consultant will submit a written Functional Requirements Document (FRD) to County upon completion of the workshop as prescribed in Section 2.A. above.

Section 3. Consultant shall install CRS (Installation Sequence #1) components, as follows:

A. Case Review:

- (1) Main Review Screen
 - (a) Identifying Demographic headers criteria:
 - (a) Review ID (Auto-fill)

- (b) Review Date (Auto-fill)
 - (c) Reviewer (Auto-fill)
 - (d) Reviewer Supervisor
 - (e) Review Month
 - (f) Review Class
 - (g) Case Number
 - (h) Case Name
 - (i) Worker
 - (j) Assigned To
 - (k) Supervisor
 - (l) Office
 - (m) Program and Review Type
- (2) Review Screen - Examples of items that could be included in the review section are:
- (a) Elements
 - (b) Casual Factors
 - (c) Comments
- (3) Program Specific Screen
- (4) Review Action Screen

B. Re-Review

- (1) Re-evaluate information outlined in the Demographic pursuant to Section 3.A.(1)a. of this **Exhibit A**, shall include the additional fields:
- (a) Re-Reviewer: Performs quality control reviews of the Re-Review's work
 - (b) Re-Reviewer Date
 - (c) Elements
 - (d) Casual Factors
 - (e) Comments
 - (f) Re-Review Action Section

C. CAR

- (1) The information outlined in the Case Review and Re-Review pursuant to Section 2.A. and Section 2.B. of this **Exhibit A**, shall include the additional fields:
- (a) CAR Reviewer
 - (b) CAR Date
 - (c) CAR Elements

- (d) CAR Comments

D. Find/Search

- (1) The Find/Search criteria shall include the following:
 - (a) Programs Selected: Filters reviews based on the program
 - (b) Review Identification Number (ID): Filters reviews based on the review ID.
 - (c) Case Number: Filters reviews based on the case number.
 - (d) Reviewer Type: Filters reviews based on the entry in the <Reviewer Type>
 - (e) Worker: Filters reviews based on the entry in the <Worker> field.
 - (f) Supervisor: Filters reviews based on the entry in the <Supervisor> field.
 - (g) Response: Filters reviews based on the entry in the <Response> field.
 - (h) Review Class: Filters reviews based on the entry in the <Review Class> field.
 - (i) Reviewer: Filters reviews based on the entry in the <Reviewer> field.
 - (j) Program Status: Filters reviews based on the entry on the <Program Status> field.
 - (k) Assigned To Worker: Filters reviews based on the entry in the <Assigned to Worker> field.
 - (l) Assigned To Supervisor: Filters reviews based on the entry in the <Assigned to Supervisor> field.
 - (m) Review Dates: Filters reviews based on the date entered in the <Review Date> field.
 - (n) Benefit Month: Filters reviews based on the entry in the <Benefit Month> field.
 - (o) District: Filters reviews based on the entry in the <District> field.
 - (p) Region: Filters reviews based the region.
- (2) The Find/Search will have the ability to print the query and/or copy the query into another application such as Microsoft® Word or Excel.

E. Reports

- (1) Consultant will work with County to design reports that summarize and present detailed, in-depth findings with respect to the data collected on the case review form to allow County supervisor and County management to identify issues that accompany workflow challenges; support managerial decisions and the development of corrective action plans at the worker, supervisor, office, region and statewide levels; and, finally, permit the measurement of improvement over time. Initial reports will be defined by County within the System Configuration phase.
- (2) In addition to the “canned” reports requested by County, the system will allow County to run ad hoc reports using the SQL Query Option of the system. The

reports will also allow the user to export report data into another application, such as Microsoft Access or Excel, thus allowing the user the ability to generate additional reports based on that data.

