

AGREEMENT FOR SERVICES #7869
Animal Management Software System

THIS AGREEMENT is made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and HLP, Inc., an Arizona corporation, duly qualified to conduct business in the State of California, whose principal place of business is 9878 West Belleview Avenue, Suite 110, Littleton, Colorado 80123 (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, County has determined that it is necessary to obtain a Contractor to provide software licenses for Contractor's proprietary animal management software system identified as Chameleon/CMS (CMS) that was purchased by the County from Contractor in 2003 and for ongoing maintenance, technical support, and upgrades to CMS;

WHEREAS, Contractor has represented to County that it is specially trained, experienced, expert and competent to perform the special services described in ARTICLE I, Scope of Services; that it is an independent and bona fide business operation, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and County relies upon those representations;

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provision of such services provided by Contractor are in the public's best interest and that there are specialty skills, qualifications, and equipment not expressly identified in County classifications involved in the performance of the work in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(b), El Dorado County Charter, Section 210(b)(6), and/or Government Code Section 31000;

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

Scope of Services:

- A. Contractor will license the software program identified as Chameleon/CMS according to the terms and conditions stipulated in Exhibit A, marked "Chameleon / CMS Software License Agreement," incorporated herein and made by reference a part hereof. CMS is currently

installed on the County server with access via secure login on seven (7) workstations located at the following two (2) County Animal Services locations:

1. 6435 Capitol Avenue, Diamond Springs, California 95619
2. 1120 Shakori Drive, South Lake Tahoe, California 96150

B. Contractor agrees to provide maintenance support and upgrades of the CMS software program for the period of March 1, 2023 through February 28, 2026 for this Agreement at the two (2) County sites identified above to include a single server and a total of seven (7) workstations per the terms delineated in aforementioned Exhibit A and in Exhibit B, marked “Chameleon / Public Access Software License Agreement,” incorporated herein and made by reference a part hereof. Should any additional workstations be required, County will notify Contractor and an amendment to this Agreement will be processed accordingly.

In the event Contractor fails to fulfill its maintenance obligations or in the event Contractor does not remain in business, then County will be entitled to claim a copy of the CMS Source Code, pursuant to the terms of Exhibit C, marked “Escrow Agreement,” incorporated herein and made by reference a part hereof. Contractor agrees to continuously maintain a Software Escrow Agreement with National Software Escrow, Inc., or other similar escrow corporation, for the duration of this Agreement expressly for this purpose. Should Contractor terminate its Software Escrow Agreement with National Software Escrow, Inc., or any subsequent Escrow Agents, Contractor shall notify County in writing within ten (10) business days prior to said termination and shall concurrently notify and provide County in writing the name and address of the replacement software Escrow Agent and provide a copy of the replacement Software Escrow Agreement to County within twenty-one (21) days of said initial notification.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall cover the period of March 1, 2023 through February 28, 2026.

ARTICLE III

Compensation for Services:

- A. **Rates:** For the purposes of this Agreement, the annual rate for software services outlined in this Agreement shall be \$7,680 per year plus the appropriate sales tax calculated at 7.25% (subject to increase based upon State rates), for a total of \$8,236.80 on an annual basis.
- B. **Invoices:** It is a requirement of this Agreement that Contractor shall submit an original invoice, similar in content and format with the following sample available at: https://www.edcgov.us/Government/hhsa/Pages/hhsa_contractor_resources.aspx. Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces and on any enclosures or backup documentation. Copies of documentation attached to invoices shall reflect Contractor’s charges for the specific services billed on those invoices.

Invoices shall be sent as follows, or as otherwise directed in writing by County:

Email (preferred method):	U.S. Mail:
<p>CSinvoice@edcgov.us</p> <p>Please include in the subject line: “Contract #, Service Month, Description / Program</p>	<p>County of El Dorado Health and Human Services Agency Attn: Finance Unit 3057 Briw Road, Suite B Placerville, CA 95667-5321</p>

or to such other location as County directs.

- C. For services provided herein, Contractor shall submit an annual invoice no later than thirty (30) days following the final execution of this Agreement, continuing on the anniversary date each year thereafter, continuing through the term of the Agreement. Itemized invoices shall reference this Agreement number on their faces and on any enclosures or backup documentation. Copies of documentation attached to invoices shall reflect Contractor's charges for the specific services billed on those invoices.
- D. Pursuant to Exhibit A, Item IV, Terms and Restrictions, bullet point four (4), should payment as identified in this Section become delinquent and is not remedied thirty (30) days after notification from Contractor to County in writing, Contractor may revoke all licenses obtained under this Agreement.

For all satisfactory services provided herein, County agrees to pay Contractor annually in arrears and within forty-five (45) days following the County's receipt and approval of itemized invoice(s) identifying services rendered. County may withhold or delay any payment if Contractor fails to comply with any provision of this Agreement.

- 1. Supplemental Invoices: For the purpose of this Agreement, supplemental invoices shall be defined as invoices submitted for additional services rendered during a month for which a prior invoice has already been submitted to County. Supplemental invoices should include the standard invoice format with description of services rendered and a detailed explanation why the invoice was not submitted in the approved timeframe.
 - 1.1. For those situations where a service is disallowed by County on an invoice, or inadvertently not submitted on an invoice, and a corrected invoice is later submitted ("Supplemental Invoice"), Supplemental Invoices for services provided during the period July 1st through June 30th for each fiscal year of this Agreement and received by County after July 31 of the subsequent fiscal year, shall be neither accepted nor paid by the County. Requests for exceptions to pay an invoice received after July 31 of the subsequent year, must be submitted in writing, and must be approved by the Health and Human Services Agency's Chief Fiscal Officer.

In the event that Contractor fails to deliver the services, documents or other deliverables required herein, County at its sole option may delay the monthly payment for the period of time of the delay, cease all payments until such time as the deliverables are received, or proceed as set forth herein below in the Article titled "Default, Termination, and Cancellation". In no event shall County be obligated to pay Contractor for any amount above the Maximum Obligation of this Agreement.

ARTICLE IV

Maximum Obligation: The maximum contractual obligation under this Agreement shall not exceed \$40,000 for all of the stated services during the term of the Agreement.

ARTICLE V

Taxes: Contractor certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Contractor to County. Contractor agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE VI

Executive Order N-6-22 – Russia Sanctions: On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, if this Agreement is funded by state funds and County determines Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The County shall provide Contractor advance written notice of such termination, allowing Contractor at least thirty (30) calendar days to provide a written response. Termination shall be at the sole discretion of the County.

ARTICLE VII

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VIII

Contractor to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Contractor, and Contractor may perform similar work or services for others. However, Contractor shall not enter into any agreement with any other party or provide any information in any manner to any other party, that would conflict with Contractor's responsibilities or hinder Contractor's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

ARTICLE IX

Assignment and Delegation: Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

In the event Contractor receives written consent to subcontract services under this Agreement, Contractor is required to ensure subcontractor remains in compliance with the terms and conditions of this Agreement. In addition, Contractor is required to monitor subcontractor's compliance with said terms and conditions and provide written evidence of monitoring to County upon request.

ARTICLE X

Independent Contractor: The parties intend that an independent contractor relationship will be created by this contract. Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Contractor. Those persons will be entirely and exclusively under the direction, supervision, and control of Contractor.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Contractor performs the work or services for accomplishing the results. Contractor understands and agrees that Contractor lacks the authority to bind County or incur any obligations on behalf of County.

Contractor, including any subcontractor or employees of Contractor, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Contractor shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Contractor. Contractor shall not be subject to the work schedules or vacation periods that apply to County employees.

Contractor shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Contractor provides for its employees.

Contractor acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

ARTICLE XI

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the

effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XII

Audit by California State Auditor: Contractor acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Contractor shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

ARTICLE XIII

Default, Termination, and Cancellation:

- A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:
1. The alleged default and the applicable Agreement provision.
 2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Contractor shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Contractor, the excess costs to procure from an alternate source.
2. County shall pay Contractor the sum due to Contractor under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Contractor under this Agreement and the balance, if any, shall be paid to Contractor upon demand.

3. County may require Contractor to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
 2. A representation or warranty made by Contractor in this Agreement proves to have been false or misleading in any respect.
 3. Contractor fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
 4. A violation of the Article titled "Conflict of Interest."
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event Contractor ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Contractor, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

ARTICLE XIV

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

COUNTY OF EL DORADO
Health and Human Services Agency
3057 Briw Road, Suite B
Placerville, CA 95667
ATTN: Contracts Unit
hhsa-contract@edcgov.us

or to such other location as the County directs.

with a copy to

COUNTY OF EL DORADO
Chief Administrative Office
Procurement and Contracts Division
330 Fair Lane
Placerville, CA 95667
ATTN: Purchasing Agent

Notices to Contractor shall be addressed as follows:

HLP, INC.
9878 West Belleview Avenue, Suite 110
Littleton, Colorado 80123
ATTN: Director of Operations, or successor

or to such other location as the Contractor directs.

