

**PERSONAL SERVICES AGREEMENT BETWEEN THE COUNTY OF SHASTA  
AND  
JAMES E. HUGHES DBA WESTERN INTEGRATED SYSTEMS**

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 James E. Hughes dba Western Integrated Systems (“Consultant”), a sole proprietorship, (collectively, the “Parties” and individually a “Party”) for the purpose of providing automated document capture for fiscal related documents (“Project”) and ongoing related software development/implementation and consulting services (“Additional Services”).

**Section 1. RESPONSIBILITIES OF CONSULTANT.**

Pursuant to the terms and conditions of this agreement, Consultant shall:

- A. Obtain and provide automated document capture software which will utilize two Accounts Payable (AP) systems: FileBound Document Management (FileBound), which is the County’s Enterprise Content Manager (ECM), and Kofax, an advanced data and document capture tool). The Kofax Invoice Processing Software Bundle (Covered Software) includes:
  - 1. Kofax Invoice processing, 30,000 invoices per year,
    - a. Kofax Capture station – quantity four,
    - b. Kofax Capture volume – additional 300,000 pages,
    - c. Kofax Transformation Module with Add-on Pack – 120,000 pages,
    - d. Virtual Re-scan Elite Production,
    - e. Analytics for Kofax Capture,
    - f. Enhanced Barcode, and
    - g. Kofax Import Connector which includes e-mail, fax, and virtual re-scan.
- B. Perform an in depth analysis of the specific data fields, field lengths, work flow and release information required by County. The in-depth analysis shall follow the recommended guidelines for electronic record preservation set forth in Government Code sections 12168.7 and 22620 (Trusted System).
- C. Draft a comprehensive written Functional/Technical Requirements Analysis Report (Report), defining all aspects of system configurations required for the County AP Automation System (System) to perform. Provide detailed specifications for configuration of the County System, which shall include:
  - 1. AP documents to be captured,
  - 2. Specific fields to be captured from each AP document,
  - 3. Field lengths and structure specific user groups, user roles and security,
  - 4. Data Validation Rules,
  - 5. Invoice data export,
  - 6. Specific data transfer and lookup protocol, and
  - 7. Specific server names and locations for software installation.

- D. Using the Report, create a written Project Plan with detailed implementation dates, benchmark dates, and resource requirements for both County and Consultant.
- E. Upon completion of County's installation preparation as described in Section 2.G.:
  - 1. Set up FileBound.
  - 2. Complete installation and perform testing to ensure proper AP System operations by, but not limited to:
    - a. Accessing County's FileBound website, and
    - b. Project sample demonstration; and
    - c. Upload of image files.
- F. Configure Active Directory (AD) to authenticate users in FileBound.
- G. Provide FileBound Viewer Launcher Install Package to County IT.
- H. Perform all testing from a user computer within County's network that represents the type of computer that the majority of County FileBound and Kofax users will use to access the System.
- I. Install and deploy the AP System.
- J. Install the Kofax document capture software and any required scanning hardware, including related software and scanner drivers, as needed, on all required work stations.
- K. Verify correct functionality of installed hardware and software.
- L. Work with County personnel to ensure invoice data files are formatted properly and test the import of the AP System.
- M. Conduct testing sufficient to confirm all problems are resolved and the system is operational.
- N. Provide training on:
  - 1. The core functions, terminology, and theory of how the AP System works to:
    - a. Three County employees as designated administrators, and
    - b. County's users or designated County trainers who will be responsible for training County users.
  - 2. The following, to County's Project Manager listed in Section 2.A., including but not limited to:
    - a. Kofax and FileBound User Training,
    - b. Methods to add content to FileBound,
    - c. Methods to add batch classes to Kofax, and
    - d. Methods to train Kofax on interpreting new invoices.
- O. Provide written Standard User Guides and Administration Manuals to County users and administrators.
- P. Upon completion of the initial week of productive use of the AP System and custom modules in the production environment, and after the system has been operational for no less than 60 days, submit request to County for final acceptance of the AP System.

- Q. Provide clear direction to the appropriate County personnel as to:
1. When and who to call for assistance,
  2. Phone numbers for the appropriate Consultant staff,
  3. Help desk phone numbers, email address, and
  4. How to make a report to help desk.
- R. After the implementation is complete as prescribed in Section 1.P., conduct five follow-ups via telephone or online meeting with County personnel to troubleshoot any issues. Each telephone call or online meeting shall include:
1. Two days after completion - Training Follow-up and answer questions on any unforeseen issue(s),
  2. One week after completion - Process Review and confirm proper functionality,
  3. Two weeks after completion - Implementation Review,
  4. One month after completion - Implementation and New Product Review, and
  5. Three months after completion - Final System Review and New Product Introduction.
- S. Provide to County:
1. End user and system administration documents, and
  2. Other required documents.
- T. Provide Support pursuant to **Exhibit A** and **Exhibit B**, attached and incorporated herein.
- U. Provide Additional Services upon request of County. Consultant shall submit a proposal for services when services are requested and shall include but not be limited to ongoing related software development/implementation, necessary updates, customizations, and consulting services. Approval by County for each proposal shall be required in advance and in writing prior to any Additional Services being performed by Consultant pursuant to this Section 1.U.
- V. 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, contractor shall add: "This [document or report] is one of [number] produced under this agreement."

