COUNTY OF EL DORADO

Purchase Contract

Fiscal Year 2021   Page 1 of 1

	ABACUS DATA SYSTEMS INC
V E N D O R	4850 EASTGATE MALL
	SAN DIEGO, CA 92121

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS
Purchase Contract #   **5775**

For Period: To

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

NTE: **$11,904.00**

PRICING PER QUOTE #088582v1

.

EXHIBIT "A" IS INCORPORATED HEREIN AND MADE BY REFERENCE A PART OF THIS PURCHASE ORDER CONTRACT. EXCEPT FOR ANY REFERENCE MADE TO THE "CONFIDENTIALITY", IN EXHIBIT "A" IN WHICH CASE THIS PURCHASE ORDER CONTRACT IS SUBJECT TO DISCLOSURE IN ACCORDANCEWITH THE LAWS OF THE STATE OF CALIFORNIA

..

Exhibit "B" is incorporated to and made a part of this Purchase Order Contract.

.

Contract Administrator: Rich Todd, Older Adult Services & Veteran Services Program Manager, or successor.

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

Exhibit A

1. Taxes: County is exempt from payment of Federal Excise Tax; Federal tax should not be included in any prices contained herein.

2. Alterations: No alteration in any of the terms, conditions, delivery, price, quantities, specifications or services of this contract will be effective without prior written consent of the County.

3. Failure to Deliver: Time is of the essence and the contract is subject to cancellation for failure to deliver on time. If Vendor fails to deliver an article or service of the quality or quantity, in the manner or within the time called for by this contract: such article or service may be bought from any source by County. If a greater price than named in this contract is paid for such article or service, the excess cost will be charged to and collected from Vendor or sureties on its bond if bond had been required; or, the County may terminate the contract for default; or, the County may return deliveries already made and receive a refund. For any exception to the delivery date as specified in this contract, the Vendor shall give prior notification and obtain approval thereto from the County. Failure or refusal of Vendor to perform any work or service or do any act required under this contract shall constitute a default.

4. Force Majeure: Vendor shall not be liable for any delay or failure to deliver any or all the goods or services if that delay or failure is caused by labor disputes, strikes, war, riots, insurrection, civil commotion, fire, flood, accident, storm or any act of God. The County shall not be liable for failure to take delivery of the goods attributable to any of the causes specified in this paragraph if they render it commercially impractical for the County to receive the goods. When either Vendor or the County claims an excuse for nonperformance under this paragraph, they must give reasonable notice to the other party.

5. Proposal, Quotation and Attachments: This contract incorporates by reference on the face of this form, the provisions of any related bid request issued by County, any bid submitted by Vendor, or both. This contract incorporates by reference on the face of this form, the provision of any attachments. Vendor agrees that in the event of conflicting language between this contract and Vendor's printed form, the provisions of this contract shall take precedence. This section shall supersede any language in the Vendor's terms and conditions attempting to nullify County terms and conditions or to resolve language conflicts in favor of the Vendor's terms and conditions.

6. Warranty:

  6.1 Warranty For Goods: Vendor warrants that any and all goods covered by this contract will be (i) new and suitable for the use intended, unless otherwise specified; (ii) will conform to the drawings, specifications, samples, description and time provisions furnished by the County; (iii) of the grade and quality specified; (vi) free from defect in design, material and workmanship; and (v) in compliance with all applicable federal, state and local laws and regulations. At County's option, Vendor shall repair or replace the goods without charge within five (5) business days from being notified of the nonconformance with the foregoing warranties. If, after notice, the Vendor cannot promptly replace or repair the goods Vendor shall refund the full purchase price paid by County for such goods. Defective goods rejected by the County may, without prejudice to any other legal remedy (including, without limitation, incidental and consequential damages) be held at Vendor's risk and returned to Vendor at Vendor's expense. This warranty shall not be deemed to be waived by the County for any reason, including, without limitation, the County's acceptance of the goods or the County's failure to notify Vendor thereof. Further, the failure of the County to reasonably specify any defects in rejected goods shall not prevent the County from relying on the defect to establish a breach, even though the Vendor could have cured the defect on proper notification.

  6.2 Warranty for Services: Vendor warrants to County that any and all materials and equipment incidental to services that are furnished under this contract will be new unless otherwise specified and that all services will be of good quality, free from faults and defects and in conformance with the contract. Neither final payment nor inspection of Vendor's services shall constitute an acceptance of services not done in accordance with this contract or relieve Vendor of liability in respect to any express warranties or responsibilities for faulty material or workmanship. Upon request of County, Vendor shall immediately remedy any defects in the services, materials and/or equipment and pay for any damage resulting therefrom. The County shall have the unqualified option to make any needed replacement or repairs itself or to have such replacement or repairs done by the Vendor. In the event the County elects to have said work performed by the Vendor, the Vendor agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from the County; however, in no event shall such period exceed fifteen (15) calendar days. If the Vendor shall fail or refuse to comply with its obligations under this section, the County shall be entitled to all costs and expenses, including attorney's fees, reasonably incurred by reason of the said failure or refusal.

