



Contract Number

21-716

SAP Number

District Attorney

Department Contract Representative	Gordon Chapman
Telephone Number	(909) 382-3669
Contractor	Xpertdoc Technologies, Inc.
Contractor Representative	Katie Moore
Telephone Number	(617) 701-7414 x 266
Contract Term	6/12/2021 – 6/11/2026
Original Contract Amount	US\$250,000
Amendment Amount	
Total Contract Amount	US\$250,000
Cost Center	4503001000

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the San Bernardino County through the District Attorney's Office, hereinafter referred to as County, desires to contract with Xpertdoc Technologies, Inc., hereinafter referred to as Contractor, to provide document design and automated document generation and processing services;

WHEREAS, the County conducted a competitive process to find Contractor(s) to provide these services;

WHEREAS, the County finds Contractor qualified to provide document design and automated document generation and processing services; and

WHEREAS, the County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below.

NOW, THEREFORE, the County and Contractor mutually agree to the following terms and conditions:

A. DEFINITIONS

- A.1** Subcontractor – A person, partnership, or company, not in the employment of or owned by Contractor who is performing services under this contract or under a separate contract with or on behalf of Contractor.

B. CONTRACTOR RESPONSIBILITIES

- B.1** Subject to the terms of this Contract, and Terms of Service in Attachment C, Contractor shall provide all of the following:

- A. Software that allows for document template design, document generation, processing, and automated document production with Microsoft Dynamics 365 online and Sharepoint online.
- B. Software that has the ability to be initiated by an end user with the Microsoft Dynamics 365 user interface without a separate logon/login.
- C. Software that has the ability to support more than 100 document templates. These templates will be used to generate labels (which include barcodes) and complex document templates that require conditional data substitution and/or tabular data substitution.
- D. Software that allows the end-user to print completed documents to a network or local printer. The printer will be able to be designated based on the document generated. In addition, multiple copies shall be able to be printed for designated document types.
- E. Software that generates documents using the record, from which the document generation was initiated, as the source for values added to the document template.
- F. Software that prompts end users to enter information based upon defined tags which exist in the document template. The software shall also generate multi-selection prompts based on data retrieved from the record and/or the prompt text. The software shall be able to provide the following:

Prompt/Substitution Scenarios

- 1. Prompt the user to provide a free-form text answer to a question
 - 2. Prompt the user to select a single response from a list of choices
 - 3. Prompt the user to select multiple responses from a list of choices
 - 4. Prompt the user to select a single value from a static list of values
 - 5. Prompt the user to select a value from a list of values extracted from Customer Relationship Management (CRM)
 - 6. Automatically substitute a value based on a Boolean in the CRM data
 - 7. Automatically substitute a value based on a count of CRM records (one or more than one)
 - 8. Automatically substitute values based on CRM data
 - 9. Prompt user responses based upon tags contained within scenario (8). Prompts may include any of scenarios (1 – 5).
- G. Software that incorporates the end user response(s) into the document and have the ability to write the responses back to the record in Dynamics 365.
 - H. Software that uploads the generated document into a SharePoint folder associated to the record from which it was initiated and automatically attach or link it to the record. The record shall also be updated to indicate the document(s) have been generated.
 - I. Software that generates documents based on different types of entities in CRM.
 - J. Software that navigates complex data structures to find substitution values for document generation.
 - K. Software that generates documents that meet Court standards for margins and line spacing.

B.2 Background Checks

- A. Contractor shall conduct thorough background checks on personnel, subcontractors, and consultants assigned to the District Attorney's contract. Background checks will include, but not be limited to: criminal history check, fingerprints, and photographs. All costs incurred related to the completion of any and all background investigations shall be the responsibility of the Contractor.

- B. Contractor shall ensure that employees, subcontractors and consultants who are assigned to the District Attorney's contract are not on probation, parole, and shall not have any criminal conviction or arrest record.
- C. Contractor has a continuing obligation to disclose any prior or subsequent criminal arrest or conviction record regarding any personnel, subcontractors, or consultants assigned to the District Attorney's contract and once known, will immediately assign new personnel, subcontractor, or consultant to the District Attorney's contract.

