

AGREEMENT FOR SERVICES #090-S1411
AMENDMENT I

This Amendment I to that Agreement for Services #090-S1411, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Columbia Ultimate, a Washington Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 4400 Ne 77th Avenue, Suite 100, Vancouver, Washington 98662; (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, Contractor has been engaged by County to provide collection software licenses and support, in accordance with Agreement for Services #090-S1411, dated October 8, 2013, incorporated herein and made by reference a part hereof; and

WHEREAS, the parties hereto have mutually agreed to add a Victim Restitution Module to the collection software which increases the annual support costs by \$1,000.00.

NOW THEREFORE, the parties do hereby agree that Agreement for Services #090-S1411 shall be amended a first time as follows:

ARTICLE I

Scope of Services: Section 5 is amended in its entirety and an Amended Fee Schedule is attached hereto in Exhibit B. Section 5 is amended to read as follows:

5. The County is agreeing to the prices of the Fixed Costs and Annual Support Costs found on the Amended Fee Schedule included in Exhibit B. The Annual Support costs can change annually.

ARTICLE III

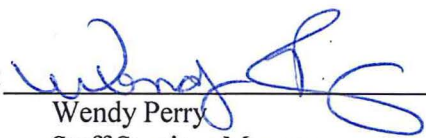
Compensation for Services is amended in its entirety to read as follows:

Compensation for Services: For services provided herein, County agrees to pay Contractor monthly in arrears and within thirty (30) days following the County's receipt and approval of itemized invoice(s) identifying services rendered. For the purposes of this Agreement, the billing rate shall be in accordance with the Amended Fee Schedule attached hereto. The total amount of this Agreement shall not exceed \$51,900.00 for the first year.

Following the initial acquisition of the software, County agrees to pay an annual fee for License Renewal and Support Costs in order to continue the license. The amount of the annual fee is subject to change year to year and/or when the number of workstation software users changes.


Except as herein amended, all other parts and sections of that Agreement #090-S1411 shall remain unchanged and in full force and effect.

Requesting Contract Administrator Concurrence:

By: 
Wendy Perry
Staff Services Manager
Department of Child Support Services

Dated: 12-24-13

Requesting Department Head Concurrence:

By: 
Laura Roth
Director
Department of Child Support Services

Dated: 12/20/13

IN WITNESS WHEREOF, the parties hereto have executed this first Amendment to that Agreement for Services #090-S1411 on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Chair
Board of Supervisors
"County"

ATTEST:
James S. Mitrison
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- CONTRACTOR --

COLUMBIA ULTIMATE, INC.
A WASHINGTON CORPORATION

By: _____
Fred Houston
President Columbia Ultimate
"Contractor"

Dated: _____

By: _____
Jim Adamson
Chief Financial Officer

Dated: _____

By: _____
Corporate Secretary

Dated: _____

(glh)

(#090-S1411, Amendment I)

Exhibit B

Software License Agreement

Between

Columbia Ultimate, Inc., dba RevQ
4400 Ne 77th Avenue, Suite 100
Vancouver, Washington 98662
360-260-5838
Hereafter "Rev Q"

And

County of El Dorado
3883 Ponderosa Road
Shingle Springs, CA 95682
530-621-5780
Hereafter "County"

This Software License Agreement ("Agreement") is made by and between RevQ and County. In consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. BACKGROUND. RevQ, a subsidiary of Columbia Ultimate, Inc. an independent software sales, development, re-seller and consulting company licensed in the State of Washington. RevQ owns a copyright and holds all ownership rights to a series of computer programs collectively known as Revenue Results. County is licensing Revenue Results from RevQ which will be used in the operation of its business. County is aware that RevQ does not manufacture nor maintain any hardware or networks.

II. DEFINITIONS. For purposes of this Agreement, the following terms have the meanings set forth below:

- A. "Workstation Software" means any Revenue Results software loaded onto any Hardware to access the Server.
- B. "Documentation" means the tangible or intangible information necessary for the use, planning, operation and maintenance of the Software, including but not limited to the Revenue Results User Guide manual.
- C. "Hardware" means any piece of tangible equipment used for the purpose of running Software.
- D. "Product(s)" means those goods, supplies, materials, items, components, hardware, and the incidental associated software listed and/or described in this Agreement.
- E. "Release" means an update of the Software, subsequent to the initial delivery of the Software, in which RevQ provides multiple new features and functionality to the Software. A Release will have updated Documentation, a new Release number, and by its nature will include any accumulated corrections which make the Software conform to the Documentation, or any improvements in the performance of the Software.

