COUNTY OF EL DORADO

Purchase Contract

VENDOR	CENTRAL COAST ENERGY SERVICES INC PO BOX 2707 WATSONVILLE, CA 95077-2707

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS

Purchase Contract #	8666

SUBJECT TO TERMS AND CONDITIONS ON WEBSITE
https://edcgov.us/Government/Contracts/Pages/po_terms___conditions.aspx

For Period: To

PLEASE NOTE: This Purchase Contract is for a NTE (Not To Exceed) amount.

NTE:

Vendor shall provide software Licenses in accordance with Attachment "A" marked "Central Coast Energy Services," attached hereto and incorporated by reference.
//
Term: This Agreement shall become effective upon final execution by both parties hereto and shall cover the periodof 06/1/2024 through 5/31/2027
//
Rate:
//

NTE: The total amount ofthis Agreement shall not exceed $73,800
//
Contract Administrator: Margaret Williams, Program Manager or successor.
//
Contractor shall comply with the insurance requirements stated at:
https://edcgov.us/government/contracts/pages/insurance_requirements.aspx

Contractor shall not begin work until all insurance requirements noted in the aforementioned link have been met.

The County of El Dorado has contracted with Ebix to review the certificate(s) and endorsement(s) to assure complete and accurate compliance with the insurance provisions required by this Agreement. They may contact you to advise you of deficiencies and requested corrected documents. please cooperate with their requests for information or corrections in order for the County to continue your Agreement through the expiration date.
//
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.
//
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.), relatingto conflict of interest of public officers and employees. Individualswho are working for Contractor and performing work for County and whoare

This Purchase Contract expressly limits acceptance to the terms and conditions stated herein, set forth on the website and any supplementary or additional terms and conditions annexed hereto or incorporated herein by reference. Any additional or different terms and conditions proposed by the seller are objected to and hereby rejected unless otherwise stated above.

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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, orany 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 relatedto 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 Attachment B, 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.
//
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 oremail electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.
//
This Purchase Contract shall be effective after Contractor has signed below and returned to the County acknowledgingacceptance of the terms and conditions contained herein and the County's standard terms and conditions here: https://edcgov.us/Government/Contracts/Documents/PO%20Terms%20Conditions.pdf; that the undersigned individual executing this Purchase Contract is fully authorized to do so by law or other appropriate instrument and to bind upon the obligations set forth herein.

This Purchase Contract expressly limits acceptance to the terms and conditions stated herein, set forth on the website and any supplementary or additional terms and conditions annexed hereto or incorporated herein by reference. Any additional or different terms and conditions proposed by the seller are objected to and hereby rejected unless otherwise stated above.

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COUNTY OF EL DORADO

Purchase Contract

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| VENDOR | CENTRAL COAST ENERGY SERVICES INC

PO BOX 2707

WATSONVILLE, CA 95077-2707 |

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS
Purchase Contract #   **8666**

SUBJECT TO TERMS AND CONDITIONS ON WEBSITE
https://edcgov.us/Government/Contracts/Pages/po_terms___conditions.aspx

Print Name: _____

Title: _____

Signature: _____

Date: _____

This Purchase Contract expressly limits acceptance to the terms and conditions stated herein, set forth on the website and any supplementary or additional terms and conditions annexed hereto or incorporated herein by reference. Any additional or different terms and conditions proposed by the seller are objected to and hereby rejected unless otherwise stated above.

24-1102 A 3 of 25

SERVTRAQ© SERVICE AGREEMENT
Central Coast Energy Services, Inc.

THIS AGREEMENT is dated June 1, 2024

PARTIES

(1)   Central Coast Energy Services, Inc., a California corporation, Entity Number C2545703, herein known as **Supplier** with a mailing address of: PO Box 2707 Watsonville, CA 95077.

(2)   El Dorado County, herein known as **Customer**.

BACKGROUND

(A)   The Supplier has developed a software application and platform known as ServTraq© which it makes available to subscribers via the internet on a pay-per- agency basis for the purpose of federally funded low income energy services delivery, tracking and reporting to the State of California and other entities. The Supplier may also provide custom data, consulting and training services apart from the software and platforms known as ServTraq©.

(B)   The Customer wishes to use the Supplier's services in its business operations.

(C)   The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this Agreement.

AGREED TERMS

3.   INTERPRETATION

3.1   The definitions and rules of interpretation in this clause apply in this Agreement.

Agreement: means this SERVTRAQ© Service Agreement.

