County of Los Angeles
CHIEF EXECUTIVE OFFICE
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
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WILLIAM T FUJIOKA
Chief Executive Officer

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

July 29, 2008

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

AGRICULTURAL COMMISSIONER/WEIGHTS & MEASURES: APPROVAL OF CONTRACT BETWEEN THE COUNTY OF LOS ANGELES AND CHEMWARE INC. TO ACQUIRE A LABORATORY INFORMATION MANAGEMENT SYSTEM FOR THE ENVIRONMENTAL TOXICOLOGY LABORATORY (ALL DISTRICTS) (3-VOTES)

CIO RECOMMENDATION: APPROVE (X) APPROVE WITH MODIFICATION ( ) DISAPPROVE ( )

SUBJECT:

The Agricultural Commissioner/Weights and Measures is requesting approval of a contract for $559,562 with ChemWare Inc. to acquire a software package, Laboratory Information Management System, for the Department's Environmental Toxicology Laboratory.

IT IS RECOMMENDED THAT YOUR BOARD:

Approve and instruct the Chair of the Board to sign the attached contract, with ChemWare Inc. (ChemWare) for a software, professional services, and maintenance and support services to support the implementation of the Laboratory Information Management System (LIMS) at the Agricultural Commissioner/Weights and Measures' (ACWM) Environmental Toxicology Laboratory (ETL). The Agreement term is for four years effective upon Board approval with a total maximum County obligation of $559,562.

"To Enrich Lives Through Effective And Caring Service"

Please Conserve Paper – This Document and Copies are Two-Sided
Intra-County Correspondence Sent Electronically Only

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION:

ACWM's ETL analyzes water, produce, wipe, paint and other environmental samples for toxic contaminants including heavy metals, pesticides and bacteria as the base for health policy decisions. Samples are analyzed for County agencies and private firms.

Currently, the ETL utilizes personal computing spreadsheet software to automate some of the logging and billing functions, but it is very limited and does not meet current operational, regulatory and data reporting requirements. ACWM has determined that by acquiring and implementing a comprehensive LIMS, the ETL will greatly improve efficiency, capacity and service to all of their customers.

The purpose of this action is to contract with ChemWare to acquire its commercial-off-the-shelf LIMS software package, Horizon LIMS, and professional services required for successful configuration, training, implementation, and ongoing software maintenance and support.

Implementation of Strategic Plan Goals:

The recommended Board action supports the County's Strategic Plan Goals of Service Excellence (Goal 1) and Organizational Effectiveness (Goal 3). The LIMS will provide quicker response times of lab results for ETL customers and more efficient laboratory operations by automating the login reporting, and billing processes.

FISCAL IMPACT/FINANCING:

The total maximum obligation for this contract is $559,562. This amount is comprised of $426,961 for one time software licenses and implementation services; allocation of $42,696 in pool dollars for potential additional professional services or software licenses that may arise in the future as mutually agreed upon between County and ChemWare; and a total of $89,905 for application software maintenance. The software licenses, implementation services and pool dollars will be funded with monies from the ACWM fiscal year 2008-2009 final budget. The annual software maintenance costs of approximately $30,000 will be offset by revenue. There is no additional net County cost.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS:

This contract will become effective upon Board approval for a four year term. ChemWare agrees to all of the County terms and conditions.

The County's Chief Information Officer concurs with the Department's recommendation (See attached analysis).

The contract has been approved as to form by County Counsel.

CONTRACTING PROCESS:

ChemWare was selected through a formal open, competitive solicitation process. Prior to development of a solicitation, ACWM conducted an analysis to determine if ETL could work with other County laboratories operated by the Department of Health Services and the Department of Public Health to support their toxicology testing. It was determined that ETL's requirements were unique enough to justify a search for LIMS software.

ACWM prepared and released a Request for Proposals (RFP) on December 5, 2007. The RFP was distributed to nine potential LIMS vendors and was posted on the County's "Doing Business with the County" Website. A voluntary Proposers Conference was held on January 8, 2008, to present an overview of the RFP and to answer vendor questions An addendum addressing questions was issued on January 15, 2008. On the proposal due date of January 24, 2008, seven proposals were received.

The evaluation process followed recommended County guidelines. The proposal evaluation was based upon criteria described in the RFP, which included qualifications, approach, quality control plan, references, and proposed price. The evaluation process included reference checks, a comprehensive review of the proposals, and presentations and demonstrations by the finalists. The evaluation committee reached consensus at each phase of the evaluation process.

Based upon the evaluation, ChemWare was found to be the most responsive and qualified proposer, the selection decision was based on key criteria including software functionality, reference checks, experience in public environmental health labs, five year cost of ownership, and company resources.
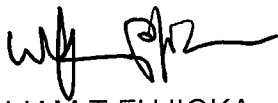
IMPACT ON CURRENT SERVICES (OR PROJECTS):

The contract will support the current level of services and streamline the work flow in the ETL, allowing more opportunity to solicit new customers and generate additional revenue for the Department.

CONCLUSION:

Following execution by your Board, it is requested that the Executive Office/Clerk of the Board return to the ACWM two (2) executed copies of the contract, along with an adopted copy of this letter.

Respectfully submitted,   Reviewed by:

WILLIAM T FUJIOKA   Richard Sanchez
Chief Executive Officer   Acting Chief Information Officer

WTF:SRH:RDC
KEF:AA:em/yjf

Attachments

c: County Counsel
    Executive Office/Clerk of the Board
    CIO

CONTRACT BETWEEN
COUNTY OF LOS ANGELES
AND
CHEMWARE, INC.
FOR
LABORATORY INFORMATION MANAGEMENT SYSTEM

This Contract is made and entered into this 29th day of ＿July＿, 2008 by and between the County of Los Angeles ("County"), by and through its Agricultural Commissioner/Weights and Measures Department ("Department") and ChemWare, Inc., a North Carolina corporation, headquartered at 900 Ridgefield Drive, Suite 150, Raleigh, North Carolina 27609 ("Contractor").

RECITALS

WHEREAS, County may contract with private businesses for information systems and associated professional services when certain requirements are met;

WHEREAS, Contractor is a private firm specializing in providing information systems and associated professional services;

WHEREAS, County desires to employ Contractor to provide certain information systems and associated professional services in connection with the implementation of a Laboratory Information Management System (LIMS) for the Environmental Toxicology Laboratory (ETL) of the Agricultural Commissioner/Weights and Measures (ACWM).

NOW THEREFORE, in consideration of the foregoing, the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following:

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1.0   AGREEMENT AND INTERPRETATION

1.1   Agreement. This base document along with Exhibits A through L and any schedules attached hereto or thereto collectively constitute and throughout and hereinafter are referred to as the "Contract." This Contract shall constitute the complete and exclusive statement of understanding between County and Contractor and supersedes any and all prior and contemporaneous agreements, written or oral, and all communications between the parties relating to the subject matter of this Agreement.