F. "Server" means all the inclusive attributes of the Revenue Results software residing on the Hardware used to store the database and Revenue Results software application.

G. "Software" means Revenue Results Server and Workstation Software and any ancillary products used in collection of outstanding credit obligations.

H. "License and Support Fees" means the current license and support fee County is paying in the amount of \$14,387/year. The new support amount will be \$12,760 which includes licensing. Whereas the County has paid for licensing and support for fiscal 2014 on the current RPCS system RevQ will provide the appropriate schedule of new fees when the migration is completed and deal with any prorated amounts at that time.

I. "Advanced Distribution Module" means that software development specific to the appropriate distribution of fines and assessments to the appropriate accounting buckets. In RPCS, County's current application, County utilizes the Account Distribution/Payment Proration Module which is an add on product. In Revenue Results the Advanced Distribution Module is part of the standard application and that there is no additional charge for it.

J. "Project Management" means the assignment of a certified project manager to all of our projects of this nature to keep all of the elements moving forward for a successful implementation. The project manager initiates the project with a Project Plan and timetable developed with the RevQ staff and County representatives. The PM will set up weekly conference calls to provide updates, manage timeframe and address open items. Our projection on projects of this nature allows for 32 hours invested by the project manager at our standard rate of \$156.25/hour. There is no additional billing if the project runs over the 32 hours.

K. "System Setup and Collector Process Training" means that training which is specifically for those in an administrative role that will be assigning system privileges and work flow to the system. This training can include some of the same people that are in the End User training. This training is usually done in advance of the end user training during the setup and testing phase of the project. The project manager arranges training and will seek an acceptance of the training that has been completed for go-live. If there is a need for any additional training after go-live on the Revenue Results platform, those costs would be covered as part of the annual support plan.

L. "End User Training" means that training for County collections staff and those using Revenue Results on a daily basis and is usually done as part of go-live activities. The project manager arranges training and will seek an acceptance of the training that has been completed for go-live. If there is a need for any additional training after go-live on the Revenue Results platform, those costs would be covered as part of the annual support plan.

M. "Upgrades" means an update to the Software, subsequent to the initial delivery of the Software, in which RevQ has incorporated any accumulated corrections which make the Software conform to the then current Documentation, any improvement in the performance of the Software, any minor new features or functionality which were not formerly functions of the Software.

N. "Collections Process Analysis and Functional Review" means the process of a RevQ analyst working with County personnel to identify key functional areas and system requirements in place at the County.

O. "Data Conversion RPCS to Revenue Results" means the migration process of the information stored in the proprietary database utilized by RPCS to the SQL tables utilized by Revenue Results. RevQ staff work closely with County staff to convert the data through a number of test iterations and certify that the end migration of data is complete and correct. The final migration will occur at go-live after the County has completed all updates to the data in the RPCS system.

III. SCOPE OF LICENSE.

A. RevQ grants to County a nonexclusive, nontransferable license for the Software. RevQ continues to own all rights to the copy of the Software licensed to the County under this Agreement along with any and all copies that the County is authorized to make.

B. County's rights to use Software are specified in this Agreement, and RevQ retains all rights not expressly granted in this Agreement.

C. County may make one back-up copy for disaster recovery use.

D. RevQ will put the Software in Escrow at a mutually agreed on location, at the County's request and at the County's initial and on-going expense under a separate written agreement if desired.

E. The Software is and at all times shall remain the sole property of RevQ. The ownership is protected by the copyright laws of the United States and by international treaty provisions. Nothing in this Agreement constitutes a waiver of any rights under U.S. Copyright law or any other international, federal or state law.

F. Unless agreed to in advance in writing by RevQ, County shall not assign, rent, lease, or otherwise sublet the Software or any part thereof to any third party, and County shall not use the Software for any purpose other than expressed in this License.

G. The Software is licensed to County so that only one copy of the Server is in use at any given moment and that the County will only access the Server up to the maximum Workstation Software licenses the County has purchased from RevQ.

H. The data populated by the County is solely owned by the County. RevQ will not use any County data elements in any form.

I. Upgrades and Releases of the Software currently licensed to the County will be offered to the County at no additional charges as long as they have a valid and current Support agreement. If a CD is requested, then County is responsible for the freight charges.

IV. TERM AND TERMINATION.

A. The term of this License shall begin upon the delivery of the Software and shall remain in force until terminated in accordance with the terms of this Agreement.