Authorized Users: those employees, agents and independent contractors of the Customer who are authorized by the Customer to use the Services and the Documentation, as further described in this clause.

Business Day: any day which is not a Saturday, Sunday or public holiday in California.

Change of Control: the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in **clause 15**.

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Customer Data: the data inputted by the Customer, Authorized Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Documentation: the document, video or other media made available to the Customer by the Supplier online via servtraq.com or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: the date of this Agreement.

Subscription Term: means the period of time from June 1, 2024 to June 1, 2027 and any Renewal Periods.

Normal Business Hours: 8:00 am to 5:00 pm PST, each Business Day.

Renewal Period: is defined in **clause 16.1**.

Services: the subscription services and features provided by the Supplier to the Customer under this Agreement via servtraq.com or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.

Software: the online ServTraq© software application provided by the Supplier as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in paragraph 1 of **Schedule 1**.

Support Services Policy: the Supplier's policy for providing support in relation to the Services as made available at servtraq.com or such other website address as may be notified to the Customer from time to time.

User Subscriptions: the user subscriptions purchased by the Customer pursuant to **clause 8** which entitle Authorized Users to access and use the Services and the Documentation in accordance with this Agreement.

Virus: anything or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

3.2   Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

3.3   A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

3.4   A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

3.5   Words in the singular shall include the plural and vice versa.

3.6   A reference to one gender shall include a reference to the other genders.

3.7   A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

3.8   A reference to writing or written includes faxes and e-mail.

3.9   References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

4.   USER SUBSCRIPTIONS

4.1   Subject to the Customer purchasing the User Subscriptions in accordance with this Agreement, the restrictions set out in this clause and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non- transferable right to permit the Authorized Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

4.2   In relation to the Authorized Users, the Customer undertakes that:

(a)   the maximum number of Authorized Users that it authorizes to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time as set forth on **Schedule 1**;

(b)   it will not allow or suffer any User Subscription to be used by more than one individual Authorized User unless it has been reassigned in its entirety to another individual Authorized User, in which case the prior Authorized User shall no longer have any right to access or use the Services and/or Documentation;

(c)   each Authorized User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than monthly and that each Authorized User shall keep his password confidential;

(d)   it shall maintain a written, up to date list of current Authorized Users and provide such list to the Supplier within (5) Business Days of the Supplier's written request at any time or times;

(e)   it shall permit the Supplier to audit the Services in order to establish the name and password of each Authorized User. Such audit may be conducted no more than once per quarter in such a manner as not to substantially interfere with the Customer's normal conduct of business;

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(f)   if any of the audits referred to in **clause 4.2** reveal that any password has been provided to any individual who is not an Authorized User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and

(g)   if any of the audits referred to in **clause 4.2** reveal that the Customer has underpaid Subscription Fees to the Supplier, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in **Schedule 1** within thirty (30) Business Days of the date of the relevant audit.

4.3   The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

(a)   is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b)   facilitates illegal activity;

(c)   depicts sexually explicit images;

(d)   promotes unlawful violence;

(e)   is discriminatory based on race, gender, color, religious belief, sexual orientation, disability, or any other illegal activity; or

(f)   causes damage or injury to any person or property;

and the Supplier reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

4.4   The Customer shall not:

(a)   except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

(i)   and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

(ii)   attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

(b)   access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

(c)   use the Services and/or Documentation to provide services to third parties; or

(d)   license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorized Users, or

(e)   attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided in this Agreement; and

4.5   The Customer shall use all reasonable endeavors to prevent any unauthorized access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorized access or use, promptly notify the Supplier.

4.6   The rights provided under this clause are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

5.   ADDITIONAL USER SUBSCRIPTIONS

5.1   The Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in **Schedule 1** and the Supplier shall grant access to the Services and the Documentation to such additional Authorized Users in accordance with the provisions of this Agreement.

5.2   If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or disapproval of the request (such approval not to be unreasonably withheld).

5.3   If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in paragraph **2** of Schedule 1 and, if such additional User Subscriptions are purchased by the Customer part way through the Subscription Term or any Renewal Period (as applicable), such fees shall be pro- rated for the remainder of the Subscription Term or then current Renewal Period (as applicable).

6. SERVICES

6.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

6.2 The Supplier shall use commercially reasonable endeavors to make the Services available 24 hours a day, seven days a week, except for:

(a) planned maintenance carried out during the maintenance window of 10:00 pm to 4:00 am PDT time; and

(b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavors to give the Customer at least 6 Normal Business Hours' notice in advance.