- (3) Each report has predetermined criteria-allowing the user to customize reports. A few examples of the criteria are:
 - (a) Start Date and End Date – If these fields remain blank, the reports will contain information on all reviews conducted without regard to the date of the review. If a specific time frame is desired, the user can enter a start date and end date.
 - (b) Management Levels – Allows the user to generate reports based on data for the entire county or a specific office, supervisor or worker. The management level fields are dropdowns lists that contain the allowable entries.
 - (c) Data Elements – Allows the user to run the reports for all data elements or specific function.
- (4) Core reports will include information to identify and monitor:
 - (a) Data elements in which issues are occurring;
 - (b) Root cause of the issues;
 - (c) Scope of issues (worker, supervisor, office, agency);
 - (d) Review accuracy and provide summaries at the worker, supervisor, office, and agency level; and
 - (e) Completion of corrective action for each review.
- (5) Reports shall include, but not be limited to:
 - (a) Accuracy Trend: Provides information on the number of reviews completed, the review accuracy rate, and the payment/benefit accuracy rate over a period of time not to exceed 12 months.
 - (b) Accuracy Detail: Provides information on the total cases reviewed and the number and percentage of cases that have an overall status of Correct and incorrect.
 - (c) Accuracy Summary: Summarizes the total number of cases reviewed and indicates the number and percentage of those cases that have an overall status of Incorrect or Correct.
 - (d) Reviews: Provides the basic review data for each review.
 - (e) Causal Factor Summary: For each eligibility element, lists the causal factors within the CRS data elements and the number of times the causal factor was cited in the reviews. Also, for each eligibility element provides a summary of the: total number of cases reviewed, reviews with an element status of Not Applicable (N/A), element status of Incorrect and the number of causal factors cited.

- (f) Element Overview: For each element, summarizes the number of: cases reviewed, reviews with an Element Status of N/A, and the number and percentage with an Element status of Incorrect or Correct. Also provides the total number of Elements Reviewed, Total Elements Correct and the overall Element Accuracy.
- (g) Element Overview Trend: Provides the eligibility element accuracy rate for a period of time not to exceed 12 months.
- (h) Element Summary: For the selected Element summarizes the number of cases reviewed, the number of reviews where the Element Status was N/A and the number and percentage of reviews with an Element status of Correct or incorrect.
- (i) Employee History: For the selected worker, provides the case accuracy rate and the payment/benefit accuracy rate for each position that the employee has occupied in the Case Review System.
- (j) Payment Accuracy Detail: For each worker, provides the total number of incorrect and correct reviews, the benefit amount at review, the benefit difference and the payment accuracy rate.
- (k) Payment Accuracy Summary: Summarizes the total number of correct and incorrect reviews, the benefit amount reviewed, the benefit difference, and the payment accuracy rate.
- (l) Response Due Summary: Summarizes the number of reviews that are past due or pending based on Review Class for all reviews that have been Submitted to Worker and have a Response Required status in the Worker Response field.
- (m) Review Count: Provides the number of full, targeted, and total reviews as well as the total number of cases reviewed for each program. Report has option to drill down to the individual case review. Reviews are counted the month the reviewer submits the review to reports.

Section 4. Testing

Consultant shall conduct Testing of Installation Sequence #1 to ensure operations are error free.

System Development and Training

Consultant relies heavily on user involvement during the modeling and development of Installation to insure complete satisfaction at these times when adjustments or modifications to the Software and database are easier to make.

Section 1. System Customization and Scheduling

Upon completion as prescribed in **Exhibit A**, Consultant will customize the CRS building on the outcome associated with the work sessions and documented in the FRD. Consultant and County agree to communicate to move through the system configuration in a timely manner. Documentation of agreements regarding deadlines, timelines, and any delays in projections will be communicated via mutual written consent and subject to County approval as defined per the FRD. County will designate a primary contact for Consultant who will be responsible for final approval of all sections within this Exhibit.

Section 2. Testing

Consultant will work with designated County staff to facilitate testing of the CRS as outlined in the FRD. Consultant will create a secure web site allowing designated County staff the ability to access the CRS for testing at all phases of the development from the data entry form through creating reports. This testing methodology does not preclude the Installation of the system in the test environment of County for additional testing.

Section 3. Installation Sequence #2

The Consultant and the County shall work together regarding the software development of the installation of the CRS, Installation Sequence #1. Following the tailoring of the application Software, Consultant will work closely with the County Information Technology Department (IT) staff to install, initiate, test and initially operate the application Software. This process will be completed by means of both detailed written directions provided by the Consultant via conference calls as well as the onsite presence of the Consultant. Upon the completion of the Installation of the CRS, the Consultant will issue the Notice of Completion.