ARTICLE XV

Change of Address: In the event of a change in address for Contractor's principal place of business, Contractor's Agent for Service of Process, or Notices to Contractor, Contractor shall notify County in writing pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties". Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XVI

Indemnity: To the fullest extent permitted by law, Contractor shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Contractor or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

The insurance obligations of Contractor are separate, independent obligations under the Agreement, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Agreement.

Nothing herein shall be construed to seek indemnity in excess of that permitted by Civil Code section 2782, et seq. In the event any portion of this Article is found invalid, the Parties agree that

this Article shall survive and be interpreted consistent with the provisions of Civil Code section 2782, et seq.

ARTICLE XVII

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Workers' Compensation Insurance with statutory limits as required by the laws of any and all states in which Contractor's employees are located, and Employer's Liability Insurance on a per occurrence basis with a limit of not less than \$1,000,000.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 1. The insurer will not cancel the insured's coverage without prior written notice to County, and;
 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall

procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

ARTICLE XVIII

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Contractor and performing work for County and who are considered to be a Consultant within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are Consultants within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Contractor covenants that during the term of this Agreement neither it, or any officer or employee of the Contractor, has or shall acquire any interest, directly or indirectly, in any of the following:

- A. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
- B. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
- C. Any officer or employee of County that are involved in this Agreement.

If Contractor becomes aware of a conflict of interest related to this Agreement, Contractor shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice as detailed in the Article titled "Default, Termination and Cancellation."

Pursuant to Government Code section 84308 (SB 1439, the Levine Act), Contractor shall complete and sign the attached Exhibit D, marked "California Levine Act Statement," incorporated herein and made by reference a part hereof, regarding campaign contributions by Contractor, if any, to any officer of County.

ARTICLE XIX

Nondiscrimination:

- A. County may require Contractor's services on projects involving funding from various state and/or federal agencies, and as a consequence, Contractor shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Contractor and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Contractor shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, section 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Contractor and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Contractor shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Contractor's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 11102.
- D. Contractor shall comply with Exhibit E, marked "Vendor Assurance of Compliance with Nondiscrimination in State and Federally Assisted Programs," incorporated herein and made by reference a part hereof. Contractor shall acknowledge compliance by signing and returning Exhibit E upon request by County.

ARTICLE XX

Nonresident Withholding: If Contractor is not a California resident, Contractor shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to the Contractor during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Contractor shall indemnify and hold the County harmless for any action taken by the California Franchise Tax Board.

ARTICLE XXI

Taxpayer Identification Number (Form W-9): All independent Contractors or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XXII

County Business License: It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

ARTICLE XXIII

Licenses: Contractor hereby represents and warrants that Contractor and any of its subcontractors employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Contractor and its subcontractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Contractor and its subcontractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

ARTICLE XXIV

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Henry Brzezinski, Manager of Animal Services, Health and Human Services Agency, or successor.

ARTICLE XXV

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXVI

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXVII

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXVIII

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

ARTICLE XXIX

Counterparts: This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.


ARTICLE XXX

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

ARTICLE XXXI


Electronic Signatures: Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

Requesting Contract Administrator Concurrence:

By: 
Henry Brzezinski (Aug 4, 2023 11:02 PDT)
Henry Brzezinski
Manager of Animal Services
Health and Human Services Agency

Dated: 08/04/2023

Requesting Department Head Concurrence:

By: 
Olivia Byron-Cooper (Aug 4, 2023 11:03 PDT)
Olivia Byron-Cooper, MPH
Interim Director
Health and Human Services Agency

Dated: 08/04/2023

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Chair
Board of Supervisors
"County"

ATTEST:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- HLP, INC. --

By: *Todd Whittington*
Todd Whittington (Aug 8, 2023 13:32 EDT)

Todd Whittington
Vice President, Sales and Service
"Contractor"

Dated: 08/08/2023

HLP, Inc.
EXHIBIT A
CHAMELEON / CMS SOFTWARE
LICENSE AGREEMENT

This is a legal and binding agreement between the County of El Dorado (hereinafter referred to as "Purchaser" in this Exhibit A) and HLP, INC. ("HLP"). The request of the Purchaser for the Chameleon / CMS Software Package ("CMS") and License, and the acceptance of payment for such by HLP, is an acceptance of these terms and conditions.

I. GRANT OF LICENSE and USE :

HLP shall grant Purchaser this License for use of CMS at the time of payment. HLP grants no software licenses whatsoever, either explicitly or implicitly, except by full payment for the CMS Software. This license entitles the Purchaser the right to install CMS on a single Server unit to be used by any number of Client Workstations. Additional Servers require additional Licenses, except as stated under Terms and Restrictions. This License Agreement is with the designated Purchaser only. This Purchaser may not rent, lease, give, sell or in any way transmit any part of the CMS Software Package to an unauthorized, unlicensed entity. This is a non-exclusive, non-transferable license to the use of CMS.

II. PAYMENT :

- * Payment for CMS is defined as two parts: 1) Cost of initial License and 2) Support and Maintenance.
- * The "Cost of initial License" is currently fixed at a published price and is a one time fee.
- * The "Support and Maintenance" cost is figured by the size of the Purchaser's network, and this fee is billed monthly, quarterly, or annually. The formula is a fixed amount for the Server plus a fixed amount for **each** client workstation that uses CMS for daily operations. The amount changes as the numbers of workstations change unless the Purchaser is paying for "unlimited" users. Annual increases in this fixed, published amount are limited to the "cost of living index".
- * All of the above payment conditions must be met within 30 days of Invoice date in order for the Purchaser to hold a current, valid CMS License.

III. OWNERSHIP :

- * Title to CMS shall remain with HLP. The CMS product name, software, documentation, and other material parts of the CMS package are owned by HLP and may not be reproduced in any form, except as stated under Terms and Restrictions. CMS Software contains the proprietary technology of HLP, INC.
- * All modifications, additions, upgrades, and new versions provided for under Support and Maintenance are considered part of this title and subject to the conditions of this License.
- * Purchaser hereby acknowledges HLP's copyright of CMS regardless of whether the copyright notice appears on CMS or whether it has been filed with the United States Copyright Office.

IV. TERMS and RESTRICTIONS :

- * The Purchaser shall receive an executable copy of CMS Software. The Purchaser may load, copy, or transmit CMS, in whole or in part, only as is necessary for execution, backup, and hot standby.
- * Purchaser may modify or merge CMS solely for execution by itself. Any part of this Software included in such adaptations will continue to be subject to this License.
- * HLP shall bill the Purchaser a Support & Maintenance FEE periodically using the formula under "Payment". This bill is due and payable within thirty days of receipt.
- * HLP reserves the right to revoke this License if the Support & Maintenance FEE becomes delinquent and is not remedied 30 days after notification in writing. The Purchaser shall then cease use of CMS.
- * Purchaser agrees not to reverse engineer, decompile, or disassemble CMS.

V. MAINTENANCE :

HLP agrees to provide the following maintenance services:

- * **NEW VERSIONS:** New Versions are major changes to the look or feel of CMS. All new versions are included and guaranteed to all Purchasers.
- * **UPGRADES:** As requests for improvements are accumulated from more than one Purchaser, they will be incorporated into periodic upgrades. These upgrades are included and guaranteed to all Purchasers.
- * **DIAGNOSIS:** Technical personnel will diagnose the cause of system problems and refer the Purchaser to the appropriate avenue of correction. HLP shall correct the problem only if the cause is a bug in CMS.
- * **CORRECTIONS:** Corrections in CMS code will be available to all Purchasers through the technical support office. Corrections will be made as soon as possible after reported and prioritized as to urgency to CMS operations.

VI. SUPPORT :

HLP agrees to provide the following support services:

- * **TECHNICAL SUPPORT LINE:** This shall entitle the Purchaser faster access to a technical support person for questions of high priority. Calls are answered during business days and hours and referred to the appropriate staff person. Requests may be faxed or left on the message service when lines are busy or after hours. Evenings, weekends, and holidays are available by pre-arrangement.
- * **SYSTEM to SYSTEM:** When requested, HLP can provide the Purchaser direct support via modem and communication software in real time.
- * **SYSTEM ON-LINE HELP:** CMS contains comprehensive, context-sensitive, and hyper-texted HELP files that are installed with the software and upgraded as needed.
- * **INTERNET WEB SITE:** An internet site is available 24 hours and 7 days to registered Users. Questions, suggestions, and comments may be posted to other Users or the HLP staff. Data can be uploaded and down loaded, all through a local access call.
- * **PERSONNEL ON-SITE:** If, for any reason, HLP cannot resolve the Purchaser's request by the means of support listed above, and HLP deems the request critical, then HLP staff may visit the Purchaser's site to resolve the problem.

VII. SOURCE CODE ESCROW:

- * This License does not include or cover access in any way to the CMS Source Code.
- * HLP has placed in escrow all current Source Code for CMS with an authorized escrow Agent.
- * The Purchaser shall be entitled to claim a copy of the CMS Source Code under the terms and conditions set forth in the Chameleon/CMS Source Code Escrow Agreement.