6.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

6.4 Supplier and Customer agree that Attachment 1 (ServTraq© Development Procedure – CSD Rules) and Attachment 2 (ServTraq© Development Policy– CSD Rules) sets forth the process and terms and conditions with respect to Supplier's development of the Software with respect to requirements dictated by the California Department of Community Services and Development ("CSD"). Customer understands that Supplier's modifications to the Software in response to CSD changes will only be made with clear and timely documentation from CSD.

7. CUSTOMER DATA

7.1 The Customer owns all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

7.2 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at servtraq.com or such other website address as may be notified to the Customer from time to time, as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy

shall be for the Supplier to use reasonable commercial endeavors to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. The Supplier shall not be liable to Customer for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up), except to the extent such loss, destruction, alteration or disclosure of Customer Data was a result of the negligence or willful misconduct of Supplier or Supplier's subcontractors.

7.3   The Customer agrees that no client personal financial information, i.e., credit card, bank account numbers, shall be entered for storage or exchange.

7.4   Supplier's application system shall protect Customer's application system/data, and the Customer's application system in accordance with the Privacy Act and Trade Secrets Act (18 U.S. Code 1905) and the Unauthorized Access Act (18 U.S. Code 2701 and 2710). Data exchange between the California Department of Community Services and Development or the state agency designated to administer the low income home energy assistance program (LIHEAP), Department of Energy Weatherization Assistance Program (DOE WAP) or Community Services Block Grant (CSBG) programs and the Customer shall be handled through one of two methods: 1) a Customer user must authenticate to upload data files in a secure socket layer connection; or 2) a secure user interface that is only available to Customer users with a unique software authentication to see the login window and also a secure tunnel between State and the Customer user. Supplier shall report any security incident to the Customer in accordance with the Policy governing the reporting of Security Incidents is detailed in section D2–L of the California Office of Information Security (Office) State Administrative Manual Management Memorandum MM08-11 entitled, "Safeguarding Against and Responding to a Breach of Security Involving Personal Information."

7.5   If the Supplier processes any Customer data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:

(a)   the Supplier shall not transfer or store data outside the US or the country where the Customer and the Authorized Users are located in order to carry out the Services and the Supplier's other obligations under this Agreement;

(b)   the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's

behalf;

(c)   the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation, if any;

(d)   the Supplier shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time; and

(e)   each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data or its accidental loss, destruction or damage.

8. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

9. SUPPLIER'S OBLIGATIONS

9.1   The Supplier will perform the Services substantially in accordance with the Documentation and with reasonable skill and care.

9.2   The undertaking at **clause 9** shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorized contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavors to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in **clause 9** Notwithstanding the foregoing, the Supplier:

(a)   does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained

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by the Customer through the Services will meet the Customer's requirements; and

(b)   is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

9.3   This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

9.4   The Supplier warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement.

10.   CUSTOMER'S OBLIGATIONS

The Customer shall:

(a)   provide the Supplier with:

(i)   all necessary co-operation in relation to this Agreement; and

(ii)   all necessary access to such information as may be required by the Supplier;

in order to render the Services, including but not limited to Customer Data, security access information and configuration services;

(b)   comply with all applicable laws and regulations with respect to its activities under this Agreement;

(c)   carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

(d)   ensure that the Authorized Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorized User's breach of this Agreement;

(e)   obtain and shall maintain all necessary licenses, consents, and permissions necessary for the Customer, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

(f)   ensure that its network and systems comply with the relevant specifications

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provided by the Supplier from time to time; and

(g)   be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centers, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

11.   CHARGES AND PAYMENT

11.1   The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause and **Schedule 1**.

11.2   Customer agrees at a minimum to pay monthly within 15 days of the beginning of each month.

11.3   If the Supplier has not received payment within 60 days of the due date, and without prejudice to any other rights and remedies of the Supplier:

(a)   the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

11.4   All amounts and fees stated or referred to in this Agreement:

(a)   shall be payable in US dollars;

(b)   are non-cancellable and non-refundable;

(c)   are exclusive of any applicable tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

11.5   If, at any time while using the Services, the Customer exceeds the amount of disk storage space of **5 GB**, the Supplier shall charge the Customer, and the Customer shall pay, the Supplier's then current excess data storage fees. The Supplier's excess data storage fees current as at the Effective Date are set out in Schedule 1.