1.2   Interpretation. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, subtask, deliverable, goods, service, or other work, or otherwise, such conflict or inconsistency shall be resolved by giving precedence first to this base document and then to the Exhibits according to the following priority:

EXHIBIT A - Pricing Schedule

EXHIBIT B - Payment Schedule

EXHIBIT C - Software License Agreement

EXHIBIT D - Technical Services Agreement

EXHIBIT E - Software Maintenance Agreement

EXHIBIT F - Relevant Correspondence (incorporated by reference)

EXHIBIT G - Contractor's Proposal (incorporated by reference)

EXHIBIT H - County's RFP and Addendum (incorporated by reference)

EXHIBIT I -   County's Administration

EXHIBIT J -   Contractor's Administration

EXHIBIT K - Contractor Acknowledgement and Confidentiality Agreement

EXHIBIT L - Safely Surrendered Baby Law

1.3   Construction.   The words "herein", "hereof", and "hereunder" and words of similar import used in this Contract refer to this Contract, including all annexes, attachments, Exhibits, and Schedules as the context may require. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural. Whenever examples are used in this Contract with the words "including", "for example", "e.g.", "such as", "etc.", or any deviation of such words, such examples are intended to be illustrative and not limiting.

2.0   WORK

2.1   Pursuant to the provisions of this Contract, the Contractor shall fully perform, complete and deliver on time, all tasks, deliverables, services and other work as set forth in herein.

2.2   If the Contractor provides any tasks, deliverables, goods, services, or other work, other than as specified in this Contract, the same shall be deemed to be a gratuitous effort on the part of the Contractor, and the Contractor shall have no claim whatsoever against the County.

3.0   TERM OF CONTRACT

3.1   The term of this Contract shall commence upon the Effective Date, defined as approval by the County Board of Supervisors, continue in full force and effect for a period of four (4) years, unless sooner terminated or extended, in whole or in part, as provided in this Contract.

3.2   This Contract may be extended for up to two (2) additional one-year periods (each a Renewal Term) for Software Maintenance, in accordance with Exhibit E (Software Maintenance Agreement), Paragraph 6 (Term and Termination).

3.3 The Contractor shall notify the Department when this Contract is within six (6) months from the expiration of the term as provided for hereinabove. Upon occurrence of this event, the Contractor shall send written notification to the Department at the address set forth in Exhibit I (County's Administration).

4.0 MAXIMUM CONTRACT SUM

4.1 The total compensation to be paid to Contractor under this Contract shall not exceed Five hundred fifty nine thousand five hundred sixty two Dollars ($559,562) (the "Maximum Contract Sum"). This amount is comprised of $426,961 for one time software licenses and implementation services as detailed in Exhibit A (Pricing Schedule); a 10 % pool dollars allocation for potential additional professional services or software licenses that may arise in the future as mutually agreed upon between County and Contractor; and a total of $89,905 for application software maintenance for Years 2-4.

4.2 Contractor shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein. Assumption or takeover of any of Contractor's duties, responsibilities, or obligations, or performance of same by any entity other than Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, shall occur only with County's express prior written approval.

4.3 Contractor shall maintain a system of record keeping that will allow Contractor to determine when it has incurred seventy-five percent (75%) of the total contract authorization under this Contract. Upon occurrence of

this event, the Contractor shall send written notification to the Department at the address set forth in Exhibit I (County's Administration).

4.4   Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by Contractor after the expiration or other termination of this Contract. Should Contractor receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Contract shall not constitute a waiver of County's right to recover such payment from Contractor.   This provision shall survive the expiration or other termination of this Contract.

4.5   Invoices and Payments.

    4.5.1   Contractor shall invoice County only for providing the tasks, deliverables, goods, services, and other work specified in Exhibit A (Pricing Schedule) and elsewhere hereunder.   Contractor shall prepare invoices, which shall include the charges owed to Contractor by County under the terms of this Contract. Contractor's payments shall be as provided in Exhibit B (Payment Schedule), and Contractor shall be paid only for the tasks, deliverables, goods, services, and other work approved in writing by County. If County does not approve work in writing no payment shall be due to Contractor for that work.

    4.5.2   Contractor's invoices shall be priced in accordance with Exhibit B (Payment Schedule).

    4.5.3   Contractor's invoices shall contain the information set forth in Exhibit B (Pricing Schedule) describing the tasks, deliverables, goods, services, work hours, and facility and/or other work for which payment is claimed.

4.5.4   Contractor shall submit the monthly invoices to the County by the fifteenth (15th) calendar day of the month following the month of service.

4.5.5   All invoices under this Contract shall be submitted in two (2) copies to the Project Manager and Project Director as identified in Exhibit I (County's Administration).

4.5.6   All invoices submitted by the Contractor for payment must have the written approval of the County's Project Manager prior to any payment thereof. In no event shall the County be liable or responsible for any payment prior to such written approval. Approval for payment will not be unreasonably withheld

4.5.7   Certified Local SBEs will receive prompt payment for services they provide to County departments. Prompt payment is defined as fifteen (15) calendar days after receipt of an undisputed invoice.

5.0   ADMINISTRATION OF CONTRACT – COUNTY

A listing of all County Administration referenced in the following sub-paragraphs is set forth in Exhibit I (County's Administration). County shall notify Contractor in writing of any change in the names or addresses shown.

5.1   **County's Project Director**

Responsibilities of County's Project Director include:
▪ ensuring that the objectives of this Contract are met; and
▪ providing direction to Contractor in the areas relating to County policy, information requirements, and procedural requirements.

5.2   **County's Project Manager**

The responsibilities of County's Project Manager include:

- meeting with Contractor's Project Manager on a regular basis; and

- inspecting any and all tasks, deliverables, goods, services, or other work provided by or on behalf of Contractor.

County's Project Manager is not authorized to make any changes in any of the terms and conditions of this Contract and is not authorized to further obligate County in any respect whatsoever.

6.0 ADMINISTRATION OF CONTRACT – CONTRACTOR

A listing of all Contractor Administration referenced in the following sub-paragraphs is set forth in Exhibit J (Contractor's Administration). Contractor shall notify County in writing of any change in the names or addresses shown.

6.1 Contractor's Project Manager

Contractor's Project Manager shall be responsible for Contractor's day-to day activities as related to this Contract and shall coordinate with County's Project Manager on a regular basis.

6.2 Approval of Contractor's Staff

County has the absolute right to approve or disapprove all of the Contractor's staff performing work hereunder and any proposed changes in the Contractor's staff, including, but not limited to, the Contractor's Project Manager.

6.3 Contractor's Staff Identification

All of Contractor's employees assigned to County facilities are required to have a County Identification (ID) badge on their person and visible at all times.

6.3.1 Contractor is responsible to ensure that employees have obtained a County ID badge before they are assigned to work in a County

facility. Contractor personnel may be asked to leave a County facility by a County representative if they do not have the proper County ID badge on their person.