B.3 Data Security and Maintaining Confidentiality

- A. Contractor's software shall be hosted by the District Attorney's office in Microsoft Azure Government tenant. Contractor shall not host any District Attorney data in its software or on any of its servers. Upon approval by the District Attorney or his designee, Contractor may temporarily store data on individual devices (not a network) during the design and implementation of software and immediately delete it when it is no longer needed.
- B. Contractor shall ensure that all data between the District Attorney, Contractor and Microsoft Dynamics 365 will be encrypted through HTTPS protocol.
- C. Contractor's employees, subcontractors, and consultants may encounter very sensitive and confidential information that might identify victims of crimes. The information shall remain confidential and Contractor and its staff, subcontractors, and consultants are bound to strict confidentiality. By signing this contract, Contractor attests that District Attorney records shall be stored in such a way as to maintain the confidentiality of the information to the extent permitted and required by law. Such requirements shall remain in effect for the entire time that such records are in the possession of Contractor, even following the termination of this contract.
- D. Contractor shall be required to sign a confidentiality agreement substantially similar to Attachment B and also require that all staff, subcontractors, consultants, or others who perform work under this Contract or have access to any District Attorney information to sign confidentiality agreements in a form acceptable to the County and provide copies to the District Attorney upon request.
- E. Contractor shall utilize employees located within the United States and/or Canada and shall work at the office premises of the Contractor and/or District Attorney, as mutually agreed, during the start-up and implementation phase to obtain convenient access to District Attorney and Microsoft staff. If additional services are needed after project go-live, the work may be authorized by the District Attorney or his designated staff to be performed off-site.

B.4. Contractor Employees, Subcontractors, Consultants, and Qualifications

- A. Contractor shall ensure that its employees, subcontractors, or consultants meet the background and training requirements as set forth in the CJIS and the California Law Enforcement Telecommunication System (CLETS). The requirements may be found at <https://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center> and <http://www.arjis.org/RegionalPolicies/CLETS-PPP-2014.pdf>.
- B. Contractor shall notify the District Attorney within one (1) business day of changes in employee, subcontractors, and consultants who are assigned to the District Attorney's contract.

B.5. Software Maintenance and Support

- A. Contractor will provide County with Standard Support & Maintenance with the Software Subscription and at no additional cost. Custom support programs or special event support

shall be pre-arranged with Contractor as needed. The cost will be determined based on the specific needs of County at the time of the request.

B. Type/Level of Support

In order to provide The County with effective support of the functionality provided by the Software, a two-tier technical support model is employed. The County will provide first-tier technical support to their internal users in accordance with the procedures and quality standards described below. Except as may otherwise be determined by Contractor to be appropriate or necessary on a case-by-case basis, Contractor will not provide technical support resources or services directly to The County end users, but rather will provide second tier technical support, on an escalated basis, to an identified qualified team at The County.

The County will be supplied with access to:

1. Support telephone number and email (support@xpertdoc.com) by which to contact Contractor's technical support team.
2. Electronic user documentation.
3. Support database containing technical support most common procedures which are updated on a regular basis.
4. Contractor will provide initial response and resolutions based on the following severity levels:
 - a. "Critical" means it is suspected that the Contractor Software may not be working at a high impact level where the business is placed at risk. No interim fix acceptable to the Customer has been implemented.
 - b. "Serious" means it is suspected that Contractor Software may not be working at a moderate impact level where the business is placed partially at risk or the Contractor Environment is not fully available.
 - c. "Minor" means it is suspected that the Contractor Software may not be working at a low impact level where the Contractor Environment is not fully available.

Contractor will make every best effort to accommodate the following service levels (during Business Hours) for issues that have been determined to be In Scope:

	Critical	Serious	Minor
Response Time	1 hour	4 hours	2 business days
Diagnosis Time	4 hours	1 business day	5 business days
Resolution Time	2 business days	5 business days	20 business days

The County will:

1. Provide first-tier technical support to its end users;
2. Escalate to Contractor only those requests whose description cannot be found in Contractor's support database or whose resolution cannot be applied as documented;
3. Ensure all back-ups required are done and that a recovery procedure to prevent damages or loss of its data is in place.

C. Handling of upgrades and costs

Contractor regularly releases upgrades and/or enhancements to the software. So long as Annual Subscription Fees are paid in full, all upgrades issued by Contractor and made generally available to its Customers will be available at no additional charge to County for the duration of the term.

D. Support hours

Contractor maintains standard support hours from 9:00 am – 5:00 pm EST/EDT, Monday through Friday, excluding legal United States holidays. Ongoing custom support programs or custom support for specific events (upgrades, go-live, etc.) can be pre-arranged with Contractor.