7. Termination: At any time and without cause, the County shall have the right, at its sole discretion, to terminate this contract by giving seven (7) calendar days written notice to Vendor. In the event of such termination, Vendor shall only be entitled to payment for those goods that have been delivered and accepted by the County or services satisfactorily rendered through the date of termination.

8. Invoice: Purchase Order number must appear on all invoices, packing lists, shipping notices, and any correspondence. Invoices must be fully itemized. A separate invoice shall be provided for each Purchase Order.

9. Payment Terms & Cash Discounts: Payment shall be made at the prices stipulated herein for goods or materials delivered or services rendered. Payment on partial deliveries or services may be made when requested by the Vendor and approved by the County. Payment shall be made within forty-five (45) days following County's receipt of itemized invoices. For any cash discount specified in this contract, time will be computed from the date of completed delivery of the goods or the completion of the performance of services as specified, or from the date that correct invoices are received, whichever is later. For the purpose of earning the discount, payment shall be deemed to have been made on the date of mailing of the County warrant or check.

10. Assignment: This contract may not be assigned in whole or in part without the prior written consent of the County.

11. Independent Capacity: In the performance of this contract, agents and employees of the Vendor shall act in an independent capacity and not as officers, employees or agents of the County.

12. Indemnity: The Vendor 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 attorneys 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 damages to property or any economic or consequential losses, which are claimed to or in any way arise out of, or connected with the Vendor's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Vendor and employee(s) or any of these, except for the sole or active negligence of the County, its officers and employees, or as expressly proscribed by statute. This duty of Vendor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

13. Nondiscrimination: Vendor shall comply with all applicable federal, state and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this contract are incorporated by this reference.

14. Infringement: The Vendor agrees to defend and hold the County, its officers, agents, employees and volunteers harmless from any and all actions, suits, liabilities, penalties, settlements, losses, damages, costs, charges, attorney's fees, and all other expenses which may arise directly or indirectly from any claim that any of the products or services supplied by Vendor infringes any patent, copyright, trade secret, trademark, or other intellectual property right..

15. Applicable Law and Forum: This contract shall be construed and interpreted according to the substantive law of the State of California excluding the law of conflicts. Any action arising out this contract shall be brought in El Dorado County, California and shall be resolved in accordance with the laws of the state of California.

16. Funding: Funds for this contract are available on a fiscal year basis. Should sufficient funds not be budgeted and appropriated for the payment of goods or services described herein, this contract shall be cancelled in its entirety without penalty or expense to the County of any kind, except for payment for those goods that have been delivered and accepted by the County or services satisfactorily rendered through the date of termination.

17. 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. Contact Tax Collector's Office, 360 Fair Lane, Placerville, CA 95667, telephone (530) 621-5800, for further information.

18. Inspection, Acceptance, and Returns: Goods or services shall be subject to County inspection, approval, and acceptance notwithstanding any prior payment for such goods or services. No goods shall be deemed accepted until County had reasonable opportunity to inspect said goods or services. If rejected as nonconforming or defective, County reserves the right to return product within thirty (30) days of receipt by the County for credit or refund without a shipping or restocking fee, or to request a replacement by a specified date. Substitutions are not permitted except upon specific written authorization of County. Defective product or product under warranty may not always be returned in the original package.

19. Permits, Licenses, and Other Requirements. Vendor shall comply with all applicable federal, state, and other laws, rules, regulations, ordinances, and orders in the performance of this contract. Vendor shall be in full compliance with all permit or licensing requirements in connection with the sale, shipment, and/or installation of the goods or performance of the services herein.

20. Insurance. When specified herein and/or when specified by bid or quote documents that are incorporated herein by reference, failure to maintain the required insurance coverage shall be deemed a material breach of this contract.

21. Severability. If any provision of this contract is declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will continue in full force and effect, without being impaired or invalidated in any way.