6.3.2   Contractor shall notify the County within one (1) business day when staff is terminated from working under this Contract. Contractor shall retrieve and return an employee's ID badge to the County on the next business day after the employee has terminated employment with the Contractor.

6.3.3   If County requests the removal of Contractor's staff, Contractor shall retrieve and return an employee's ID badge to the County on the next business day after the employee has been removed from working on this Contract.

6.4   Background and Security Investigations

6.4.1   At any time prior to or during term of this Contract, County may require that all Contractor's staff performing work under this Contract undergo and pass, to the satisfaction of County, a background investigation, as a condition of beginning and continuing to work under this Contract. County shall use its discretion in determining the method of background clearance to be used, up to and including a County performed fingerprint security clearance.

6.4.2   County may request that Contractor's staff be immediately removed from working on this Contract at any time during the term of this Contract. County will not provide to Contractor nor to Contractor's staff any information obtained through County conducted background clearance.

6.4.3   County may immediately, in its sole discretion, deny or terminate facility access to those of Contractor's staff who do not pass such investigation(s) to the satisfaction of County or whose background or conduct is incompatible with County facility access.

6.4.4 Disqualification, if any, of the Contractor's staff pursuant to this sub-paragraph 6.4 shall not relieve Contractor of its obligation to complete all work in accordance with the terms and conditions of this Contract.

6.5 Confidentiality

6.5.1 Contractor shall maintain the confidentiality of all records obtained from County under this Contract in accordance with all applicable federal, State or local laws, ordinances, regulations and directives relating to confidentiality.

6.5.2 Contractor shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality provisions of this Contract.

6.5.3 The Contractor shall sign and adhere to the provisions of the Exhibit K (Contractor Acknowledgement and Confidentiality Agreement).

7.0 ADDITIONAL TERMS AND CONDITIONS

7.1 Amendments

7.1.1 For any change which materially affects the scope of work, term, Maximum Contract Sum, payments, or any other term or condition included under this Contract, an Amendment shall be prepared and executed by the Contractor and by the Board of Supervisor.

7.1.2 The County's Board of Supervisors or Chief Executive Officer or designee may require the addition and/or change of certain terms and conditions in the Contract during the term of this Contract. The County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors or Chief Executive Officer. To implement such changes, an Amendment to the

Contract shall be prepared and executed by the Contractor and by the Agricultural Commissioner/Director of Weights and Measures.

7.1.3   The Agricultural Commissioner/Director of Weights and Measures, may at his/her sole discretion, authorize extensions of time as defined in Paragraph 3.0 (Term of Contract). Contractor agrees that such extensions of time shall not change any other term or condition of this Contract during the period of such extensions. To implement an extension of time, an Amendment to the Contract shall be prepared and executed by the Contractor and by the Agricultural Commissioner/Director of Weights and Measures .

7.2   Assignment and Delegation

7.2.1   Contractor shall not assign its rights or delegate its duties under this Contract, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this Paragraph 7.2, County consent shall require a written amendment to the Contract, which is formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under this Contract shall be deductible, at County's sole discretion, against the claims, which Contractor may have against County.

7.2.2   Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is an

assignment requiring the prior written consent of County in accordance with applicable provisions of this Contract.

7.2.3   If any assumption, assignment, delegation, or takeover of any of Contractor's duties, responsibilities, obligations, or performance of same by any entity other than Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Contract which may result in the termination of this Contract. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

7.3   Authorization Warranty

The Contractor represents and warrants that the person executing this Contract for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition, and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.

7.4   Budget Reductions

In the event that County's Board of Supervisors adopts, in any fiscal year, a County budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, County reserves the right to reduce its payment obligation under this Contract correspondingly for that fiscal year and any subsequent fiscal year during the term of this Contract (including any extensions), and the products and services to be provided by Contractor under this Contract shall also be reduced correspondingly. County's notice to Contractor regarding said reduction in payment

obligation shall be provided within thirty (30) calendar days of the Board's approval of such actions. Except as set forth in the preceding sentence, Contractor shall continue to provide all of the services set forth in this Contract.

7.5   Complaints

Contractor shall develop, maintain and operate procedures for receiving, investigating and responding to complaints.

7.5.1   Within 5 business days after the Contract effective date, Contractor shall provide County with Contractor's policy for receiving, investigating and responding to user complaints.

7.5.2   County will review Contractor's policy and provide Contractor with approval of said plan or with requested changes.

7.5.3   If County requests changes in Contractor's policy, Contractor shall make such changes and resubmit the plan within five (5) business days for County approval.

7.5.4   If, at any time, Contractor wishes to change Contractor's policy, Contractor shall submit proposed changes to County for approval before implementation.

7.5.5   Contractor shall preliminarily investigate all complaints and notify County's Project Manager of the status of the investigation within five (5) business days of receiving the complaint.

7.5.6   When complaints cannot be resolved informally, a system of follow-through shall be instituted which adheres to formal plans for specific actions and strict time deadlines.

7.5.7   Copies of all written responses shall be sent to County's Project Manager within three (3) business days of mailing to the complainant.

7.6   Compliance with Applicable Law

7.6.1   Contractor shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.

7.6.2   Contractor shall indemnify and hold harmless County from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, arising from or related to any violation on the part of Contractor or its employees, agents, or subcontractors of any such laws, rules, regulations, ordinances, or directives.

7.7   Compliance with Civil Rights Laws

Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The Contractor shall comply with Exhibit D (Contractor's EEO Certification).

7.8   Compliance with County's Jury Service Program

7.8.1   This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as part of Exhibit H (Contractor's Proposal) and incorporated herein by this reference.

7.8.2 Unless the Contractor has demonstrated to the County's satisfaction either that the Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that the Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.

7.8.3 For purposes of this Paragraph 7.8, "Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of $50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of the Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If the Contractor uses any Subcontractor to perform services for the County under the Contract, the Subcontractor shall also be subject to the provisions of this sub-paragraph. The provisions of this sub-paragraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.

7.8.4 If the Contractor is not required to comply with the Jury Service Program when the Contract commences, the Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and the Contractor shall immediately notify the County if the Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if the Contractor no longer qualifies for an exception to the Jury Service Program. In either event, the Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion that the Contractor demonstrates to the County's satisfaction that the Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that the Contractor continues to qualify for an exception to the Program.

7.8.5 Contractor's violation of this Paragraph 7.8 of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract and/or bar the Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

7.9 Conflict of Interest

7.9.1 No County employee whose position with the County enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Contractor or have any other direct or indirect financial interest in this Contract. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such

work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

7.9.2　The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this sub-paragraph shall be a material breach of this Contract.

7.10　Consideration of Hiring County Employees Targeted for Layoff or on Re-employment List

Should Contractor require additional or replacement personnel after the effective date of this Contract to perform the services set forth herein, Contractor shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Contract.