## **Section 2.     RESPONSIBILITIES OF COUNTY.**

Pursuant to the terms and conditions of this agreement, County shall:

**A. Appoint a County employee who will:**

1. Act as the Project Manager, and shall:
  - a. Have sufficient time and technical expertise to ensure the timely achievement of the Project Schedule,
  - b. Conduct periodic reviews of the work necessary for the completion of Consultant services, and
  - c. Coordinate with the Consultant's Project Manager to promptly resolve all issues to ensure adherence to the Project Plan described in Section 1.D.
2. Act as the AP System Administrator, and:
  - a. Be the onsite AP System expert,
  - b. Attend all AP System and user training sessions, and
  - c. Be responsible for:
    - 1) Ongoing setup and maintenance of the AP System, and
    - 2) The management and monitoring of the AP System.
3. Assume technical responsibilities related to the servers, database, County work stations and network storage devices in the System, and
  - a. Provide training including, but not limited to:
    - 1) AP Automation System process and server shutdown and startup procedures,
    - 2) Basic administration of the AP System servers,
    - 3) Basic database maintenance, backup procedures, and monitoring status,
    - 4) Installation of AP System agent(s) on review workstations, and
    - 5) "GoToMeeting" software maintenance and network connection for remote access.

**B. Provide:**

1. Non-exclusive office space for Consultant including a desk, telephone capable of making outgoing and receiving incoming calls from outside County, electrical outlets, at least one computer with network access to the AP System and the SQL Database Server, and full Internet access,
2. Space or move furnishings, as needed, to facilitate the various stages of installation,
3. Assistance to Consultant including, but not limited to, furnishing all related data and other files required to verify, reproduce, diagnose, and resolve reported problems, as necessary,

4. Acquisition, installation, and maintenance of additional hardware components as necessary, and
  5. Remote diagnostic capabilities to Consultant.
- C. Ensure:
1. Timely access to County employees who are authorized to make decisions related to business process and workflow changes necessary to meet project deadlines,
  2. Sufficiency of air conditioning and environment for the AP System server and network storage devices,
  3. County Information Technology Department (IT) personnel are available to oversee software configuration, and
  4. Adequate access for Consultant to pass through all areas necessary in fulfilling contract requirements, pursuant to Section 2.C.3.
- D. Meet with Consultant at scheduled times as determined by County.
- E. Make attendance at scheduled trainings mandatory for County's personnel, as determined by County and Consultant.
- F. Prepare installation site to accommodate machinery and equipment, interfaced with the AP System, in accordance with instructions provided by Consultant as approved by County.
- G. Prepare the Windows server(s) and network infrastructure for Consultant's installation of all Kofax and FileBound components, including but not limited to:
1. Web server,
  2. Database,
  3. Document storage location,
  4. Network domain user, and
  5. Two Microsoft SQL Server user accounts specified by Consultant.
- H. Create:
1. "A Name" record within Domain Name Service (DNS) that associates the County requested Uniform Resource Locator (URL), and
  2. New Active Directory groups and assign users.
- I. Install and maintain necessary virus protection for the AP System as determined by the County's Chief Information Officer (CIO).
- J. Coordinate extraction and import of data into AP System with the assistance and approval of the County's Auditor-Controller.
- K. Conduct daily, weekly, and other backups of data and AP System in a manner consistent with the need to protect programs and data.

- L. Upon request, furnish Consultant with existing data, plans, studies, and other information in County's possession which may be useful in connection with the work of the Project, all of which shall be and remain the property of the County, and shall be returned to the County's Project Manager upon completion of the services performed by the Consultant.
  - 1. Requests for this information shall be reviewed by the County's CIO, and the County's Health Insurance Portability and Accountability Act (HIPAA) Privacy Officer who will determine what information, if any, needs to be withheld.
- M. Be responsible for:
  - 1. Upgrading County's operating environment in the event that failure to do so affects the performance of the AP System and custom interface connectors,
  - 2. Notifying Consultant of any Covered Software failure and shall allow Consultant free access to the Covered Software for performing support services, and
  - 3. Loss of use arising from County's failure to fulfill its obligations under this agreement.
  - 4. Charges incurred for communication facilities from County's facilities, whether incurred by County or Consultant, while Consultant is performing service on the Covered Software.
  - 5. Performing all system software backups and restoration of data.
- N. Comply with the Support Terms and Conditions as set forth in **Exhibit A** and **Exhibit B**.
- O. Review, commenting as necessary, and pre-approve any future written or oral report created by Consultant pursuant to Section 1.U.
- P. Compensate Consultant as prescribed in sections 3 and 4 of this agreement.