#5775

⚠ABACUSNE⟩T

We have prepared a quote for you

AbacusLaw Renewal for County of El Dorado

Quote # 088582
Version 1

Prepared for: **County of El Dorado**

Ashley Wells
ashley.wells@edcgov.us

Prepared by: **AbacusNext**

Jeff Newman
jnewman@abacusnext.com

#5775

⚠ABACUS**NEXT**

AbacusLaw

Description		Recurring	Qty	Ext. Recurring
ABACUSLAW BDL USER	**AbacusLaw User (On-Prem), AL User Includes DB Secure, Document Management, Accounting, Mobile App, Client Portal, APX, Integrations, and 1 PAK/PAL/Rule.**	$124.00	4	$496.00

Monthly Subtotal: **$496.00**

#5775

⟨⟨⟩ABACUSNEXT

AbacusLaw Renewal for County of El Dorado

Proposal Information:	Prepared for:	Prepared by:
Proposal #: 088582	**County of El Dorado**	**AbacusNext**
Version: 1	,	Jeff Newman
Delivery Date: 06/11/2021	Ashley Wells	1-858-795-1783
Expiration Date: 06/25/2021		jnewman@abacusnext.com
	ashley.wells@edcgov.us	

Client Type: Existing	Solution: AbacusLaw	Order Type: Renewal
	Migrating: No	Already Existing Customer: Existing
	Term: 24 Months	PPOC:

Proposal Summary

Monthly Expenses Summary

Description	Amount
AbacusLaw	$496.00

Monthly Total: **$496.00 USD**

* Abacus may be required to charge sales tax on any and all charges set forth herein pursuant to certain state and local sales tax laws. Any such taxes will be in addition to the amounts set forth herein. Where Client pays its Monthly Recurring Charges by ACH a 2% discosunt shall apply. Where Client pays its Annual Recurring Charges in advance by ACH, a 4% discount shall apply. Must qualify for ACH payments to receive discount, US billing addresses only.

ABACUSNEXT ORDER FORM

By executing this Order Form, Client hereby understands that it is entering into a binding contract with AbacusNext to create an AbacusNext Subscription for the products and services listed above. This Order Form supersedes all prior agreements between Client and Abacus related to any of the products and services purchased herein (if any).

AbacusNext Software Subscriptions shall be governed by the AbacusNext Software Terms set forth at https://www.abacusnext.com/softwareterms as modified in the Modification section below. All Professional Services related to AbacusNext products and services (which includes but is not limited to modifications, customizations, data migration, data importation and training) shall be rendered pursuant to a separate Statement of Work ("SOW"), a distinct agreement from Client's AbacusNext Subscription, and governed by the Professional Services Terms set forth at https://www.abacusnext.com/proservterms.

This Service Order Form may be executed with written or electronic signature, and delivered by facsimile or as a pdf or e-mail. Client further agrees that such approval shall constitute Client's signature. If so executed and delivered to Abacus, the document shall be treated as an original and binding copy of this Order Form. Any handwritten or other changes inserted by or on behalf of Client are expressly invalid and shall have no effect.

#5775

ABACUSNEXT
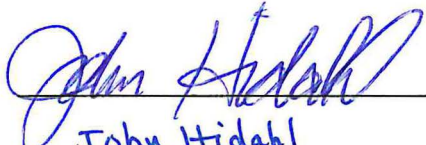
Additional Terms & Conditions

MODIFICATION

As it relates to this Service Order Form, **Paragraph 14 - Term** of the AbacusNext Software Terms and Conditions is replaced in its entirety with the language below:

14. Term – Unless stated otherwise in the Order Form, the term of Client's AbacusNext Subscription commences on the date when Abacus processes Client's initial payment and shall continue for the minimum term set forth in the corresponding Order Form executed by Client ("Initial Term").

County of El Dorado

Signature: _John Hidahl_ (signature)
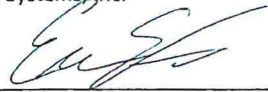
Name: _John Hidahl_

Date: _6/29/21_

Abacus Data Systems, Inc.

Signature: _(signature)_

Name: _Eric Hart, General Counsel_

Date: _June 11, 2021_

#5775

AbacusNext Software Terms

ABACUSNEXT SOFTWARE TERMS

Where AbacusNext software products are purchased by Client via a fully executed Order Form or through a website managed by Abacus or its affiliates which incorporates these AbacusNext Software Terms ("Terms"), the following terms and conditions shall govern Client's **AbacusNext Software Subscription**. The products and services described in these terms shall at all times be provided by Abacus and its Affiliates.

1. **AbacusNext Software Subscription** – All AbacusNext Software items purchased by Client in a fully executed Service Order Form or Service Order Addendum (collectively an "Order Form") shall be part of Client's AbacusNext Software Subscription and subject to these Terms. Client's license to use the products and receive Support are contingent on Client making timely Payments as set forth below. Only where Client and Abacus have negotiated and executed a separate set of terms (e.g. a Master Services Agreement) attached to a fully executed Order Form, shall these Terms not apply. To the extent Abacus has offered a Modification in a signed Order Form governed by a prior set of terms, that Modification will prevail over the logically equivalent section in the terms below.

