

AGREEMENT FOR SERVICES #4889

THIS AGREEMENT 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 AutoMon LLC, a Limited Liability Company, duly qualified to conduct business in the State of California, whose principal place of business is 6621 N Scottsdale Road, Scottsdale, AZ 85250, and whose Agent for Service of Process is *Michael Mel, 9515 Soquel Dr., Suite 2013, Aptos, CA 95003*, (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, County has determined that it is necessary to obtain a Contractor to provide maintenance and support services and to provide product subscription service for Ce Connect Licensed Software Products and Modules as part of AutoMon's proprietary probation, pretrial, and parole case management software; and

WHEREAS, Contractor has represented to County that it is specially trained, experienced, expert, and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

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;

WHEREAS, the parties agree that Service Agreement 118-S1811 shall be terminated upon execution of this Service Agreement 4889; and

WHEREAS, this Service Agreement 4889 shall supersede and replace Service Agreement 118-S1811.

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

ARTICLE I

Scope of Services: Contractor agrees to provide software support and maintenance, and product subscription services for the software products listed on attached Exhibit A, AutoMon Pricing, Annual Charges for Licensed Software. These services shall conform to the terms and conditions set forth in this agreement, including the Master Subscription Agreement attached as Exhibit B and AutoMon's Software Maintenance Services Customer Handbook, attached as Exhibit C.

Contractor to provide the following software maintenance and support services (collectively referred to as "Support Services"):

- A. **Telephone Support.** Contractor shall provide County with telephone support services for Licensed Software from 8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday, excluding County recognized holidays ("**Regular Support Hours**"). In addition, Contractor will provide after-hours support on a paid hourly basis. Response to after-hours calls from County shall be returned by the next business day.
- B. **Error Corrections.** Contractor will respond to any Errors reported by County in accordance with its response policy attached hereto included in Exhibit C, Software Maintenance Services Customer Handbook.
- C. **Releases and Versions.** Contractor will provide the County with new Versions of the Licensed Software at no additional cost so long as this Agreement remains in effect and the County is current with its financial obligations with Contractor. The delivery of each Version and Release will include Installation, any necessary data conversions, and Release documentation that will include Release/Version notes, and updated Training materials. Notwithstanding anything in the foregoing to the contrary, the County shall, at its own expense, be responsible for the User Training with respect to each Version and Release. Contractor will maintain the functionality of Customizations, Enhancements, and Interfaces performed by Contractor and provided for under this Agreement or any Change Order in all new Versions and Releases, unless otherwise agreed by the County and Contractor. County understands implementation of new Releases may require County to upgrade its Computer Systems. Moreover, new Releases may entail costs to the County associated with Contractor performing an analysis of the impact on the new Release to determine effect on County-performed modifications to the Software as well as manipulation to and migration of data that new Releases occasion. In some instances, Contractor in its sole discretion may determine that new functionality in the Licensed Software may comprise a New Product. New products are not included in new Versions or Releases and may entail additional fees and may need to be separately licensed by the County. Such separate license or subscriptions may entail additional service fees. The County will not be charged for a New Product, additional fees, or for professional services without a written Change Order authorized by the County.
- D. **Supported Licensed Software.** Contractor's obligation to provide Support Services shall extend only to the current Release and prior Version.

E. County Obligations.

1. **Help Desk.** County will maintain an internal Help Desk to provide first level user support to County's Users relating to basic system and application Licensed Software questions or problems. Only County's Authorized Representatives are authorized to contact AutoMon's Help Desk and only after attempting to resolve user errors, or issues that are caused by the County's Computer Systems.
2. **Computer Systems Responsibility.** County shall perform all tasks necessary to prepare and maintain its Computer Systems for the use of the Licensed Software by County.
3. **Licensed Software Administration.** County, as a general matter, shall perform all tasks associated with the administration of the Licensed Software, including without limitation, (i) add, modify, remove, and otherwise maintain users, templates, lookups, and logons and passwords, (ii) transfer of offenders between officers, (iii) maintaining calendars, (iv) merging or deleting of offenders, associates and organizations and similar application administration functions.
4. **Communications Equipment.** County shall, at its sole expense, install and maintain communications equipment that will permit County to have high speed internet access to the Licensed Software. County acknowledges that maintenance of the appropriate communications equipment is a condition precedent to Contractor's responsibility to perform support and maintenance on the Licensed Software.
5. **Data Security for County Servers.** County shall, at its own expense, install and periodically update a computer virus program, firewalls, and other data security measures on the County's Computer Systems appropriate to protect the Data from unauthorized disclosure and to avoid the transmission of viruses and similar malicious code. Contractor shall not be responsible for any computer virus originating from the County and expressly disclaims any liability for loss or damage caused by any computer virus on County's Computer Systems.
6. **Security.** County shall, at its own expense, protect the security of its Computer System and adopt policies and practices needed to prohibit unauthorized access to or disclosure from the Computer System. Contractor shall not be responsible for any security breach on the County's Computer Systems and expressly disclaims any liability for loss or damage caused by the unauthorized access to County's Computer System other than that which is caused by an employee of Contractor.

F. **Services Outside Scope, Exclusions.** The exclusions set forth in Article I, H (Scope of Service, No Support for LAN, Computer Systems, and Third-Party Software) and Article XVI; C (Confidential Information, Exceptions) shall apply to Contractor's obligations to provide Support Services under this Section.

