

ORIGINAL

## AGREEMENT FOR SERVICES #118-S1811

**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 these services provided by Contractor is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

**WHEREAS**, the parties agree that Service Agreement 047-S1610, Amendment I shall be terminated upon execution of this Service Agreement 118-S1811; and

**WHEREAS**, this Service Agreement 118-S1811 shall supersede and replace Service Agreement 047-S1610, Amendment I.

**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, in each case as listed on Exhibit A, Licensed Software Products. These services shall conform to the terms and conditions set forth in this agreement, including the Master Subscription Agreement contained in Exhibit B, AutoMon's Software Maintenance Services Customer Handbook, referenced in 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 as Appendix "A".
- 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 Counties 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.**

1. **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 Service) 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 Service), 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, 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, 2017 through July 23, 2018. 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. For the purposes of this Agreement, the fees and charges are listed in the table below labeled "Licensed Software Products".

If the term of this Agreement is extended passed year one a four percent (4%) increase to the following support and maintenance, annual subscription fees and per hour professional service charges will apply.

Licensed Software Products			
Description	YEAR 1 2017-18	YEAR 2 2018-19	YEAR 3 2019-20
Caseload Explorer Support & Maintenance – Caseload Explorer Adult (JCPSS, Programs); Caseload Explorer Juvenile (JCPSS, Programs); and Caseload Explorer Juvenile Institutions	\$45,021.25	\$46,822.10	\$48,694.98
Ce Drug Testing (Annual Subscription Fee)	\$3,536.00	\$3,677.44	\$3,824.54
Ce Check-In (Annual Subscription Fee)	\$3,978.00	\$4,137.12	\$4,302.60
Ce Pretrial (Annual Subscription Fee)	\$2,080.00	\$2,163.20	\$2,249.73
Ce Assessments/SRF	N/A	N/A	N/A
Ce Analytics	N/A	N/A	N/A
Annual Totals	\$54,615.25	\$56,799.86	\$59,071.85
Professional Services Charge (Hourly)	\$189.00	\$196.56	\$204.42

B. 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 \$170,486.96.

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.

1. 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, or 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, then 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 below 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) 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:** The Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages 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 Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, subContractor(s) and employee(s) of any of these, except for the sole, or active negligence 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, that and 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 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, Contractors 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: 6/30/17

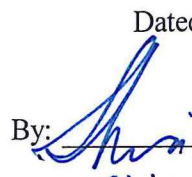
**Requesting Department Head Concurrence:**

By:   
Brian Richart  
Chief Probation Officer  
Probation Department

Dated: 7/3/17

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

-- COUNTY OF EL DORADO --

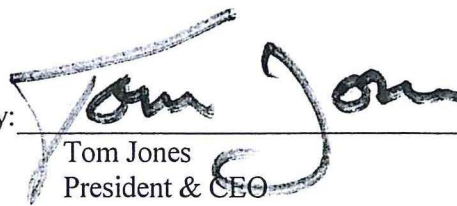
Dated: 7-18-17  
By:  Chair  
Shiva Frenka Board of Supervisors  
"County"

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

By:  Deputy Clerk  
Dated: 7-18-17

-- CONTRACTOR --

AUTOMON, LLC  
a Delaware Limited Liability Company

By:   
Tom Jones  
President & CEO  
"Contractor"  
Dated: 6/28/17

By:   
Corporate Secretary  
Dated: 6/28/17

## ***EXHIBIT "A"***

### **Licensed Software Products**

#### **Caseload Explorer & Ce Connect Products**

\*Ce Connect Products Governed by Master Subscription Agreement – Exhibit "B"

\*\*Caseload Explorer Support & Maintenance Governed by AutoMon's Software Maintenance Services Customer Handbook - Exhibit "C".

<b>Description</b>	<b>Licensed, Yes/No</b>
**Caseload Explorer Support & Maintenance	Yes
*Ce Drug Testing	Yes
*Ce Check-In	Yes
*Ce Pretrial	Yes
*Ce SRF	Yes
*Ce Analytics	Yes

\*This exhibit may be modified to add additional functionality and products in the future by amending in writing, authorized and signed by both parties as stated in ARTICLE XII Notice to Parties so long as it does not increase the maximum dollar amount or term of the Agreement,.

## ***Exhibit "B"***

### **AutoMon, LLC Master Subscription Agreement (Ce Connect Products)**

**EFFECTIVE DATE:** This Agreement was last updated on September 29, 2016. It is effective between You and Us as of the date You accept this Agreement by signing the Agreement for Services #118-S1811.

