

SOFTWARE LICENSE AGREEMENT

BETWEEN

PANORAMIC SOFTWARE CORPORATION

AND

County of El Dorado Veterans Services

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SOFTWARE LICENSE AGREEMENT

This SOFTWARE LICENSE AGREEMENT ("Agreement") is made and entered into as of March 22, 2011, by and **between PANORAMIC SOFTWARE CORPORATION**, a California corporation ("**PANOSOFT**"), and **THE COUNTY OF EL DORADO VETERANS SERVICES, CVSO** ("**Customer**").

RECITALS

A. **PANOSOFT** has developed and owns all rights in and to the computer software and documentation referred to herein as the "**Software**".

B. **Customer** wishes to acquire from **PANOSOFT**, and **PANOSOFT** is willing to grant to **Customer**, certain rights with respect to the Software, on the terms and conditions set forth herein.

AGREEMENT

In consideration of the mutual agreements contained herein, the parties agree as follows:

1 CERTAIN DEFINITIONS

1.1 Software. As used herein, the term "Software" shall mean the computer application software known to **PANOSOFT** as "**VetProWeb**", described in [Schedule A](#), and all coding, (object code and source code), tapes, discs, modules, and similar materials comprising such software. The Software is described more specifically in the Documentation (defined below).

1.2 System. As used herein, the term "System" shall mean the Software. Reference to the System shall include any component thereof. All modifications and enhancements to the System shall be deemed to be part of the System as defined herein and shall be subject to all of the terms and conditions set forth herein

1.3 License. As used herein, the term "License" shall have the meaning assigned to such term in [Section 2.1](#).

1.4 Access. Access to the System will be provided to Customer via the Internet by PANOSOFT with the sole purpose and intention of Customer performing services as required for Customer's stated business. Customer is solely responsible for any and all data entered and in turn provided to local, state and federal agencies as well as any other individual or entity.

2 GRANT OF LICENSE

2.1 Grant. PANOSOFT hereby grants to **Customer** a license with respect to the Software, subject to the terms and conditions set forth herein (the "License").

2.2 Scope. The License granted herein shall consist solely of: (i) the non-exclusive, non-transferable right of **Customer** to access the **SYSTEM** via the internet to provide services solely in connection with **Customer's** existing business; (ii) the non-exclusive, non-transferable right of **Customer** to copy the customer data solely for backup purposes; and (iii) the right to receive and use the on line Documentation. The License granted herein shall not entitle **Customer** to access the **SYSTEM** other than in connection with **Customer's** existing business; or (c) to permit any person or entity other than **Customer** and its employees to access the system; or (d) to copy or access the **SYSTEM** data in any manner or in any form other than solely for backup purposes; or (e) to modify or enhance the **SYSTEM** in any respect; or (f) to transfer any right in the **SYSTEM** to any other person or entity.

2.3 Ownership. **Customer** acknowledges and agrees that, as between PANOSOFT and **Customer**, title and full ownership of all rights in and to the **SYSTEM** and all other materials provided to **Customer** hereunder shall remain with PANOSOFT. **Customer** further acknowledges and agrees that the **SYSTEM**, and all ideas and expressions contained therein, are proprietary information and trade secrets of PANOSOFT.

3 TERM

3.1 Duration. The License granted herein shall be effective as of the Activation Date (defined in [Section 4.1](#)) and shall remain in effect perpetually unless terminated as provided in [Section 3.2](#).

3.2 Termination. **Customer** may at any time terminate the License granted herein if PANOSOFT has breached a material provision of this Agreement and has failed to cure such breach within sixty (60) days after receiving written notice thereof. **Customer** upon ninety (90) days notice may terminate the license granted herein in the event of a change in the nature, scope, or requirements of **Customer's** program or operations. PANOSOFT may at any time terminate the License granted herein if **Customer** has breached a material provision of this Agreement (which shall include without limitation Sections [5](#), [7](#), and [8](#)) and has failed to cure such breach within sixty (60) days after receiving written notice thereof.

3.3 Events upon Termination. Upon any termination of the License granted herein, the parties shall comply with the provisions of [Section 9](#).

4 ACTIVATION, TRAINING and SUPPORT

4.1 Activation. PANOSOFT shall have **SYSTEM** ready for **Customer** access in the manner and on the schedule set forth in [Schedule B](#) attached hereto. The date on which PANOSOFT notifies **Customer** that the **SYSTEM** is available to **Customer** for data entry and access shall be referred to herein as the "**Activation Date**".