### **Section 3. COMPENSATION.**

Consultant shall be paid in accordance with the following:

- A. Kofax Invoice Processing Bundle, as set forth in Section 1.A. – \$26,092.
- B. Completion of in-depth analysis, Report, and Project Plan, as set forth in Sections 1.B-1.D. – \$4,200.
- C. Implementation, testing, scripting, configuration, and import testing of AP System at \$182.50 per hour, up to 140 hours total, as set forth in Sections 1.E.-M. – maximum of \$25,550.
- D. Software maintenance and upgrade assurance at \$5,218 per year pursuant to **Exhibit A** and **Exhibit B**.
- E. Additional Services not to exceed \$175 per hour for pre-approved services pursuant to Section 1.U. In no event shall the maximum compensation for the services delineated

in Section 1.U. exceed \$20,000 for County Fiscal Year 2017-18 and \$10,000 for County Fiscal Years 2018-19, 2019-20, 2020-21, and 2021-22.

- F. In no event shall the maximum amount payable under this agreement exceed \$141,932.
- G. Consultant's violation or breach of agreement terms may result in fiscal penalties, withholding of compensation, or termination of agreement.

#### **Section 4. BILLING AND PAYMENT.**

- A. Consultant shall submit to HHSA 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. Within 15 days of execution of Agreement, \$26,092 pursuant to Section 3.A.;
  - 2. Within 15 days of execution of Agreement, \$5,218 pursuant to Section 3.D.; and
  - 3. Within 15 days of completion of services pursuant to Sections 3.B., 3.C., and 3.E.
- B. County shall make payment within 30 days of receipt of Consultant's correct and approved invoice.
- C. 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 5. TERM OF AGREEMENT.**

This agreement shall commence as of July 1, 2017 and shall end June 30, 2022.

#### **Section 6. 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 Shasta County Board of Supervisors, the Shasta County Executive Officer, the Shasta County Health and Human Services Agency (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. If this agreement is terminated, Consultant shall only be paid for services satisfactorily completed and provided prior to the effective date of termination.

**Section 7. 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, prospective and retroactive, 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 per County Fiscal Year or the maximum amount payable under this agreement may be agreed to in writing between Consultant and Shasta County Health and Human Services Agency (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 8. 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 9. EMPLOYMENT STATUS OF CONSULTANT.**

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 10. 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 11. 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 12. 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(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. Without limiting any of the obligations or liabilities of Consultant, Consultant shall carry and maintain Cyber Liability insurance with limits of not less than \$1,000,000 for each occurrence and an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic

information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to County and for claims involving any professional services for which Consultant is engaged with or providing to County for as long as respective, applicable statute(s) of limitation or response are in effect relating to the specific purposes of this Agreement to cover any and all claims.

E. 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.

F. 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 13. 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. 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 14. 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 not discriminate in employment practices or in the delivery of services on the basis of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, medical condition (including cancer, HIV, and AIDS) physical or mental disability, use of family care leave under either the Family & Medical Leave Act or the California Family Rights Act, or on the basis of any other status or conduct protected by law.
- C. Consultant represents that Consultant is in compliance with and agrees that Consultant shall continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. sections 12101, et seq.), the Fair Employment and Housing Act (Government Code sections 12900, et seq.), and regulations and guidelines issued pursuant thereto.
- D. No funds or compensation received by Consultant under this agreement shall be used by Consultant for sectarian worship, instruction, or proselytization. No funds or compensation received by Consultant under this agreement shall be used to provide direct, immediate, or substantial support to any religious activity.

**Section 15. 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 16. 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 17. 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 18. 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 19. 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 20. NOTICES.**

- A. Except as provided in section 6.C. of this agreement (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:                      Director of Business & Support Services  
Attn: Contracts Unit  
1810 Market Street  
Redding, CA 96001  
Telephone: (530) 245-6860  
Fax: (530) 225-5555

If to Consultant:                James Hughes  
Western Integrated Systems  
3640 Grand Avenue, Suite 100

Oakland, CA 94610  
Telephone: (415) 989-1777  
Fax: (415) 989-1776

- B. Any oral notice authorized by this agreement shall be given to the persons specified in Section 20.A. and shall be deemed to be effective immediately.