2. **Grant of License** – Abacus grants Client a non-exclusive, limited, and non-transferable license to use the products and services that comprise Client's AbacusNext Subscription subject to Client making its Payments. Unless otherwise specified on the applicable Order Form, this license is limited to one runtime and/or repository instance. A separate subscription is required for each additional runtime and/or repository instance. Separate license fees and validation codes are required for each business entity to use any of the products that comprise Client's AbacusNext Software Subscription. Client agrees to pay a license fee for each User (who must be employed by Client unless a waiver is granted by

#5775

versions of products or services licensed by Abacus (including legacy or perpetual licenses) terminates upon Client's signature on the applicable Order. Client agrees that it will not rent, lend, or transfer any products or services the comprise Client's AbacusNext Software Subscription or any of its rights under these Terms without the express written permission of Abacus.

3. **Hosting of Licenses–** Unless Client purchases license or SKU that specifically permits Client to remotely host or make AbacusNext Software server enabled ("Hosted License"), Client may not host AbacusNext Software within any type of remote access solution, including but not limited to Remote Desktop Services session, a Terminal Services session, in a cloud (private or multitenant) environment, via Citrix, TeamViewer, or a similar solution, or from multiple physical locations connected to a single software deployment (collectively "Hosted"). Where Abacus determines that during the Term of Client's AbacusNext Software Subscription Client is using or has used AbacusNext Software products in a Hosted fashion, Client acknowledges and agrees that a fee increase will apply at then-current list prices for each User ("Hosting License Fee Increase") on Client's AbacusNext Software Subscription, effective immediately, backdated to the commencement of the Term of Client's AbacusNext Software Subscription, and the total amount owed will be amortized over the remainder of the Term of Client's AbacusNext Software Subscription. If Client has purchased AbacusNext Cloud products in addition to AbacusNext Software products, a Hosted License is not required, but Client's license to use AbacusNext Software products is limited to host and use within Client's Abacus Cloud products.

4. **Payments –** Client shall pay all fees and expenses as listed in the Order Form for the entire Term of Client's AbacusNext Software Subscription (the "Payment"). Whether Client pays annually or monthly, the Payment is made in advance of the services being provided. Where Client selects to make the Payment by annual invoice, Client shall make its annual payment within thirty (30) days of Client's receipt of the annual invoice. Where Client selects to make the Payment by monthly expenses, Client authorizes Abacus to automatically bill in advance of each month's services via a recurring Automated Clearing House transaction. All payments made by Client to Abacus are non-refundable. Client shall pay Abacus the fees set forth in the applicable Order together with any taxes payable by Client that are required to be collected by Abacus pursuant to any applicable law. Any fees listed in an Order Form are set forth in US Dollars unless specifically indicated on the Order Form that the fees charged are in a different currency. To the extent Client wishes to be billed in a different currency than USD, at the time of signature, Abacus will take the 30-day

#5775

5. **Software Performance** – Abacus shall make all reasonable efforts to make AbacusNext Software products purchased by Client function in substantial accordance with the published documentation and applicable user support guides ("Knowledge Base") found within the AbacusNext Customer Portal, subject to Client meeting the minimum system requirements. Due to changes in technology and the marketplace, Abacus may make modifications to the products or services that comprise Client's AbacusNext Software Subscription, or particular components of such product or service (including but not limited to discontinuing a component) from time to time, and will use commercially reasonable efforts to notify Client of any material modifications.

6. **Knowledge Base** – Each AbacusNext Software product, subject to the description of service(s) purchased as part of Client's AbacusNext Software Subscription, is provided in accordance with the applicable Knowledge Base linked below (all of which are herein incorporated by reference):

- AbacusLaw
- Amicus Attorney
- OfficeTools
- HotDocs

   Where Client hosts AbacusNext Software products within AbacusNext Cloud Products, additional terms, conditions, and requirements shall apply, as described in the applicable AbacusNext Cloud Terms (found at https://www.abacusnext.com/cloudterms/).

7. **Third-Party Software or Services** – Certain AbacusNext Software products may include the use of Microsoft products or services, including but not limited to Microsoft Azure Hosting and Microsoft Azure PaaS solutions. Where the AbacusNext Microsoft Azure Policy, (found at https://support.abacusnext.com/hc/en-us/categories/360003947651-AbacusNext-Microsoft-Azure-Policy) and herein incorporated by reference, describes a product's use of Microsoft Azure, Client agrees that Client's Data may be stored within Microsoft Azure and hosted in a data center that meets the AICPA requirements for a SOC II Type II compliant data center. The Microsoft Azure data center used to store Client's Data shall be located in the United States, Canada, or the United Kingdom, depending on the business address Client provides to Abacus. Where the applicable Knowledge Base describes Client's use of any Microsoft products or services as part of Client's AbacusNext Software Subscription, Client agrees that the applicable standard Microsoft terms and conditions for those products or services shall apply (found

#5775

FUNCTIONALITY OF APX. More information can be found in the APX Knowledge Base at https://support.abacusnext.com/hc/en-us/categories/360003373112-APX-.