G. **Change Orders, Process.** The parties agree that County may request additional services not covered under this Agreement by delivering to Contractor a Change Order request. Contractor shall provide County with a written response to the Change Order request which describes in general the work requested, an estimate of the time required to perform such services, and a schedule of the fees related thereto. For clarity, the scope and nature of a requested Change Order may require the development of specific requirements and an analysis of the impact on the Licensed Software and reports in order to provide detailed estimate for the requested work. The County understands and acknowledges that Contractor shall not undertake detailed specification development or estimate preparation until a signed Change Order authorizing such work is signed by County. The County shall be charged at the rates set forth in Article III (Compensation for Services) for the development of requirements by Contractor. All work detailed in a Change Order will be performed on a time and materials basis at the rates set forth in Article III (Compensation for Services), unless specified otherwise in the Change Order. Any impact on the Subscription Software Fee will also be reflected in the Change Order. Notwithstanding the preceding sentence, Contractor will not assess a maintenance surcharge or increase in the Subscription Software Fee related to a Change Order for technical services performed for the County that do not modify the Licensed Products in a way that requires Contractor to maintain a separate version or special configuration on behalf of the County over time, nor for Change Orders for training, training materials, or training preparation.

H. **No Support for LAN, Computer Systems, and Third-Party Software.** Contractor does not offer or provide support for Computer Systems, local area networks, or Third Party Software.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall cover the one (1) year term of July 24, 2020, through July 23, 2021. This Agreement may be extended for two (2) additional one-year terms if written notice is given by the Chief Probation Officer to the Contractor at least thirty (30) days prior to the expiration date of a term.

ARTICLE III

Compensation for Services:

- A. All invoices are due net forty-five (45) days. Support and Maintenance, and Annual Licensed Software charges are due and owing in full on the first day of the term or any renewal term. Change orders are due and owing following the County's receipt and approval of an itemized invoice(s) identifying services rendered and completed.

- B. For the purposes of this Agreement, the billing rate shall be in accordance with the attached Exhibit A, AutoMon Pricing.
- C. If the term of this Agreement is extended past year one, a five percent (5%) increase to all charges will apply.
- D. Taxes: Unless otherwise stated on an invoice, Contractor's fees and charges do not include any taxes, levies, duties, or similar governmental assessments of any nature, including but not limited to value-added, sales, use, or withholding taxes, assessable by any local, state, provincial, federal, or foreign jurisdiction (collectively, "Taxes"). The County is responsible for paying all taxes associated with the services or products purchased by the County under this Agreement. If at some future date, a change in law or a changed interpretation of existing laws results in sales tax being assessed on the products and services supplied by Contractor to the County, the County would provide a sales tax exemption certificate or pay the sales tax owed either to Contractor or directly to the State for the then-current year and future years. However, if the sales tax is assessed because of a re-interpretation of existing law, the County shall not be required to pay any resulting sales tax liability that relates to calendar years prior to the year that the new interpretation is made. For clarity, Contractor is solely responsible for taxes assessable against it based on Contractor's income, property, and employees.

Total amount of this Agreement shall not exceed \$195,535.23.

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 mailed to County at the following address:

County of El Dorado
Probation Department - Fiscal
3974 Durock Rd, Ste. 205
Shingle Springs, CA 95682

or to such other location as County directs.

In the event that Contractor fails to deliver the documents or other deliverables required by the individual Work Orders issued pursuant to this Agreement, 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 Article XI, Default, Termination, and Cancellation.

ARTICLE IV

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 V

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 VI

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 agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

ARTICLE VII

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.

ARTICLE VIII

Independent Contractor/Liability: 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 terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

ARTICLE IX

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 X

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 XI

Default, Termination, and Cancellation:

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. 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 on which the extension of time to cure expires.
- B. Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.
- C. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.

- D. **Ceasing Performance:** County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- E. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. 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.

Either party may terminate this Agreement by giving the other party sixty (60) days advance written notice. In the event of termination Contractor shall return any monies already paid by County for use of the Licensed Software for the period following termination.

- F. **Termination by the County for Cause.** County may terminate this Agreement if there is a continuous, repeated, or systemic failure of the Licensed Software or Contractor's failure to substantially perform its duties set forth in this Agreement. In such event, the County shall deliver written notice of its intent to terminate this Agreement (a "Notice of Termination") that includes a description in reasonable detail of the problems for which the County is invoking its right to terminate this Agreement and the specific requirement within this Agreement or any exhibit or schedule hereto that the County is relying upon. Following delivery of a Notice of Termination, Contractor shall have up to sixty (60) days to cure the failures identified in the Notice of Termination. Throughout such sixty (60) day period, Contractor and County representatives will meet weekly to discuss resolution of the issues identified in the Notice of Termination and identify any remaining outstanding issues. If at the end of the sixty (60) day period of time the issues identified in the Notice of Termination have been cured to County's satisfaction and no other issues remain, County will rescind its Notice of Termination, by sending Contractor formal notice of the same. If Contractor fails to cure the defects identified in the Notice of Termination to County's satisfaction within the sixty (60) day period, County will notify Contractor of such failure to cure and this Agreement will be terminated as of the date that is sixty (60) days after the date of the Notice of Termination. In the event of a Termination by County for cause under this paragraph, Contractor shall return any monies already paid by County for maintenance of the Licensed Software for the period following Termination.

- G. **Source Code Escrow.** Contractor shall maintain the County on the list of customers that are reflected on its multi-party escrow agreement. Contractor, on behalf of its customers, has entered into an escrow agreement, and deposited its source code for the Licensed Software and relevant explanatory documentation. Such deposit shall be updated at a minimum of once per year by Contractor such that what is on deposit with the Escrow Agent reflects enhancements and other modifications to the Licensed Software installed at the County. Should events described in the escrow agreement occur, the County may demand the release, and upon such demand receive the source code and accompanying documentation

from the Escrow Agent. In the event the source code is released to the County, the County shall have the right to use the source code to provide technical improvements and enhancements to the Licensed Software, but shall not have the right to sell, assign or transfer the right to use the Licensed Software to another party. Contractor's obligations and the County's rights under the escrow arrangement shall cease to exist upon termination or expiration of this Agreement.