7.11　Consideration of Hiring Gain/Grow Program Participants

7.11.1　Should Contractor require additional or replacement personnel after the effective date of this Contract, Contractor shall give consideration for any such employment openings to participants in County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity

for Work (GROW) Program who meet Contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that the Contractor will interview qualified candidates. County will refer GAIN/GROW participants by job category to Contractor.

7.11.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

7.12 Contractor Responsibility and Debarment

7.12.1 A responsible contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is County's policy to conduct business only with responsible contractors.

7.12.2 Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if County acquires information concerning the performance of Contractor on this or other contracts which indicates that Contractor is not responsible, County may, in addition to other remedies provided in the Contract, debar Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing contracts Contractor may have with County.

7.12.3 County may debar a contractor if the Board of Supervisors finds, in its discretion, that the contractor has done any of the following: (1) violated a term of a contract with County or a nonprofit corporation created by County, (2) committed an act or omission which negatively reflects on the contractor's quality, fitness or

capacity to perform a contract with County, any other public entity, or a nonprofit corporation created by County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against County or any other public entity.

7.12.4 <u>Contractor Hearing Board</u>

1. If there is evidence that Contractor may be subject to debarment, the Department will notify Contractor in writing of the evidence which is the basis for the proposed debarment and will advise Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.

2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. Contractor and/or Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether Contractor should be debarred, and, if so, the appropriate length of time of the debarment. Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.

3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

4. If a contractor has been debarred for a period longer than five (5) years, that contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of County.

5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the

period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

7.12.5 These terms shall also apply to subcontractors of County contractors.

7.13 Contractor's Acknowledgement of County's Commitment to the Safely Surrendered Baby Law

The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be used. Information on how to receive the poster can be found on the Internet at www.babysafela.org.

7.14 Contractor's Warranty of Adherence to County's Child Support Compliance Program

7.14.1 Contractor acknowledges that County has established a goal of ensuring that all individuals who benefit financially from County through contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

7.14.2 As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Contractor's duty under this Contract to comply with all applicable provisions of law, Contractor warrants that it is now in compliance and shall during the term of this Contract maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

7.15 County's Quality Assurance Plan

The County or its agent will evaluate the Contractor's performance under this Contract on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Contract terms and conditions and performance standards. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Contract or impose other penalties as specified in this Contract.

7.16 Damage to County Facilities, Buildings or Grounds

7.16.1 Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by Contractor or employees or agents of Contractor. Such repairs shall be made immediately after Contractor has become aware of

such damage, but in no event later than thirty (30) days after the occurrence.

7.16.2   If Contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by Contractor by cash payment upon demand.

7.17   Employment Eligibility Verification

7.17.1   Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State Statutes and regulations. Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees for the period prescribed by law.

7.17.2   Contractor shall indemnify, defend, and hold harmless County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

7.18   Facsimile Representations

County and Contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in

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appropriate places on the Amendments prepared pursuant to Paragraph 7.1 (Amendments), and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments to this Contract, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

7.19 Fair Labor Standards

Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by Contractor's employees for which County may be found jointly or solely liable.

7.20 Force Majeure

7.20.1 Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Contract if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this sub-paragraph as "force majeure events").

7.20.2 Notwithstanding the foregoing, a default by a subcontractor of Contractor shall not constitute a force majeure event, unless such default arises out of causes beyond the control of both Contractor

and such subcontractor, and without any fault or negligence of either of them. In such case, Contractor shall not be liable for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule. As used in this sub-paragraph, the term "subcontractors" and "subcontractors" mean subcontractors at any tier.

7.20.3 In the event Contractor's failure to perform arises out of a force majeure event, Contractor agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

7.21 Governing Law, Jurisdiction and Venue

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

7.22 Independent Contractor Status

7.22.1 This Contract is by and between County and Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

7.22.2 Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this

Contract all compensation and benefits. County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Contractor.

7.22.3 Contractor understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Contract.

7.22.4 Contractor shall adhere to the provisions stated in Paragraph 6.5 (Confidentiality).

7.23 <u>Indemnification</u>

Contractor shall indemnify, defend and hold harmless County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with Contractor's acts and/or omissions arising from and/or relating to this Contract.

7.24 <u>General Insurance Requirements</u>

Without limiting Contractor's indemnification of County and during the term of this Contract, Contractor shall provide and maintain, and shall require all of its Subcontractors to maintain, the following programs of insurance specified in this Contract. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs

maintained by County. Such coverage shall be provided and maintained at Contractor's own expense.

7.24.1 <u>Evidence of Insurance</u>: Certificate(s) or other evidence of coverage satisfactory to the County shall be delivered to County's Project Director as listed in Exhibit I, County's Administration prior to commencing services under this Contract. Such certificates or other evidence shall:

- Specifically identify this Contract;
- Clearly evidence all coverages required in this Contract;
- Contain the express condition that the County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance;
- Include copies of the additional insured endorsement to the commercial general liability policy, adding the County of Los Angeles, its Special Districts, its officials, officers and employees as insureds for all activities arising from this Contract; and
- Identify any deductibles or self-insured retentions for the County's approval. The County retains the right to require the Contractor to reduce or eliminate such deductibles or self-insured retentions as they apply to the County, or, require the Contractor to provide a bond guaranteeing payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

7.24.2 <u>Insurer Financial Ratings</u>: Insurance is to be provided by an insurance company acceptable to the County with an A.M. Best

rating of not less than A:VII unless otherwise approved by the County.

7.24.3 Failure to Maintain Coverage: Failure by the Contractor to maintain the required insurance, or to provide evidence of insurance coverage acceptable to the County, shall constitute a material breach of the Contract upon which the County may immediately terminate or suspend this Contract. The County, at its sole option, may obtain damages from the Contractor resulting from said breach. Alternatively, the County may purchase such required insurance coverage, and without further notice to the Contractor, the County may deduct from sums due to the Contractor any premium costs advanced by the County for such insurance.

7.24.4 Notification of Incidents, Claims or Suits: Contractor shall report to the County:

- Any accident or incident relating to services performed under this Contract which involves injury or property damage which may result in the filing of a claim or lawsuit against the Contractor and/or the County. Such report shall be made in writing within 24 hours of occurrence.

- Any third party claim or lawsuit filed against the Contractor arising from or related to services performed by the Contractor under this Contract.

  ▪ Any injury to a Contractor employee that occurs on County property.   This report shall be submitted on a County "Non-employee Injury Report" to the County's Project Manager.

- Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of County property, monies or securities entrusted to the Contractor under the terms of this Contract.

7.24.5 Compensation for County Costs: In the event that the Contractor fails to comply with any of the indemnification or insurance

requirements of this Contract, and such failure to comply results in any costs to the County, the Contractor shall pay full compensation for all costs incurred by the County.