4.2 Training. PANOSOFT shall provide to **Customer** the training services relating to the System described in [Schedule B](#) attached hereto.

4.3 Support Services. PANOSOFT shall provide to **Customer** support services relating to the System described in the Maintenance Agreement attached hereto.

5 COMPENSATION

5.1 License Fee. As compensation for the License granted herein, **Customer** shall pay to PANOSOFT a fee in accordance with the schedule set forth in [Schedule C](#) attached hereto.

5.2 Other Compensation

5.2.1 Fee for Additional Services. If PANOSOFT provides services requested in writing by **Customer** which are in addition to the services specified in [Section 4](#), **Customer** shall, as compensation for such additional services, pay to PANOSOFT a fee based on PANOSOFT's current prevailing rate for such services or per the terms of a separate contract agreement for specific services rendered.

5.3 General

5.3.1 Invoices. PANOSOFT shall invoice **Customer** monthly for all sums that **Customer** owes PANOSOFT hereunder, and **Customer** shall pay each invoice within thirty (30) days after receipt thereof.

5.3.2 Taxes. **Customer** shall be responsible for payment of any and all taxes or other governmental charges or fees attributable to the License granted herein.

6 WARRANTY

6.1 General Warranty. PANOSOFT warrants to **Customer** that PANOSOFT has full right and authority to grant to **Customer** the License herein and that **Customer's** use of the **SYSTEM** in accordance with the License herein shall not infringe any United States copyright or patent.

6.2 Performance. PANOSOFT warrants to **Customer** that **VetProWeb** application software contracted for by **Customer** will perform in substantial compliance with the **VetProWeb User's Manual** listed on [Schedule A](#). There are no express or implied warranties, including the implied warranty of merchantability and fitness for a particular purpose not specifically set forth in this agreement, with respect to this agreement, or the software or other products, documentation or other products.

6.3 Sole and Exclusive Remedy. If **Customer** believes a product does not conform to the above warranties, **Customer** shall notify PANOSOFT in writing during the warranty period. PANOSOFT will use commercially reasonable efforts to repair or replace the software medium or bring the Licensed Programs into substantial conformance with the applicable specification at no additional cost to the **Customer**. In the event that the foregoing remedy is determined to fail of its essential purpose, PANOSOFT shall refund or reimburse **Customer** a pro-rata amount of that actually paid by **Customer** to PANOSOFT under the terms of this Agreement which has not been earned as measured by the time since the Activation Date.

7 CONFIDENTIALITY

7.1 Customer Obligations. **Customer** acknowledges that, by virtue of the License granted herein, it will have access to certain proprietary information and trade secrets of PANOSOFT, including without limitation proprietary information and trade secrets relating to the **SYSTEM** (collectively, the "Confidential Matters"). **Customer** agrees that the Confidential Matters, and all information comprising or relating to the Confidential Matters, shall be deemed confidential and proprietary to PANOSOFT, shall be held in trust by **Customer**, and shall be safeguarded by **Customer** to the same extent that **Customer** safeguards confidential matters relating to its own operation which in no event shall be less than the safeguards that a reasonably prudent person or business would exercise under similar circumstances.

7.2 To these ends, **Customer** agrees to take such steps as may be necessary to ensure that neither the Confidential Matters, nor any information comprising or relating to the Confidential Matters, are used by **Customer** or any of its employees, agents, or representatives in any manner or for any purpose other than as provided herein or are made available by **Customer** or any of its employees, agents, or representatives to any other person or entity, without the prior written consent of **PANOSOFT**.

7.3 Exceptions. **Customer's** obligations pursuant to [Section 7.1](#) shall not apply to: (i) information which is in the public domain, other than as a result of any breach of this Agreement; or (ii) information which **Customer** is obligated to disclose pursuant to the lawful order of any court or government instrumentality in the United States, but only to the extent required by such order. Nothing in Sections 7.1 or 7.2 shall prevent Customer from complying with the Public Records Act.