ARTICLE XII

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

Probation Department
3974 Durock Road, Suite 205
Shingle Springs, CA 95682
ATTN: Chief Probation Officer

or to such other location as the County directs.

with a carbon 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:

AUTOMON, LLC
6621 N. Scottsdale Road
Scottsdale, AZ 85250
ATTN: Contract Administration

or to such other location as the Contractor directs.

- A. **Delivery.** Except as otherwise provided herein, any notice or other communication between the parties hereto regarding the matters contemplated by this Agreement may be sent by United States mail (first class, airmail, or express mail), commercial courier, or electronic mail, in each case delivered to the address set forth above for the recipient. Any written notice required to be sent under Article XI (Default, Termination, and Cancellation) must be sent by U.S. mail (first class, airmail, or express mail) or commercial courier.

- B. **Receipt.** Communications shall be deemed received, if by mail, on the earlier of receipt or the third calendar day after deposit in the mail with postage prepaid; if by courier, when delivered as evidenced by the courier's records; and if by electronic mail, when first available on recipient's mail server. If received on a day other than a business day, or on a business day but after 4:30 p.m. recipient's local time, the communication will be deemed received at 9:00 a.m. the next business day.

ARTICLE XIII

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 XIV

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.

ARTICLE XV

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. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.
- 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 XVI

Confidential Information:

- A. **Defined.** As used in this Article XVI, Confidential Information includes the Licensed Software and Customizations in any embodiment, and either party's technical and business information relating to inventions or software, research and development, future product specifications, engineering processes, costs, profit or margin information, marketing and future business plans, as well as any and all internal County and employee information, information concerning or relating to the property and affairs of County that is furnished or may become available to Contractor while working on this project, any information exchanged by the parties that is clearly marked with a confidential, private, or proprietary legend, and any information that is otherwise made confidential by state law or regulation. Information that is conveyed orally shall be designated as confidential at the time of disclosure and shall be reduced to writing within ten (10) business days. Notwithstanding any provision in Article XVI, County specifically acknowledges that the Licensed Software, including without limitation the database architecture and sequence and Documentation comprise Confidential Information and know-how that are the exclusive property of Contractor.
- B. **Nondisclosure.** Contractor and County agree that any and all Confidential Information will be held in confidence; the recipient shall protect the Confidential Information from disclosure by using the same degree of care, but no less than a reasonable degree of care, that it uses to protect its own confidential information of a like nature to prevent its unauthorized use, dissemination, or publication by its employees or agents. Further, Confidential Information will not be disclosed to any third party without the consent of the other Party. These confidentiality obligations shall not apply to any information that is or subsequently becomes available to the general public other than through a breach by the receiving party. Further, these confidentiality obligations shall not apply to information or materials that are required to be disclosed by a subpoena or court order or other legal process of a court or governmental or regulatory authority; provided, however, that the party being compelled to disclose such information or materials shall promptly notify the other party of any such requirement to enable such party to seek protective relief therefrom

and shall reasonably cooperate as the other party may request in connection therewith. Contractor understands and acknowledges that any use, disclosure, or misappropriation of the County's confidential information by the receiving party may cause the County irreparable harm, the amount of which may be difficult to ascertain. Contractor and County agree the County shall have the right to an order restraining any actual or threatened use, disclosure, or misappropriation of its confidential information and to apply for such other relief as the County shall deem appropriate. Such right is to be in addition to all of the remedies otherwise available to the County at law or in equity.

- C. **Exceptions.** A party's Confidential Information shall not include information that: (a) is or becomes publicly available through no act or omission of the recipient; (b) was in the recipient's lawful possession prior to the disclosure and was not obtained by the recipient either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the recipient by a third party without restriction on recipient's disclosure, and where recipient was not aware that the information was the confidential information of discloser; (d) is independently developed by the recipient without violation of this Agreement; or (e) is required to be disclosed by law.
- D. **Injunctive Relief.** Contractor and County agree that in the event of any breach of Article XVI (Confidential Information), monetary damages may not be a sufficient remedy or protection for the aggrieved party, and that the aggrieved party shall be entitled to injunctive or other relief as may be deemed proper or necessary by a court of competent jurisdiction.

ARTICLE XVII

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XVIII

Interest of Contractor: Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XIX

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Contractor attests that it has no current business or financial

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relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Contractor relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination, and Cancellation."

ARTICLE XX

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, medical condition, marital status, age, or sex; Contractor shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 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 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 8103.

ARTICLE XXI

California Residency (Form 590): If Contractor is a California resident, Contractor must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XXII

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 XXIII

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 XXIV

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 XXV

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 XXVI

Administrator: The County Officer or employee with responsibility for administering this Agreement is Paul Lewis, Sr. IT Department Coordinator, Probation Department, or successor.

ARTICLE XXVII

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 XXVIII

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 XXIX

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 XXX

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 XXXI

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 XXXII

Counterparts: This Agreement may be executed in separate counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute but one and the same document.

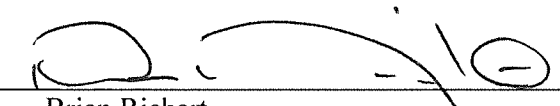
Requesting Contract Administrator Concurrence:

By: 

Paul Lewis
Sr. IT Department Coordinator
Probation Department

Dated: 5/18/2020

Requesting Department Head Concurrence:

By: 

Brian Richart
Chief Probation Officer
Probation Department

Dated: 5.18.20

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

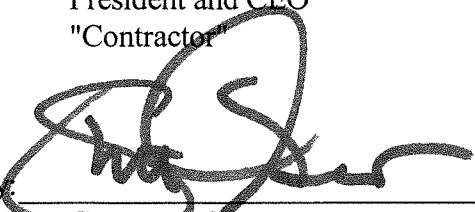
Dated: _____

-- CONTRACTOR --

AUTOMON, LLC
a Delaware Limited Liability Company

By:  _____
Tom Jones
President and CEO
"Contractor"

Dated: 5-18-2020

By:  _____
Corporate Secretary

Dated: 5/18/2020

AutoMon Pricing

AutoMon’s pricing for annual Support and Maintenance and Subscriptions for El Dorado County Probation Department.