7.24.6 <u>Insurance Coverage Requirements for Subcontractors</u>: The Contractor shall ensure any and all Subcontractors performing services under this Contract meet the insurance requirements of this Contract by either:

▪ The Contractor providing evidence of insurance covering the activities of Subcontractors, or

▪ The Contractor providing evidence submitted by Subcontractors evidencing that Subcontractors maintain the required insurance coverage. The County retains the right to obtain copies of evidence of Subcontractor insurance coverage at any time.

7.25 <u>Insurance Coverage Requirements</u>

7.25.1 <u>General Liability</u> insurance written on ISO policy form CG 00 01 or its equivalent with limits of not less than the following:

General Aggregate:	$2 million
Products/Completed Operations Aggregate:	$1 million
Personal and Advertising Injury:	$1 million
Each Occurrence:	$1 million

7.25.2 <u>Automobile Liability</u> insurance written on ISO policy form CA 00 01 or its equivalent with a limit of liability of not less than $1 million for each accident. Such insurance shall include coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto".

7.25.3 <u>Workers' Compensation and Employers' Liability</u> insurance providing workers' compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which the Contractor is responsible. If the Contractor's

employees will be engaged in maritime employment, coverage shall provide workers' compensation benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which the Contractor is responsible.

In all cases, the above insurance also shall include Employers' Liability coverage with limits of not less than the following:

Each Accident:	$1 million
Disease - policy limit:	$1 million
Disease - each employee:	$1 million

7.26 Liquidated Damages

7.26.1 If, in the judgment of the Department Head, or his/her designee, the Contractor is deemed to be non-compliant with the terms and obligations assumed hereby, the Department Head, or his/her designee, at his/her option, in addition to, or in lieu of, other remedies provided herein, may withhold the entire milestone payment or deduct pro rata from the Contractor's invoice for work not performed. A description of the work not performed and the amount to be withheld or deducted from payments to the Contractor from the County, will be forwarded to the Contractor by the Department Head, or his/her designee, in a written notice describing the reasons for said action.

7.26.2 If the Department Head, or his/her designee, determines that there are deficiencies in the performance of this Contract that the Department Head, or his/her designee, deems are correctable by the Contractor over a certain time span, the Department Head, or his/her designee, will provide a written notice to the Contractor to correct the deficiency within specified time frames. Should the

Contractor fail to correct deficiencies within said time frame, the Department Head, or his/her designee, may:

(a) Deduct from the Contractor's payment, pro rata, those applicable portions of the Milestone Contract Sum; and/or

(b) Deduct liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Contractor to correct a deficiency within the specified time frame. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is One Hundred Dollars ($100) per day per infraction, and that the Contractor shall be liable to the County for liquidated damages in said amount. Said amount shall be deducted from the County's payment to the Contractor; and/or

(c) Upon giving five (5) days notice to the Contractor for failure to correct the deficiencies, the County may correct any and all deficiencies and the total costs incurred by the County for completion of the work by an alternate source, whether it be County forces or separate private contractor, will be deducted and forfeited from the payment to the Contractor from the County, as determined by the County.

7.26.3   The action noted in sub-paragraph 7.26.2 shall not be construed as a penalty, but as adjustment of payment to the Contractor to recover the County cost due to the failure of the Contractor to complete or comply with the provisions of this Contract.

7.26.4   This sub-paragraph shall not, in any manner, restrict or limit the County's right to damages for any breach of this Contract provided by law or as specified in the PRS or sub-paragraph 8.26.2, and shall not, in any manner, restrict or limit the County's right to terminate this Contract as agreed to herein.

7.27 **<u>Most Favored Public Entity</u>**

If the Contractor's prices decline, or should the Contractor at any time during the term of this Contract provide the same goods or services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Contract, then such lower prices shall be immediately extended to the County.

7.28 **<u>Nondiscrimination and Affirmative Action</u>**

7.28.1   The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

7.28.2   The Contractor shall certify to, and comply with, the provisions of Contractor's EEO Certification (included in Exhibit G, Contractor's Proposal*.*

7.28.3   The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

7.28.4   The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of

race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.

7.28.5 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.

7.28.6 The Contractor shall allow County representatives access to the Contractor's employment records during regular business hours to verify compliance with the provisions of this sub-paragraph 7.28 when so requested by the County.

7.28.7 If the County finds that any provisions of this Paragraph 7.28 have been violated, such violation shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While

the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Contractor has violated the anti-discrimination provisions of this Contract.

7.28.8 The parties agree that in the event the Contractor violates any of the anti-discrimination provisions of this Contract, the County shall, at its sole option, be entitled to the sum of Five Hundred Dollars ($500) for each such violation pursuant to California Civil Code

Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

7.29 Non-Exclusivity

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Contractor. This Contract shall not restrict County from acquiring similar, equal or like goods and/or services from other entities or sources.

7.30 Notice of Delays

Except as otherwise provided under this Contract, 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 one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

7.31 Notice of Disputes

The Contractor shall bring to the attention of the County's Project Manager and/or County's Project Director any dispute between the County and the Contractor regarding the performance of services as stated in this Contract. If the County's Project Manager or County's Project Director is not able to resolve the dispute, the Project Executive or designee shall resolve it.

7.32 Notice to Employees Regarding the Federal Earned Income Credit

The Contractor shall notify its employees, and shall require each Subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

7.33 Notice to Employees Regarding the Safely Surrendered Baby Law

The Contractor shall notify and provide to its employees, and shall require each Subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in Exhibit L of this Contract and is also available on the Internet at www.babysafela.org for printing purposes.

7.34 Notices

All notices or demands required or permitted to be given or made under this Contract shall be in writing and shall be hand delivered with signed receipt or mailed by first class registered or certified mail, postage prepaid, addressed to the parties as identified in Exhibits I - County's Administration and J - Contractor's Administration. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party. The Agricultural Commissioner/Weights and Measures Director shall have the authority to issue all notices or demands required or permitted by the County under this Contract.

7.35 Prohibition Against Inducement or Persuasion

Notwithstanding the above, the Contractor and the County agree that, during the term of this Contract and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

7.36 Public Records Act

7.36.1 Any documents submitted by the Contractor; all information obtained in connection with the County's right to audit and inspect the Contractor's documents, books, and accounting records pursuant to sub-paragraph 8.38 - Record Retention and

Inspection/Audit Settlement of this Contract; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

7.36.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

7.37 Publicity

7.37.1 The Contractor shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Contractor's need to identify its services and related clients to sustain itself, the County shall not inhibit the Contractor from publishing its role under this Contract within the following conditions:

- The Contractor shall develop all publicity material in a professional manner; and

- During the term of this Contract, the Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the County's Project Director. The County shall not unreasonably withhold written consent.

7.37.2 The Contractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this sub-paragraph 7.37 shall apply.

7.38 Record Retention and Inspection/Audit Settlement

The Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Contract. The Contractor agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Contractor and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, the Contractor shall pay the County for travel, per diem, and other

costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

7.38.1   In the event that an audit of the Contractor is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by the Contractor or otherwise, then the Contractor shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).