7.4 PANOSOFT Obligations. **PANOSOFT** acknowledges that, by virtue of the **Customer**/developer relationship established herein, it will have access to certain confidential information relating to the **Customer's** clients and activities. **PANOSOFT** agrees that all information relating to the activities and the clients of **Customer** shall be deemed confidential and proprietary to **Customer**, shall be held in trust by **PANOSOFT**, and shall be safeguarded by **PANOSOFT** to the same extent that **PANOSOFT** safeguards confidential matters relating to its own clients and activities which in no event shall be less than the safeguards that a reasonably prudent person or business would exercise under similar circumstances.

7.4.1 To these ends, **PANOSOFT** agrees to take such steps as may be necessary to ensure that no information comprising or relating to the clients or activities of **Customer** are used by **PANOSOFT** or any of its employees, agents, or representatives in any manner or for any purpose other than as provided herein or are made available by **PANOSOFT** or any of its employees, agents, or representatives to any other person or entity, without the prior written consent of **Customer**.

7.4.2 Customer Data. **PANOSOFT** will be responsible for the storage and security of Customer data including data management and protection. Data access will be accomplished via Secure Socket Layer (SSL). Backup of customer data will be performed on a nightly basis and restoration of data will be available within 24 hours for disaster recovery. **Customer** is solely responsible for the content of data.

7.5 Exceptions. PANOSOFT's obligations pursuant to [Section 7.4](#) shall not apply to: (i) information which is in the public domain, other than as a result of any breach of this Agreement; or (ii) information which PANOSOFT is obligated to disclose pursuant to the lawful order of any court or government instrumentality in the United States, but only to the extent required by such order.

8 LIABILITY

8.1 Indemnification by PANOSOFT. PANOSOFT shall indemnify and hold harmless **Customer**, and its directors, officers, and employees from and against any and all liability, losses, damages, and expenses (including without limitation reasonable attorney's fees and costs) incurred by **Customer**, or its directors, officers, or employees that arise solely out of or relate solely to PANOSOFT's breach of any provision hereof.

8.2 Indemnification by Customer. **Customer** shall indemnify and hold harmless PANOSOFT, and its directors, officers, and employees from and against any and all liability, losses, damages, and expenses (including without limitation reasonable attorney's fees and costs) incurred by PANOSOFT, or its directors, officers, or employees that arise solely out of or relate solely to **Customer's** breach of any provision hereof.

8.3 Limitations on Liability Notwithstanding the provisions of [Sections 8.1](#) and [8.2](#), the liability of the parties and the remedies of the parties shall be limited as follows:

8.3.1 Uncontrollable Events. Neither party shall bear any liability arising out of events beyond the control of such party, including without limitation acts of Nature, acts of a public enemy, fires, floods, storms, earthquakes, riots, strikes, lock outs, wars, restraints of government, court orders, power shortages or outages, equipment or communications malfunctions, nonperformance by any third parties, or other events which cannot be controlled or prevented with reasonable diligence by such party.

8.3.2 Consequential Damages. Neither party shall bear any liability for special, consequential, incidental, or indirect damages (including without limitation loss of anticipated income or profits, loss of goodwill, or other loss or damages), even if such party has been informed of the possibility of such damages.

8.3.3 Value of Contract. In no event shall the aggregate liability of PANOSOFT to **Customer** or **Customer** to PANOSOFT (regardless of the form, whether in contract or tort) exceed the amount of the fee paid by **Customer** to PANOSOFT pursuant to [Section 5.1](#).

8.3.4 Passage of Time. In no event shall a cause of action be asserted by **Customer** against PANOSOFT or PANOSOFT against **Customer** that arises out of or relates to any event, condition, breach, or claim occurring more than one (1) year prior to the filing of such cause of action.

8.4 Insurance. Without limiting **PANOSOFT's** indemnification of the **Customer**, **PANOSOFT** shall provide and maintain at its own expense during the term of this Agreement the following programs of insurance covering its operations hereunder. Such insurance shall be provided through insurer(s) satisfactory to **Customer** and certificates evidencing such insurance, along with significant endorsements, shall be delivered to **Customer** on or before the effective date of this Agreement, and shall stipulate that the **Customer** is to be given at least thirty (30) days written notice in advance of any modification or cancellation of any policy of insurance.

8.4.1 General and Auto Liability. Insurance shall include but not be limited to, comprehensive general and automobile liability with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall be primary and not contributing with any other insurance maintained by **Customer**.

8.4.2 Workers' Compensation. A program of Workers' Compensation Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, and which specifically covers all persons providing services by or on behalf of **PANOSOFT** and all risks to such persons under this Agreement.