B. This Agreement may be terminated, at RevQ's discretion, if payment for Software license fees is not made to RevQ when due as defined on RevQ's fee schedule.

C. This Agreement can be terminated by the County with 30 days written notice.

D. Upon termination of this Agreement, County shall promptly return all copies of the Software and accompanying written materials to RevQ.

V. FEES AND CHARGES.

A. Unless otherwise specified on the invoice, all payments shall be due upon invoice and shall be deemed late if not paid within forty-five (45) days from the date of County's receipt of invoice. Prices and fees are exclusive of, and County shall be solely responsible for paying, all sales, use, excise and similar taxes relating to the sale or license of the Software.

B. Products or services requested by County in addition to those specified in this Agreement will be billed to County at RevQ's then current rates.

C. Freight charges will be billed as incurred at the then current ground shipping rates unless County requests additional methods of transportation.

VI. SERVICES AND SUPPORT

A. No services come with the licensed software unless specified in the Fee Schedule. If the County would like additional on-site, electronic, or telephone services setting up the software, the County can make arrangements with RevQ based on the availability of RevQ personnel at the then current rates for that service under a separate written agreement.

B. RevQ provides no Software support under this license Agreement. Revenue Results support is available through a separate support agreement.

VII. CONFIDENTIALITY. County shall take all reasonable steps necessary to ensure that the Software and related documentation, or any portion thereof, on magnetic tape, disk, or memory or in any form, are not made available by County or by any of its employees to any organizations or individuals not licensed by this Agreement to make use thereof. County warrants that all those individuals having access to the Software and related documentation under this License shall observe and perform this non-disclosure covenant. In particular, County recognizes the proprietary nature of Software and the related documentation and, in connection with the Software and related documentation, agrees as follows: (a) to instruct its employees having access to Software and related documentation not to copy or duplicate programs or make disclosure with reference thereto or of any components thereof to any third party; and (b) to effect normal security measures to safeguard Software and related documentation from theft or from access by persons other than its own employees using the Software and related documentation for County's own requirements. The obligations of County under this Section shall survive the termination of this License for three (3) years following termination of this Agreement.

VIII. LIMITED WARRANTY.

A. RevQ warrants that it has the right to license the Software to County under terms of this License and RevQ does not infringe upon the rights of any third parties and that the Software does not violate any U.S. protected copyright or trademark or any other proprietary rights of third parties.

B. RevQ warrants that the Software will perform substantially as described in the Documentation which is outlined in the Revenue Results User Guide at the time of the execution of this Agreement, provided such Software is used on hardware that meet the minimum specifications made available by RevQ at the time of the execution of this Agreement. This warranty will expire thirty (30) days from the delivery date of the Software.

C. In the event the Software does not so perform, RevQ's sole obligation in case of any breach of this warranty shall be to repair or replace, at RevQ's option, any component of the Software which does not perform as documented.

D. Except as specifically provided herein, RevQ shall have no liability to County or any other party because of the failure of the Software to so perform and RevQ does not warrant that the functions contained in the Software will meet County's requirements or that the operation of the Software will be uninterrupted or error free. RevQ assumes no responsibility for Software which has been altered or modified, except if altered or modified by RevQ.

E. RevQ disclaims all other expressed or implied warranties, including, but not limited to, implied warranties of merchantability or fitness for a particular purpose, and implied warranties arising by usage of trade, course of dealing, or course of performance.

F. In no event shall RevQ be liable for any indirect, special, incidental or consequential damages, such as, but not limited to, loss of anticipated profits, cost of overhead or any substitute service, claims of County's Workstation Software for such damage or other economic damages, including without limitation loss in connection with or arising out of the use of the Software or the Services provided for in this Agreement, even if RevQ has been advised of the possibility of such damages.

IX. INDEMNIFICATION.

A. Proprietary Rights -- RevQ shall defend and pay the cost and damages made in settlement or awarded as a result of a legal action based upon an allegation that the Software furnished by RevQ hereunder infringes a U.S. Patent, copyright or trade secret, if RevQ is notified promptly in writing of such action and if RevQ shall have sole control of its defense and negotiations for settlement. If County's use of the Software is finally enjoined, RevQ will, at its option: (1) procure the continued right of use; or (2) replace or modify the Software to restore the right of use; or (3) terminate the License for the infringing Software and refund the balance if any of license fees paid for the Software, prorated over a 3-year term from the commencement of the licensed Workstation Software. RevQ shall not be liable for infringement of any right resulting from use of the Software in a manner for which it

was not specified. The foregoing states the entire liability of RevQ with respect to claims based on and resulting from the infringement of patents, copyrights or trade secrets.