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

BY EXECUTING THE AGREEMENT FOR SERVICES #118-S1811 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, 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.

**"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.

**"Order Form"** means the documents for placing orders hereunder, including addenda thereto, which are entered into between You and Us or any of Our Affiliates from time to time, including addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Order Forms shall be deemed incorporated herein by reference.

**"Purchased Services"** means Services that You purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

**"Services"** means the products and services that are ordered by You on an Order Form and made available by Us online via the customer login link at <https://www.ce-connect.com> and/or other web pages designated by Us, including associated offline components, 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](https://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 Service have been ordered, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users may include but are not limited to Your employees, consultants, contractors and agents, and third parties with which You transact business.

**"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. PURCHASED SERVICES**

**2.1. Provision of Purchased Services.** We shall make the Purchased 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 or if You are a government or corporate entity, the employees who are employed by You or persons under your direct control who provide technical or research services to You, (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 or if You are a government or corporate entity, based on pricing negotiated with Us and reflected in an additional Order Form, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. Unless otherwise specified in the Order Form, 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. Our Responsibilities.** We shall: (i) provide Our basic support for the Purchased Services to You, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime of which We shall give at least one day prior notice via the Purchased Services and which We shall schedule during standard non-business hours, or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.
- 3.2. Our Protection of Your Data.** We shall maintain, or cause to be maintained, appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data that operate on the servers maintained by Our hosting vendor. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 8.3 (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. 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) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the User Guide and applicable laws and government regulations, (v) provide the servers and system and third party software for Purchased Services that run on Your servers, (vi) desktop computers and related software to operate the Purchased Services. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) 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.
- 3.4. Usage Limitations.** Services may be subject to other limitations or additional charges, such as, for example, on the calls You are permitted to make against Our application programming interface and similar limitations. Any such limitations or charges are specified in the Order Form.

#### **4. NON-AUTOMON PROVIDERS**

- 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. 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 PURCHASED 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 each annual anniversary thereof.
- 5.2. Invoicing and Payment.** You will provide Us with a valid purchase order or alternative document 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 45 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. 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 7 days' prior notice that Your account is overdue, in accordance with Section 12.2 (Manner of Giving Notice), before suspending services to You.

**5.4. Payment Disputes.** We shall not exercise Our rights under Section 5.3 (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.

**5.5. Taxes.** Unless otherwise stated, 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 entitle Us to exercise the rights set forth in Section 5.4.

## **6. PROPRIETARY RIGHTS**

**6.1. Reservation of Rights in Services.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

**6.2. Restrictions.** You shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Services except as authorized herein, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

- 6.3. Your Data.** Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein.
- 6.4. 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, including Users, relating to the operation of the Services.
- 6.5. Federal Government End Use Provisions.** We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

## **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. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other party's prior written consent.

**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 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 11.3 (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 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. 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, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. 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 3.2, 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 Purchased User Subscriptions.** 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. The annual pricing increase shall not exceed 4% of the pricing for the relevant Services in the immediately prior subscription term, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.

**11.3. 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.

**11.4. 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.

**11.5. Return of Your Data.** Upon request by You made within 30 days after the effective date of termination of a Purchased Services subscription, We will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

**11.6. Surviving Provisions.** Section 5 (Fees and Payment for Purchased Services), 6 (Proprietary Rights), 7 (Confidentiality), 8.3 (Disclaimer), 9 (Mutual Indemnification), 10 (Limitation of Liability), 11.4 (Refund or Payment upon Termination), 11.5 (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 relevant Services system administrator 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. 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.

**13.2. 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.

**13.3. 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.

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

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

**13.6. 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.

**13.7. 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.

**13.8. 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.



***EXHIBIT "C"***

**Support Services**

Incorporated by Reference

AutoMon Software Maintenance Services, Customer Handbook, Version 6.0

Effective Date: January 11, 2016

*Appendix "A"*  
*Maintenance and Support Services*  
*Definition of Error levels*

**1. Support Services for Documented Defects**

AutoMon shall correct or otherwise cure Documented Defects (as defined below) to the then current Version Release of the Licensed Software. Following review and identification by the Customer's Help Desk, the designated representative of the Customer shall contact AutoMon, via phone or by recording an issue in AutoMon's online support application ("Issue Tracker"). Once AutoMon receives a reported issue, AutoMon will use commercially reasonable efforts or stated response times to respond and resolve various Documented Defects in accordance with the Service Levels set forth below.