7.38.2   Failure on the part of the Contractor to comply with any of the provisions of this sub-paragraph 7.38 shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.

7.38.3   If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the County conduct an audit of the Contractor regarding the work performed under this Contract, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Contractor, then the difference shall be either: a) repaid by the Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Contractor from the County, whether under this Contract or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment, provided that in no event shall the

County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract.

7.39   Recycled Bond Paper

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on this Contract.

7.40   Subcontracting

7.40.1   The requirements of this Contract may not be subcontracted by Contractor without the advance written approval of County. Any attempt by Contractor to subcontract without the prior consent of County may be deemed a material breach of this Contract.

7.40.2   If Contractor desires to subcontract, Contractor shall provide the following information promptly at County's request:

- A description of the work to be performed by the Subcontractor;
- A draft copy of the proposed subcontract; and
- Other pertinent information and/or certifications requested by the County.

7.40.3   Contractor shall indemnify and hold County harmless with respect to the activities of each and every Subcontractor in the same manner and to the same degree as if such Subcontractor(s) were Contractor employees.

7.40.4   Contractor shall remain fully responsible for all performances required of it under this Contract, including those that Contractor has determined to subcontract, notwithstanding County's approval of Contractor's proposed subcontract.

7.40.5   County's consent to subcontract shall not waive County's right to prior and continuing approval of any and all personnel, including Subcontractor employees, providing services under this Contract.

Contractor is responsible to notify its Subcontractors of this County right.

7.40.6   County's Project Director is authorized to act for and on behalf of County with respect to approval of any subcontract and Subcontractor employees. After approval of the subcontract by County, Contractor shall forward a fully executed subcontract to County for its files.

7.40.7   Contractor shall be solely liable and responsible for all payments or other compensation to all Subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding County's consent to subcontract.

7.40.8   Contractor shall obtain certificates of insurance, which establish that the Subcontractor maintains all the programs of insurance required by County from each approved Subcontractor. Contractor shall ensure delivery of all such documents to:

County's Project Directorbefore any Subcontractor employee may perform any work hereunder.

7.41   <u>Termination for Breach of Warranty to Maintain Compliance with County's Child Support Compliance Program</u>

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 7.14 (Contractor's Warranty of Adherence to County's Child Support Compliance Program) shall constitute default under this Contract. Without limiting the rights and remedies available to County under any other provision of this Contract, failure of Contractor to cure such default within ninety (90) calendar days of written notice shall be grounds upon which County may terminate this Contract pursuant to Paragraph 7.43 (Termination for Default) and pursue debarment of Contractor pursuant to County Code Chapter 2.202.

7.42   Termination for Convenience

7.42.1   This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than ten (10) days after the notice is sent.

7.42.2   After receipt of a notice of termination and except as otherwise directed by the County, Contractor shall:

- Stop work under this Contract on the date and to the extent specified in such notice, and

- Complete performance of such part of the work as shall not have been terminated by such notice.

7.42.3   All material including books, records, documents, or other evidence bearing on the costs and expenses of Contractor under this Contract shall be maintained by Contractor in accordance with Paragraph 8.38 (Record Retention & Inspection/Audit Settlement).

7.43   Termination for Default

7.43.1   County may, by written notice to Contractor, terminate the whole or any part of this Contract, if, in the judgment of County's Project Director:

- Contractor has materially breached this Contract; or

- Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Contract; or

- Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to

demonstrate convincing progress toward a cure within five (5) working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

7.43.2   In the event that County terminates this Contract in whole or in part as provided in sub-paragraph 7.43.1, County may procure, upon such terms and in such manner as County may deem appropriate, goods and services similar to those so terminated. Contractor shall be liable to County for any and all excess costs incurred by County, as determined by County, for such similar goods and services. Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Paragraph 7.43.

7.43.3   Except with respect to defaults of any Subcontractor, Contractor shall not be liable for any such excess costs of the type identified in sub-paragraph 8.43.2 if its failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of County in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both Contractor and Subcontractor, and without the fault or negligence of either of them, Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required   performance   schedule.   As   used   in   this   sub-

paragraph 7.43.3, the terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) at any tier.

7.43.4 If, after County has given notice of termination under the provisions of this Paragraph 7.43, it is determined by County that Contractor was not in default under the provisions of this Paragraph 7.43, or that the default was excusable under the provisions of sub-paragraph 7.43.3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 7.42 (Termination for Convenience).

7.43.5 The rights and remedies of County provided in this Paragraph 7.43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

7.44   Termination for Improper Consideration

7.44.1 The County may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this Contract if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, amendment, or extension of this Contract or the making of any determinations with respect to the Contractor's performance pursuant to this Contract. In the event of such termination, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.

7.44.2 The Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.

7.44.3   Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

7.45   Termination for Insolvency

7.45.1   The County may terminate this Contract forthwith in the event of the occurrence of any of the following:

- Insolvency of the Contractor. The Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Contractor is insolvent within the meaning of the Federal Bankruptcy Code;

- The filing of a voluntary or involuntary petition regarding the Contractor under the Federal Bankruptcy Code;

- The appointment of a Receiver or Trustee for the Contractor; or

- The execution by the Contractor of a general assignment for the benefit of creditors.

7.45.2   The rights and remedies of the County provided in this sub-paragraph 7.45 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

7.46   Termination for Non-Adherence to County Lobbyist Ordinance

Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by Contractor, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of Contractor or any County Lobbyist or County Lobbying firm retained by Contractor to fully comply with County's Lobbyist Ordinance shall constitute a material breach of this Contract,

upon which County may, in its sole discretion, immediately terminate or suspend this Contract.

7.47   Termination for Non-Appropriation of Funds

Notwithstanding any other provision of this Contract, County shall not be obligated for Contractor's performance hereunder or by any provision of this Contract during any of County's future fiscal years unless and until County's Board of Supervisors appropriates funds for this Contract in County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. County shall notify Contractor in writing of any such non-allocation of funds at the earliest possible date.

7.48   Validity

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

7.49   Waiver

No waiver by County of any breach of any provision of this Contract shall constitute a waiver of any other breach or of such provision. Failure of County to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The rights and remedies set forth in this Paragraph 7.49 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

7.50   Warranty Against Contingent Fees

7.50.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.

7.50.2 For breach of this warranty, County shall have the right to terminate this Contract and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

7.51 Local Small Business Enterprise (SBE) Preference Program

7.51.1 This Contract is subject to the provisions of County's ordinance entitled Local Small Business Enterprise Preference Program, as codified in Chapter 2.204 of the Los Angeles County Code.

7.51.2 Contractor shall not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a Local Small Business Enterprise.

7.51.3 Contractor shall not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a Local Small Business Enterprise.

7.51.4 If Contractor has obtained County certification as a Local Small Business Enterprise by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of

such certification has been awarded this Contract to which it would not otherwise have been entitled, shall:

1. Pay to County any difference between the contract amount and what County's costs would have been if this Contract had been properly awarded;

2. In addition to the amount described in subdivision (1), be assessed a penalty in an amount of not more than ten percent (10%) of the amount of the Contract; and

3. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

The above penalties shall also apply if Contractor is no longer eligible for certification as a result in a change of its status and Contractor failed to notify the State and County's Office of Affirmative Action Compliance of this information.