The County may request, in advance, support outside of normal Business Hours. Upon mutual agreement, these services will be billed according to Contractor's then current "After Hours" support rates that include an on-call availability rate and a Time & Materials rate for each hour worked.

B.6. Training

Contractor shall provide any necessary orientation and training services to the District Attorney's employees. Training will include:

- A. A minimum of 40 hours dedicated to the development, design, modification, and production of document templates.
- B. Server/software installation and configuration in the Microsoft Azure environment (if necessary).
- C. Server/desktop client installation.
- D. Access to an online user manual and other user documentation relevant to the implemented software.

C. GENERAL CONTRACT REQUIREMENTS

C.1 Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

C.2 Contract Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

C.3 Contract Assignability

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

C.4 Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

C.5 Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

C.6 Background Checks for Contractor Personnel

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (d) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background

check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

C.7 Change of Address

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

C.8 Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

C.9 Compliance with County Policy

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

C.10 Confidentiality

Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving Services pursuant to this Contract, except for statistical information not identifying any participant. Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract

C.11 Primary Point of Contact

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

C.12 County Internship Initiative

Contractor agrees to be contacted by the County to solicit its participation in an internship initiative known as GenerationGo! Career Pathways, involving the potential placement and hiring of interns by Contractor's business. Contractor is encouraged, and agrees to make good faith efforts, to utilize the County's program to aid the **County's Vision for a skilled workforce and jobs that create countywide prosperity**, and its **goal to Create, Maintain and Grow Jobs and Economic Value in the County**. The County's objective with its internship initiative is to focus on training, education, employment and support services to develop a more highly-educated and

trained workforce. When participating in the County's internship initiative, the Contractor remains an independent contractor and shall not be construed as agents, officers, or employees of the County. More information about the County's GenerationGo! Career Pathways Program can be located at <http://wp.sbcounty.gov/workforce/career-pathways/>.

C.13 County Representative

The District Attorney of his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

C.14 Damage to County Property

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

C. 15 Debarment and Suspension

Contractor certifies that neither it nor its principals or subcontracts is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

C.16 Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- C.16.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- C.16.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- C.16.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

C.17 Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

C.18 Employment Discrimination

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

C.19 Environmental Requirements

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the county in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

C.20 Improper Influence

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

C.21 Improper Consideration

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

C.22 Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

C.23 Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

C.24 Licenses, Permits and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

C.25 Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

C.26 Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

C.27 Nondisclosure

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

C.28 Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

C.29 Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and products, if applicable). All such items shall be delivered to County at the completion of work

under the Contract, subject to the requirements of Section IV–Term of the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

C.30 Reserve

C.31 Air, Water Pollution Control, Safety and Health

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

C.32 Records

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

C.33 Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

C.34 Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

C.35 Representation of the County

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County.

C.36 Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

C.37 Subcontracting

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

- 37.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 37.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 37.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities and C. General Contract Requirements.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

C. 38 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

C.39 Termination for Convenience

The County and the Contractor each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

C.40 Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

C.41 Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

C.42 Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation,

may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

C.43 Former County Administrative Officials

Contractor agrees to provide or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

C.44 Disclosure of Criminal and Civil Procedures

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

C.45 Copyright

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the San Bernardino County as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent

right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

C.46 Artwork, Proofs and Negatives

All artwork, proofs, and/or negatives in either print or digital format for anything produced under the terms of this Contract are the property of the County. These items must be returned to the County within ten (10) days, upon written notification to the Contractor. In the event of a failure to return the documents, the County is entitled to pursue any available legal remedies. In addition, the Contractor will be barred from all future solicitations, for a period of at least six (6) months.

C.47 English Language

This Contract has been executed by the parties hereto in the English Language, and no translated version of this Contract into other languages shall be controlling or binding upon any of the parties hereto. It is the express wish of the parties that this Contract and all related documents, including notices and other communications, be drawn up in the English language only. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés en anglais seulement."

D. TERM OF CONTRACT

This Contract is effective as of June 12, 2021 and expires June 11, 2026 but may be terminated earlier in accordance with provisions of this Contract.

E. COUNTY RESPONSIBILITIES

- E.1** Provide Contractor with access to the District Attorney's Microsoft Dynamics environment and Azure Government tenant.
- E.2** Designate District Attorney staff to manage and coordinate the project with the Contractor and act as a liaison between the Contractor and Microsoft as needed.
- E.3** Provide final sign-off to Contractor upon satisfactory completion of the project.