County's request for services for any technical or other issue that is not covered by Support Services provided pursuant to Section 3 or is not a cure of a Documented Defect, shall be treated as a request for additional services from AutoMon and may result in a charge to County. In no event shall AutoMon invoice County for such additional services without receiving prior written authorization from the County for such charges.

**2. Definitions**

As used in this Appendix "A", the following terms have the meanings set forth below:

- a) **"Circumvention" or "Circumvention Procedures"** shall mean, as applied to a Documented Defect, a change in operating procedures whereby the County can reasonably avoid any deleterious effects of such Documented Defect.
- b) **"Documented Defect"** means a failure of the Licensed Software to properly perform any of its intended functions pursuant to the Documentation. County must use reasonable efforts 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 County must deliver such information to AutoMon concurrently with its notification to AutoMon of such defect. County shall use all reasonable efforts to eliminate any non-Licensed Software related issues prior to its notification to AutoMon of such defect, including, but not limited to, issues related to the network, user training, County-produced extensions, and Data problems not caused by the Licensed Software.
- c) **"Documentation"** means the user's manual, data dictionary, and any other materials in any form or medium customarily provided by AutoMon to the users of the Licensed Software, which will provide to Customer sufficient information to operate and maintain the Licensed Software.

**3. Documented Defect Correction**

AutoMon shall provide the County with procedures for contacting support staff during Regular Support Hours for Service Level 1, 2, 3, 4, 5 and 6 (as defined below). AutoMon will assist County in the diagnosis of any Documented Defect. Determination of the Service Level shall be based on the operational needs of the County. AutoMon agrees to respond and resolve Documented Defects in accordance with the Service Levels as defined in this Appendix "A".

### **Service Level 1**

- a) Definition. “**Service Level 1**” A Documented Defect that causes either: (i) loss or corruption of Data; or (ii) complete failure of essential Licensed Software functionality (e.g., unable to access Licensed Software, perform Assessments, etc...)
- b) Response Time. AutoMon shall provide County an initial response within two (2) hours of receipt via the web, email or voice mail and will respond immediately if reported by phone to a support representative of receipt of the Notice of Documented Defect.
- c) Response. AutoMon will immediately assign appropriate personnel to diagnose and correct the Documented Defect or to identify Circumvention Procedures. AutoMon’s initial response will include an acknowledgement of the Notice of Documented Defect, confirmation that AutoMon has received sufficient information concerning the Documented Defect, and an action plan for resolving the Documented Defect and avoiding further deleterious consequences of the Documented Defect.
- d) Resolution Time. AutoMon will use commercially reasonable efforts to resolve such Documented Defect within two business days of receipt of the Notice of Documented Defect.
- e) Limitations. AutoMon’s responsibility for lost or corrupted Data is limited to assisting the County to restore the database from the County’s backup.

### **Service Level 2**

- a) Definition. “**Service Level 2** A Documented Defect that causes failure of essential Licensed Software functionality with a Circumvention Procedure.
- b) Response Time. AutoMon shall provide County an initial response within one (1) business day of receipt of the Notice of Documented Defect.
- c) Response. AutoMon will promptly assign appropriate personnel to diagnose and correct the Documented Defect. AutoMon’s initial response will include an acknowledgement of the Notice of the Documented Defect, confirmation that AutoMon has received sufficient information concerning the Documented Defect, and an action plan for resolving the Documented Defect.
- d) Resolution Time. AutoMon will use commercially reasonable efforts to resolve the Documented Defect without the need for Circumvention Procedures within five (5) business days of receipt of the Notice of Documented Defect.

### **Service Level 3**

- a) Definition. “A Documented Defect that causes failure of non-essential Licensed Software functionality. Examples (i) Licensed Software is not performing in a normal manner or the Error is intermittent, or (ii) the Documented Defect has minimal impact on staff.
- b) Response Time. AutoMon shall provide County an initial response within five (5) business days of the Notice of Documented Defect.

- c) Response. AutoMon will assign appropriate personnel to diagnose and correct or identify Circumvention Procedures. AutoMon's initial response will include an acknowledgement of Notice of the Documented Defect, confirmation that AutoMon has received sufficient information concerning the Documented Defect, and an action plan for resolving the Documented Defect.
- d) Resolution Time. AutoMon will use commercially reasonable efforts to resolve such Documented Defect within twenty-five (25) business days of receipt of the Notice of Documented Defect.