**Section 21. 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 22. 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 23. 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 24. SEVERABILITY.**

If any portion of this agreement or AP Automation System 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 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 25. 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 26. 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 27. HIPAA ADDENDUM.**

Attached to this agreement, and incorporated by reference, is an Addendum that constitutes a Business Associate Agreement as required by the federal Health Insurance Portability and Accountability Act.

**Section 28. 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 29. 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.

**Section 30. PROPERTY INTEREST.**

This agreement does not and is not intended to grant any property interest to Consultant or to grant Consultant exclusive use, possession, or control of non-exclusive office space as provided by County.

***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

**RISK MANAGEMENT APPROVAL**

\_\_\_\_\_  
Alan B. Cox  
Deputy County Counsel

\_\_\_\_\_  
James Johnson  
Risk Management Analyst

Approved by:  
INFORMATION TECHNOLOGY

\_\_\_\_\_  
Tom Schreiber  
Chief Information Officer

**CONSULTANT**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
James E. Hughes, Sole Proprietor

Tax I.D. #: On File

## **SUPPORT TERMS AND CONDITIONS**

The following document details the general terms and conditions of support between Western Integrated Systems (hereafter “Consultant”) and the entity (hereafter “County”) specified in the accompanying Support Coverage Agreement (hereafter “EXHIBIT B”), and covers only those items listed in the EXHIBIT B.

### **A. GENERAL SCOPE OF COVERAGE AND RESPONSIBILITIES**

1. Consultant agrees to provide County software support—consisting of telephone, email, and remote access—only for those items supplied and installed by Consultant as outlined in EXHIBIT B accompanying these Terms and Conditions.
2. Basic technical support will be provided to County only if an authorized representative of the County pursuant to EXHIBIT B and only if the County is current on all payments due to Consultant, as applicable.
3. The standard software support term is 12 months from the previous software assurance anniversary date or from the date of initial purchase if the term is for first-year coverage. The coverage will be offered for renewal, at the rate then in effect, for additional annual periods until terminated as herein provided. Consultant will send out a renewal reminder and quote that includes charges for the next 12 month period. Coverage may be terminated as of the last day of the term or by either Party upon 30 days prior written notice sent via certified mail to the other Party.
4. All services provided by Consultant that are not covered under these terms and conditions or listed as an addendum in the accompanying EXHIBIT B, whether provided in person, by telephone or by remote access, will be billable at the prevailing standard hourly rate. An illustrative list of services excluded from coverage is explained in Section E.
5. The terms and conditions set forth in this document constitute Consultant Support Services with respect to the subject matter hereof, and no representation, either written or oral, will be of any force or effect unless specifically set forth in these terms and conditions.

### **B. SOFTWARE SUPPORT**

1. **PRIME CONTRACTOR:** Consultant shall, with respect to the software outlined in EXHIBIT B, act as the prime contractor and provide the first level of support for all software. Consultant has the ability to contact the software vendor who functions as the second level of support, if needed. Consultant also reserves the right to engage other agents to assist in the performance of support.
2. **SUPPORT HOURS OF OPERATION:** Consultant agrees to provide County software support during normal business hours defined as Monday through Friday 8am – 5pm Pacific Standard Time (PST), excluding Consultant holidays. Consultant reserves the right to modify its holiday schedule from year to year, but is currently defined as New Year’s Eve, President’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving (two days), and Christmas. Consultant reserves the right to modify its holiday schedule from year to year. Consultant may, at the County’s request, render support outside of normal working hours, subject to the availability of personnel and at the rate then in effect.
3. **SUPPORT METHODS:** Consultant will receive and track software support issues from authorized County contacts via telephone at (866) 736-2191 x1 or email at support@westint.com. Consultant will use then provide assistance via telephone, email and/or remote access (via customer-supplied Virtual Private Network (VPN) access or commercially available remote access tools provided by Consultant).
4. **ON-SITE SUPPORT:** Software support services are provided hereunder only during normal hours of operation (as defined above). At the sole discretion of Consultant, on-site support may be arranged if Consultant deems it necessary to resolve a particular issue that Consultant is unable to resolve by telephone or remote means. In addition, Consultant may, at the County’s request, provide on-site support on a time and materials basis during normal hours of operation.