VIII. LIMITED WARRANTY:

- * HLP is the owner of CMS and has the right to grant the Purchaser this license to use the same without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on the alleged violation of such right by HLP.
- * HLP warrants that CMS will perform substantially in accordance with it's intended use.
- * If CMS does not perform as represented and can not be remedied within a reasonable time, HLP will refund the initial cost of this License only.
- * HLP does not warrant performance of CMS if it is modified by persons other than the staff of HLP.
- * HLP does not warrant that the execution of CMS will be uninterrupted or error free.
- * HLP does not warrant that other software programs or computer hardware will not interfere with it's execution.
- * HLP disclaims all other warranties, either expressed or implied.

IX. LIABILITY:

Under this agreement, HLP's liability for damages to the Purchaser resulting from the use of CMS shall not exceed the amount of the Purchaser's initial License. Under this agreement, HLP shall not be liable for any damages resulting from loss of data or use, lost profits or revenue, or any incidental or consequential damages.

X. TERMINATION:

HLP may terminate any License granted if Purchaser fails to observe this agreement, and such condition is not remedied within thirty days after written notice has been given Purchaser. Purchaser will then destroy all copies and adaptations of all versions of CMS and certify in writing that such has been done.

COPYRIGHTED AND NON NEGOTIABLE

10/99

HLP, Inc.
EXHIBIT B
Chameleon / Public Access Software License Agreement

This is a legal and binding agreement between the County of El Dorado (hereinafter referred to as "Purchaser" in this Exhibit B) and HLP, INC. ("HLP"). The request of the Purchaser for the Chameleon / PUBLIC ACCESS Software Package ("PUBLIC ACCESS") and License, and the acceptance of payment for such by HLP, is an acceptance of these terms and conditions. The PUBLIC ACCESS package is composed of ChamCam, Knowledge Rocket, Image Engine, WebChameleon, PaWWW, PetLink, the integrated hardware, and their media products.

I. GRANT OF LICENSE and USE :

HLP shall grant Purchaser this License for use of PUBLIC ACCESS at the time of payment. HLP grants no software licenses whatsoever, either explicitly or implicitly, except by full payment for the PUBLIC ACCESS Software. This license entitles the Purchaser the right to install PUBLIC ACCESS on a single Server unit to be used by any number of Client Workstations. Additional Clients require additional Licenses, except as stated under Terms and Restrictions. This License Agreement is with the designated Purchaser only. This Purchaser may not rent, lease, give, sell or in any way transmit any part of the PUBLIC ACCESS Software Package, or media products of this software, to an unauthorized, unlicensed entity. This is a limited, non-exclusive, non-transferable license to the use of PUBLIC ACCESS.

II. PAYMENT :

* Payment for PUBLIC ACCESS is defined as two parts:

1) Cost of initial License and 2) Support and Maintenance.

* The "Cost of initial License" is currently fixed at a published price and is a one time fee.

* The "Support and Maintenance" cost is figured by the size of the Purchaser's network, and this fee is billed monthly, quarterly, or annually. Each client workstation that uses PUBLIC ACCESS for daily operations pays the fixed fee. The total amount changes as the numbers of workstations change unless the Purchaser is paying for "unlimited" users. Annual increases in this fixed, published amount are limited to the "cost of living index".

* All of the above payment conditions must be met within 30 days of Invoice date in order for the Purchaser to hold a current, valid PUBLIC ACCESS License.

III. OWNERSHIP :

* Title to PUBLIC ACCESS, and the media products from it, shall remain with HLP. The PUBLIC ACCESS product name, software, documentation, media products, and other material parts of the PUBLIC ACCESS package are owned by HLP and may not be reproduced in any form, except as stated under Terms and Restrictions. PUBLIC ACCESS Software, and its media products, contains the proprietary technology of HLP, INC.

* All modifications, additions, upgrades, and new versions provided for under Support and Maintenance are considered part of this title and subject to the conditions of this License.

* Purchaser hereby acknowledges HLP's copyright of PUBLIC ACCESS regardless of whether the copyright notice appears on PUBLIC ACCESS or whether it has been filed with the United States Copyright Office.

IV. TERMS and RESTRICTIONS :

* The Purchaser shall receive a executable copy of PUBLIC ACCESS Software and integrated hardware. The Purchaser may load, copy, or transmit PUBLIC ACCESS, or its media products, in whole or in part, only as is necessary for execution, backup, and hot standby.

* Purchaser may modify or merge PUBLIC ACCESS solely for execution by itself. Any part of this Software included in such adaptations will continue to be subject to this License.

* Purchaser agrees to maintain necessary internet links to allow for a consolidated search of shelter data.

* HLP agrees to maintain a neutral, commercial free internet site for the sole purpose of achieving a consolidated search. All 'hits' are immediately linked to the local Shelter home page.

* Images and data extracts created by PUBLIC ACCESS are intended for use by the Purchaser only. Transfer or sale of PUBLIC ACCESS images by the PURCHASER to other non-licenses entities for commercial purposes is forbidden.

* HLP shall bill the Purchaser a Support & Maintenance FEE periodically using the formula under "Payment". This bill is due and payable within thirty days of receipt.

* HLP reserves the right to revoke this License if the Support & Maintenance FEE becomes delinquent and is not remedied 30 days after notification in writing. The Purchaser shall then cease use of PUBLIC ACCESS.

* Purchaser agrees not to reverse engineer, decompile, or disassemble PUBLIC ACCESS.

* Purchaser agrees to protect HLP proprietary information. Information, including, but not limited to, all database schema, procedures, techniques, sounds, and images, may only be used by authorized, licensed entity.

V. MAINTENANCE :

HLP agrees to provide the following maintenance services:

- * NEW VERSIONS: New Versions are major changes to the look or feel of PUBLIC ACCESS. All new versions are included and guaranteed to all Purchasers.
- * UPGRADES: As requests for improvements are accumulated from more than one Purchaser, they will be incorporated into periodic upgrades. These upgrades are included and guaranteed to all Purchasers.
- * DIAGNOSIS: Technical personnel will diagnose the cause of system problems and refer the Purchaser to the appropriate avenue of correction. HLP shall correct the problem only if the cause is a bug in PUBLIC ACCESS.
- * CORRECTIONS: Corrections in PUBLIC ACCESS code will be available to all Purchasers through the technical support office. Corrections will be made as soon as possible after reported and prioritized as to urgency to PUBLIC ACCESS operations.

VI. SUPPORT :

HLP agrees to provide the following support services:

- * TECHNICAL SUPPORT LINE: This shall entitle the Purchaser faster access to a technical support person for questions of high priority. Calls are answered during business days and hours and referred to the appropriate staff person. Requests may be faxed or left on the message service when lines are busy or after hours. Evenings, weekends, and holidays are available by pre-arrangement.
- * SYSTEM to SYSTEM: When requested, HLP can provide the Purchaser direct support via modem and communication software in real time.
- * INTERNET WEB SITE: An internet site is available 24 hours and 7 days per week to registered Users. Questions, suggestions, and comments may be posted to other Users or the HLP staff. Data can be uploaded and down loaded, all through a local access call.
- * PERSONNEL ON-SITE: If, for any reason, HLP cannot resolve the Purchaser's request by the means of support listed above, and HLP deems the request critical, then HLP staff may visit the Purchaser's site to resolve the problem.

VII. LIMITED WARRANTY:

- * HLP is the owner of PUBLIC ACCESS and has the right to grant the Purchaser this license to use the same without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on the alleged violation of such right by HLP.
- * HLP warrants that PUBLIC ACCESS will perform substantially in accordance with it's intended use.
- * If PUBLIC ACCESS does not perform as represented and can not be remedied within a reasonable time, HLP will refund the initial cost of this License only.
- * HLP does not warrant performance of PUBLIC ACCESS if it is modified by persons other than the staff of HLP.
- * HLP does not warrant that the execution of PUBLIC ACCESS will be uninterrupted or error free.
- * HLP does not warrant that other software programs or computer hardware will not interfere with it's execution.
- * HLP disclaims all other warranties, either expressed or implied.

VIII. LIABILITY:

Under this agreement, HLP's liability for damages to the Purchaser resulting from the use of PUBLIC ACCESS shall not exceed the amount of the Purchaser's initial License. Under this agreement, HLP shall not be liable for any damages resulting from loss of data or use, lost profits or revenue, or any incidental or consequential damages.

IX. TERMINATION:

HLP may terminate any License granted if Purchaser fails to observe this agreement, and such condition is not remedied within thirty days after written notice has been given Purchaser. Purchaser will then destroy all copies and adaptations of all versions of PUBLIC ACCESS and certify in writing that such has been done.

1/2015

Escrow Agreement



SOFTWARE ESCROW AGREEMENT

NUMBER 7410

This Escrow Agreement (AGREEMENT) is made between an ESCROW AGENT (as hereinafter defined), a TECHNOLOGY VENDOR (as hereinafter defined), Multiple Beneficiaries, (as hereinafter defined), collectively referred to as the ("BENEFICIARIES", each a "BENEFICIARY") wherein the Multiple Beneficiaries are separately identified in Escrow Form 2.2. As used in this Agreement, each BENEFICIARY is a contracting party and collective action is not required to implement various terms and conditions in this Agreement. Each entity is a Party and collectively Parties to this AGREEMENT and effective between various Parties as defined by the completion of the events identified below ("Effective Date"), each of the dates to be entered by the ESCROW AGENT upon receipt and shared with all Parties electronically at identified email addresses. The first two (2) events must be completed no later than thirty (30) days after receipt of the first signature. If the first two (2) events do not occur within the thirty (30) days, then this Agreement is null and void absent an express amendment (written or electronic) to this Agreement by the ESCROW AGENT and the TECHNOLOGY VENDOR.