9. **Technical Support** – Abacus and its wholly owned subsidiaries in Canada, the United Kingdom, and India ("Affiliates") shall provide technical support and troubleshooting for reported issues that are directly related to the AbacusNext Software product(s) purchased by Client. Under strict security protocols and monitoring by Abacus, Tier I support may be provided by contractors located in Mexico. Abacus shall not be obligated to provide technical support or to cure issues regarding third-party applications, customizations, integrations with third-party applications, internet or local network connectivity, Client's local infrastructure or workstations, or issues caused by Client's users, agents, or other technology providers. Included with Client's AbacusNext Software Subscription is access to AbacusNext standard technical support, during Technical Support business hours for each product, found at https://support.abacusnext.com/hc/en-us. In order to request technical support from AbacusNext, Client must first initiate its support request using the AbacusNext Customer Portal, by creating a support ticket or using the live chat feature included on the AbacusNext Customer Portal. Depending on the nature of the reported technical issue, Abacus may initiate further troubleshooting efforts, which may include support via the live chat feature, responding via e-mail to a support ticket created by Client, or in certain cases providing direct phone support and/or remote screen-sharing, including Abacus taking screen grabs of Client's Users' screens; any support response or combination thereof shall be provided in Abacus' sole discretion.

10. **Professional Services** – Any request for Abacus to perform technical support, services, or any deliverables that are outside the scope of Technical Support shall require a Professional Services engagement, provided on a time and materials basis by Abacus and its Affiliates at the prevailing hourly rate. All such Professional Services shall be rendered pursuant to a separate Statement of Work ("SOW"), a separate and distinct agreement from Client's AbacusNext Software Subscription and governed by the terms and conditions set forth at https://www.abacusnext.com/professionalservicesterms.

11. **Advanced Support Offerings** – Client can purchase Advanced Support Offerings (Premium Support, 24/7 Support, etc.) to enhance its AbacusNext Software Subscription experience. Where purchased in any Order Form, Advanced Support Offerings shall be provided in accordance with Technical Support, as well as in accordance with additional service descriptions found in the applicable software Knowledge Base.

12. **Confidentiality** – Any information, including but not limited to data belonging to Client or

#5775

confidential nature, without Abacus' express written consent. The rights and obligations set forth in this section shall not apply to: (i) information publicly known or in the public domain prior to the time of disclosure; (ii) information publicly known and made generally available after disclosure through no action or inaction of the recipient; (ii) information already in the possession of recipient, without confidentiality restrictions; (iv) information obtained by the recipient from a third party without a breach of confidentiality; and (v) information independently developed by the recipient.

13. **Intellectual Property** – Abacus and its Affiliates own all rights, title and interest, including all related Intellectual Property Rights, in and to all AbacusNext products and services, and any suggestions, ideas, enhancement or development requests, feedback, or recommendations provided by Client relating to the products and services. The AbacusNext name and logos, as well the product names and logos associated with all AbacusNext products and services are trademarks of AbacusNext or its Affiliates. Client retains all right, title, and interest in and to Client's Data. Client warrants that it owns the necessary legal rights to Client's Data, and grants to AbacusNext the necessary licenses and rights to Client's Data as necessary for AbacusNext to: (i) provide the products, services, and corresponding support to Client; (ii) compile aggregated information that AbacusNext can use to improve its products; and (iii) share information with Client relevant to other AbacusNext products and services that may be of use to Client.

14. **Term** – Unless stated otherwise in the Order Form, the term of Client's AbacusNext Subscription commences on the date when Abacus processes Client's initial payment and shall continue for the minimum term set forth in the corresponding Order Form executed by Client ("Initial Term"). Absent either party providing the other with written notification (as required in the Notices section below) at least 60 days prior to the expiration of the Initial Term or any subsequent Renewal Term, Client's AbacusNext Software Subscription will automatically renew for a twelve (12) month term ("Renewal Term") subject to a price increase.

15. **Users** – Each unique named individual ("User") must have a license to use AbacusNext Software. Concurrent use of a User license by more than one individual is expressly prohibited. A User license is part of Client's AbacusNext Software Subscription, and the User license may only be reassigned to another individual in the event that the User has ceased working for Client or within Client's organization. Where available (depending on the AbacusNext Software product and at Abacus' sole discretion) Client may purchase a Flex User. A Flex User shall have the same definition as User, except that Client may cancel

#5775

Exhibit B

employee's duties with Abacus to terminate his or her employment with Abacus. Client acknowledges that if it breached this Paragraph and the relevant employee left his or her employment with Abacus, it would be difficult to determine actual damages. Based on what the Parties presently know, they agree that an amount equal to 100% of the relevant employee's Abacus annual salary is a reasonable estimate of the damages that would accrue if a breach of this provision occurred in the future and the relevant employee terminated his or her employment with Abacus as a result. Client agrees that the amount of liquidated damages is fair and reasonable and would not act as a penalty in such an instance. This Paragraph shall not preclude Client from hiring an Abacus employee where that employee independently responded to a job posting made available to the general public.