5. **AFTER-HOURS SUPPORT:** After-hours support is defined as any request for support outside of normal hours of operation. These requests may fall into two types of categories:
- Non-scheduled Request:** If County contacts support outside of normal support hours of operation (as defined above) and the request was unscheduled, they may leave a voicemail message for the support team (or send an email) and the message will be returned during normal hours of operation, in accordance with the service level objectives (outlined below). If in the event that a Consultant representative receives a message after-hours, it is at the sole discretion of Consultant whether the issue is considered an emergency, whether the County will be contacted outside of normal hours of operation, and whether the service rendered is subject to additional support fees.
  - Scheduled Request:** After-hours support assistance may be requested by submitting such request to the Consultant support team 21 days in advance of the requested period. It will be at the sole discretion of Consultant, based on availability of personnel and at the established after-hours rates, that Consultant will provide support assistance during the requested after-hours period.
6. **SERVICE LEVEL OBJECTIVES:** During the covered period outlined in EXHIBIT B, Consultant will use commercially reasonable efforts to meet the following service level objectives and response times.

| Priority | Initial Callback  | Definition  | Contact Frequency | Resolution                |
|----------|-------------------|---|-------------------|---------------------------|
| 1        | ≤ 2 Hours         | Severe problem preventing County from performing business critical functions: <ul style="list-style-type: none"> <li>Production data corruption</li> <li>Production system down</li> <li>Production systems significantly impacted</li> <li>Production system and/or data is at high risk of potential loss or interruption</li> <li>Production system workaround is required immediately</li> </ul>  | Daily             | Continuous Business Days  |
| 2        | ≤ 4 Hours         | County able to perform job function, but performance of job function degraded or severely limited: <ul style="list-style-type: none"> <li>Production system adversely impacted</li> <li>Non-Production data corruption</li> <li>Non-Production system down</li> <li>Non-Production systems significantly impacted</li> <li>Non-Production system and/or data is at high risk of potential loss or interruption</li> <li>Non-Production system workaround is required immediately</li> </ul> | Every other day   | Continuous Business Days  |
| 3        | ≤ 1 Business Day  | County performance of job function is largely unaffected; Production or Non-Production system has encountered a non-critical problem or defect and/or questions have arisen as to product use.  | Weekly            | As Required Business Days |
| 4        | ≤ 2 Business Days | Minimal system impact; includes feature requests and other non-critical questions: <ul style="list-style-type: none"> <li>No customer business impact</li> <li>Request for enhancements.</li> </ul>   | Monthly           | As Required Business Days |

7. **VERSION SUPPORT AND SUPPORT LIMITATIONS:** Consultant will only be obligated to provide software support for current and in-support versions of the software, as defined by the manufacturer.

Support for any deprecated versions of software will be provided on a best-efforts basis and at the sole discretion of Consultant.

8. **ALTERATIONS OR ADDITIONS:** Consultant will not be responsible to County for loss of use of software covered under EXHIBIT B or for any other liabilities arising from alterations, additions or modifications which are made to the software by anyone other than authorized representatives of Consultant.
9. **SOFTWARE UPDATES:** Consultant shall, with respect to the software covered in EXHIBIT B, provide licensed software updates and upgrades to include, but not limited to, all enhancements and program corrections as well as documentation updates when made available for general release by the manufacturer. All software updates are provided and processed on a request and receive basis by County. Consultant does not cover software installations or upgrades performed by County personnel unless previously approved in writing by Consultant.
10. **OPERATOR TRAINING:** Consultant shall, with respect to the software outlined in EXHIBIT B, provide operator training at the County's request in a timely manner. Operator training requests may be on-site or at a Consultant facility, as determined by County. County may contract with Consultant for operator training on a customized program basis.

## C. HARDWARE SUPPORT

1. **PRIMARY SERVICE PROVIDER:** Consultant provides hardware support and maintenance through third-party service providers who act as the primary support entity for hardware-specific issues.
2. **SUPPORT HOURS OF OPERATION:** Consultant agrees to provide County software support during normal business hours defined as Monday through Friday 8am – 5pm PST, excluding Consultant holidays. Consultant reserves the right to modify its holiday schedule from year to year, but is currently defined as New Year's Eve, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving (two days), and Christmas. Consultant may, at the County's request, render support outside of normal working hours, subject to the availability of personnel.
3. **SUPPORT METHODS:** The County may, at their discretion, contact the service provider directly, or contact Consultant to act as a liaison. Consultant shall, with respect to any hardware described in EXHIBIT B and at the County's request, provide support by determining the nature of the issue and whether its root cause is hardware or software related. If it is confirmed as a hardware issue, Consultant will act as a liaison for the County in contacting the authorized third-party partners and vendors and scheduling a field-service technician. Consultant will receive and track authorized hardware support requests from authorized County contacts via telephone at (866) 736-2191 x1 or email at support@westint.com.
4. **LIMITATIONS:** Any service level objectives or after-hours support related to the covered hardware item is in accordance with the specific maintenance purchased with the service provider and according to their published terms and conditions.

## D. COUNTY RESPONSIBILITIES

1. **AUTHORIZED CONTACTS:** The County agrees to ensure that technical contacts are trained and knowledgeable in the use of the system and that they are an authorized point of contact with the ability to request support from Consultant.
2. **NOTIFICATION PROCEDURES:** In the event that support is needed, the County agrees to have at least the following information when contacting Consultant support: company name and contact information, the product in question, and the nature of the issue being experienced. In addition, the County agrees to make a reasonable effort to document and make available a complete and concise description, including all pertinent details of the problem, product name and version/model, relevant operating system or platform information, any available errors messages or codes generated by the system, as well as what activities were being performed prior to the malfunction, and what, if any, corrective action was taken by the County.