- (1) Receipt of the signature of the TECHNOLOGY VENDOR by the ESCROW AGENT;
 - (a) Receipt Date: 4/30/2020;
- (2) Receipt of 1st year non-refundable payment of the TECHNOLOGY VENDOR Escrow Fee(s) by the ESCROW AGENT;
 - (a) Receipt Date: _____; and

Based upon the later of the Receipt Dates above, the dates within the thirty (30) day window (and any extensions thereof), the TECHNOLOGY VENDOR Effective Date is _____. Each BENEFICIARY Effective Date is as shown on Escrow Form 2.2.

As defined herein, the ESCROW AGENT is:

National Software Escrow, Inc,
8225 Brecksville Rd., Building Three, Suite 105,
Brecksville, OH 44141

As defined herein, the TECHNOLOGY VENDOR is:

HLP INC.
9888 W. Belleview Avenue, #110
Littleton, CO 80123

As defined herein, BENEFICIARIES, each a BENEFICIARY, are separately identified in Escrow Form 2.2.

- A. *Whereas* the TECHNOLOGY VENDOR and each BENEFICIARY have entered into a License Agreement (the "License Agreement").
- B. *Whereas*, pursuant to the terms of the License Agreement, the TECHNOLOGY VENDOR granted a license to each BENEFICIARY for its use of certain computer software program(s) and

related documentation which are proprietary to the TECHNOLOGY VENDOR and access to which must be restricted to protect its business.

- C. *Whereas*, the TECHNOLOGY VENDOR has on-going and timely maintenance and upgrade obligations to each BENEFICIARY as provided by the License Agreement.
- D. *Whereas*, each BENEFICIARY must have access to those materials identified in this Agreement if the TECHNOLOGY VENDOR is unable to satisfy its obligations as set forth in the License Agreement.
- E. *Whereas*, the TECHNOLOGY VENDOR and each BENEFICIARY affirmatively represent that there is no known Default as defined in §3.1, prior to the latest EFFECTIVE DATE of this AGREEMENT.
- F. *Whereas*, to address the respective needs of the TECHNOLOGY VENDOR and each BENEFICIARY, the TECHNOLOGY VENDOR and each BENEFICIARY in consideration of the promises

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8225 Brecksville Road, Building Three, Suite 105 • Brecksville, Ohio 44141
(440) 546-9750 • Fax (440) 546-0207 • www.nationalsoftwareescrow.com

National Software Escrow

and the mutual covenants contained herein, have agreed to escrow Deposit Materials with the ESCROW AGENT and the ESCROW AGENT agrees to accept and to likewise be bound as follows:

1. DEFINITIONS

- 1.1 "Source Code" means a form suitable for reproduction by computer and/or photocopy equipment, and consists of a full source language statement of the Program or Programs as initially installed by each BENEFICIARY or as later revised, updated or improved comprising the product and any existing Program maintenance documentation, including all flow charts, schematics and annotations which comprise the precoding detailed design specifications and all other materials necessary to allow a reasonably skilled third-party programmer to maintain or enhance the product without the help of any other person or reference to any other material.
- 1.2 "Programs" means one of the computer software programs identified by the TECHNOLOGY VENDOR to the ESCROW AGENT as being a program for purposes of this Agreement. This includes any program so identified in a deposit form (Form 2.1) (electronic version or hard copy version) sent by the TECHNOLOGY VENDOR to the ESCROW AGENT via Electronic Delivery or Physical Delivery (as defined below) and any additional program that the TECHNOLOGY VENDOR identifies in a deposit form (Form 2.1) that it submits to the ESCROW AGENT as a deposit as hereinafter provided. A given Program includes all components thereof and all Updates therefore (as hereinafter defined). A given Program includes any different versions thereof for different users, user agents, and operating systems.
- 1.3 "Default" means one or more of the developments or events specified in §3.0 of this Agreement.
- 1.4 "Electronic Delivery" means deposit by electronic transfer such as electronic mail (email), File Transfer Protocol (FTP), or any other electronic transfer that communicates data from one storage location to another storage location. Formats for Electronic Delivery include any file format that can be stored on a computer-readable medium. For the purposes of this agreement, an Electronic Delivery will be treated as a Physical Delivery.
- 1.5 "Physical Delivery" means deposit by any non-electronic delivery manner such as, courier, courier service, postal service, mail service, hand-delivery, or any physical delivery in which data stored on tangible medium exchanges possession from one entity to another entity. Formats for a Physical Delivery can be optical disc storage (CD-ROM, Compact Disc, (CD), Digital Video Disc (DVD), etc.), removable storage, hard drive, portable storage, memory card, memory stick, or any other tangible computer-readable medium.
- 1.6 "Electronic Format" means deposit by Electronic Delivery.
- 1.7 "Hardcopy Format" means deposit by Physical Delivery.
- 1.8 "Deposit Materials" means proprietary technology and other materials identified on Form 2.1 (including passwords if applicable). They are readable and useable in their current form or, if any portion is encrypted, the decryption tools and decryption keys must also be deposited and separately identified as such on Form 2.1 attached; and include a current version of any Source Code for all software licensed under the License Agreement and all updates thereto, together with all documentation necessary to enable a reasonably skilled programmer to maintain such licensed software, and descriptions of all compilers, assemblers and other computer programs and related documentation and other materials that are necessary or useful to use, modify and prepare derivative works of such Source Code. Deposit Materials can be delivered to the ESCROW AGENT by Electronic Delivery or Physical Delivery. Regardless of delivery method, the ESCROW AGENT is not responsible for any inability by a BENEFICIARY, the TECHNOLOGY VENDOR, or any third-party to successfully utilize the Deposit Materials.
- 1.9 "Notice of Default" means a written or electronic notice issued by a BENEFICIARY to both the TECHNOLOGY VENDOR and the ESCROW AGENT, which complies with §9.14 and further, that identifies the License Agreement and this Escrow Agreement, specifies the Default with

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reasonable specificity under §3.1, identifies the Deposit Materials and demands the delivery of the Deposit Materials (or an archived copy thereof) to the BENEFICIARY that submitted the Notice of Default.

- 1.10 "Updates" mean any release, improvement, revision, enhancement, update, or module generally made available by the TECHNOLOGY VENDOR for a Program. Unless otherwise specified by the TECHNOLOGY VENDOR, each BENEFICIARY will have access to all Updates.
- 1.11 "License Agreement" means the agreement between each BENEFICIARY and TECHNOLOGY VENDOR identified in the Recitals above.

2. DEPOSIT OF DEPOSIT MATERIALS

2.1 Upon execution of this Agreement, the TECHNOLOGY VENDOR agrees to deposit as required by this Agreement and the ESCROW AGENT agrees to accept the Deposit Materials for the licensed Program(s) as listed in Form 2.1, attached hereto and made a part hereof. In addition, from time to time hereafter, the TECHNOLOGY VENDOR must deposit with the ESCROW AGENT all necessary and appropriate improvements, revisions, enhancements, or updates for the Deposit Materials so that the Deposit Materials will correspond with the Programs actually distributed to the BENEFICIARY or BENEFICIARIES as listed in Escrow Form 2.2, each BENEFICIARY designated on a separate form. This obligation to update on behalf of the TECHNOLOGY VENDOR is on-going without any request or intervention from the ESCROW AGENT.

2.2 The TECHNOLOGY VENDOR represents and warrants that:

2.2.1 The TECHNOLOGY VENDOR owns free and clear title to the items listed in Form 2.1 attached hereto and which comply with the definition of Deposit Materials as defined in §1.8 of this Agreement and constitutes the Deposit Materials and documentation of the licensed Program(s) subject to the License Agreement.

2.2.2 The Deposit Materials delivered to the ESCROW AGENT are in a form suitable for

reproduction by computer and/or photocopy equipment.

2.2.3 The Deposit Materials initially delivered to the ESCROW AGENT include all necessary materials to permit a reasonably skilled third party programmer to recreate executable version(s) of licensed Program(s) from the Source Code (if applicable).

2.2.4 The Deposit Materials are not subject to any lien or other encumbrance, and any liens or encumbrances made after the execution of this Agreement will not prohibit, limit, or alter the rights and obligations of the ESCROW AGENT under this Agreement.

2.3 The TECHNOLOGY VENDOR covenants that:

2.3.1 The TECHNOLOGY VENDOR shall notify each BENEFICIARY (either hardcopy or electronically) within ten (10) days of its intended deposits of updates, enhancements or other modifications to the Deposit Materials escrowed with the ESCROW AGENT.

2.3.2 With regard to Deposit Materials, to the extent possible, the TECHNOLOGY VENDOR will conspicuously label as "Source Code" both initial and subsequent deliveries of Source Code.