11.6   The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to **clause 4**, and/or the excess storage fees payable pursuant to **clause 11.5**, and/or a major change in data requirements enforced by the California Department of Community Services and Development or the state agency designated to administer the LIHEAP, DAP, CARES, DOE, or CSBG Programs upon 30 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.

12.   PROPRIETARY RIGHTS

12.1   The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses in respect of the Services or the Documentation.

12.2   The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

13.   CONFIDENTIALITY

13.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. The Customer acknowledges that the results of any performance tests of the Services constitute the Supplier's Confidential Information. The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

13.2 A party's Confidential Information shall not be deemed to include information that:

(a)   is or becomes publicly known other than through any act or omission of the receiving party;

(b)   was in the other party's lawful possession before the disclosure;

(c)   is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

(d)   is independently developed by the receiving party, which independent development can be shown by written evidence; or

(e)   is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

13.3 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

13.4 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

13.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of

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Confidential Information caused by any third party.

13.6 **Clause 13** shall survive termination of this Agreement, however arising.

14 **INDEMNITY**

14.3 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's breach of the terms of this Agreement, provided that:

14.3.1 the Customer is given prompt notice of any such claim;

14.3.2 the Supplier provides reasonable cooperation to the Customer in the defense and settlement of such claim, at the Customer's expense; and

14.3.3 the Customer is given sole authority to defend or settle the claim.

14.4 The Supplier shall, subject to **clause 14.5**, defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United States patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

14.4.1 the Supplier is given prompt notice of any such claim;

14.4.2 the Customer provides reasonable cooperation to the Supplier in the defense and settlement of such claim, at the Supplier's expense; and

14.4.3 the Supplier is given sole authority to defend or settle the claim.

14.5 In the defense or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

14.6 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

14.6.1 a modification of the Services or Documentation by anyone other than the Supplier; or

14.6.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or

14.6.3   the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

14.7   The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

15   LIMITATION OF LIABILITY

15.3   Subject to the provisions of **clause 16**, this clause sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

15.3.1   any breach of this Agreement;

15.3.2   any use made by the Customer of the Services and Documentation or any part of them; and

15.3.3   any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

15.4   Except as expressly and specifically provided in this Agreement:

15.4.1   the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;

15.4.2   all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

15.5   Nothing in this Agreement excludes the liability of the Supplier:

15.5.1   for death or personal injury caused by the Supplier's negligence; or

15.5.2   for fraud or fraudulent misrepresentation.

15.6   Subject to **clause 15.2** and **clause 15.3**:

15.6.1   the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

15.6.2 Except for Supplier's indemnification obligations set forth in this Agreement the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the greater of \$1,000.00 **OR** the total Subscription Fees paid for the User Subscriptions during the 6 months immediately preceding the date on which the claim arose.

16 **TERM AND TERMINATION**

16.3 This Agreement shall, unless otherwise terminated as provided in this clause 16, commence on the Effective Date and shall continue for the Subscription Term unless:

(a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiration of the applicable Subscription Term or Renewal Period; or

(b) otherwise terminated in accordance with the provisions of this Agreement;

16.4 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:

16.4.1 the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

16.4.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or

16.4.3 or a petition for bankruptcy is filed by or against you, then, to the extent permitted by applicable law, or

16.4.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

16.4.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

16.4.6 the other party ceases, or threatens to cease, to trade; or

16.4.7 there is a change of control of the other party; or

16.4.8 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

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16.5   On termination of this Agreement for any reason:

16.5.1   all licenses granted under this Agreement shall immediately terminate;

16.5.2   each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

16.5.3 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than one hundred twenty (120) days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavors to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

16.5.4   the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

17   FORCE MAJEURE

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

18   WAIVER

18.3   A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

18.4   Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

19   SEVERANCE

19.3   If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19.4   If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20   ENTIRE AGREEMENT

20.3   This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

20.4   Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

21   ASSIGNMENT

21.3   The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

21.4   With Customer's prior written consent, which shall not be unreasonably withheld, the Supplier may assign or sub-contract its rights or obligations under this Agreement.

22   NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorize either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23   THIRD PARTY RIGHTS

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This agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns).

24 NOTICES

24.3   Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this Agreement.

24.4   A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9:00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax or e mail shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

25.   ADMINISTRATOR

The County Officer or employee with responsibility for administering this Agreement is Margaret Williams, Program Manager, or successor.