Annual Charges for Licensed Software

#	ITEM	7/24/2020 – 7/23/2021	7/24/2021 – 7/23/2022	7/24/2022 – 7/23/2023
1	Caseload Explorer Annual Support and Maintenance (including Ce SRF)	\$51,129.73	\$53,686.22	\$56,370.53
2	Ce Drug Testing Annual Subscription	\$4,015.77	\$4,216.56	\$4,427.38
3	Ce Check-in Annual Subscription	\$4,517.73	\$4,743.62	\$4,980.80
4	Ce Pretrial Annual Subscription	\$2,362.22	\$2,480.33	\$2,604.34
	Total Annual Charges	\$62,025.45	\$65,126.73	\$68,383.05

Custom Enhancements and Interfaces

ITEM	7/24/2020 – 7/23/2021	7/24/2021 – 7/23/2022	7/24/2022 – 7/23/2023
Hourly Rate for Time and Materials Charges. Custom enhancements and after-hours support include potential customization of new modules or modules related to County-specific requirements.	\$214.64	\$225.37	\$236.64

**Maintenance, Subscriptions and hourly rate amounts reflect 5% annual increase*

EXHIBIT B

AutoMon, LLC Master Subscription Agreement (Ce Connect Products)

EFFECTIVE DATE: This Agreement was last updated on November 6, 2019. It is effective between You and Us as of the date You accept this Agreement by signing the Order Form.

THIS MASTER SUBSCRIPTION AGREEMENT ("AGREEMENT") GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES.

BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor of Ours, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

1. DEFINITIONS

"**Affiliate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**AutoMon Technology**" means all of Our proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, APIs, know-how, techniques, designs and other tangible or intangible technical material or information) made available to You by Us in providing the Services;

"**Content**" means the audio and visual information, documents, software, products and services contained or made available to You in the course of using the Services; "Content" exclude Non-AutoMon Applications and Content.

"**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"**Non-AutoMon Applications and Content**" means online and offline software products, services and content that are provided by entities or individuals other than Us and are clearly identified as such, and that interoperate with the Services with Our written consent.

"**Order Form**" means the documents for placing orders hereunder, which are entered into between You and Us from time to time. Order Form(s) shall be deemed incorporated herein by reference.

"**Purchased Services**" means Services that You purchase under an Order Form and further described on Exhibit B hereto.

"**Services**" means the products and services offered by Us and made available to You via the customer login link at <https://www.automonapps.com> and/or other web pages designated by Us, as described in the User Guide. "Services" exclude Non-AutoMon Applications and Content.

"**User Guide**" means the online user guide for the Services, accessible via login at www.ce-connect.com, as updated from time to time.

"**Users**" means individuals who are authorized by You to use the Services, for whom subscriptions to a Services have been ordered, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users include Your employees, consultants, contractors and agents, provided however, Our competitors or vendors of complimentary products are not Users and may not access or view the Services without our express written consent.

"**We,**" "**Us**" or "**Our**" means AutoMon, LLC and its Affiliates.

"**You**" or "**Your**" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

"**Your Data**" means all electronic data or information submitted by You to the Purchased Services.

2. SERVICES

2.1. Provision of Services. We shall make the Services available to You pursuant to this Agreement and the relevant Order Forms during a subscription term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

2.2. User Subscriptions. Unless otherwise specified in the applicable Order Form, (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users as described in the Order Form(s), (ii) additional User subscriptions may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

3. USE OF THE SERVICES

3.1. License Grant. We hereby grant You a non-exclusive, non-transferable, worldwide right to use the Services as described on the relevant Order Form(s), solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to You are reserved by Us (and Our licensors, where applicable.)

3.2. Restrictions. You shall not and shall not permit third parties, without our express written consent, (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services or the Content in any way for any reason; (ii) modify or make derivative works based upon the Services, AutoMon Technology or the Content; (iii) create "links" or integrations to the Services, (iv) "frame" or "mirror" any Services or Content or on any other server or wireless or Internet-based device; or (v) reverse engineer or access the Services in order to (a) build a complimentary or competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Services, or (c) copy any ideas, features, functions or graphics of the Services. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Services.

3.3. Responsibilities of the Parties.

3.3.1. Our Responsibilities. We shall: (i) provide Our basic support for the Services to You, (ii) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for (a) planned downtime of which We shall give You notice, or (b) any unavailability of the Services caused by circumstances beyond Our reasonable control, and (iii) provide the Services only in accordance with applicable laws and government regulations. The Services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. We are not responsible for any delays, delivery failures, or other damages resulting from such problems.

3.3.2. Our Protection of Your Data. We shall maintain, or cause to be maintained, commercially reasonable and appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Your Data stored with Our hosting vendor. We shall not (a) modify Your Data, (b) disclose, provide, rent, or sell Your Data except as compelled by law in accordance with Section 7.3 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.

3.3.3. Data Storage. We will determine the locations of the data centers in which Your Data will be stored and accessible by You and Your Users. For federal, state, and local governmental entities, We will ensure that all Your Data is stored within the United States including any backup data, replication sites, and disaster recovery sites. We will not transfer Your Data to any third parties without Your express written directive to transfer such Data, and Your complete waiver and release from all liability which may result from or be connected with the transfer or use of Your Data by such third party.