Section 4. Webinar Training

- (1) Consultant will present webinar training (Training) to County staff to be determined at a later date, at the sole discretion of the County. County staff will include, but not be limited to the following:
 - (a) Administrative Users
 - (b) Eligibility Workers
 - (c) Staff Services Analysts
 - (d) Supervisors
 - (e) Managers
- (2) The Consultant will provide a total of 32 hours of Training and an online CRS user guide to County.
 - (a) At the sole discretion of the County, the 32 hours of Training will be delivered by the Consultant in time segments consisting of, but not limited to the following:

- (a) Day (eight hours)
 - (b) Half day (four hours)
 - (c) Quarter day (two hours)
- (3) County shall at its own discretion determine which staff and positions will participate in the Training delivered by the Consultant.
- (4) Training topics to be discussed by the Consultant for administrative users to include, but not limited to the following:
 - (a) Review the CRS application options available to County staff
 - (b) Demonstrate techniques to modify the user-defined areas of the CRS
 - (c) Review all screens pertinent to the trainee
 - (d) Demonstrate how to add, delete, and modify users
 - (e) Allow trainees to practice learned skills
- (5) Training topics to be discussed by the Consultant for County staff who are not administrative users to include, but not limited to the following:
 - (a) Review the data entry screens for reviews
 - (b) Demonstrate data entry
 - (c) Allow participants to explore the data entry screen (hands-on)
 - (d) Review the reports
 - (e) Explain the information contained within each report
 - (f) Explain the criteria screens
 - (g) Explain how reports can be employed for corrective action planning

Section 5. Acceptance Testing

During the Test Period, County may test the Software to verify that it conforms in all material respects to the FRD. If the Software does not so conform, County shall promptly notify Consultant in writing and Consultant shall work diligently to correct all nonconformities free of cost to County. If after a 30 day period of time Consultant is unable to correct a nonconformity in the Software, County may, as its sole and exclusive remedy, invoke the penalty provisions of Section 7 ("Termination of Agreement") of this Agreement.

Annual Software License and Support Services

Section 1. Software License

- A. **Grant.** Consultant grants to County a perpetual, nontransferable nonexclusive license to use the Software and Documentation solely on the terms and conditions set forth in this exhibit.
- B. **Scope of Rights.** County may:
- (1) Install the Software on the Designated Processor(s) and may move the Software to a different processor(s), or, in the event of a disaster, run the Software on a back-up processor(s).
 - (2) Make copies of the Software for backup and archival purposes only, provided that (a) no more than two (2) copies of the Software are in existence at any one time, and (b) Consultant's copyright and other proprietary legends are reproduced on each copy. County shall keep appropriate records of the number and location of all copies and make such records available to Consultant upon request. All copies that are made by County shall be the property of Consultant.
 - (3) Make copies of the Documentation for County's internal use only, provided that Consultant's copyright and other proprietary legends are reproduced on each copy.
- C. **Restrictions.** In addition to other restrictions set forth in this Agreement, County may not:
- (1) Use, copy, modify or distribute the Software (electronically or otherwise) or any copy, adaptation, transcription or merged portion thereof except as expressly authorized under this Agreement.
 - (2) Use the Software for any purpose for the benefit of any third party (including any body of government other than the entity that executes this Agreement) in a commercial, retail, service bureau or similar enterprise.
 - (3) Translate, reverse engineer, decompile, recompile, update, enhance or create derivations of all or any part of the Software or merge any Software with any other software or program including without limitation, the structure and sequence of any database and/or database files, including those created by County under this Agreement.
 - (4) Without prior written approval of Consultant, modify or manipulate the data maintained in the standard database structure schema that is documented as part of the Software, except by the features provided in the Software.

- (5) Without prior written approval of Consultant, modify, extend or add tables including without limitation, the structure and sequence of any database or database files that are used by the Software, including those created by or for County under this Agreement.
 - (6) Intentionally remove the labels or any proprietary legends from the Software or its Documentation.
- D. **Title.** Consultant reserves all rights not expressly granted to County hereunder. County understands that the license granted herein transfers neither title nor proprietary rights to County with respect to the Software or Documentation. Any data supplied by County shall remain the property of County.

Section 2. Support Services

- A. **Scope.** Provided that County is current in the payment of the applicable support fee, Consultant shall provide the following support services (collectively referred to as “Support Services”):
- (1) **Telephone Support.** Consultant shall provide County with telephone support services for Software from 8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday, excluding the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the immediately succeeding Friday, Christmas Eve and Christmas Day. Consultant may from time to time amend its holiday schedule upon at least 60 days’ prior written notice to County.
 - (2) **Error Corrections.** Consultant will respond to any Errors reported by County in accordance with its response policy attached hereto as **Exhibit D**.
 - (3) **Versions.** Consultant shall provide County with new Versions of the Software. County understands implementation of a new Version may require County to upgrade its Computer System.
- C. **Supported Software.** Consultant’s obligation to provide Support Services shall extend only to the current Release and prior Versions whose Release number begins with the same number or immediately preceding number. For example, if the current Release is 4.5, Consultant will support only those Versions between 3.x and 4.5. If County desires support for earlier Versions of the Software, such support may be treated by Consultant as additional consulting services for which County will be billed at Consultant’s then-current time-and-material rates.
- D. **County Obligations.**
- (1) County shall implement and follow the reasonable written instructions of Consultant regarding operation of the Software.
 - (2) County shall purchase, install and maintain a Computer System that complies with the Minimum Requirements.