25 GOVERNING LAW AND JURISDICTION

25.3   This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of the United States.

25.4   Choice of Law; Venue; Forum. This AGREEMENT shall be governed by the laws of the State of California, without giving effect to principles of conflict of laws.

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

Accepted and Signed by:

Supplier

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(signature)

Dennis Osmer

Executive Director

Authorized Representative of: Central Coast Energy Services, Inc.

Requesting Contract Administrator Concurrence:

By: _Margaret Williams_   Dated: 5/29/2024

       Margaret Williams
       Program Manager
       Health and Human Services Agency

Requesting Department Head Concurrence:

By: _Olivia Byron-Cooper (May 29, 2024 12:11 PDT)_   Dated: 5/29/2024

       Olivia Byron-Cooper
       Director
       Health and Human Services Agency

<center>

-- COUNTY OF EL DORADO --

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Schedule 1 Subscription Fees

1. **SUBSCRIPTION FEES**

   The Subscription Fees shall amount to a total of $2050.00 per month, which includes 100 User Subscriptions. Total compensation for this contract shall not exceed $73,800.

2. **ADDITIONAL USER SUBSCRIPTION FEES**

   Additional User Subscriptions may be purchased by the Customer in accordance with **clause 7** at **$0** per User Subscription.

3. **EXCESS STORAGE FEES**

   The Supplier's excess storage fees current as at the Effective Date are set out below: **$0**.

4. **CUSTOM DATA, CONSULTING AND TRAINING SERVICES FEES**

   Supplier will provide custom services at the following rates:

Code	Service	Generally Covers	Hourly Per Person
01	On-Site Staff Training or Consultation*	Instruction & Demonstration, Hands -on input coaching using CCES inputs. Includes handouts, forms and other materials.	$190.00**
02	Off-Site Preparation & Training	Instruction & Demonstration, Hands -on input coaching using customer inputs.	$240.00
03	Hardware/Network/Other Related Service	Hardware and network service that may be identified in the course of implementation. May include repair of systems necessary for proper functioning of database application. Does not include equipment or materials.	$280.00
04	One Time Custom Queries and Reports	One time extraction of data	$310.00
05	Data Conversions	Conversion of other data sources for use in ServTraq©	$260.00
06	Travel/Per Diem	Mileage, Air Fare, Parking, Travel Expenses, Meals, Per Diem Reimbursements made at State Rate***	As incurred in connection with on-site services
07	Lodging	Accommodations***	As incurred in connection with on-site services

* CCES Offices at 135 Aviation Way #7, Watsonville, CA

** Not per person - rate is per hour staff is on-site

*** Reimbursable travel shall be in accordance with the "County of El Dorado, California, Board of Supervisors, Travel Policy (D-1)," Incorporated herein and made by reference hereof.

Attachment 1 - ServTraq© Development Procedure – CSD Rules

A. **General**. Data reporting capabilities and delivery capacity of the ServTraq© system are dependent upon specifications published by the State of California Department of Community Services and Development ("CSD"). The CSD specifications, commonly known as Data Transfer Rules ("DTRs") and attachments, as well as existing contracts and related documents, current published guidance and current audit and program monitoring practices are used to guide the development of the ServTraq© system.

B. **Data Transfer Rules.** Supplier and Customer understand and agree to the following with respect to Data Transfer Rules:
1. CSD may change Data Transfer Rules and specifications without prior notice and without being published by CSD.
2. CSD may require changes to Data Transfer Rules by a certain date and then may later retract the new Data Transfer Rule on or before such date.
3. Customer is responsible for communication directly with CSD in regard to timelines for changes in data reporting.
4. The process by which the Data Transfer Rules and related documents are changed by CSD is beyond the control of Supplier.
5.
The Software is not a CSD directed enforcement or monitoring tool.

C. Supplier will modify the ServTraq© front end system no sooner than 30 days after the Data Transfer Rules are final, and in no event after the CSD stated implementation date. Supplier is entitled to assume that the CSD Data Transfer Rules are not final until a projected CSD Implementation Date (as defined below) is set by CSD and reflected in the DTRs and in the case of CORE CRM system DTRs that a transfer or import template is included and correct and they are signed. As used herein, the term "Implementation Date" means the date that CSD expects all transfers (live) into the CORE or Weatherization Data Repository systems (Production, not testing) will be subject to the rules and rejections will occur based on the rules in the final DTRs.