2.3.3 The TECHNOLOGY VENDOR will complete Form 2.1 and submit both it and the original, along with revised, updated or improved copies of the Deposit Materials to the ESCROW AGENT. Additionally, the TECHNOLOGY VENDOR will simultaneously send a copy of Form 2.1 to each BENEFICIARY when the foregoing is sent to the ESCROW AGENT.

2.3.4 The TECHNOLOGY VENDOR will promptly supplement the Deposit Materials with all revisions, corrections, enhancements, or other changes so that the Deposit Materials constitute a human readable program for the current release of the licensed Program to which this agreement relates.

- 2.3.5 The TECHNOLOGY VENDOR will both initially and in subsequent deliveries of Deposit Materials to the ESCROW AGENT deliver all necessary materials to permit a reasonably skilled third party programmer to recreate executable version(s) of licensed Program(s) from the Deposit Materials.
- 2.3.6 Upon request of a BENEFICIARY, the TECHNOLOGY VENDOR must verify and certify that the Deposit Materials deposited accurately and completely comprise the Source Code and related documentation needed to support the current version(s) of the Software. The TECHNOLOGY VENDOR and the BENEFICIARY will agree upon a mutually acceptable protocol for this verification and certification and the ESCROW AGENT will play no part in this protocol, other than providing a current copy of the Deposit Materials to a mutually designated location identified by both the TECHNOLOGY VENDOR and the BENEFICIARY as per the guidelines provided in Exhibit C.
- 2.4 The ESCROW AGENT covenants that:
- 2.4.1 The ESCROW AGENT will issue to the TECHNOLOGY VENDOR and each BENEFICIARY a hardcopy or electronic receipt for the initial Deposit Materials and for each subsequent deposit in a manner consistent with §9.14 (updated as appropriate). The ESCROW AGENT will also attempt to issue a receipt by electronic communication to the email addresses (updated as appropriate) identifying the Deposit Materials with such indicia as provided by the TECHNOLOGY VENDOR. Such receipt verifies a delivery to ESCROW AGENT but not a verification of the contents of initial Deposit Materials and/or for each subsequent deposit. The ESCROW AGENT is not responsible for any inability by a BENEFICIARY, the TECHNOLOGY VENDOR, or any third-party to successfully utilize the Deposit Materials.
- 2.4.2 The ESCROW AGENT will use its best efforts for the storage, maintenance and safety of the Deposit Materials as used in the industry provided to the ESCROW AGENT by Physical Delivery or Electronic Delivery.
- 2.4.3 The Deposit Materials provided to the ESCROW AGENT by Physical Delivery will be stored, maintained and preserved in a secure and climatized storage facility containing, at a minimum, the following:
- 2.4.3.1 Certified Halon fire suppression system;
 - 2.4.3.2 Computer-controlled humidity and temperature levels;
 - 2.4.3.3 Vault and building monitored by 24-hour surveillance and security systems;
 - 2.4.3.4 Key punch access restricting access throughout the vault; and
 - 2.4.3.5 Air filtration system.
- 2.4.4 The Deposit Materials provided to the ESCROW AGENT by Electronic Delivery will be stored, maintained and preserved having, at a minimum, the following:
- 2.4.4.1 File encryption using applicable and appropriate standards. Encryption for storage is applied after files are uploaded;
 - 2.4.4.2 Data storage over several large-scale data centers throughout the world. Location of such centers is limited to those with a legitimate business need to have such information about the actual location of such centers;
 - 2.4.4.3 Protection against network security issues, e.g., Distributed Denial of Service (DDoS) attacks, Man in the Middle (MITM) attacks, and packet sniffing; and
 - 2.4.4.4 Redundant backups for data over multiple locations.
- 2.4.5 The ESCROW AGENT will hold the Deposit Materials free of access of any other person unless §3.0 Defaults and Release from Escrow, and §4.0 Disputes, have been satisfied.
- 2.5 Each BENEFICIARY and the TECHNOLOGY VENDOR both acknowledge and agree that:

2.5.1 The ESCROW AGENT has no duty to verify that the TECHNOLOGY VENDOR has appropriately provided Deposit Materials as required by this Agreement and the TECHNOLOGY VENDOR has thirty (30) days from the Effective Date of this Agreement to provide the Deposit Materials. Should the TECHNOLOGY VENDOR fail to provide the required Deposit Materials within this time period, the ESCROW AGENT will provide one curative notice to the TECHNOLOGY VENDOR (with a copy to any named BENEFICIARY) which provides an additional ten (10) business days ("Deposit Curative Period") from the date of the Notice to supply the Deposit Materials. If the TECHNOLOGY VENDOR fails to provide the Deposit Materials within this Deposit Curative Period, the ESCROW AGENT may in its absolute discretion, treat this Agreement as terminated unless both the TECHNOLOGY VENDOR and each BENEFICIARY mutually agree in writing to a longer period of time. If no Deposit Material(s) is/are received within one year from the Effective Date of this Agreement, this Agreement is terminated without any further action from the ESCROW AGENT.

2.5.2 This Agreement does not transfer the TECHNOLOGY VENDOR's right, title or interest in the Deposit Materials or its related documentation to a BENEFICIARY and the TECHNOLOGY VENDOR may at its sole discretion except as limited by the License Agreement, own, possess and secure the original Deposit Materials.

3. DEFAULTS AND RELEASE FROM ESCROW

3.1 Any of the following will constitute a Default by the TECHNOLOGY VENDOR of its obligation and responsibilities to a BENEFICIARY or BENEFICIARIES.

3.1.1 A BENEFICIARY has reasonable cause to believe that any one of the following events will cause the TECHNOLOGY VENDOR to fail to meet its warranty and maintenance obligations:

- 3.1.1.1 insolvency;
- 3.1.1.2 general assignment for benefit of creditors;
- 3.1.1.3 receiver appointment;
- 3.1.1.4 assets become subject to insolvency proceeding;
- 3.1.1.5 wind-up or business liquidation;
- 3.1.1.6 death of key programmers utilized by the TECHNOLOGY VENDOR;
- 3.1.1.7 bankruptcy;
- 3.1.1.8 bankruptcy proceeding; or
- 3.1.1.9 assets become subject to bankruptcy proceeding.

3.1.2 On the alleged happening of one or more Events of Default above that does/do not involve bankruptcy, a BENEFICIARY must give electronic or written Notice of Default as provided by this Agreement to both the ESCROW AGENT and the TECHNOLOGY VENDOR of that alleged Default as identified by the BENEFICIARY. The Notice of Default shall be labeled a "Notice of Default," shall identify the License Agreement and this Escrow Agreement, shall specify the nature of alleged Default, shall identify the Deposit Materials with reasonable specificity, and shall demand the delivery of a complete copy of the Deposit Materials to the BENEFICIARY.

3.1.3 In the event that more than one BENEFICIARY exists, each BENEFICIARY is required to file a separate Notice of Default. A Notice of Default shall not be valid for more than one BENEFICIARY.

3.1.4 Upon receipt of the Notice of alleged Default that does not involve bankruptcy and payment corresponding to the Release Request Fee as detailed in Exhibit B, attached hereto and incorporated by reference as "PRICE SCHEDULE," the ESCROW AGENT shall likewise send a copy of the Notice of Default to the TECHNOLOGY VENDOR by certified or registered mail, return receipt requested to the address identified in §9.14 (as updated). If the TECHNOLOGY VENDOR desires to dispute the Notice of alleged Default, the TECHNOLOGY VENDOR shall, within ten business days after receipt

thereof, deliver to the ESCROW AGENT in the manner specified in §9.14 an electronic or hardcopy affidavit or other sworn statement stating that in the TECHNOLOGY VENDOR'S view, no Default as alleged, has occurred.

- 3.1.5 If the ESCROW AGENT does not receive an electronic or hardcopy affidavit or other sworn written statement from the TECHNOLOGY VENDOR stating that the TECHNOLOGY VENDOR does not believe there has been a Default, within the time permitted by §3.1.4, the ESCROW AGENT is authorized and directed by TECHNOLOGY VENDOR to deliver the Deposit Materials to the BENEFICIARY that filed the Notice of Default, even if no response is received by the ESCROW AGENT from the TECHNOLOGY VENDOR within the designated time which expires at 5:00 p.m., Eastern Time (either EDT or EST as applicable). The ESCROW AGENT shall provide the Deposit Materials to the BENEFICIARY in the same medium as delivered to the ESCROW AGENT by the TECHNOLOGY VENDOR and by the same delivery method (Physical Delivery or Electronic Delivery) as delivered to the ESCROW AGENT by the TECHNOLOGY VENDOR, except that ESCROW AGENT reserves the right to provide an archival copy of the Deposit Materials to the BENEFICIARY in the event that TECHNOLOGY VENDOR delivers the Deposit Materials to ESCROW AGENT via Electronic Delivery. The ESCROW AGENT's responsibility for the Deposit Materials ceases upon release of the Deposit Materials to the BENEFICIARY, and the ESCROW AGENT is not responsible for any inability by the BENEFICIARY to successfully utilize the Deposit Materials after release, including a lack of an encryption password (if not originally provided to the ESCROW AGENT by the TECHNOLOGY VENDOR), or the validity of an encryption password (if originally provided to the ESCROW AGENT by the TECHNOLOGY VENDOR).
- 3.1.6 Unless otherwise provided in the License Agreement, upon release of the Deposit Materials to a requesting BENEFICIARY,

that BENEFICIARY shall have the right to use the Deposit Materials for the sole purpose of continuing the benefits afforded to the BENEFICIARY by the License Agreement. The BENEFICIARY shall be obligated to maintain the confidentiality of the released Deposit Materials and even though the Deposit Materials have been released or otherwise, this Agreement will not constitute a termination, renewal, or otherwise of the License Agreement.