17. **Suspension** – Abacus may, at its sole discretion, suspend Client's AbacusNext Software Subscription if Client's account is 5 days past due. In the event that Abacus suspends Client's AbacusNext Software Subscription, Client's AbacusNext Software will convert to read only format (or in the case of OfficeTools software the application will no longer provide any functionality), and Client will not have the ability to import or manipulate data within the program(s). If Client wishes to reinstate its AbacusNext Software Subscription, Client must make its account current and pay a re-activation fee of $250 ("Re-Activation Fee").

18. **Termination by Client** – Client may not terminate its AbacusNext Software Subscription for any reason other than a material breach of these Terms which remains uncured for thirty (30) days from Abacus' receipt of Notice of the alleged breach (the "Cure Period"). In order for a Notice of material breach to be deemed sufficient, Client must identify the specific contractual obligation that was breached by Abacus, provide particular facts to support the allegation of breach, and must cooperate with and provide access to Abacus in order for Abacus to observe, replicate, and troubleshoot the reported issue throughout the Cure Period. If after giving the requisite notice of an alleged material breach, Client refuses to allow Abacus to evaluate the nature of the alleged breach or otherwise fails to cooperate with Abacus' efforts to cure the alleged breach, Abacus shall be relieved of any obligation to cure the alleged breach, and will eliminate Client's ability to terminate Client's AbacusNext Software Subscription for cause (with respect to that alleged breach). For termination of Client's AbacusNext Software Subscription (or any part thereof) for any reason other than for cause, Client shall pay the Early Termination Fee, which shall be equal to any remaining unpaid portion of the Payment.

#5775

products for any illegal purpose; (ii) Client shall not use AbacusNext products or services to infringe on the intellectual property rights of a third party; (ii) Client shall not assign multiple individual named humans to a single license; licenses are sold on a "per seat" basis; (iv) Client shall not use any API, integration, third party software, or otherwise use AbacusNext products and services in a way that circumvents the requirement for each unique individual to have a license; (v) Client shall not license, sublicense, sell, resell, use as a service bureau, transfer, assign, distribute, or otherwise use or commercially exploit AbacusNext Software for a third party's benefit unless specifically authorized by Abacus pursuant to a mutually executed written agreement; (vi) as it relates to HotDocs Advance, Client shall not use Cloud APIs for batch processing either simultaneously or in rapid succession without prior written consent by Abacus; (vii) as it relates to HotDocs Advance, Client shall not use the "Client Interviews" feature for Client's employees or for an individual who repeatedly accesses HotDocs interviews unless such individual is a licensed User; (viii) Client has the legal right as a data controller to provide Client's Data to Abacus for Abacus to process; (ix) Client shall not disassemble, decompile, reverse engineer, copy, reproduce, modify, or create any derivative work of any AbacusNext products or services; and (x) Client shall promptly provide notice to Abacus of any violation of this Acceptable & Fair Use Policy or any other violation by Client of these Terms.

21. **Disclaimer of Warranty** – ABACUS TRIES TO KEEP ALL OF THE PRODUCTS AND SERVICES THAT COMPRISE CLIENT'S ABACUSLAW SUBSCRIPTION OPERATING BUG-FREE, AND SAFE, BUT CLIENT ACKNOWLEDGES THAT ITS USE OF THOSE PRODUCTS AND/OR SERVICES IS AT ITS OWN RISK. ABACUS IS PROVIDING THE PRODUCTS AND SERVICES THAT COMPRISE CLIENT'S ABACUSLAW SUBSCRIPTION AS IS WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. ABACUS DOES NOT GUARANTEE THAT THE PRODUCTS AND/OR SERVICES THAT COMPRISE CLIENT'S ABACUSLAW SUBSCRIPTION WILL ALWAYS FUNCTION WITHOUT DISRUPTIONS, DELAYS OR IMPERFECTIONS. ABACUS FURTHER EXPRESSLY DISCLAIMS ANY WARRANTY THAT ABACUS PRODUCTS WILL FUNCTION WHEN INTEGRATED OR COMBINED WITH THIRD-PARTY SOFTARE PRODUCTS, INCLUDING BUT NOT LIMITED TO MICROSOFT PRODUCTS.