3. **SYSTEM CONFIGURATION / MAINTENANCE:** The County understands and agrees that proper operation of the system is dependent on the having properly configured computers, operating systems, and any other necessary third-party software or devices. The County understands and agrees that proper system maintenance by the County can greatly improve system reliability and performance. General system maintenance should include database maintenance, preventative maintenance of applicable hardware, and version updates of third-party software with any applicable service packs. At the very minimum, the County agrees to ensure that they perform regular backups of the system and understands sole responsibility of backups is assumed by County.
4. **ACCESS:** Consultant shall have full, safe and free access to the items covered in EXHIBIT B, and shall have access to the use of any Consultant's machines, attachments, features, or other equipment necessary to provide support services. Consultant strongly suggests that every County allow for technical assistance to be provided in a remote manner either by a County provided method or allow for the use of a commercially available method provided by Consultant. By remote means Consultant technicians can access the system directly and fix most problems with little or no user intervention in a much more effective way than just over the telephone.

## E. EXCLUSIONS

Unless otherwise agreed to in the accompanying EXHIBIT B, the following items are specifically excluded from the terms and conditions stated herein. In addition, it is at the sole discretion of Consultant to decide when a support call becomes a billable professional services event. Consultant will inform the County in writing of any billable charges and will require written authorization from the County before proceeding.

1. **BACKUP AND/OR RECOVERY OF DATA, IMAGES, PROGRAMS, AND SYSTEM FILES:**  
Performing regular backups, as applicable; testing the integrity of the backup media and data/images, as well as the System's ability to restore data from a backup source; safe and proper storage of the backup media; data entry or recovery, database editing or recovery, image recovery, or routine database maintenance.
2. Custom programming services.
3. System optimization, including but not limited to routine database maintenance, purging of log files, ongoing performance testing, disk surface test and integrity analysis, disk defragmentation, virus scanning and protection, and other activities or files that hamper the performance of a system.
4. Services to install new version updates of software covered in EXHIBIT B.
5. Services to repair software corruption caused from accident, neglect, alterations, improper use, or misuse of software covered in EXHIBIT B as necessitated by adjustments and changes attempted by non-Consultant personnel.
6. Services to repair software errors or software corruption caused by installation or upgrades of application software by non-Consultant personnel, unless approved in writing by Consultant.
7. Services to repair or reinstall software due to change in County's computer hardware or operating system.
8. Services to repair or reinstall software due to power failures, water damages, dust damages or physical damages by fire, electrical or storm damages.
9. Services to reconfigure software to accommodate new user needs/applications beyond the specifications provided by the County during the initial installation and testing period and/or services outside of the scope of work provided in this agreement.
10. Services to configure software to accommodate new hardware devices.
11. Services to migrate files from one system to another.
12. Services to provide offsite storage of software either on physical data or electronic media.
13. Services to maintain license data codes.

14. Special user guides or documentation beyond the Technical and User Guides bundled with the original product.
15. Training, including user and system administrator, outside of any training agreed upon as part of this agreement.

## F. MISCELLANEOUS

1. **DEFAULT:** Should the County fail to make any payments due hereunder, or become insolvent or be a party to acquiesce in any bankruptcy or receivership proceeding or any similar action affecting the affairs of property of County, Consultant may (1) refuse to continue support, or (2) furnish support only on a time, material, and travel basis, paid in advance of the scheduled service, without prejudice to any other remedies Consultant may have.
2. **AGREEMENT ASSIGNMENT:**
  - i. County shall not assign the EXHIBIT B or any interest herein without prior written permission by Consultant, which shall not be unreasonably held. Consultant may assign EXHIBIT B and all of its rights hereunder, free from all defenses, setoffs, or counterclaims which County may be entitled to assert against Consultant.
  - ii. This agreement shall insure to the benefit of and be binding upon the successors and permitted assigned of the parties hereof.
  - iii. County agrees to not copy or reproduce the Licensed Software or Material or any part thereof, other than for computer system backups for archival purposes without the prior written consent of Consultant. County also agrees not to make any attempts to reverse engineer the Licensed Software.
3. **RELOCATION OF EQUIPMENT/SOFTWARE:** Any relocation of System or Project-related equipment or software shall require prior written consent by Consultant, which shall not be unreasonably held. Consultant's technical assistance may be required prior to, and after the completion of, the move from the location at which it is installed. The maintenance charge may be subject to adjustment, depending upon the new location. County shall pay for packaging, freight, and related expenses incurred during relocation. Any relocation of equipment or software not agreed to by Consultant shall entitle Consultant, at its option, to terminate this agreement.
4. **MANUFACTURER LICENSE AGREEMENTS:** County must adhere to all the terms and conditions of the license agreements of the manufacturers named in EXHIBIT B. County is responsible for registering all items with the specific manufacturer and maintaining on file the serial numbers of all licensed products. Consultant will assist in keeping the serial numbers on file, but the ultimate responsibility lies with the County. Lost or misplaced serial numbers may necessitate a charge for replacement.