3.3.4. Your Responsibilities. You shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data, (iii) if applicable to You, maintain processes, controls and procedures to ensure You and Your Users compliance with the current version of the CJIS Security Policy, HIPAA regulations and similar statutory and regulatory requirements, (iv) prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use of any password or account or any other breach of security, (v) use the Services only in accordance with the User Guide and applicable laws and government regulations, (vi) provide all hardware, systems software and third party software for Services that run on Your servers, and (vii) provide desktop computers and related software to operate the Services. You shall not (a) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks. You are responsible for all activities undertaken by You, or Your Users which result in unauthorized access to Your data. You are solely responsible for any and all costs, expenses, and third party claims or losses related to a data breach, data loss, release of Your Data, damage to Your Data or similar outcome that results from (1) misuse or unauthorized disclosure of Your Data by You or Your Users, (2) any unauthorized access to the Services via Your Users' logons or passwords caused by the negligence of You or Your Users, (3) any loss of or misuse of an electronic device belonging to You or Your Users (e.g. phone, laptop, tablet, computer), (4) an unauthorized disclosure of Your Data resulting from Your or Your Users loss or negligent handling of Your Data in electronic or paper form, or (5) ransomware, phishing scam or similar malicious activity emanating from You or any of Your Users, or (6) Your or Your Users' failure to comply with the provisions of any privacy statutes or regulations that apply to You or Your Data (e.g. CJIS, HIPAA and similar), For clarity, this provision is not an obligation for You to indemnify to Us, but rather, is an allocation of risk and responsibility for any resulting costs and expenses associated with the listed actions.

- 3.4. Storage Limitations.** If You are storing photographic, video or audio materials in the Services that are not directly related to Your primary business and operations, We reserve the right to limit the type and amount of such digital information to 10 MB per User unless You negotiate an increase to Your Subscription Fee with Us. There is no limit on the amount of data or documents You may store in the Service directly related to Your business and operations.

4. NON-AUTOMON APPLICATIONS AND CONTENT

- 4.1. Acquisition of Non-AutoMon Applications and Content.** We or third parties may from time to time make available to You third-party products or services, including but not limited to Non-AutoMon Applications and Content, training and other consulting services. Any acquisition by You of such Non-AutoMon Applications or Content, and any exchange of data between You and any Non-AutoMon provider, is solely between You and the applicable Non-AutoMon provider of such applications or content. We do not warrant or support Non-AutoMon Applications or Content, whether or not they are designated by Us as “certified” or otherwise, except as explicitly specified in an Order Form. Subject to Section 4.2 (Integration with Non-AutoMon Applications and Content), no purchase of Non-AutoMon Applications or Content is required to use the Services except a supported computing device, operating system, compliant web browser and Internet connection.
- 4.2. Integration with Non-AutoMon Applications and Content.** The Services may contain features designed to interoperate with Non-AutoMon Applications and Content (e.g., JSORRAT-II, Virginia Pretrial Risk or Static 99 and similar assessment instruments). To use such features, You may be required to obtain access to such Non-AutoMon Applications or Content from their providers. If the provider of any such Non-AutoMon Applications or Content ceases to make the Non-AutoMon Applications or Content available for interoperation with the corresponding Service on reasonable terms, We may cease providing such Service features without entitling You to any refund, credit, or other compensation.

5. FEES AND PAYMENT FOR SERVICES

- 5.1. Fees.** You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are based on services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form. User subscription fees are based on annual periods that begin on the subscription start date and end twelve calendar months later. The number of subscriptions purchased may be increased during the relevant annual period and fees payable will be prorated based on the remaining time before the expiration of the then current term.
- 5.2. Invoicing and Payment.** You will provide Us with a valid purchase order or alternative document You need and which is reasonably acceptable to Us. We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.
- 5.3. Overdue Charges.** If any charges are not received from You by the due date, then at Our discretion, such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Notwithstanding the previous sentence, if You are a government entity and are prohibited or limited by law from paying interest or penalties for late payment, this section shall not apply to You.

- 5.4. Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 45 or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least seven (7) days' prior notice that Your account is overdue, in accordance with Section 12.2 (Manner of Giving Notice), before suspending services to You.
- 5.5. Payment Disputes.** We shall not exercise Our rights under Section 5.3 (Overdue Charges) or 5.4 (Suspension of Service and Acceleration) if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.
- 5.6. Taxes.** Unless otherwise stated on the Order Form, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against us based on Our income, property and employees. If in the future, We are required to collect such taxes from You by a governmental entity for any period covered by this Agreement, You agree to promptly provide evidence of having paid the applicable Taxes, or remit such taxes to Us to remit to such government entity. Your failure to comply with this section shall be a material breach of this Agreement, entitle Us to exercise the rights set forth in Sections 5.3 and 5.4, and assess reasonable costs and attorney's fees incurred in connection with our effort to collect such Taxes from You.

6. PROPRIETARY RIGHTS

- 6.1. Reservation of Rights in Services.** We alone (and Our licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, to the Services, AutoMon Technology and Content. This Agreement is not a sale and does not convey to You any rights of ownership in or related to the Services, Content, AutoMon Technology or the Intellectual Property Rights owned by Us (or our licensors, where applicable.) Our name, Our logo, and the product names associated with the Services are trademarks of Ours, and no right or license is granted to You to use them, except in training materials prepared by You for Your internal use.
- 6.2. Your Data.** Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You under this Agreement in or to Your Data, including any intellectual property rights therein.
- 6.3. Suggestions.** We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, or Your Users, relating to the operation of the Services, AutoMon Technology and the Content.