F. FISCAL PROVISIONS

- F.1** The maximum amount of payment under this Contract shall not exceed US\$250,000. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.
- F.2** Contractor's costs are listed in Attachment A. Contractor shall submit monthly invoices to the Department based on the costs in Attachment A and shall clearly indicate one or more of the billing elements listed in Attachment A.
- F.3** All amounts due under this Contract are payable in United States Dollars. Contractor shall invoice the County as services are completed and accepted by the County. County will not pay for services prior to implementation and/or acceptance by the County. The County shall make payment to Contractor within sixty (60) working days after validation of the services or software provided or the resolution of any billing dispute.
- F.4** Annual licenses or subscription costs will be paid at the beginning of the period to which the licenses or subscription costs apply.
- F.5** Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall

promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

- F.6** County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
- F.7** Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.
- F.8** Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- F.9** Contractor shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

G.1 General Indemnity

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

G.2 Infringement Indemnity

Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify Contractor promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve Contractor of its obligations only if and to the extent that such delay or failure materially prejudices Consultant's ability to defend such lawsuit or claim. County will give Contractor sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that Contractor may not settle the claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the goods or services that are the subject of the claim. In the event that Contractor fails to or elects not to defend County against any claim for which County is entitled to indemnity by Contractor, then Contractor shall reimburse County for all reasonable attorneys' fees

and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to Contractor. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit Contractor's account at any time; and County, at its sole discretion, may settle the claim or suit.

If, in Contractor's opinion, any goods or services become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Contractor may, at its option: (i) procure for County the right to continue using the goods or receiving the services; (ii) replace or modify the goods or services to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of Contractor, County shall cease use of the goods or services upon written notice from Contractor, and Contractor shall provide County with a pro-rata refund of the unearned fees paid by County to Contractor for such goods or services.

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

G.3 Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

G.4 Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

G.5 Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

G.6 Severability of Interests

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

G.7 Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated

or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

G.8 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

G.9 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

G.10 Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

G.11 Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

G.12 The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

G.12.1 Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers

providing services on behalf of the Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

G.12.2 Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

G.12.3 Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

G.12.4 Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

G.12.5 Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

- G.12.6 Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

H. RIGHT TO MONITOR AND AUDIT

- H.1** The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.
- H.2** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

I. CORRECTION OF PERFORMANCE DEFICIENCIES

- I.1** Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
- I.2** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
 - Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
 - Withhold funds pending duration of the breach; and/or
 - Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
 - Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

J. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*County of San Bernardino
Office of the District Attorney
303 West Third Street, 6th Floor
San Bernardino, CA 92415*

*Xpertdoc Technologies, Inc.
100-1562 Nationale Street
Terrebonne (Quebec)
Canada J6W 0E2*

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

K. ENTIRE AGREEMENT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

L. CONTRACT EXECUTION

This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

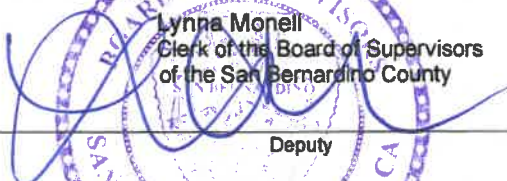
IN WITNESS WHEREOF, the San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

► 
Curt Hagman, Chairman, Board of Supervisors

Dated: OCT 05 2021

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By  Lynna Monell
Clerk of the Board of Supervisors
of the San Bernardino County

By  Deputy

Experlogix

(Print or type name of corporation, company, contractor, etc.)

By ►


B7BB3F60784240D...

(Authorized signature - sign in blue ink)

Louis-Philippe Perras

Name

(Print or type name of person signing contract)

Title VP Technology and Development

(Print or Type)

10-Sep-21

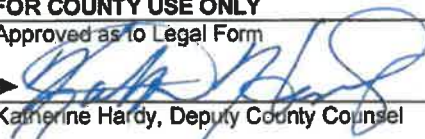
Dated:

1562 Nationale, Terrebonne

Address

FOR COUNTY USE ONLY

Approved as to Legal Form

► 
Katherine Hardy, Deputy County Counsel

Date 9-13-21

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

► 
Jason Anderson, District Attorney

Date 9/13/21

ATTACHMENT A
FEE SCHEDULE

SERVICE	COST
CCM Document Management Annual Subscription, including: • On Premise (hosted by County) Server License • 4 Template Designer Seats • 600 Internal End User Seats • Standard Support and Maintenance including access to Contractor's help-desk and online documentation and knowledgebase (see description below)	US\$36,800 annually
Additional Template Designer seats if needed during contract	US\$1,200 per seat annually
Additional End User seats if needed during contract	US\$40 per seat annually
Additional days as needed to provide ongoing mentoring/guidance	US\$1,800 per day