### **Western Integrated Systems - Kofax Software Assurance Support**

Western Integrated Systems (WIS) provides hybrid annual software assurance support for Kofax, Inc. (Kofax) that includes the following:

#### **Updates and Upgrades**

All regularly scheduled Product Releases which include defect fixes and functional upgrades.

#### **Web Based Services**

##### **Knowledgebase**

Clients are entitled to 24x7 access to Kofax Knowledgebase which is updated regularly with latest validated information on case solutions, Frequently Asked Questions (FAQ's), Tips and Techniques.

##### **Web-Based Support Tools**

Remote connect support via Gotoassist or something equivalent, as determined by County.

Online case submission and tracking system allowing eligible contacts to create, update, and review their existing cases.

Download delivery site access for latest Service Pack releases.

#### **Telephone Support**

WIS provided **First Line** telephone support during normal business hours Monday through Friday (8:00 a.m. to 5:00 p.m. PST) at (866) 736-2191; Option 1

Includes assistance in answering software installation, configuration or usage questions;

Initial error information gathering;

Error isolation and identification;

Creating a reproducible test environment; and

Provide for standard fixes or workarounds to known problems.

Kofax will provide **Second Line** support to WIS and County as a certified and authorized partner that includes:

Further assistance with the tasks described in the previous paragraph. This may include a workaround or require the County to install a Hot Fix, Service Pack, or upgrade to the latest Product Release.

If required, Secondary Support will include WIS contacting Kofax Research & Development for diagnostic assistance, a Hot Fix if deemed necessary by Kofax to resolve the issue.

### Kofax Software Life Cycle Policy

Kofax provides new software in the form of Major or Minor Releases. These contain functional enhancements as well as fixes to newly discovered defects. Major Releases are denoted by 9.x, 10.x while minor releases are 10.1, 10.2, etc. In addition, on a periodic basis, Kofax will release Service Packs which contain newly discovered fixes only. Kofax, at its sole discretion, will issue Hot Fixes which will then be incorporated into the next available Service Pack and Major or Minor Release.

Kofax is committed to supporting the most current Major Release and the previous Major Release. When a new Major Release enters General Availability, the then oldest Major Release is no longer available for sale of new volumes or add-ons. That Product Release then enters an End of Support process where no new Minor Releases, Service Packs or Hot Fixes will be delivered. The period of time for this support will be announced at the time of the new Major Release.

### Exclusions

Software Assurance Support does not include:

- Modifications made to the standard software application by County or third parties,
- Applications developed by County or third parties, products, services or functionality not provided by WIS or Kofax,
- On-site support services at the physical location of the County for:
  - Troubleshooting assistance;
  - Training; and
  - Upgrade assistance,
- Products for which the County has not maintained current certifications, (Note: WIS would be required to maintain this certification with Kofax in the event the County is not certified),
- Systems engineering services, programming and operations procedures of any sort,
- The use of an operating system or any software, hardware or networking system(s) not approved by Kofax,
- Interconnection or integration of the programs with products not designated certified or supported by Kofax, and
- The use of the System or Project in a manner for which they were not designed.

**ADDENDUM TO CONTRACT/AGREEMENT**  
**(HIPAA Business Associate Agreement)**  
*(Revised 5/9/13)*

This Addendum is attached to, and incorporated into the Agreement, entitled Personal Services Agreement between the County of Shasta and Western Integrated Systems, dated May 16, 2017.

**Definitions.**

All terms and phrases used, but not otherwise defined in this Addendum, shall have the same meaning as those terms are defined in 45 Code of Federal Regulations, subtitle A, subchapter C, parts 160 and 164. All section references in this Addendum are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a) Business Associate. “Business Associate” shall mean the Party with whom County of Shasta is contracting, as referenced above.
- b) Underlying Agreement. “Underlying Agreement” shall mean the agreement or contract between the County of Shasta and the Business Associate, to which this Addendum is attached and incorporated.
- c) Covered Entity. “Covered Entity” shall mean the covered components of the County of Shasta hybrid entity which are subject to the standards for privacy and security of Title 45, Code of Federal Regulations, subchapter C, Parts 160 and 164.