7. CONFIDENTIALITY

- 7.1. Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business

processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

- 7.2. Protection of Confidential Information.** The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.
- 7.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

8. WARRANTIES AND DISCLAIMERS

- 8.1. Our Warranties.** We warrant that (i) We have validly entered into this Agreement and have the legal power to do so, (ii) the Services shall perform materially in accordance with the current User Guide, (iii) subject to Section 4.2 (Integration with Non-AutoMon Applications and Content), the functionality of the Services will not be materially decreased during a subscription term, and (iv) We will not transmit Malicious Code to You, provided it is not a breach of this subpart (iv) if You or a User uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code. For any breach of a warranty above, Your exclusive remedy shall be as provided in Section 11.4 (Termination for Cause).
- 8.2. Your Warranties.** You warrant that You have validly entered into this Agreement and have the legal power to do so.
- 8.3. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. INDEMNIFICATION

- 9.1. Indemnification by Us.** We shall defend You against any claim, demand, suit, or proceeding made or brought against You by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "**Claim Against You**"), and shall indemnify You for any related damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court-approved settlement of, a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You; (b) give Us sole control of the defense and

settlement of the Claim Against You (provided that We may not settle any Claim Against You unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense. In the event of a Claim Against You, or if We reasonably believe the Services may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the Services so that they no longer infringe or misappropriate, without breaching Our warranties under "Our Warranties" above, (ii) obtain a license for Your continued use of the Services in accordance with this Agreement, or (iii) terminate Your User subscriptions for such Services upon 30 days' written notice and refund to You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.

- 9.2. Exclusions.** We will not be liable under Section 9.1 for any claims based on the following: Your modification of the Services, AutoMon Technology or Content other than as contemplated by this Agreement; Use of the Services in a manner other than as contemplated in this Agreement; Claims arising from the use of old versions of Services after receipt of modified or updated versions; Claims arising from the use of Your third-party applications or data; and Losses attributable to Your acts or omissions and of Your officers, employees or agents.
- 9.3. Exclusive Remedy.** This Section 9 (Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

10. LIMITATION OF LIABILITY

- 10.1. Limitation of Liability.** NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE LESSER OF \$500,000 OR THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).
- 10.2. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.
- 10.3. Exceptions.** The limitations and exclusions of this Section 10 shall not be construed to apply to or limit Our data security obligations under Paragraph 3.3, Our confidentiality obligations under Paragraph 7.2, or Our infringement indemnification obligations under Paragraph 9.1

11. TERM AND TERMINATION

- 11.1. Term of Agreement.** This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated. If You elect to use the Services for a free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the free trial period.
- 11.2. Term of User Subscriptions, Pricing on Renewal.** User subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 60 days before the end of the relevant subscription term. Pricing increases shall be as set forth in the Order Form(s). If the Order Form does not

reflect a renewal price, then the annual increase in subscription fees for any renewal or extension shall be the greater of 5% per annum or the percentage increase shown in the most recently available CPI-All Urban Counties over the most prior twelve months.

- 11.3. Termination for Convenience.** If You are a government entity, You shall have the right to terminate this Agreement in its entirety for Your convenience at any time by providing us with written notice. Such termination shall not entitle You to a refund of any pre-paid subscription fees or other costs, and You must promptly pay any unpaid obligations owed to Us as of the date of Your written notice of termination (which shall be given in a manner consistent with Section 12.2.)
- 11.4. Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 11.5. Refund or Payment upon Termination.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.
- 11.6. Return of Your Data.** Upon written request by You on or before the effective date of the expiration of Your subscriptions or any termination of the Services, We will make available to You for download a file containing Your Data in a MS SQL database formatted file. If we do not receive a timely request to provide You with a copy of Your Data, We shall have no obligation to maintain Your Data and shall promptly thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.
- 11.7. Surviving Provisions.** Section 5 (Fees and Payment for Purchased Services), 6 (Proprietary Rights), 7 (Confidentiality), 8.3 (Disclaimer), 9 (Indemnification), 10 (Limitation of Liability), 11.5 (Refund or Payment upon Termination), 11.6 (Return of Your Data), 12 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction) and 13 (General Provisions) shall survive any termination or expiration of this Agreement.

12. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

- 12.1. General.** Who You are contracting with under this Agreement, who You should direct notices to under this Agreement, what law will apply in any lawsuit arising out of or in connection with this Agreement, and which courts can adjudicate any such lawsuit, depend on where You are domiciled.
- 12.2. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the authorized person designated by You.
- 12.3. Agreement to Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of Your state without regard to or application of choice of law rules or principles. Both parties hereby consent to the exclusive jurisdiction of the state and federal courts located within Your state, agree to venue lying in such

courts, and expressly waive any objections or defense based upon lack of personal jurisdiction or venue or forum non conveniens.

- 12.4. Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement

13. GENERAL PROVISIONS

13.1. Criminal Justice Information Services (“CJIS”) Requirements.

In the event You are a Criminal Justice Agency subject to CJIS regulations the following representations and responsibilities shall apply: (i) We acknowledge that each of Our employees who will have access to CJIS information has received a copy of the current Federal Bureau of Investigation CJIS Security Policy ; (ii) We will ensure that each of Our employees who will have access to CJIS information signs a Security Addendum Certification; (iii) We will return an executed copy of such addendums to You; (iv) We have provided proof of CJIS training for such employees to the agency in Your State authorized to accept this information on your behalf and (v) We will maintain compliance with the CJIS requirements applicable to Us for the duration of the period of time We are providing you Services.

- 13.2. Export Compliance.** The Services, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use Services in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

- 13.3. Anti-Corruption.** You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department.

- 13.4. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

- 13.5. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

- 13.6. Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right

- 13.7. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

- 13.8. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party’s sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party’s election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering

the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- 13.9. Executory Clause.** If You are a government entity, notwithstanding anything in this Agreement to the contrary, You shall have no liability for the Services to Us beyond the funds appropriated and made available for the Services.
- 13.10. Insurance.** We shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at Our expense, insurance with stated minimum coverages, and otherwise described on Schedule A, attached to this Agreement.
- 13.11. Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

DESCRIPTION OF SERVICES

Caseload Explorer

Caseload Explorer was designed to simplify and empower the management of all areas of Community-based Supervision. In a single application with an efficiently organized data store, Caseload Explorer provides a case and financial management system in a secure environment for protecting, organizing, sharing, and managing client information. Caseload Explorer's powerful underlying technology and sophisticated data model can help agencies connect and synchronize multiple applications to make IT integration challenges more manageable. Caseload Explorer is firmly built on advanced Microsoft® technology and can scale to handle exponential growth without compromising system performance. Integrated with Ce SRF.