ATTACHMENT B

CONFIDENTIALITY AGREEMENT

The San Bernardino County ("County") has a legal and ethical responsibility to safeguard the privacy/confidentiality of all law enforcement investigations. The County has entered into a contract with Xpertdoc Technologies, Inc. (Contractor) for the provision of document design and automated document generation and processing services. In the course of this business relationship with Contractor, and/or its employees, agents, subcontractors (collectively referred to as Vendors), the Vendors may come into possession of confidential information through the provision of transcription/translation services.

In consideration of, and as a condition to, its business relationship with Contractor and Vendor will hold the following information ("confidential information") in strictest confidence:

1. Any information supplied by the District Attorney's Office or County employees;
2. Any information which is the direct or indirect result of Contractor's or Vendors' services provided; and
3. Any information about the District Attorney's Office business operations.

No confidential information shall be disclosed except to Contractor and Vendors who need to know it to fulfill Contractor's obligations to provide transcription/translation services under this Contract. At any time, upon request of the District Attorney's Office, Contractor and Vendors will return promptly all embodiments, in any form, of confidential information in a form acceptable to the District Attorney's Office without retaining any copies thereof. Furthermore, Contractor and Vendors will not sell, share, discuss, assign, transfer, or otherwise disclose any confidential information outlined above with any other individuals or business entities and will not use the confidential information for any purpose other than providing the mutually agreed upon services. It is understood that "confidential information" does not include information which:

1. Generally becomes available to the public other than as a result of disclosure by Contractor/Vendors, or
2. Was available to Contractor/Vendors on a non-confidential basis prior to its disclosure by the District Attorney's Office.

At all times during the term of Contractor's agreement with the County, Contractor and Vendors shall protect the confidential information from unauthorized use or disclosure and otherwise abide by the terms of Contractor's agreement with the County. The requirement and obligation to protect the confidential information shall survive beyond the termination of Contractor's agreement with the County and extend until Contractor and/or Vendors no longer have in their possession, control or access to confidential information.

DocuSigned by:
Louis-Philippe Perras
B7BB3F80784240D...

10-Sep-21

Signature of Vendor/Contractor

Date

VP Technology and Development

Title of Authorized Signor

ATTACHMENT C

SUBSCRIPTION TERMS OF SERVICE

Subject to payment of Fees outlined in Attachment A and compliance with these Subscription Terms of Service (Attachment C), which may be mutually amended from time to time, Contractor grants The County a license for the Contractor Software.

"Authorized User" means any employee, authorized contractor or agent of Customer to whom Customer grants the right to access or use the Software for the sole use on behalf of the Customer.

"Deliverable" means: (a) developments, work product and deliverables made available to Customer by Contractor that result from Professional Services performed by Contractor pursuant to a SOW; and (b) any deliverables, tools, services and other materials made available to Customer by Contractor as a part of the Agreement or an Ordering Document.

"Documentation" means any user guides, documented procedures, instructions, or correspondence, whether in print or machine readable media, relating to the Software that are identified by Contractor as "Documentation", as may be produced and updated by Contractor from time to time.

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

"Software" means any portion of Contractor's Software identified in one or more Ordering Document to which Customer subscribes pursuant to the terms of this Agreement and all applicable Ordering Documents.

"Third Party Software" means all external software, components, databases, operating systems or utilities that may be required for the operation of the Software but are manufactured and produced by providers other than Contractor.

1) THE COUNTY RESPONSIBILITIES

The County shall (i) be responsible for Authorized Users' compliance with the Contract, (ii) prevent the unauthorized access to or use of the Software(s) and notify Contractor promptly if it becomes aware of any such unauthorized access or use, and (iii) use the Software only in accordance with the Documentation and applicable laws and government regulations, and (iv) run the Software only on the environments and number of computers or server instances authorized by the Contract, and (v) comply with applicable laws and regulations regarding export of Software or its use. The County's failure to perform their responsibilities will relieve Contractor of its obligations to the extent that such obligations are dependent upon performance of the County responsibilities. The County shall bear all expenses incurred in performance of its obligations or exercise of its rights under this Agreement.