22. **Limitation of Liability** – WITH THE EXCEPTION OF ANY UNAUTHORIZED COPYING AND/OR DISTRIBUTION OF ANY OF THE PRODUCTS AND/OR SERVICES THAT COMPRISE CLIENT'S ABACUSNEXT SOFTWARE SUBSCRIPTION BY CLIENT, NEITHER PARTY SHALL BE

#5775

CONTRACT, WARRANTY, TORT, OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL ABACUS' TOTAL AGGREGATE AND CUMULATIVE LIABILITY TO CLIENT FOR ANY AND ALL CLAIMS OF ANY KIND ARISING AS A RESULT OF OR RELATED TO CLIENT'S ABACUSNEXT SOFTWARE SUBSCRIPTION, THESE TERMS, OR TO ANY ACT OR OMISSION OF ABACUS, EXCEED THE AMOUNT OF SUBSCRIPTION FEES ACTUALLY PAID (IF ANY) BY CLIENT FOR CLIENT'S ABACUSNEXT SOFTWARE SUBSCRIPTION GIVING RISE TO THE CLAIM IN THE SIX MONTHS PRECEDING THE CLAIM. WHERE CLIENT HAS PAID THE TOTAL CONTRACTUAL VALUE UPFRONT, ABACUS' TOTAL LIABILITY FOR ANY AND ALL CLAIMS WILL NOT EXCEED THE EQUIVALENT OF SIX-MONTHLY RECURRING CHARGES (MRC). WHERE CLIENT PAYS AN ANNUAL RECURRING CHARGE, ABACUS' TOTAL LIABILITY FOR ANY AND ALL CLAIMS WILL NOT EXCEED THE EQUIVALENT OF SIX-MONTHLY RECURRING CHARGES (MRC). LIKEWISE, WITH THE EXCEPTION OF CLAIMS ARISING OUT OF THE UNAUTHORIZED COPY OR DISTRIBUTION OF THE PRODUCTS AND/SERVICES THAT COMPRISE CLIENT'S ABACUSNEXT SOFTWARE SUBSCRIPTION BY CLIENT, CLIENT'S TOTAL AGGREGATE AND CUMULATIVE LIABILITY TO ABACUS FOR CLAIMS ARISING OUT OF CLIENT'S ABACUSNEXT SOFTWARE SUBSCRIPTION OR THESE TERMS SHALL NOT EXCEED THE EARLY TERMINATION FEE (AS DEFINED ABOVE). THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF THE PARTIES ARISING FROM THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS PARAGRAPH ARE INTEGRAL TO THE AMOUNT OF FEES CHARGED IN CONNECTION WITH MAKING CLIENT'S ABACUSNEXT SOFTWARE SUBSCRIPTION AVAILABLE TO CLIENT AND THAT, WERE ABACUS TO ASSUME ANY FURTHER LIABILITY OTHER THAN SET FORTH HEREIN, SUCH FEES WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER. THIS LIMITATION OF LIABILITY APPLIES EQUALLY TO CLAIMS RELATED TO THIRD PARTY SOFTWARE AND ITS OWNERS AND PROVIDERS.

23. **Indemnification** – Client shall fully indemnify, hold harmless and defend Abacus and its directors, officers, employees, agents, stock holders, subsidiaries and affiliates (collectively "Abacus Indemnified Parties") from and against all claims demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to reasonable attorney's fees and costs), whether or not involving a third party claim, which arises out of or relate to (1) any breach of any representation or warranty of Client contained in these Terms, and (2) any breach or violation of any covenant or other obligation or duty of Client under these Terms or under applicable law. Abacus shall fully

#5775

Exhibit B

24. **Assignment** – Client shall not directly or indirectly assign, transfer, convey, pledge, encumber or otherwise dispose of any rights or obligations under this Agreement without the prior written consent of Abacus, which consent will not be unreasonably withheld. Any assignment made without Abacus' consent is void and ineffective.

25. **Anti-Bribery** – Abacus has an anti-bribery and anti-corruption policy. Abacus shall maintain and comply with the policy. Abacus shall provide a copy of the prevailing anti-bribery upon request.

26. **Severability** – If any provision of these Terms is held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

27. **Integration** – These Terms, the Knowledge Base, and the corresponding Order Form(s) executed by Client (which are incorporated by reference) set forth the entire agreement relating to the subject matter hereof and supersede all prior agreements, discussions and understandings between them, whether oral or written, relating to the subject matter hereof. These Terms supersede any prior edition of terms and conditions or End User License Agreements with respect to AbacusNext Software Products.

28. **Governing Law** – WHERE PERMITTED UNDER THE APPLICABLE LAW, CLIENT AND ABACUS AGREE THAT EACH PARTY MAY ONLY BRING CLAIMS AGAINST THE OTHER PARTY IN AN INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION. NO ARBITER OR JUDGE MAY CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS UNDER THESE TERMS AGAINST EITHER PARTY TO THIS AGREEMENT WITHOUT THE WRITTEN CONSENT OF BOTH PARTIES.