Ce Drug Testing

Ce Drug Testing is a SaaS-based drug testing management system, allowing Community-based Corrections agencies to manage and generate random testing groups, record individual UA results, easily view client drug testing history and generate drug testing analytics and reports.

Ce Check-in

Ce Ce Check-in delivers Community-based Corrections agencies with a simple, affordable solution that provides flexible Client reporting, allowing staff to focus on Clients with more involved supervision requirements. Available as both a Web and Kiosk reporting solution, Ce Check-in provides an ideal reporting tool for low risk clients or as an enhanced, supplemental supervision tool for higher risk clients. Ce Check-in provides flexibility to manage reporting frequencies by a variety of factors while alerting Officers when clients are out of compliance or when events occur that require their attention (i.e., FTRs, change of address, employment, etc.).

Ce Pretrial

Ce Pretrial is a SaaS case and data management system designed specifically for Pretrial Services agencies to efficiently and effectively manage all phases of Pretrial. With a focus on providing tools to effectively measure and manage risk, Ce Pretrial leverages today's most modern technologies and a high level of configuration to reflect industry best practices married closely with local policies and procedures

EXHIBIT C



Software Maintenance Services

Customer Handbook

Version 6.2

Effective Date: May 29, 2019

AutoMon, LLC

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Scottsdale, AZ 85250

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WELCOME TO AUTOMON SUPPORT

AutoMon is committed to ensuring our customers' success by offering direct, knowledgeable, and responsive technical support. We strive to create a support environment that will provide you with timely information and prompt resolutions resulting in maximized availability and increased performance of our Software.

This handbook provides guidelines and reference materials that describe AutoMon's Software support, system and application upgrade process, certain customer responsibilities and Service Level response times. In most cases, the delivery of our support and maintenance for AutoMon Software products and services are governed by the terms and conditions herein. In some cases, you or your firm, company or government agency has executed a separate License, Support and Maintenance Agreement with AutoMon. If you have a separate Agreement, to the extent this Handbook and your Agreement differ, your Agreement will govern your support and maintenance arrangements with AutoMon.

Some of AutoMon Software products may be installed locally/on-premise on a customer's servers or alternatively in Microsoft Azure Cloud; others are hosted exclusively on Microsoft Azure Cloud. AutoMon's responsibilities will depend in some instances on where the Software is installed. For example, if the customer has the Software locally installed on servers they control, database backups, system and Software upgrades, encryption, anti-virus and fraud detection software are the responsibility of the customer. If the Software is hosted on Microsoft Azure Cloud by AutoMon, then those same responsibilities will be borne by AutoMon. See *Customer Responsibilities* section for additional responsibilities.

The Customer is responsible for First Line Support of any AutoMon Software product, without regard to where the Software is hosted.



CONTACTING AUTOMON SUPPORT

Once a Customer is using an AutoMon product or service, support is handled by AutoMon's Help Desk. Support may be requested using AutoMon's toll-free phone number, or via TeamSupport, an online portal for reporting issues or errors. After-hours support is available for an additional hourly fee and only offered on a non-guaranteed response time.

The AutoMon Help Desk may be reached by calling 1-888-726-8110, ext 2. AutoMon's Standard Support Hours are: Europe and South America Mon-Fri 9 a.m. to 5 p.m. (ET); North America (except for Alaska and Hawaii) Mon-Fri 9 a.m. to 5 p.m. (Local Time Zone); Alaska and Hawaii Mon-Fri 6 a.m. to 5 p.m. (Pacific Time). In all cases, excluding weekends and holidays. Alternatively, TeamSupport can be accessed via the AutoMon website Support page at:

<https://automonllc.na1.teamsupport.com/>

Logons and Passwords to AutoMon's TeamSupport are issued through the portal itself. To receive a password, visit the URL above and select "Log In" to create an account. During the Term of your License, Maintenance and Support Agreement or your Master Subscription Agreement, there is no limit to the amount of Standard Business Hours Support so long as you provide Front Line Support in accordance with the terms described below.



CUSTOMER RESPONSIBILITIES

You are required to establish and maintain an internal help desk to provide First Line Support for the Software. This means that you are responsible for your internal network, local hardware, systems software on your servers, desktop configuration and support and basic user questions or problems regarding the features and functions of the Software. In all cases, First Line Support requires you to investigate and provide initial response to your users for the following:

- First call response respecting performance, functionality or operation of the system and Software;
- Attempt to recreate the reported problem;
- Document the reported problem, including, when possible, screenshots and/or detailed descriptions with reproduction steps;
- Document the steps taken by your First Line Support to troubleshoot the problem;
- Resolve, when possible, the problems your users have reported.

If after reasonable commercial efforts your First Line Support is unable to diagnose or resolve the issues, your designated representative will contact AutoMon Support to report the issue. In the event that you do not establish and maintain First Line Support for your users throughout the term of your Maintenance or Subscription agreement, AutoMon reserves the right to request an increase to your current subscription or maintenance fees and/or assess charges for out of scope work. Any additional charges, referred to in the previous sentence, will constitute a change order that must be signed by both parties.