7.52   Ownership of Materials, Software and Copyright

7.52..1   County shall be the sole owner of all right, title and interest, including copyright, in and to all software, plans, diagrams, facilities, and tools (hereafter "materials") which are originated or created through Contractor's work pursuant to this Contract. Contractor, for valuable consideration herein provided, shall execute all documents necessary to assign and transfer to, and vest in County all of Contractor's right, title and interest in and to such original materials, including any copyright, patent and trade secret rights which arise pursuant to Contractor's work under this Contract.

7.52.2   During the term of this Contract and for five (5) years thereafter, Contractor shall maintain and provide security for all of Contractor's working papers prepared under this Contract. County shall have the right to inspect, copy and use at any time

during and subsequent to the term of this Contract, any and all such working papers and all information contained therein.

7.52.3 Any and all materials, software and tools which are developed or were originally acquired by Contractor outside the scope of this Contract, which Contractor desires to use hereunder, and which Contractor considers to be proprietary or confidential, must be specifically identified by Contractor to County's Project Manager as proprietary or confidential, and shall be plainly and prominently marked by Contractor as "Propriety" or "Confidential" on each appropriate page of any document containing such material.

7.52.4 County will use reasonable means to ensure that Contractor's proprietary and/or confidential items are safeguarded and held in confidence. County agrees not to reproduce, distribute or disclose to non-County entities any such proprietary and/or confidential items without the prior written consent of Contractor.

7.52.5 Notwithstanding any other provision of this Contract, County will not be obligated to Contractor in any way under sub-paragraph 7.52.4 for any of Contractor's proprietary and/or confidential items which are not plainly and prominently marked with restrictive legends as required by sub-paragraph 7.52.3 or for any disclosure which County is required to make under any state or federal law or order of court.

7.52.5 All the rights and obligations of this Paragraph 7.52 shall survive the expiration or termination of this Contract.

7.53 Patent, Copyright and Trade Secret Indemnification

7.53.1 Contractor shall indemnify, hold harmless and defend County from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual

or alleged unauthorized trade secret disclosure, arising from or related to the operation and utilization of Contractor's work under this Contract. County shall inform Contractor as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure, and shall support Contractor's defense and settlement thereof.

7.53.2 In the event any equipment, part thereof, or software product becomes the subject of any complaint, claim, or proceeding alleging infringement or unauthorized disclosure, such that County's continued use of such item is formally restrained, enjoined, or subjected to a risk of damages, Contractor, at its sole expense, and providing that County's continued use of the system is not materially impeded, shall either:

- Procure for County all rights to continued use of the questioned equipment, part, or software product; or

- Replace the questioned equipment, part, or software product with a non-questioned item; or

- Modify the questioned equipment, part, or software so that it is free of claims.

7.53.3 Contractor shall have no liability if the alleged infringement or unauthorized disclosure is based upon a use of the questioned product, either alone or in combination with other items not supplied by Contractor, in a manner for which the questioned product was not designed nor intended.

7.54 Transitional Job Opportunities Preference Program

7.54.1 This Contract is subject to the provisions of County's ordinance entitled "Transitional Job Opportunities Preference Program", as codified in Chapter 2.205 of the Los Angeles County Code.

7.54.2 Contractor shall not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid

another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a Transitional Job Opportunity vendor.

7.54.3   Contractor shall not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a Transitional Job Opportunity vendor.

7.54.4   If Contractor has obtained County certification as a Transitional Job Opportunity vendor by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this contract to which it would not otherwise have been entitled, shall:

1. Pay to the County any difference between the contract amount and what the County's costs would have been if the contract had been properly awarded;

2. In addition to the amount described in subdivision (1), be assessed a penalty in an amount of not more than 10 percent (10%) of the amount of the contract; and

3. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

The above penalties shall also apply to any entity that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification,

and fails to notify the certifying department of this information prior to responding to a solicitation or accepting a contract award.

IN WITNESS WHEREOF, Contractor has executed this Contract, or caused it to be duly executed and the County of Los Angeles, by order of its Board of Supervisors has caused this Contract to be executed on its behalf by the Chair of said Board and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, the day and year first above written.

I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Directors

By _____
                Deputy

CONTRACTOR: *ChemWare, Inc.*
                                    Name

By *Robert J. Whitehead*
       Robert J. Whitehead   Name

Vice President
                                    Title

ATTEST:

SACHI HAMAI
Executive Officer-Clerk
of the Board of Supervisors

By _____

APPROVED AS TO FORM:

Raymond G. Fortner, Jr.
County Counsel

By _____
Principal Deputy County Counsel

COUNTY OF LOS ANGELES

By *Yvonne B. Burke*
(Mayor/Chairman), Board of Supervisors

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

4 6   -   JUL 2 9 2008

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

76652

CONTRACT FOR LIMS
August 2008

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EXHIBIT – A

PRICING SCHEDULE

quotation

HORIZON® LABORATORY INFORMATION MANAGEMENT SYSTEMS

#200801064r3-JJ
January 22, 2008

customer contact information		chemware contact information	
Customer:	LA County ACWM ETL	Acct Mgr:	Jim Jenkins
Contact:	John Arnstein	Phone:	919.855.8716x297
Address:	500 W. Temple St, Ste 493	Email:	jjenkins@chemware.com
City, ST Zip:	Los Angeles, CA 90012	Project Mgr:	TBD
Phone:	213-974-1712	Phone:	
Email:	jarnstein@cio.lacounty.gov	Email:	

Domestic USD

required	optional	item	software: laboratory information management system (LIMS)	qty	units	total
☒	☐	HC-002	HORIZON Central-One [1]	Core LIMS, Database Licenses	24	named users	80,593
				subtotal core LIMS software	$	80,593

required	optional	item	software: scientific data management system (SDMS)	qty	units	total
☒	☐	HO-101	HORIZON Data Management-Vision®	Data Capture/Management	20	named users	32,935
☒	☐	HO-104	HDM-Extraction Template Builder®	HDM-Vision Interface Tool	1	server	5,111
☒	☐	HO-105	HORIZON Data Management-WebVision®	Thin Client for HDM	1	server	5,567
				subtotal SDMS software	$	43,613

required	optional	item	software: enterprise reporting and business intelligence (BI)	qty	units	total
☒	☐	HO-106	HORIZON Report Manager-Actuate®	Web Report Portal, Dev Tools	1	processor	26,843
☒	☐	HO-108	HORIZON Statistical Analysis-NWA Quality Analyst®	Control Charts/Analysis Tool	1	workstation	1,293
☐	☒	HO-115	HORIZON Autofaxing	Faxman® Integration	~~1~~	~~server~~	~~2,365~~
				subtotal BI software	$	28,136