- 3.1.7 On the alleged happening of one or more Events of Default involving bankruptcy, a BENEFICIARY shall give electronic or written Notice of Default as provided by this Agreement to both the ESCROW AGENT and the Trustee in Bankruptcy for the TECHNOLOGY VENDOR of that Default. The Notice of Default shall be labeled a "Notice of Default," shall identify the Trustee in Bankruptcy, the License Agreement and this Escrow Agreement, shall specify the nature of Default, and shall identify the Deposit Materials with reasonable specificity.
- 3.1.8 Upon receipt of the Notice of alleged Default under one or more Events of Default involving bankruptcy, the ESCROW AGENT shall likewise send a physical copy of the Notice of Default to the Trustee in Bankruptcy of the TECHNOLOGY VENDOR as identified by the BENEFICIARY by certified or registered mail, return receipt requested. The ESCROW AGENT will abide and enforce any order, instruction, or request made by the Trustee in Bankruptcy of the TECHNOLOGY VENDOR regarding to the Deposit Materials. The ESCROW AGENT's responsibility for the Deposit Materials ceases upon enforcement of any order, instruction, or request made by the Trustee in Bankruptcy of the TECHNOLOGY VENDOR, and the ESCROW AGENT is not responsible for any inability by the BENEFICIARY, the TECHNOLOGY VENDOR, or any Third-Party to successfully utilize the Deposit Materials after release.
- 3.1.9 In the event that the ESCROW AGENT becomes insolvent, makes a general assignment for the benefit of creditors,

or suffers or permits the appointment of a receiver for its business, where its assets become subject to any proceeding under any insolvency law, domestic or foreign, or has wound up or liquidated its business, the ESCROW AGENT shall notify both the BENEFICIARY or BENEFICIARIES and TECHNOLOGY VENDOR of the occurrence by hardcopy or electronic notification. The BENEFICIARIES and TECHNOLOGY VENDOR will each use its best efforts to find another suitable party to serve as a replacement ESCROW AGENT.

- 3.2 The TECHNOLOGY VENDOR and each BENEFICIARY expressly agree that the ESCROW AGENT is entitled to rely upon the veracity of any affidavit or other sworn electronic or hardcopy statement and is under no obligation to perform any independent verification of the same. The ESCROW AGENT is equally entitled to rely upon the veracity of any written notice or other sworn statement regarding the choice of the default event by either the TECHNOLOGY VENDOR or BENEFICIARY or BENEFICIARIES or whether the alleged default falls within the enumerated categories.
- 3.3 The ESCROW AGENT has no obligation to release the copy of the Deposit Materials to any third-party that is not a Party to this Agreement except as required by operation of law or court order.
- 3.4 The TECHNOLOGY VENDOR acknowledges that the ESCROW AGENT has the right to maintain the Deposit Materials in the ESCROW AGENT'S possession and to provide such Deposit Materials to a BENEFICIARY or BENEFICIARIES for the fulfillment of this Agreement between the TECHNOLOGY VENDOR and a BENEFICIARY or BENEFICIARIES.

4. DISPUTES

- 4.1 If the TECHNOLOGY VENDOR provides to the ESCROW AGENT and a BENEFICIARY within the time permitted by §3.1.4 an affidavit or other sworn statement in response to the Notice of Default disputing the existence of any Default, the ESCROW AGENT will not release the Deposit Materials until it receives joint instructions from the TECHNOLOGY VENDOR and a BENEFICIARY, or a copy of a final non-appealable U.S. court order, or binding arbitration award requiring or authorizing such release, unless such judicial order or binding arbitration award is under seal, in which case, the TECHNOLOGY VENDOR and BENEFICIARY will provide a joint statement to that effect to the ESCROW AGENT and provide authorization to provide a release to the appropriate Party.
- 4.2 All Parties agree that the ESCROW AGENT is directed to act in good faith reliance of any representation made in accordance with this Agreement and is completely protected from any adverse results or consequences of such actions even if a court should later determine their rights differently.

5. PAYMENT AND INDEMNIFICATION OF THE ESCROW AGENT

- 5.1 The ESCROW AGENT must be paid for its services in accordance with Exhibit B, attached hereto and titled "PRICE SCHEDULE." The ESCROW AGENT is not be required to perform any service, including release of any Deposit Materials, unless the payment for such service and any outstanding balances owed to the ESCROW AGENT by either the TECHNOLOGY VENDOR or the BENEFICIARIES have been paid in full. Initial fees are due upon receipt of a signed contract. This Escrow Agreement is only effective upon receipt of all required payments and signatures and is terminated as to any Party if payment is not received within the Curative Payment Period defined herein below. Any payment which is owed and effected within the Curative Payment Period is automatically increased by an additional ten percent (10%) over the owed amount. If this increased amount is not paid-in-full, then this Agreement is terminated as to the Party making insufficient payment.

5.2 The "PRICE SCHEDULE" attached hereto as Exhibit B may be modified and updated at the discretion of the ESCROW AGENT. The ESCROW AGENT shall provide 90 days' electronic notice to the TECHNOLOGY VENDOR and the BENEFICIARIES in the event the "PRICE SCHEDULE" is modified or updated.

5.3 If the TECHNOLOGY VENDOR or a BENEFICIARY, as the case may be, fails to pay an electronic or written invoice addressed to it for services under this Agreement within 30 days of its issue, the ESCROW AGENT reserves the right to alert both Parties by electronic notice to pay the outstanding invoice(s) within 30 days ("Curative Payment Period").

5.3.1 If a specific BENEFICIARY fails to pay the outstanding invoice upon the expiration of the Curative Payment Period with notice given to both Parties and the TECHNOLOGY VENDOR does not pay the specific BENEFICIARY's outstanding invoice during the Curative Payment Period, this Agreement will automatically terminate to the extent it relates to the delinquent BENEFICIARY.

5.3.2 If the TECHNOLOGY VENDOR fails to pay the outstanding invoice upon the expiration of the Curative Payment Period with notice given to all the Parties and the BENEFICIARY or BENEFICIARIES does/do not pay the TECHNOLOGY VENDOR's outstanding invoice during the Curative Payment Period, this Agreement will automatically and immediately terminate and all Deposit Materials previously deposited will be returned to the TECHNOLOGY VENDOR, even if no written or electronic response has been received from the Parties. If no written or electronic response has been received from the TECHNOLOGY VENDOR, then the Deposit Materials will be destroyed.

5.4 All monies received by the ESCROW AGENT are NON-REFUNDABLE payments.

5.5 The ESCROW AGENT is not be obligated or required to examine or inspect the Deposit Materials. The ESCROW AGENT'S obligation is limited to providing the same degree of care for

the Deposit Materials as it maintains for its valuable documents and those of its customers.

5.6 The ESCROW AGENT may rely upon representations made by individuals of the respective BENEFICIARIES and the TECHNOLOGY VENDOR of their representative capacity within the respective Party and authority to act on behalf of the respective Party. The ESCROW AGENT shall be protected from actions by each BENEFICIARY and/or the TECHNOLOGY VENDOR in acting upon any notice, request, waiver, consent, receipt, or other paper or document furnished to it not only in assuming its due execution, but also as to the truth of any information contained therein.

6. OWNERSHIP OF DEPOSIT MATERIALS

6.1 The TECHNOLOGY VENDOR shall be the legal owner of the escrowed Deposit Materials and the documentation and other information embodied in such and at all times, subject only to the claims of a BENEFICIARY as described herein.

6.2 The ESCROW AGENT, the TECHNOLOGY VENDOR and a BENEFICIARY or BENEFICIARIES recognize and acknowledge that ownership of the Deposit Materials itself and any programmer documentation (together with all copyright rights and proprietary rights therein) shall continue as belonging to the TECHNOLOGY VENDOR at all times.

6.3 The ESCROW AGENT has the right to make copies or reproduce the Deposit Materials only as is reasonably necessary to perform or fulfill the terms of this Agreement. In the event that Deposit Materials are provided to the ESCROW AGENT by Electronic Delivery, the ESCROW AGENT reserves the right to produce one archival physical copy and will follow the procedures for storing the physical copy as outlined within this Agreement.