Additionally, customers will, at your own expense:

- *For customers hosting their Software locally*, upgrade all system software on or before the end of Mainstream support from Microsoft (Recommended);
- Update, maintain and patch all system software, security, anti-virus, and fraud detection software to the current releases from the licensor on all customer servers used in connection with the Software;
- Consistent with government regulations (e.g. HIPAA, CJIS), apply database encryption software to secure all private or personal data stored locally while at rest or in transit;
- When the Software is locally installed, implement and perform appropriate data backup and data recovery procedures;
- Secure a high speed internet connection for use by AutoMon to perform support services and for your users to access the Software.



SERVICE LEVEL DEFINITIONS

Service requests for Software may be submitted by your designated representative online via AutoMon’s web-based customer support system, TeamSupport, or by telephone. The Service Level shall be determined based on the severity definitions specified below.

Service Level	Service Level Definition	Initial Response Time	Resolution
1	Your production use of the Software is stopped or severely impacted such that you cannot continue to work. The operation is mission critical to the business and no Circumvention Procedures are available.	2 hours	2 business days
2	You experience a severe loss of service where essential functionality is unavailable, however, operations can continue in a restricted fashion or by use of a Circumvention Procedure.	1 business day	5 business days
3	You experience a loss of service where non-essential functionality is unavailable and a workaround is not available to restore functionality.	2 business days	25 business days
4	You experience a loss of service where non-essential functionality is unavailable. The impact is an inconvenience or a Circumvention Procedure is available.	2 business days	Within next two version releases
5	A cosmetic or minor issue that does not impact the operation of a Software.	2 business days	Issue may be resolved at AutoMon’s discretion at a future date
6	All Enhancement requests, usage questions, or requests for training. Also reported problems that are caused by customer computers, local environments, networks or third party software.	4 business days	These requests are outside the scope of our maintenance obligations



PRODUCT VERSION RELEASES

All of AutoMon's Software products include the right to Version Releases throughout the term of any maintenance or subscription agreement. If you host the Software on your servers, you will be responsible for installing Version Releases on your servers. You may contract with AutoMon to assist with installation at an additional charge. If your Software is hosted by AutoMon on Microsoft Azure, AutoMon will install the Version Releases.

The term "Version Releases" means new versions of the Software you have licensed from AutoMon that contain technical repairs, improvements, functional enhancements, updates, and/or maintenance changes to existing functionality. When appropriate, Version Releases will be accompanied by release notes describing the new features or functionality, and where appropriate, an installation guide (locally installed Software only) shall be provided.

The Customer shall be responsible for training with respect to each Version Release, or you may contract with AutoMon to perform these services.

Upgrade Process

For AutoMon hosted Software, the steps are:

1. AutoMon notifies customers via email that a new version or release is ready and when it is scheduled to be deployed. During deployment of new versions or releases, the Software may be unavailable for use for a short period of time; the accompanying release notice will indicate if there is anticipated downtime. In most cases these deployments will occur after business hours.
2. AutoMon deploys the Version Release.

For on-premise Software (Software that resides on customer owned or controlled servers) the steps are:

1. AutoMon will notify customers that a new Version Release to their Software is ready to be deployed.
2. Download the required installation files from the AutoMon SFTP site or as otherwise directed by AutoMon. Instructions for obtaining and installing those updates will be provided by AutoMon.
3. Prepare your servers for implementation, with updates to your servers' system software, and run the installation files. For a time and materials charge, AutoMon will assist with updating local servers and running the installation programs associated with updates. See your Agreement with AutoMon for applicable hourly rates.



4. In an increasing number of instances, Version Releases will be installed without active assistance of the customer, via AutoMon's automated update process using Ce Sync. When Ce Sync is utilized to install updates to your Software, you will be notified in advance by AutoMon and provided release notes describing the changes that will be implemented.

OTHER SUPPORT SERVICES

Customers may request additional services by submitting a work or enhancement request through TeamSupport or through AutoMon's Sales department (sales@automon.com). Other such services include: (a) additional training; (b) programming or configuration services; and (c) business analysts. AutoMon shall provide to Customer a written response to the request which describes in detail the anticipated impact of the request on the existing Software, the time required to perform such services, an implementation plan, and a schedule of expected costs.

DEFINITIONS

- a) "**Circumvention**" or "**Circumvention Procedures**" shall mean, as applied to a Documented Defect, a change in operating procedures whereby the Customer can reasonably avoid any deleterious effects of such Documented Defect.
- b) "**Documented Defect**" means a failure of the Software to properly perform any of its intended functions. The Customer must use reasonable effort to document a Documented Defect with sufficient information to recreate the defect, including, but not limited to, the operating environment, data set, and user, and the Customer must deliver such information to AutoMon concurrently with its notification to AutoMon of such defect. The Customer shall use all reasonable efforts to eliminate any non-application related issues prior to its notification to AutoMon of such defect, including, but not limited to, issues related to the network, user training and data problems not caused by the Software. Any technical or other issue for which the Customer requests services, but which is not a Documented Defect, shall be treated as a request for additional services requiring a Change Order.
- c) "**Documentation**" means the training materials, user's manuals and other materials in any form or medium provided by AutoMon to the users of the Software regarding the use or maintenance of Software.
- d) "**Enhancement.**" Any modification or addition that, when made or added to the Software, changes its utility, efficiency, functional capability, or application, but that does not constitute an Error Correction.
- e) "**Error.**" Any failure of the Software to materially conform to its functional specifications as agreement in writing with the Customer or Documentation as published from time to time by



AutoMon. Any nonconformity resulting from Customer's misuse, improper use, alteration, or damage of the Licensed Program shall not be considered an Error.

- f) **"Error Correction."** Either a modification or an addition that, when made or added to the Software, establishes material conformity of the Software to the Documentation, or a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect on Customer of such nonconformity.
- g) **Software** includes any and all Software you license from AutoMon under a License, Maintenance and Support agreement or a Master Subscription Agreement.
- h) **Systems or Third Party Software** means software licensed by a party other than AutoMon.