Section 3. System Maintenance

A. Maintenance for the Rushmore CRS includes the following:

- (1) Consultant will provide, as necessary, CRS updates to County for the application on a semi-annual basis. These CRS updates will include scheduled programming change and functionality requests that have been approved, fully tested and deemed ready for release by Consultant.
- (2) Consultant will respond to and address any Software issues that are demonstrable problems with the existing CRS functionality for County. Each demonstrable Software issue will be jointly discussed and an initial date will be agreed upon by which a fix will be made available for Installation or an acceptable and jointly agreed upon alternative solution will be developed in writing.
- (3) Consultant will respond as soon as reasonably possible, but within at most two working days, to demonstrable Software related problems that interrupt the daily use of the Case Review Applications or identified programmatic oversights in meeting the Software requirements as articulated by County and agreed upon by both Parties in the Functional Requirements Document.
- (4) Consultant will work with staff designated by County to resolve problems that cannot be clearly determined to be existing demonstrable issues. All reasonable efforts will be undertaken to consider the identified issue until a joint determination is made per mutual consent that the problem is or is not related to the programming of the application.

Warranties – Consultant Responsibilities

A. Software

Consultant warrants that the Software will conform in all material respects to the functional specifications upon completion of the Installation per the County approved FRD as well as all functionality described in **Exhibit A** for a period of 365 days after the Acceptance Date. Consultant agrees to correct or replace, at no charge, any nonconformity of which it receives notice during the warranty period as described in **Exhibit B**. In addition, Consultant warrants that any Enhancement, Customization, Compliance Update and/or Error Correction will conform in all material respects to the functional specifications contained in the then-current Documentation. The warranty for any Enhancement, Compliance Update, and/or Error Correction shall expire simultaneously with the expiration of the Software warranty. Consultant warrants that the Software does not contain any disabling devices that would allow Consultant to terminate operation of the Software. Consultant further warrants that to the best of its knowledge, the Software does not contain any viruses.

B. Third-Party Software; Hardware

CONSULTANT MAKES NO WARRANTY WITH RESPECT TO ANY HARDWARE OR THIRDPARTY SOFTWARE, AND WHATEVER WARRANTY MAY APPLY TO ANY HARDWARE OR THIRD-PARTY SOFTWARE PRODUCT, IF ANY, IS ONLY AS IS EXPRESSLY STATED BY THE THIRD-PARTY MANUFACTURER, OWNER OR LICENSOR OF THE HARDWARE OR THIRD-PARTY SOFTWARE. CONSULTANT EXPRESSLY DISCLAIMS ALL WARRANTIES FOR THE HARDWARE AND THIRD-PARTY SOFTWARE, WHETHER EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

C. Exclusions

Consultant's warranty obligations and other obligations under this Agreement with respect to the hardware and Software are expressly conditioned upon County's proper use and do not include:

- (1) Support or correction of Errors or increases in service time that result from (a) accident, neglect, misuse or use other than Ordinary Use; (b) failure of electrical power, air conditioning, or humidity controls that cause a computer failure; and (c) modifications made to the Software by other than a representative of Consultant;
- (2) Problems and Errors that Consultant and/or County cannot reproduce;
- (3) Problems relating to or caused by (a) any hardware, third-party software, Internet Service Provider (ISP) or software that was not supplied by Consultant or (b) use of a computer system that does not meet the Minimum Requirements; or
- (4) Problems relating to or caused by changes in, or modifications to, the operating characteristics of any computer hardware or operating system for which the Software is procured.