9 TERMINATION

9.1.1 Upon any termination of the License granted herein: (i) **Customer** shall immediately cease any and all use of **SYSTEM**. Notwithstanding the preceding sentence, if **Customer** has terminated this Agreement in accordance with [Section 3.2](#) and **Customer** has paid to **PANOSOFT** the full amount of the fee provided in [Section 5.1](#) and all other amounts then owing to **PANOSOFT** under [Section 5](#), then **Customer** may continue to use the System for the time period paid, subject to the provisions of Sections [2](#), [7](#), [8](#), and [10](#).

10 GENERAL PROVISIONS

10.1 Compliance with Laws. Each party shall, in performing its obligations hereunder, comply with all laws, rules, regulations and governmental orders applicable to such party.

10.2 Amendments. This agreement may be amended or supplemented from time to time, but only by a written instrument executed by **Customer** and **PANOSOFT**. As used herein, the term "Agreement" shall include any future amendments or supplements made hereto.

10.3 Construction. The terms "Section" or "Sections" used herein shall refer to the section or sections of this Agreement. The titles and subtitles used herein are not a part of this Agreement, are included solely for convenient reference to the Sections hereof, and have no bearing on the terms and conditions hereof. The singular used herein shall include the plural, and the plural used herein shall include the singular.

10.4 Recitals and Schedules. The Recitals to this Agreement and the Schedules attached to this Agreement shall be considered part of the Agreement and are incorporated herein by this reference.

10.5 Survival. The provisions of Sections [5](#), [6](#), [7](#), [8](#), [9](#), and [10](#) shall survive any termination or expiration of this Agreement and the License granted herein.

10.6 Relation between the Parties. This Agreement shall not be construed to constitute either party as the agent or legal representative of the other for any purpose whatsoever. Neither party is granted any express or implied right or authority by the other party to assume or create any obligation or responsibility on behalf of or in the name of the other party, or to bind the other party in any manner or thing whatsoever.

10.7 Assignment. Neither this Agreement, the License granted herein nor any other right or obligation hereunder shall be assigned, delegated or otherwise transferred by either party, without the prior written consent of the other party. Notwithstanding the preceding sentence, **PANOSOFT** may assign, delegate, or otherwise transfer this Agreement, the License granted herein, and **PANOSOFT's** rights and obligations hereunder to any affiliate of **PANOSOFT** or to any successor of **PANOSOFT's** business or any part thereof, without the prior written consent of **Customer**.

10.8 Successors. Subject to the restrictions in Section 10.7, this Agreement shall bind and inure to benefit of the respective assigns, successors, representatives and affiliates of the parties.

10.9 Waiver. The failure of either party to insist upon strict performance of any provision of this Agreement when and as called for or due, or to exercise any right provided for in this Agreement, shall not be deemed a waiver or relinquishment for the future of any such provision or right, and no waiver of any provision or right shall affect the right of the waiving party to enforce or exercise any other provision or right in this Agreement.

10.10 Certain Remedies. The parties acknowledge and agree that any breach by **Customer** of [Section 7](#) of this Agreement would cause irreparable damage to **PANOSOFT**, the exact amount of which would be impossible to ascertain, and for that reason, **PANOSOFT** shall be entitled to injunctive relief in the event of any actual or threatened breach of [Section 7](#). Such relief shall be in addition to any remedies to which **PANOSOFT** may be entitled under law or otherwise.

10.11 Governing Law. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California, U.S.A., without regard to such state's choice of laws.

10.12 Severability. If any of the provisions of this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the fullest extent permitted by law.

10.13 Notices. Any notice, payment or other communication required or permitted under this Agreement shall be in writing and shall be deemed to be properly given either: (i) upon personal delivery; or (ii) two (2) calendar days after being sent by facsimile, e-mail, telex, or telegram, or five (5) calendar days after being deposited in the mail (registered or certified first class, postage prepaid), addressed to the parties at their addresses as set forth in Schedule B attached hereto, or to such other addresses as the parties shall furnish by written notice.

10.14 Enforcement. If either party shall bring an action of any nature against the other party by reason of the breach of any provision of this Agreement, or otherwise arising out of this Agreement, whether for declaratory or other relief, the prevailing party in such action shall be entitled to such party's reasonable expenses relating to such action, including its costs of suit and attorneys' fees.