    If Client's AbacusNext Software Subscription was purchased from Abacus Data Systems, Inc., these Terms, any corresponding Order Form executed by Client, and any claim arising out of or in connection thereto (including any non-contractual disputes, acts or omissions, or claims in contract, tort, or otherwise), shall be construed under the laws of the State of California regardless of conflict of law provisions. Client and Abacus irrevocably consent to the exclusive venue of the state or federal courts in San Diego County, California. Neither party will bring any legal action more than two years after the cause of action arose. Client and Abacus further agree that as a condition precedent to instituting any legal action, the parties must participate in a non-binding mediation in San Diego, California before a neutral from JAMS, with the parties equally splitting the costs of that mediation. If the parties cannot agree on a JAMS neutral, the neutral shall be selected by JAMS at its sole discretion. The mediation process shall be initiated by the aggrieved party submitting the

#5775

Wales. Each of the parties irrevocably submits for all purposes (including any non-contractual disputes or claims) to the exclusive jurisdiction of the courts in England and Wales.

29. **Prevailing Party –** In the event of any litigation arising out of or related to Client's AbacusNext Software Subscription, these Terms, any corresponding Order Form executed by Client and/or Client's AbacusNext Software Subscription, the prevailing party shall be entitled to recover from the non-prevailing party all costs and expenses associated with such proceedings, including reasonable attorney's fees. For purposes of this provision, if a matter is filed in any venue other than the venue specified the Governing Law section, and the matter is dismissed for improper venue, the party that did not file the action shall be deemed the prevailing party in that action.

30. **Updates/Changes to Services and Terms –** Due to changes in technology and the marketplace, Abacus may make modifications to the products or services that Comprise Client's AbacusNext Software Subscription or particular components of such product or service (including but not limited to discontinuing a component) from time to time and will use commercially reasonable efforts to notify Customer of any material modifications. Any such modification shall not be deemed to violate the Software Warranty, and Client agrees that Abacus will not be liable to Client for any such modifications. Abacus reserves the right to discontinue offering a Client's AbacusNext Software Subscription at the conclusion of Client's then current subscription term. Likewise, Abacus reserves the right to routinely update, amend or change these Terms. At least 30 days prior to the effective date, Abacus will notify client by e-mail of such changes, and a new Terms document will be posted at www.abacusnext.com/softwareterms. Client's continued use of the Services after the 30 day will serve as consent to the changed terms.

31. **Notices –** All notices to Client under this Agreement will be deemed given when delivered via e-mail to the address set forth in the Service Order. All notices to Abacus under this Agreement will be deemed given when delivered via certified mail to:
General Counsel
Abacus Data Systems, Inc.
4850 Eastgate Mall
San Diego, CA 92121

(With an e-mail copy to notice@abacusnext.com)

#5775

Exhibit B

users, servers, and installations of AbacusNext Software. Upon prior written notice, Abacus or its authorized representative may conduct an audit of Client's users, and installations of AbacusNext Software. At Abacus' election, such audit may be conducted on Client's premises or remotely. Upon completion of the audit, where Abacus determines that Client is using or has used its software in an unauthorized fashion (e.g. exceeding the allotted number of Users), then Client acknowledges and agrees that a fee increase will apply at then-current list prices on Client's AbacusNext Software Subscription, effectively immediately, backdated to the commencement of the Term of Client's AbacusNext Software Subscription, and the total amount owed will be amortized over the remainder of the Term of Client's AbacusNext Software Subscription.

34. **Export Control** – AbacusNext Software products are subject to U.S. and foreign export control laws. Client shall not ship, transfer, export or re-export AbacusNext Software Products into any country, or use them in any fashion prohibited by the United States Export Administrations Act or Regulations or any other applicable laws, restrictions, or regulations.

Resources

Products

Solutions

Cloud Hosting

Webinars

Blog

Resource Library

Find a Partner

Tech & Support

Support

Account Portal

Contact

United States

AbacusNext HQ
4850 Eastgate Mall
San Diego, CA

United Kingdom

AbacusNext Int'l
14 S Charlotte St
Edinburgh

We use cookies to personalize content and ads, provide social media features, and analyze our traffic. We also share information about your use of our site with advertising and analytics partners.

> Cookie Settings   √ Accept Cookies

#5775

Exhibit B

I Yonge St, Suite 1801
Toronto, ON
M5E 1W7, Canada

Tel: 1-800-726-3339

About

Careers

Site Map

Follow Us

Terms and Conditions | Cookie Policy | Accessibility | Do Not Sell My Personal Information | Privacy Policy

We use cookies to personalize content and ads, provide social media features, and analyze our traffic. We also share information about your use of our site with advertising and analytics partners.

> Cookie Settings   ✓ Accept Cookies

#5775