D. Technology Life Expectancy

County understands, acknowledges and agrees that the technology upon which the hardware, Software and Third-Party Software is based changes rapidly. County further acknowledges that Consultant will continue to improve the functionality and features of the Software to improve legal compliance, accuracy, functionality and usability. As a result, Consultant does not represent or warrant that the hardware, Software and/or Third-Party Software provided to County under this Agreement or that the Computer System recommended by Consultant will function for an indefinite period of time. Rather, Consultant and County may, from time to time, analyze the functionality of the hardware, Software, Third-Party Software and Computer System in response to changes to determine whether County must upgrade the same. County upgrades may include without limitation, the Installation of a new Release, additional disk storage and memory, and workstation and/or server upgrades. County upgrades may also include the Installation and/or removal of Third-Party Software. County is solely responsible for all costs associated with future resources and upgrades.

- E. Errors, defects, and malfunctions that are traceable to any of the foregoing or any County errors or system changes, any ISP, or any third-party hardware and/or Software shall be billed at Consultant's then-current time-and-material rates, including out-of-pocket expenses.

F. Disclaimer

THE WARRANTIES SET FORTH IN THIS **EXHIBIT C** ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. CONSULTANT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE.

Definition of Error Levels

Section 1. Priority One

- A. Definition. A Documented Defect that causes either: (i) loss or corruption of data; or (ii) complete failure of essential Licensed Software functionality.
- B. Response Time. Consultant shall provide an initial response to Service Level 1 Defects within one (1) hour of receipt of defect documentation if reported between the hours of 8:00AM and 5:00PM Central time as defined in Section 2.A.(1) of **Exhibit B**.
- C. Response. Consultant will immediately assign appropriate personnel to diagnose and correct the Documented Defect or identify Circumvention Procedures. Consultant's initial response will include an acknowledgement of notice of the Documented Defect, confirmation that Consultant has received sufficient information concerning the Documented Defect, and an action plan for resolving the Documented Defect and avoiding further deleterious consequences of the Documented Defect.
- D. Resolution Time. Consultant will use commercially reasonable efforts to resolve such Documented Defect within one business day.
- E. Limitations. Consultant's responsibility for lost or corrupted data is limited to assisting the County to restore the database to a known, accurate state.

Section 2. Priority Two

- A. Definition. A Documented Defect that causes failure of essential Licensed Software functionality with an existing Circumvention Procedure.
- B. Response Time. Consultant shall provide an initial response to Service Level 2 Defects within one business day of receipt of defect documentation.
- C. Response. Consultant will promptly assign appropriate personnel to diagnose and correct the Documented Defect. Consultant's initial response will include an acknowledgement of notice of the Documented Defect, confirmation that Consultant has received sufficient information concerning the Documented Defect, and an action plan for resolving the Documented Defect.
- D. Resolution Time. Consultant will use commercially reasonable efforts to resolve such Documented Defect without the need for Circumvention Procedures within five business days and in any event as promptly as reasonably possible.

Section 3. Priority Three

- A. Definition. A Documented Defect that causes failure of non-essential Licensed Software functionality.
- B. Response Time. Consultant shall provide an initial response to Service Level 3 Defects within five business days.
- C. Response. Consultant will assign appropriate personnel to diagnose and correct the Documented Defect or identify Circumvention Procedures. Consultant's initial response will include an acknowledgement of notice of the Documented Defect, confirmation that Consultant has received sufficient information concerning the Documented Defect, and an action plan for resolving the Documented Defect.

- D. Resolution Time. Consultant will use commercially reasonable efforts to resolve such Documented Defect within 25 business days.

Section 4. Priority Four

- A. Definition. A Documented Defect that causes failure of non-essential Licensed Software functionality with an existing Circumvention Procedure.
- B. Response Time. Consultant shall provide an initial response to Service Level 3 Defects within 10 business days.
- C. Response. Consultant will deliver to the County correcting Software. Consultant's initial response will include an acknowledgement of notice of the Documented Defect, confirmation that Consultant has received sufficient information concerning the Documented Defect, and an action plan for resolving the Documented Defect.
- D. Resolution Time. Consultant will deliver to the County correcting Software with the next Version Release.

Section 5. Priority Five

- A. Definition. A cosmetic or other defect in the Licensed Software that does not qualify
- B. as a Service Level 1, 2, 3 or 4 defect.
- C. Response Time. Consultant shall provide an initial response to Service Level 5 Defects within 10 business days.
- D. Response. Consultant will deliver to the County correcting Software at its option in a future Release. Consultant's initial response will include an acknowledgement of notice of the Documented Defect, confirmation that Consultant has received sufficient information concerning the Documented Defect, and an action plan for resolving the Documented Defect.
- E. Resolution Time. Consultant will deliver to the County correcting Software at Consultant's discretion in a future Version Release.