7. TERM AND TERMINATION

7.1 The initial term of this Agreement is for a period of one (1) year. Thereafter, this Agreement shall automatically renew from year-to-year and the annual renewal fees in accordance with Exhibit B, attached hereto and titled, "PRICE SCHEDULE" will be due upon the anniversary of the TECHNOLOGY VENDOR Effective Date or the

National Software Escrow

BENEFICIARY Effective Date of this Agreement, the ESCROW AGENT providing both the TECHNOLOGY VENDOR and each BENEFICIARY at least thirty (30) days physical or electronic advance notice of the renewal fees, unless:

7.1.1 an officer of the TECHNOLOGY VENDOR and an officer of a BENEFICIARY jointly instruct the ESCROW AGENT in writing that the Agreement is terminated; or

7.1.2 the ESCROW AGENT instructs the TECHNOLOGY VENDOR and a BENEFICIARY pursuant to the provisions of §9.14 that the Agreement is terminated for nonpayment in accordance with §5.1; or

7.1.3 the ESCROW AGENT reserves the right to terminate this Agreement, for any reason, other than nonpayment, by providing the TECHNOLOGY VENDOR and a BENEFICIARY ninety (90) days' written notice of its intent to terminate this Agreement.

7.2 Upon termination of this Agreement or if a copy of the Deposit Materials is delivered to the BENEFICIARY or BENEFICIARIES pursuant to the Notice of Default procedures set forth herein, the ESCROW AGENT'S duties with respect to such Deposit Materials shall terminate on the date of such delivery.

7.3 Upon termination of this Agreement, the obligations of confidentiality with regards to the Deposit Materials, obligations of the TECHNOLOGY VENDOR and each BENEFICIARY to pay any fees and expenses due to the ESCROW AGENT, and all terms of §9 "GENERAL TERMS" of this Agreement survive and remain binding on the TECHNOLOGY VENDOR, each BENEFICIARY, and the ESCROW AGENT.

8. CONSENT TO ELECTRONIC COMMUNICATION

8.1 Unless expressly stated, all communications between the Parties will be electronic to the email addresses provided below. It is expressly understood by the Parties that each Party will maintain and monitor at least one email address provided below and provide the ESCROW AGENT with an updated email address should

the defined address below, be changed or modified.

8.1.1 ESCROW AGENT:

Email: dbaka@nationalsoftwareescrow.com

Backup Email: dbaka@twc.com

8.1.2 TECHNOLOGY VENDOR:

Email: kristin@chameleonbeach.com

Backup Email: accounting@chameleonbeach.com

8.1.3 EACH BENEFICIARY:

Email Addresses documented in each BENEFICIARY'S ESCROW FORM 2.2

8.2 Each Party expressly agrees to maintain and update the above email addresses. The ESCROW AGENT is not liable under any theory, for missed electronic communications pursuant to this Agreement.

9. GENERAL

9.1 Except as provided in this Agreement, the ESCROW AGENT agrees that it shall not divulge or disclose or otherwise make available to any third person whatsoever, or make any use whatsoever of the Deposit Materials without the express prior consent of the TECHNOLOGY VENDOR, by any form of communication identified in §9.14.

9.2 The ESCROW AGENT shall not, by reason of its execution of this Agreement, assume any responsibility or liability for any transactions between the TECHNOLOGY VENDOR and a BENEFICIARY other than for the performance of its obligations with respect to the Deposit Materials held by it in accordance with this Agreement. The Party on whose behalf, or pursuant to whose directions the ESCROW AGENT acts, shall, indemnify and hold harmless the ESCROW AGENT from any and all liability, damage, costs or expenses, including reasonable attorney's fees, which may be sustained or incurred by the ESCROW AGENT as a result of taking of such action.

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(440) 546-9750 • Fax (440) 546-0207 • www.nationalsoftwareescrow.com

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- 9.3 THE ESCROW AGENT HEREBY DISCLAIMS THE UNIFORM COMMERCIAL CODE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE OR KIND.
- 9.4 The ESCROW AGENT'S liability to the TECHNOLOGY VENDOR and a BENEFICIARY shall be limited to the return of the Deposit Materials to whichever Party is entitled to it pursuant to this Agreement, unless destroyed pursuant to §5.3.2 or performing its obligations under §2.4 of this Escrow Agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE FOR PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES TO EITHER THE TECHNOLOGY VENDOR OR A BENEFICIARY OR BENEFICIARIES. DAMAGES SHALL BE LIMITED TO THE SUM OF ALL ESCROW FEES PREVIOUSLY PAID BY THE TECHNOLOGY VENDOR AND A BENEFICIARY UNDER THE TERMS OF THIS ESCROW AGREEMENT.
- 9.5 This Escrow Agreement shall not be waived, amended, or modified except by written or electronic agreement of all of the Parties hereto. Any invalidity in whole or in part of any provision of this Escrow Agreement will not affect the validity of any of its other provisions.
- 9.6 All Parties to this Agreement represent and warrant that the execution, delivery and performance of this Agreement have been duly authorized and signed by a person approved to sign on behalf of the respective Party as named.
- 9.7 All disputes involving a State cause of action against the ESCROW AGENT or to which the ESCROW AGENT is a Party which arise under this Agreement must be filed in the state court located in Cuyahoga County, Ohio, which shall have exclusive jurisdiction over state law matters. The TECHNOLOGY VENDOR and each BENEFICIARY expressly waive any and all objection to personal jurisdiction in this venue. The Parties irrevocably submit to such state court's jurisdiction hereby waiving any claim of inconvenient forum. Notwithstanding the foregoing and §9.8 below, jurisdiction, venue and forum (mediation, arbitration, litigation, administrative proceeding) etc. for any disputes solely as between the TECHNOLOGY VENDOR and each BENEFICIARY (and specifically excluding the ESCROW AGENT) shall be subject to the terms of the License Agreement.
- 9.8 All disputes involving a Federal cause of action arising under this Agreement must be filed in the Northern District of Ohio, which shall have exclusive jurisdiction over federal matters. The TECHNOLOGY VENDOR and each BENEFICIARY expressly waive any and all objections to personal jurisdiction in this venue. The Parties irrevocably submit to such federal court's jurisdiction hereby waiving any claim of inconvenient forum.
- 9.9 The ESCROW AGENT shall not be liable for any failure to perform its obligations in connection with this Agreement if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, or other cause beyond such Party's reasonable control including any mechanical, electronic, Internet, server, Internet Service Provider (ISP), or communications failure.
- 9.10 This Agreement controls the Parties' respective obligations concerning only the subject matter hereof. To the extent of a conflict between the License Agreement and this Agreement concerning the ESCROW AGENT's duties, this Agreement controls. And, to the extent this Agreement modifies the TECHNOLOGY VENDOR's and each BENEFICIARY's respective obligations under the License Agreement concerning an escrow arrangement of the Deposit Materials and related documentation, then this Agreement also controls.
- 9.11 The validity and effect of this Agreement and the rights and obligations of the Parties hereto shall be construed and determined in accordance with the laws of the State of Ohio excluding its conflicts of law provisions and including the Uniform Commercial Code of the Sale of Goods as adopted in Chapter 1302 of the Ohio Revised Code.
- 9.12 This Agreement shall be binding upon and shall inure to the benefit of the transferees, successors and assigns of the Parties including, but not limited to, any company or corporation with which a Party may merge or consolidate. In the event of a permitted transfer of this Agreement by a Party, the transferring Party is required to notify the ESCROW AGENT and the TECHNOLOGY VENDOR or BENEFICIARY or

National Software Escrow

BENEFICIARIES, whichever is appropriate, of the transfer of this asset to a transferee within ten (10) days of the effective date of the transfer. If no notice is provided, then the ESCROW AGENT is entitled to rely upon providing communications to the Party pursuant to §9.14.

9.13 Numbers and titles to paragraphs hereof are for information purposes only and, where inconsistent with the text, are to be disregarded.

9.14 All notices, affidavits, sworn statements or all other communications required or which may be given pursuant to this Agreement shall be in writing and shall be delivered personally, faxed with a copy sent contemporaneously by first class mail, or sent by certified, registered, or express mail, postage prepaid, or electronically to the last email address of record, to the appropriate address set forth below, or as later

updated by a Party in a manner complying with this §9.14. The TECHNOLOGY VENDOR, each BENEFICIARY and the ESCROW AGENT are REQUIRED to update all contact information pursuant to this section within thirty (30) days of any change. Failure to comply with this update provision will relieve the ESCROW AGENT of any liability for any notices, affidavits, sworn statements or all other communications required or which may be given pursuant to this Agreement which were not received by the Party failing to comply with this section.

9.15 The failure of either Party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement will not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party.

National Software Escrow, Inc.
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ACKNOWLEDGED AND ACCEPTED

NATIONAL SOFTWARE ESCROW, INC. ("ESCROW AGENT")

Address: 8225 Brecksville Road, Building 3, Suite 105, Brecksville, Ohio 44141

To the Attention of:

By: [Signature]

Title: President

Email: JBAK@NATIONSOFTWAREESCROW.COM

HLP INC.