#### **Service Level 4**

- a) Definition. A Documented Defect that causes failure of non-essential Licensed Software functionality with an existing Circumvention Procedure (e.g., a specific task can be completed by implementing a work around, etc.).
- b) Response Time. AutoMon shall provide an initial response within ten (10) business days of receipt of the Notice of Documented Defect.
- c) Response. AutoMon will deliver to the County corrected Licensed Software. AutoMon's initial response will include an acknowledgement of notice of the Documented Defect, confirmation that AutoMon has received sufficient information concerning the Documented Defect, and an action plan for resolving the Documented Defect.
- d) Resolution Time. AutoMon will deliver to the County correcting Licensed Software within the next two Version Releases.

#### **Service Level 5**

- a) Definition. A cosmetic or other defect in the Licensed Software that does not qualify as a Service Level 1, 2, 3 or 4.
- b) Response Time. AutoMon shall provide an initial response within ten (10) business days of receipt of the Notice of Documented Defect.
- c) Response. AutoMon will deliver to the County corrected Licensed Software at its option in a future Release. AutoMon's initial response will include an acknowledgement of notice of the Documented Defect, confirmation that AutoMon has received sufficient information concerning the Documented Defect.
- d) Resolution Time. AutoMon will deliver to the County correcting Licensed Software at AutoMon's discretion in a future Version Release.

#### **Service Level 6**

- a) Definition, An Enhancement Request, 3rd party software issue, or similar out of scope related issue or request that does not qualify as a Service Level 1, 2, 3, 4, or 5 defect.
- b) Response Time. AutoMon shall provide an initial response within ten (10) business days of receipt of the Notice of Document Defect.
- c) Response. Not applicable
- d) Resolution Time, Not applicable

**ATTACHMENT "A"**

**Change Order Form (Sample)  
& Acceptance Form**



**CHANGE ORDER**

Change Order No.: \_\_\_\_\_

Customer: \_\_\_\_\_

Project Name: \_\_\_\_\_

Date: \_\_\_\_\_

Case Load Explorer Version: \_\_\_\_\_

**Change Order Expires if not  
Signed On or Before:** \_\_\_\_\_

This Change Order is issued pursuant to the Licensed Software Maintenance Agreement dated as of [DATE], by and between the County and AutoMon (Agreement"). Any term not otherwise defined herein, shall have the meaning ascribed to it in the Agreement. Upon completion and execution by the parties, this Change Order and the corresponding specification documents shall become part of and be binding on the parties to the Agreement.

**Description of Services:**

Task #	Task Description	Estimated Resource Req. (Hours)	Hourly Rate	Total

**ACCEPTANCE CRITERIA:**

**PAYMENT TERMS:**

Professional Services will be billed upon completion of change order and signed acceptance form.

Invoices are due Net 45 days.

Customer agrees that if Change Order is not returned signed as accepted or denied with recommended changes within 30 days of AutoMon's submission of the Work for County review, the Work will be deemed Accepted by the County and AutoMon may invoice the County for the Work.

**GENERAL NOTES:**

- Resource requirements represent good faith estimates based upon information provided to AutoMon as of change order date by County.
- AutoMon reserves the right to revise change order resource estimates if County modifies task order, omits tasks or makes changes in original specifications provided by County.
- AutoMon reserves the right to cancel the change order if not accepted in writing and transmitted to AutoMon by customer by change order Expiration Date listed above.
- The times listed above are estimated based on the information available to AutoMon at the time of the making of this change order. The actual time to complete the work may be longer. If AutoMon anticipates any aspect of the work taking longer, AutoMon will advise County, and secure agreement to proceed with the overage. County agrees to pay AutoMon for any time in excess of this estimate at the same rates as listed above according to the terms of this change order and the License, Maintenance and Professional Service Agreement. AutoMon will invoice Customer upon completion of change order and signed acceptance form for services identified within signed change order. Customer agrees to pay such invoices within 45 days of receipt.

Your project manager will contact you directly if any special arrangements, e.g., equipment, facilities, etc. are necessary.

**On behalf of \_\_\_\_\_, I have read and accept the above Change Order:**

\_\_\_\_\_ **El Dorado County**

**AutoMon: AutoMon, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name  
(Print): \_\_\_\_\_

Name  
(Print): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Acceptance Form



FINAL ACCEPTANCE OF CHANGE ORDER

Customer:

Work Order Number:

Scope of Work:

ACCEPTANCE CRITERIA:

**Customer accepts the deliverable outlined in the named Change Order as completed and working correctly on their Production site.**

Customer agrees that if Change Order is not returned signed as accepted or denied with recommended changes within 30 days of AutoMon’s submission of the Work for County review, the Work will be deemed Accepted by the County and AutoMon may invoice the County for the Work.

CUSTOMER

AutoMon, LLC.

By \_\_\_\_\_  
Name  
(Print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name  
(Print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_