**Obligations and Activities of Business Associate.**

**Business Associate shall:**

- a) Not use or disclose Protected Health Information (PHI), or Electronic Protected Health Information (EPHI), other than as permitted or required by this Addendum or as required by law.
- b) Use appropriate safeguards and comply with Subpart C of Title 45, Code of Federal Regulations, Part 164 with respect to EPHI, to prevent use or disclosure of PHI or EPHI other than as provided for by this Addendum and the Underlying Agreement.
- c) If a pattern of activity or practice of an agent, including a subcontractor, constitutes a material breach or violation of the requirements of this Addendum and/or the Underlying Agreement, cure the breach or end the violation, as applicable, and if such steps are unsuccessful, terminate the subcontract or other agreement.
- d) Report, as soon as reasonably practicable, to Covered Entity’s Privacy and or Security Officer any use or disclosure of PHI or EPHI not provided for by this Addendum and/or the Underlying Agreement of which it becomes aware, including breaches of unsecured PHI as required in Section 164.410. This report will include at least the following

information: (a) the nature of the non-permitted or violating use or disclosure or Security Incident; and (b) the PHI and EPHI used or disclosed. This does not relieve Business Associate of his/her/their continuing obligations under the agreement or any State or Federal reporting requirements.

- e) Ensure that any agent, including a subcontractor, to whom it provides PHI or EPHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Addendum and the Underlying Agreement to Business Associate with respect to such information.
- f) Provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI and EPHI information in a designated record set, to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements under Section 164.524.
- g) Make any amendment(s) to PHI and EPHI in a designated record set that the Covered Entity directs or agrees to make pursuant to Section 164.526 at the request of Covered Entity or an individual, and in the time and manner designated by Covered Entity.
- h) Make internal practices, books, and records, including policies and procedures and PHI and EPHI, relating to the use and disclosure of PHI and EPHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary (i.e., the Secretary of Health and Human Services [HHS], or to any officer or employee of HHS to the authority involved has been delegated), in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the law.
- i) Document disclosures of PHI and EPHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures in accordance with Section 164.528.
- j) Provide to Covered Entity or an individual, in the time and manner designated by Covered Entity, information collected of disclosures of PHI and EPHI, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures in accordance with Section 164.528.
- k) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and EPHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity, as required by law. In addition, Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI or EPHI agrees to implement reasonable and appropriate safeguards to protect it.
- l) Ensure that all employees of Business Associate that handle or access PHI or EPHI undergo annual training regarding the safeguarding of PHI and EPHI.

- m) To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of Title 45, Code of Federal Regulations, Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

#### **Permitted Uses and Disclosures by Business Associate.**

Except as otherwise limited in this Addendum and the Underlying Agreement, Business Associate may use or disclose PHI and EPHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the law if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

#### **Obligations of Covered Entity.**

- a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with Section 164.520, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI and EPHI.
- b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI and EPHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI and EPHI.
- c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI and EPHI that Covered Entity has agreed to in accordance with Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI and EPHI.

#### **Permissible Requests by Covered Entity.**

Covered Entity shall not request Business Associate to use or disclose PHI and EPHI in any manner that would not be permissible under the law if done by Covered Entity.

#### **Term and Termination.**

The provisions of this Addendum shall supersede the provisions of the Underlying Agreement insofar as they relate to the term and termination of the Underlying Agreement.

- a) *Term.* The provisions of this Addendum shall be effective as of the Effective Date of the Underlying Agreement and shall terminate when all of the PHI and EPHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy, protections are extended to such information, in accordance with the termination provisions in this Addendum.

- b) Termination for Cause. Upon County of Shasta's knowledge of a material breach by Business Associate of the provisions of this Addendum, County of Shasta may terminate this Addendum and the Underlying Agreement immediately upon oral notice.
- c) Effect of Termination.
  - 1. Except as provided in paragraph (2) of this provision, upon termination of this Addendum and the Underlying Agreement, for any reason, Business Associate shall return or destroy, in a confidential manner, all PHI and EPHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI and EPHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of said PHI and EPHI.
  - 2. In the event that Business Associate determines that returning or destroying the PHI and EPHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon the agreement of Covered Entity that return or destruction is infeasible, Business Associate shall extend the protections of this Addendum to such PHI and EPHI and limit further uses and disclosures to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI and EPHI.

### **Miscellaneous**

- a) Amendment. The Parties agree to take such action as is necessary to amend this Addendum and the Underlying Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the regulations enacted pursuant thereto. Any such amendment may be signed on behalf of the County of Shasta by the County Executive Officer, or his or her designee(s).
- b) Survival. The respective rights and obligations of Business Associate under the provision of this Addendum entitled "Effect of Termination" shall survive the termination of the Underlying Agreement.
- c) Interpretation. Any ambiguity in this Addendum and the Underlying Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.