("TECHNOLOGY VENDOR")

Address: 9888 W. Belleview Avenue, #110, Littleton, CO 80123

To the Attention of:

By: [Signature]

Title: Chief Operating Officer

Email: keith@chameleonbeach.com

National Software Escrow

DEPOSIT MATERIALS IDENTIFICATION AND CERTIFICATION

ESCROW FORM 2.1

Program	Account #	Release, Version Info	Format	
(1)			Electronic []	Hardcopy []
(2)			Electronic []	Hardcopy []
(3)			Electronic []	Hardcopy []
(4)			Electronic []	Hardcopy []

DEPOSIT MATERIAL INFORMATION:

Is the media or are any of the files encrypted? Yes No If yes, please include any passwords and the decryption tools.

Encryption tool name _____
 Version _____
 Encryption Password: _____
 Hardware required _____
 Software required _____
 Other required information _____

HLP INC. _____
 ("TECHNOLOGY VENDOR")

By: Kristin Schiechl

Title: Director of Operations

Date: 04/20/2020

* Unless ESCROW AGENT is instructed otherwise, the Deposit Materials identified in this Escrow Form 2.1 relate to ALL BENEFICIARIES enrolled to this Agreement.

** Upon receipt of Deposit Materials submitted by Physical Delivery, National Software Escrow, Inc. will open package containing Deposit Materials (unless EXPLICITLY identified and agreed upon by both the TECHNOLOGY VENDOR and BENEFICIARY as being a "sealed package"), in order to perform a visual inspection verifying that Deposit Materials exist and are not damaged. Photocopy of tangible medium or media will be made.

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National Software Escrow

"ADDITIONAL BENEFICIARY" REGISTRATION ESCROW FORM 2.2

TECHNOLOGY VENDOR, BENEFICIARY and NATIONAL SOFTWARE ESCROW, INC. hereby acknowledge that _____ is a BENEFICIARY referred to in the Master Software Escrow Agreement # 7410 originally made effective _____ with NATIONAL SOFTWARE ESCROW, INC. as the ESCROW AGENT and HLP INC. as the TECHNOLOGY VENDOR. **BENEFICIARY hereby agrees to be bound by all provisions of such Agreement.**

TECHNOLOGY VENDOR hereby enrolls BENEFICIARY to the following account(s):

<u>Account Name</u>	<u>Account Number</u>
HLP INC. _____	#7410 _____

Notices and communications to BENEFICIARY should be addressed to:	Invoices corresponding to BENEFICIARY'S fee should be addressed to:
Company Name: _____	Company Name: _____
Address: _____	Address: _____
Designated Contact: _____	Designated Contact: _____
Telephone: _____	Telephone: _____
Facsimile: _____	Facsimile: _____
E-mail: _____	E-mail: _____
	P.O. #, if required: _____

The "TECHNOLOGY VENDOR" grants the "ESCROW AGENT" the irrevocable right to copy or reproduce the "DEPOSIT MATERIALS" being held under the terms of this Escrow Agreement, to be used only for the completion of the terms of this Escrow Agreement, should the need occur. The "TECHNOLOGY VENDOR" by signing below, authorizes the "ESCROW AGENT" to issue a copy of the Escrow Agreement to the above named "BENEFICIARY", granting all protection contained in the original agreement.

HLP INC.
TECHNOLOGY VENDOR
By: _____
Title: _____
Date: _____

BENEFICIARY
By: _____
Title: _____
Date: _____

NATIONAL SOFTWARE ESCROW INC.
By: _____
Title: _____
Date: _____

Each BENEFICIARY Effective Date is defined as the later of the two events described below:

- (1) Receipt of Escrow Form 2.2
 (a) Receipt Date: _____
- (2) Receipt of 1st year non-refundable payment of a BENEFICIARY Escrow Fee(s) by the ESCROW AGENT
 (a) Receipt Date: _____

Based upon the later of the Receipt Dates above, the dates within the thirty (30) day window (and any extensions thereof), the identified BENEFICIARY Effective Date is _____.

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EXHIBIT B PRICE SCHEDULE*

TECHNOLOGY VENDOR Fees:

Annual Escrow Fee per Deposit Materials	1st Year	\$600.00**
	Renewal Fee	\$500.00***

BENEFICIARY Fees:

Annual Escrow Fee per Deposit Materials	1st Year	\$600.00**
	Renewal Fee	\$500.00***

An additional \$250.00 will be added to the TECHNOLOGY VENDOR'S 1st year fees if substantive modifications are made to this Escrow Agreement, the determination being made in the sole discretion of the ESCROW AGENT and communicated to the TECHNOLOGY VENDOR before signatures and fee payments.

An additional \$250.00 will be added to a BENEFICIARY'S 1st year fees if substantive modifications are made to the BENEFICIARY'S Escrow Form 2.2, the determination being made in the sole discretion of the ESCROW AGENT and communicated to the PARTIES before signatures and fee payments.

Miscellaneous Fees:

Update Fees per change (Includes notification to BENEFICIARY)	\$75.00**
Release Request - Per BENEFICIARY (BENEFICIARY Request for Release Based Upon Terms and Conditions of Escrow Agreement)	\$250.00**

* See §5.1 for late payment fees.

** non-refundable fee

*** may be refundable at the discretion of the Escrow Agent

National Software Escrow

EXHIBIT C

Date:

National Software Escrow, Inc.
Attn: President
8225 Brecksville Road
Building Three, Suite #105
Brecksville, Ohio 44141

Re: Software Escrow # _____ between National Software Escrow, Inc., the ("ESCROW AGENT") and _____, the ("TECHNOLOGY VENDOR") and; _____ ("BENEFICIARY").

Dear National Software Escrow, Inc.:

Pursuant to Section 2.3.6 in Software Escrow # _____, the TECHNOLOGY VENDOR and BENEFICIARY hereby authorize National Software Escrow, Inc. ("ESCROW AGENT") to make a copy of the *{Insert Date of Deposit}* Deposit Materials which has been identified by the TECHNOLOGY VENDOR as *{Insert Program Name, Release, Version info, etc.}* and send a copy via Federal Express to *{Insert Company Name}* to be delivered on *{Insert Date}* to the following address:

Company Name
Recipient Name
Address
City, State, Zip
Country
Email Address
Office Phone:
Cell Phone:

Testing of said Deposit Materials will be completed within 10 business days from the date of receipt and that the recipient and/or organization will make no further copies of the Deposit Materials, other than the one permitted for verification purposes and that after the verification purpose is complete, they will destroy any copies made and/or return the copies to National Software Escrow, Inc.

In the event that the Deposit Materials have been identified by the TECHNOLOGY VENDOR as being encrypted, National Software Escrow, Inc. may deliver the encrypted password to _____ by electronic mail to the recipient's email address noted above.

By signing this, both TECHNOLOGY VENDOR and BENEFICIARY agree to this plan, have the capacity to bind their organizations in the manner which they have indicated and request that National Software Escrow, Inc. complete the copy and sending of the Deposit Materials identified above.

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National Software Escrow

Signed by:

("TECHNOLOGY VENDOR")

Address:
To the Attention of:

By: _____

Title: _____

Email: _____

("BENEFICIARY")

Address:
To the Attention of:

By: _____

Title: _____

Email: _____

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HLP, Inc.
Exhibit D
California Levine Act Statement

California Government Code section 84308, commonly referred to as the "Levine Act," prohibits any officer of El Dorado County from participating in any action related to a contract if he or she receives any political contributions totaling more than two hundred and fifty dollars (\$250) within the previous twelve (12) months, and for twelve (12) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclose of such contribution by a party to be awarded a specific contract. An officer of El Dorado County includes the Board of Supervisors, and any elected official (collectively "Officer"). It is the Contractor's/Consultant's responsibility to confirm the appropriate "officer" and name the individual(s) in their disclosure.

Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to an Officer of the County of El Dorado in the twelve months preceding the date of the submission of your proposals or the anticipated date of any Officer action related to this contract?

YES NO

If yes, please identify the person(s) by name:

If no, please type N/A.

Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to an Officer of the County of El Dorado in the twelve months following any Officer action related to this contract?

YES NO

If yes, please identify the person(s) by name:

If no, please type N/A.

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Officer(s) from participating in any actions related to this contract.

08/08/2023

Date
Pethealth

Type or write name of company

Todd Whittington
Todd Whittington (Aug 8, 2023 13:32 EDT)

Signature of authorized individual
Todd Whittington

Type or write name of authorized individual

HLP, Inc.
Exhibit E
“Vendor Assurance of Compliance with
Nondiscrimination in State and Federally Assisted Programs”

HEREBY AGREES THAT it will comply with Title VI and VII of the Civil Rights Act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended and in particular section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code section 11135-11139.5, as amended; California Government Code section 12940 (c), (h) (1), (i), and (j); California Government Code section 4450; Title 22, California Code of Regulations section 98000 – 98413; Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act (California Government Code Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable federal and state laws, as well as their implementing regulations [including 45 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, 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 GIVE ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE VENDOR/RECIPIENT HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, the vendor/recipient 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, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code section 10605, or Government Code section 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on the vendor/recipient directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

08/08/2023


Todd Whittington (Aug 8, 2023 13:32 EDT)

Date

Signature

[1:32 p.m.] Kristin Schiechl 9878 W. Belleview Ave. #110, Littleton, CO 80123

Address of vendor/recipient

(08/13/01)