10.15 Entire Agreement. The parties acknowledge that each has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter contained herein, and supersedes all prior or contemporaneous proposals, understandings, representations, conditions, warranties, covenants and other communications between the parties, whether oral or written, relating to such subject matter.

10.16 Contract Administrator. The County officer or employee with responsibility for administering this contract is William E. Schultz, Director of Veteran Affairs.

10.17 Venue. For any action against any party by reason of breach of this agreement is in **EL DORADO COUNTY.**

Agreed to:

Accepted By:

El Dorado County Veteran Services
By:

Panoramic Software, Incorporated
By:

Date: _____

Arthur von Waldburg, President
Date: _____

SCHEDULE A

Description of the Software and Documentation
Pursuant to [Section 1.1](#) and [1.2](#) of
Software License Agreement

Basic System Overview

VetProWeb is designed for County Veterans Services Offices to track veteran claims and awards and other case-management activities. Audit Reporting functions suitable for submission to Local, State, and Federal agencies are included. These specific services will vary for each customer and typically will include but are not limited to:

- Tracking Veteran Demographic Data
- Tracking Dependent Information
- Tracking Claim and Award activities
- Filling in VA PDF Forms from the database
- Generating Form Letters
- Filing Semi-Annual Audit Reports to the CDVA
- **PANOSOFT** Hosted Secure server with access via SSL
- Daily backup of Customer data
- Disaster recovery of data within 24 hours
- On-line User Manuals and Documentation

SCHEDULE B

Description of System Activation
(Pursuant to [Section 4.1](#) of the
Software License Agreement)

I. SYSTEM ACTIVATION

In accordance with agreed upon scheduled Activation Date, system will be available for Customer use after verification of initial Customer setup and demonstration of:

- (a) System screens
- (b) Data entry (Veterans, Claims, Awards, Dependents, Disabilities, Client Notes)
- (c) System wide Reports

II. TRAINING and IMPLEMENTATION SCHEDULE

PANOSOFT will provide Customer with a training and implementation schedule prior to the effective date of the contract.

III. ADDRESSES of the PARTIES

Panoramic Software Incorporated

336 Bon Air Center, Suite 367

Greenbrae, CA 94904

Phone: (877) 558-8526

Fax: (866) 548-0636

County of El Dorado Veterans Affairs (CVSO)

130 Placerville Drive, Suite B

Placerville, CA 95667

Phone: (530) 621-5892

Fax: (530) 621-2218

SCHEDULE C

Fee and Payment Schedule

- I. INITIAL STARTUP COST. The initial startup costs shall be determined as stated in the Memo of Understanding (MOU) between the California Department of Veterans Affairs (**CDVA**) and Panoramic Software (**Panosoft**), attached below and made part of this Agreement.
- II. ANNUAL HOSTING and MAINTENANCE. Annual hosting and maintenance charges will be charged at the rate of \$ 3,500.00 per year. These charges are payable annually and in advance.
- III. ADDITIONAL TRAINING. Any visits to **Customer's** site by **PANOSOFT** staff other than for Initial Training will be made at the **Customer's** written request. Such visits will be invoiced at a rate of \$1,200.00 per day, with a one (1) day minimum.
- IV. PAYMENTS FROM CDVA. Invoices from **PANOSOFT** to **Customer** shall become payable only after payments to cover the invoiced charges have been received by **Customer** from **CDVA**.

Additional **PANOSOFT** services and costs are detailed in the [Software Maintenance Agreement](#).

SOFTWARE MAINTENANCE AGREEMENT

This SOFTWARE MAINTENANCE AGREEMENT (Agreement) is entered into, by and between **El Dorado County CVSO (Customer)** and **Panoramic Software Incorporated (PANOSOFT)** for PANOSOFT's **VetProWeb** application software.

Subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. **TERM.** This agreement shall be effective as of the official "**Activation Date**" (defined in [Section 4.1](#) of the Software License Agreement) and expire one year thereafter.
2. **RENEWAL.** At the end of the term in item 1 above, this Agreement may be renewed by agreement of both parties and may be subject to new terms and conditions upon renewal. If **Customer** intends not to renew, notice of cancellation must be provided at least thirty (60) days prior to the end of the effective period. If **PANOSOFT** is unwilling or unable to continue to provide the services as set forth in this Agreement, **Customer** will be notified thereof at least thirty (30) days prior to the renewal date.
3. **GENERAL MAINTENANCE SERVICES.** **PANOSOFT** will provide to **Customer** the following types of services under this Agreement on all week-days, Monday through Friday, from 8:30 to 4:30 Pacific Standard Time, excluding holidays.
 - (a) **Telephone Support.** **PANOSOFT** staff will be available to answer questions by telephone concerning **VetProWeb** application software.
 - (b) **VetProWeb.** System Updates to **VetProWeb** will be provided to fix application software errors and to improve ease of use and performance. Such updates may include changes necessary to meet federal, state, and county mandated requirements. All software enhancements will be provided at the discretion of **PANOSOFT**.
 - (c) **Error Correction.** An error is defined as any aspect of the software performance that does not conform substantially to the operation specified in the user documentation. **Customer** identified errors will be corrected and brought into conformance with the user documentation.
4. **CUSTOMER SYSTEM RESPONSIBILITIES.** **Customer** is responsible for performing the following duties relating to the successful operation of **VetProWeb**. **PANOSOFT** will provide assistance to **Customers** in performance of **Customer** System Responsibilities at an additional charge. **PANOSOFT** recommends that **Customer** appoint a System Administrator who will be responsible for **Customer** System Responsibilities.

- (a) Customer Hardware/Software. Customer must ensure that the versions of all underlying computer operating systems and web browsers are the versions recommended by **PANOSOFT** for use with the most current version of **VetProWeb**.
 - (b) Software Maintenance Agreement. This Agreement must be in effect for **Customer** to receive from **PANOSOFT** any of the services listed in this Agreement. Services listed in this Agreement will be unavailable to **Customers** who are not under a current Software Maintenance Agreement. In the event **Customer** discontinues this Agreement and subsequently desires to reinstate the Agreement in order to receive any of the services listed in this Agreement, **Customer** will be required to pay the normal monthly charge for all months during which service was discontinued before service will be reinstated. Payment of these charges will grant Customer all prior System updates and/or the most current version of VetProWeb.
5. ADDITIONAL SERVICES/MAINTENANCE. **PANOSOFT** will provide additional maintenance services at an additional charge. **PANOSOFT** may require **Customer** authorization in writing and/or a **Customer** Purchase Order before any service that results in billable costs is performed. Additional Maintenance Services include, but are not limited to, the following:
- (a) Additional Training. Additional software training is available at **Customer** sites.
 - (b) Data and Systems Corrections. Data and Systems corrections include any corrective actions accomplished by **PANOSOFT** staff on-site or via internet access which are necessary due to **Customer** error(s) or unauthorized data access by **Customer**. Unauthorized data access by **Customer** is defined as any **Customer** editing or entering of data other than through normal system usage as described in the user documentation.
 - (c) Customer Site Visits. Visits to **Customer** sites requested by **Customer** for reasons such as, but not limited to additional system training, system usage, and/or resolution of system difficulties not resulting from actions by or otherwise the responsibility of, **PANOSOFT** (as determined by mutual agreement between **PANOSOFT** and **Customer**
 - (d) Custom Software Modules. Software Modules are developed to address customer-specific areas of information management not currently or significantly addressed by **VetProWeb**. The License for any such Custom Software Modules will be available for **Customer** to purchase under separate contractual agreement with **PANOSOFT**.

- (e) Custom Programming. Requests for supplemental programming or customization of system features will be available for **Customers**. Such requests will be reviewed by **PANOSOFT** and if accepted for implementation by **PANOSOFT** will be subject to the current hourly programming rate. For any given request, **PANOSOFT** will provide an estimate of the total programming charges in advance of beginning work and further notify **Customer** if the ongoing estimate of total charges to completion should ever exceed the initial estimate. In no case will **Customer** be billed for charges in excess of the greatest approved estimate.