2) PROPRIETARY RIGHTS

a. Reservation of Rights. Subject to the limited rights expressly granted hereunder, Contractor, for itself and on behalf of its licensors, reserves all rights in the Software, Professional Services and Deliverables that are not expressly granted to the County in this Contract, and the County acknowledges and agrees that, except as specifically set forth in this Contract, Contractor owns all rights, title and interest in and to the Software, Professional Services and Deliverables. All rights, title and interest in and to any and all improvements, modifications, derivative works and innovations of, to and/or involving the Software, Professional Services and Deliverables will be retained in full and owned by Contractor, even if such improvements, modifications, derivative works or innovations result from suggestions, enhancement requests, recommendations or other feedback provided by the County, including Authorized Users. These rights do not extend to any information and/or processes that: (i) are or

become generally known to the public; (ii) were known to the County prior to its disclosure by Contractor; (iii) are lawfully received from a third party; or (iv) were independently developed by the County without use of or access to Contractor's Confidential Information.

b. Government Purpose Rights. The County will have Government Purpose Rights to the Deliverables. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Licensor or jointly by the Licensor and County may be used by either party without obligation or notice or accounting. Contractor grants to The County the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Deliverables; the right to release or disclose the Deliverables outside the County for any government purpose; and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Deliverables for any County government purpose. Such recipients of the Deliverables may include, without limitation, County contractors, California state government, other California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Deliverables for any commercial purpose.

3) WARRANTIES AND DISCLAIMERS

a. Contractor warrants that (i) the Software shall perform materially in accordance with the Documentation, and (ii) the functionality of the Software will not be materially decreased during a term.

b. Mutual Warranties. Each Party represents and warrants that (i) it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder; (ii) its execution, delivery and performance of this Agreement will not conflict with or result in a breach or other violation of any agreement or other third party obligation by which it is bound; (iii) when executed and delivered, this Agreement will constitute its legal, valid and binding obligation enforceable against it in accordance with its terms; (iv) it will comply with all applicable laws in its performance of this Agreement; and (v) it will not transmit to the other Party any Malicious Code (except for Malicious Code previously transmitted to the warranting Party by the other Party).

c. Third Party Software. CONTRACTOR SHALL NOT BE LIABLE TO THE COUNTY OR ANY OTHER PERSON IN CASE OF INTELLECTUAL PROPERTY INFRINGEMENT OF RIGHTS BY OPEN SOURCE SOFTWARE EMBEDDED INTO OR USED WITH THE CONTRACTOR SOFTWARE OR OTHER THIRD PARTY SOFTWARE.

d. Disclaimer. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, CONTRACTOR MAKES NO, AND COUNTY HEREBY WAIVES AND DISCLAIMS ANY AND ALL, REPRESENTATIONS OR WARRANTIES REGARDING THIS CONTRACT OR THE SOFTWARE, SERVICES AND DELIVERABLES CONTEMPLATED HEREBY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ERROR-FREE OR UNINTERRUPTED SERVICE, OR ALL IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. FURTHERMORE, THE SOFTWARE, PROFESSIONAL SERVICES AND DELIVERABLES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND CONTRACTOR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

4) LIMITATION OF LIABILITY

EXCEPT FOR AMOUNTS TO BE PAID PURSUANT TO INDEMNIFICATION DAMAGES ARISING FROM A BREACH OF CONFIDENTIALITY OR DAMAGES ARISING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY WILL BE LIABLE (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHER THEORY), TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL,

PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFIT, BUSINESS OR DATA) ARISING OUT OF THIS AGREEMENT. THE AGGREGATE LIABILITY OF CONTRACTOR RESULTING FROM OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WILL NOT EXCEED US\$1,000,000.

5) **GENERAL**

a. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Contract, and the Parties acknowledge that this Contract is intended solely for the benefit of the Parties, their successors and permitted assigns, and nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their permitted successors and assigns, any legal or equitable right whatsoever to enforce any provision of this Contract.

b. Force Majeure. Contractor shall be excused from performance of its obligations under this Contract if such a failure to perform results from compliance with any requirement of applicable law, acts of God, fire, strike, embargo, terrorist attack, war, insurrection or riot or other causes beyond the reasonable control of Contractor. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

c. Waiver and Cumulative Remedies; Severability. No failure or delay by either Party in exercising any right under this Contract shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity. If any provision of this Contract 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 Contract shall remain in effect.

d. Third Party Software. The County agrees to obtain and maintain at its expense, Third Party Software and equipment (if any) to run the Software, including updating such software and equipment. The County must refer to such Third Party Software and equipment (if any) supplier for any problem not caused by the Contractor Software.