B. General -- RevQ agrees to indemnify, defend and hold harmless County and its officers, directors, agents, employees, corporate parents, affiliates and subsidiaries (the "indemnified parties"), and to require all subcontractors to release, indemnify and hold the indemnified parties harmless from and against any and all claims for damages, losses and expenses (including attorney's fees) arising out of this Agreement to the extent that any such claim, damage, loss, or expense is (i) attributable to bodily injury, including death or damage or destruction of tangible, real or personal property, and (ii) is caused by any willful or negligent act or omission on the part of RevQ, its agents or anyone directly or indirectly employed by any of them. NOTWITHSTANDING THE ABOVE, REVQ SHALL BE RESPONSIBLE ONLY FOR DIRECT LOSSES, EXPENSES OR DAMAGES, AND SHALL NOT BE RESPONSIBLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.

X. **DISPUTE RESOLUTION.** If any controversy or claim arises out of or relates to this Agreement, or the breach thereof, the parties agree that senior management will attempt in good faith to settle the controversy or claim within ten (10) business days thereafter before resorting to arbitration pursuant to this Section. If said controversy or claim cannot be settled through such senior management intervention, either party may initiate action in a court of competent jurisdiction.

XI. **DEFAULT.**

A. RevQ shall be deemed to be in default if the Software does not perform as documented in the Revenue Results User Guide and cannot be brought into compliance with the documentation within a reasonable period of time.

B. County shall be deemed to be in default if payment is not made in accordance with this Agreement.

C. County shall be deemed to be in default if an attempt is made to transfer the Software, without the approval of RevQ, or if in violation of Section III subsection F of this agreement.

XII. **REMEDIES AFTER DEFAULT.**

A. This Agreement may be deemed terminated at the sole discretion of the non-defaulting party.

B. All materials supplied to the County by RevQ shall be returned if this Agreement is terminated.

XIII. **MISCELLANEOUS.**

A. Force Majeure. No party shall be in default if failure to perform any obligation hereunder is caused solely by supervening conditions beyond such party's control, including acts of God, civil commotion, strikes, labor disputes, interruption of transportation, unavoidable accidents, or governmental demands or requirements.

B. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of the County.

C. Binding Effect. This Agreement inures to the benefit of and is binding upon heirs, executors, administrators, successors and assigns of the parties hereto.

D. Severability. If any provision of this Agreement shall be held to be invalid, it shall not affect the balance of this Agreement.

E. Notices. Except as otherwise provided herein, any notice or other communication given hereunder shall be in writing and shall be given by personal service, express courier (such as UPS), telecopy, or by certified or registered mail to the addresses shown on this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by certified or registered mail shall be deemed to have been given at the date and time of receipt.

F. Compliance. The County shall assume all responsibility for compliance with local laws, ordinances or other regulation relating to the operation and the use of the Software.

G. Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to its subject matter and supersedes all existing Agreements and all other oral, written or other communications between them concerning its subject matter. This Agreement shall not be modified in any way except by a written agreement subscribed to by both parties.

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AMENDED FEE SCHEDULE

QTY	DESCRIPTION	FIXED COST	ANNUAL SUPPORT COSTS
10	Revenue Results Software Licenses Cost waived (Value of software is currently \$50,000)	0.00	\$11,000.00
	2 New Licenses (Users)	7,500.00	
	Collections Process Analysis and Functional Review Fixed Cost	3,840.00	
	Revenue Results End User Training (done remotely) Fixed Cost	3,600.00	
	System Setup & Collector Process Training (done remotely) Fixed Cost	5,400.00	
	Project Management	5,000.00	
	Data Interface Consulting	0.00	
	Data Conversion RPCS to Revenue Results Fixed Cost	12,800.00	
1	Victim Restitution Module	0.00	\$1,000.00
1	Advanced Distribution Module – included in RR	0.00	
1	California FTB/COD Module – Value \$4,000	0.00	880.00
1	California Tax Intercept Module – Value \$6,000	0.00	880.00
	Subtotals	\$38,140.00	\$13,760.00*
	*Support credit for unused portion of RPCS support and proration of support for Revenue Results when the system goes live.		TOTAL \$51,900.00

See Support Agreement for more information regarding Applicable Support Fees.

Payment Terms: Customer will be billed as each Deliverable (Line Item) above is incurred. Project management will be billed at the end of the project.