6. CHARGES TO CUSTOMER.

- (a) Additional Maintenance Services. The rate for all Additional Maintenance Services is \$1,200.00 per day on-site, with a one-day minimum plus travel and per diem charges, or an hourly charge of \$ 125.00 per hour when services are provided on an ad-hoc basis from **PANOSOFT** headquarters. Such charges shall only be incurred at the **Customer's** written request.
- (b) Additional Training. Any visits to **Customer's** site by **PANOSOFT** staff other than for Initial Training will be made only at the **Customer's** written request. Such visits will be invoiced at a rate of \$1,200.00 per day, with a one (1) day minimum.
- (c) Travel. No additional charges for travel to El Dorado County shall apply.
- (d) Custom Programming. Charges for custom programming will be on an hourly basis at a rate of \$ 150.00 per hour. For any given request, **PANOSOFT** will provide an estimate of the total programming charges in advance of beginning work and further notify **Customer** if the ongoing estimate of total charges to completion should ever exceed the initial estimate. In no case will **Customer** be billed for charges in excess of the greatest approved estimate.
- (e) Taxes. All maintenance charges under this Agreement are exclusive of any taxes legally imposed on the licensing, delivery, and use of **VetProWeb**. **Customer** shall pay, or reimburse **PANOSOFT**, for any such taxes, and **PANOSOFT** may add such taxes to the invoices submitted to **Customer** by **PANOSOFT**.
- (f) Changes in Charges. **PANOSOFT** may change the charges for Maintenance Services upon 30 days written notice effective at the beginning of any maintenance period.

7. **PAYMENT.** PANOSOFT will invoice **Customer** for General Maintenance Service and Other Charges as follows:
- (a) **General Maintenance.** PANOSOFT will invoice **Customer** in advance for each month payment due for General Maintenance Services during the term of the Agreement. Such invoices may include pro-rated charges for any General Maintenance Services provided prior to the invoice date. **Customer** will pay such invoices within the time specified thereon. In addition, if any charges are not paid when due, PANOSOFT may, at its option, suspend performance hereunder until payment is made.
 - (b) **Other Charges.** PANOSOFT will invoice **Customer** for all other charges incurred, and **Customer** will pay such invoices within the time specified thereon.
 - (c) **Late Charges.** In addition to any other remedies allowed by law, PANOSOFT may charge **Customer** one-half percent (0.5%) per month on any amount which **Customer** is delinquent in paying to PANOSOFT hereunder, except that such charge may not exceed the maximum amount permitted under law.
8. **TERMINATION.** This Agreement may be terminated by either party upon material failure of the other party to perform its responsibilities and obligations hereunder (except failure of **Customer** to pay monetary obligation hereunder) by submitting notice in writing to the other party of material failure, provided the material failure has not been corrected within sixty (60) days after receipt of such notice. This Agreement may be terminated by PANOSOFT upon ten (10) days notice of failure by **Customer** to pay any monetary obligation hereunder or failure by **Customer** to pay any monetary obligation outstanding under **Customer's** Software License Agreement with PANOSOFT.

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.

- 9. DISCLAIMER OF WARRANTY. **PANOSOFT** DISCLAIMS ALL WARRANTIES OR CONDITIONS, EITHER EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS AGREEMENT.

- 10. LIMITATION OF LIABILITY. **CUSTOMER** AGREES THAT **PANOSOFT'S** LIABILITY UNDER THIS AGREEMENT IS LIMITED TO FOUR TIMES THE QUARTERLY GENERAL MAINTENANCE SERVICES CHARGE. IN NO EVENT SHALL **PANOSOFT** BE LIABLE TO **CUSTOMER** FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR ANY LOSS OR INJURY TO EARNINGS, PROFITS, OR GOODWILL, OR FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES SUFFERED BY **CUSTOMER**, CAUSED DIRECTLY OR INDIRECTLY BY ANY BREACH OF THE AGREEMENT OR THE PROVISION OF ANY PRODUCTS, MATERIALS, OR SERVICES PURSUANT TO THIS AGREEMENT. **PANOSOFT** SHALL NOT BE LIABLE FOR ANY LOSS OR USE THEREOF, NOR ANY CLAIM MADE AGAINST **PANOSOFT** BY ANY OTHER PARTY.

- 11. GENERAL. This Agreement shall be governed by the laws of the State of California and constitutes the entire agreement between the parties hereto with respect to maintenance of software licensed by **PANOSOFT** to **Customer**, and shall supersede all previous or contemporaneous negotiations, commitments and writings with respect to matters set forth herein. It may only be modified by a writing signed by authorized representatives of both parties. The terms and provisions shall prevail over any conflicting, additional, or other terms appearing on any purchase order submitted by **Customer** at any time.

Agreed to:

Accepted By:

El Dorado County CVSO

Panoramic Software, Incorporated

By:

By:

Date: _____

Arthur von Waldburg, President

Date: _____