D. **Testing Participation**
ServTraq staff may contribute to the testing of data changes when Data Transfer Rules are final. No customer data will be shared without the express permission of the customer LSP.

E. **Changes in DTRs - Risks to Customer**
Customer understands that the following risks exist with respect to changes to the Weatherization Data Repository DTRs:
1. There is a risk that Customer will not receive sufficient advance notice to adjust its processes and train staff in advance of the DTR Implementation Date, and that entry adjustments in completed and entered jobs will have to be made in response to the data collection system changes;
2. There is a risk that the DTRs may restrict or impede reporting of reimbursable measures that are actually allowable and reimbursable according to the governing contract.
3. There is a risk that CSD will not make the changes in the CSD system by the implementation date.
4. There is a risk that the changes made in CSD's system will not match the validations as specified by the DTRs.
5. There is a risk that the terms of this Agreement governing changes to the ServTraq Software by Supplier in response to CSD DTR changes may not result in compliance with Customer's contracts with CSD.

Attachment 2-ServTraq© Development Policy – CSD Rules

Data reporting capabilities and delivery capacity of the ServTraq© system are dependent upon specifications published by the State of California Department of Community Services and Development (CSD). These specifications, commonly known as Data Transfer Rules and attachments, as well as existing contracts and related documents, current published guidance and current audit and program monitoring practices are used to guide the development of the ServTraq© system. Only data collection required by these specifications will be programmatically required in ServTraq©.

Data specifications have and may change without prior notice and without being published by CSD. Changes may also be required by a certain date and the requirement retracted on or before the date. No representation is made that Supplier will provide changes without clear and timely documentation from CSD or any entity receiving data. LSPs are responsible for communication directly with CSD in regard to timelines for changes in data reporting. The process by which the Data Transfer Rules and related documents are changed by CSD is beyond the control of ServTraq staff.

Key Issues in Development
ServTraq staff advocates for an approach to system development and data collection that takes into account the need for local control, efficient cost effective automation of quality service delivery systems and clear advance communication of data collection goals and requirements. We strive to anticipate and mitigate negative impacts on local programs and the people they serve. ServTraq© will not serve as a state directed enforcement or monitoring tool. We support a change process that allows LSPs to review and comment on draft DTRs before being made final.

We advocate for the allowance of lead time and advance notification of final requirements sufficient to allow LSPs to establish necessary business processes and adequately train staff before implementation at CSD occurs. In many cases, change in reporting requirements may impact a job or application completed months previous to the change in rules.

It will be our policy that changes to the ServTraq© front end system will be implemented no sooner than 30 days after the Data Transfer Rules are final. We assume that the rules are not final until a projected CSD implementation date is set by CSD and reflected in the DTRs and in the case of CORE CRM system DTRs that a transfer or import template is included and correct and they are signed. The CSD implementation date is the date that CSD expects all transfers (live) into the CORE or Weatherization Data Repository systems (Production, not testing) will be subject to the rules and rejections will occur based on the rules in the final DTRs.
Testing Participation
ServTraq staff may contribute to the testing of data changes when Data Transfer Rules are final. No customer data will be shared without the express permission of the customer LSP.

Risks to LSPs
With changes to the Weatherization Data Repository DTRs, there is a risk that LSPs will not have received sufficient advance notice to adjust processes and train staff in advance and that entry adjustments in completed and entered jobs will have to be made in response to the data collection system changes.
There is a risk that the DTRs may also restrict or impede reporting of reimbursable measures that are actually allowable and reimbursable according to the governing contract.
There is a risk that CSD will not make the changes in their system by the implementation date.
There is a risk that the changes made in CSD's system will not match the validations as specified by the DTRs.
There is a risk that ServTraq's 30 day implementation policy may not result in compliance with contracts between CSD and LSPs.

These risks are out of the control of CCES and ServTraq and are solely the responsibility of customer LSPs.

Attachment B
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 accepts, solicits, or directs 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 disclosure of such contribution by a party to be awarded a specific contract. An officer of El Dorado County includes the Board of Supervisors, any elected official, and the chief administrative officer (collectively "Officer"). It is the Contractor'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 contribution(s), or been solicited to make a contribution by an Officer or had an Officer direct you to make a contribution 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   X   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(s) 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   X   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.

5/28/2024	
Date	Signature of authorized individual
Central Coast Energy Services, Inc.	Dennis Osmer
	Type or write name of authorized individual