required	optional	item	software: data capture and integration	qty	units	total
☒	☐	HO-113	LimsLink® with Interface Library	Instrument Data Parsing Tool	5	instruments	6,731
				subtotal data capture software	$	6,731

required	optional	item	software: database and tools	qty	units	total
☒	☐	OR-303	Oracle Forms Services (Includes Oracle Reports)	Web-Based LIMS Deployment	24	named users	4,236
☐	☒	OR-306	VERITAS Backup Exec™ with Oracle Agent	Utility for "Hot" LIMS Backups	~~1~~	~~workstation~~	~~1,551~~
				subtotal database software	$	4,236

required	optional	item	hardware: barcode scanners and printer	qty	units	total
☒	☐	HW-118	Barcode Scanner[3]	Symbol Model #LS4278	2	scanners	835
☒	☐	HW-119	Barcode Printer[4]	Zebra Model # LP2844	1	printer	417
				subtotal hardware	$	1,252

included	optional	item	services: project management and implementation	qty	units	rate	total
☒	☐	IM-401	LIMS/Automation Requirements Analysis	On-Site Assessment	5	days	1,720	8,600
☒	☐	IM-402	LIMS/Automation Requirements Analysis, Remote	Data Analysis/Written Report	10	days	1,295	12,950
☒	☐	IM-403	Software Installation and Testing	At Client Site	5	days	1,295	6,475
☒	☐	IM-407	Orientation Site Visit	At Client Site, Post-Installation	3	days	1,295	3,885
☒	☐	IM-408	Test Code Configuration, Remote	Assistance by Phone/Email/Web	10	days	995	9,950
☒	☐	IM-409	Workflow Configuration, Remote	Assistance by Phone/Email/Web	10	days	995	9,950
☒	☐	IM-411	Test Code Configuration, Onsite	Assistance at Client Site	5	days	1,295	6,475
☒	☐	IM-412	Workflow Configuration, Onsite	Assistance at Client Site	5	days	1,295	6,475
☒	☐	IM-414	System Validation Assistance	Assistance at Client Site	10	days	1,295	12,950
☒	☐	IM-415	System Cutover Assistance	Assistance at Client Site	5	days	1,295	6,475
☒	☐	IM-417	Report and EDD Configuration Assistance	Assistance by Phone/Email/Web	20	days	995	19,900
☒	☐	IM-418	Benchsheet/Spreadsheet Configuration Assistance	Assistance by Phone/Email/Web	10	days	995	9,950
☒	☐	IM-419	ACWM ETL Specific End-Users Guide	Assistance by Phone/Email/Web	10	days	995	9,950
☒	☐	IM-420	Project Management	Assistance by Phone/Email/Web	25	days	995	24,875
				subtotal implementation days			133
				subtotal project management and implementation		$	148,860

included	optional	item	services: training		qty	units	rate	total
☒	☐	TR-502	System Administrator I Training (Up to 6 Students)	At Client Site (3.5-Day Course)	1	course	8,750	8,750
☒	☐	TR-503	System Administrator II Training	At ChemWare (3-Day Course)	2	students	2,211	4,422
☒	☐	TR-504	System Administrator III Training	At ChemWare (2-Day Course)	1	student	1,990	1,990
☒	☐	TR-505	End-User Training, On-Site	At Client Site, Unlimited Students	5	days	1,295	6,475
☒	☐	TR-506	Advanced Report Writer Training	7-Day Course	2	students	5,459	10,918
				subtotal training			$	32,555

included	optional	item	services: special programming/customization		qty	units	rate	total
☒	☐	CU-601	Instrument Interfaces: LimsLink Text/RS232 Parsers	See Instrument List	4	interfaces	2,000	8,000
☒	☐	CU-602	Instrument Interfaces: HDM Extraction Templates	See Instrument List	13	interfaces	2,000	26,000
☒	☐	CU-606	Custom Export File to A/R System: TBD	Estimate Pending Specification	3	days	995	2,985
☒	☐	CU-607	Custom Data Reports per RFP Sections 6 and 8e	Estimate Pending Specification	10	days	995	9,950
☐	☒	CU-608	Data Migration from Legacy LIMS (unspecified)	Estimate Pending Specification	~~3~~	~~days~~	~~995~~	~~2,985~~
☒	☐	CU-609	DOH Write-On Program Integration Assistance	Services with Specification	10	days	995	9,950
				subtotal special programming/customization			$	56,885

included	optional	item	travel expenses (estimated)		qty	units	rate	total
☒	☐	TE-802	LIMS/Automation Requirements Analysis	For Item IM-401	5	days	300	1,500
☒	☐	TE-803	Software Installation and Testing	For Item IM-403	5	days	300	1,500
☒	☐	TE-804	Orientation Site Visit	For Item IM-407	3	days	300	900
☒	☐	TE-805	Test Code Configuration, Onsite	For Item IM-411	5	days	300	1,500
☒	☐	TE-806	Workflow Configuration, Onsite	For Item IM-412	5	days	300	1,500
☒	☐	TE-808	System Validation Assistance	For Item IM-414	10	days	300	3,000
☒	☐	TE-809	System Cutover Assistance	For Item IM-415	5	days	300	1,500
☒	☐	TE-810	System Administrator I Training (Up to 6 Students)	For Item TR-502	4	days	300	1,200
☒	☐	TE-811	End-User Training, On-Site	For Item TR-505	5	days	300	1,500
☒	☐	TE-812	Airfare	For On-Site Services	10	trips	500	5,000
				subtotal travel expenses			$	19,100

included	optional	item	support: initial warranty and annual maintenance		qty	units	rate	total
☒	☐	WA-701	Year 1 HORIZON Maintenance and Support	Help Desk Support and Updates	-	various	-	Included
☒	☐	WA-702	Year 1 Oracle Maintenance and Support	Help Desk Support and Updates	1	proc.	-	Included
☒	☐	WA-705	System Documentation with Online Help	Includes 4'x5' ERD Wall Poster	1	each	-	Included
☒	☐	WA-706	Emergency Support Option	24x7 Support Availability	1	each	5,000	5,000
				subtotal warranty/maintenance			$	5,000

included	optional	item	quotation summary	qty	units	total
☒	☐	HC	HORIZON LIMS	24	named users	80,593
☒	☐	HO	Advanced Enterprise Solutions	-	various	78,480
☒	☐	OR	Database and Tools	-	various	4,236
☒	☐	HW	Hardware	-	various	1,252
☒	☐	IM	Project Management and Implementation	133	days	148,860
☒	☐	TR	Training	-	various	32,555
☒	☐	CU	Customization/Special Programming	-	various	56,885
☒	☐	TE	Travel Expenses	-	various	19,100
☒	☐	WA	Warranty and Support	-	various	5,000
			estimated labor days			215
			optional items total			~~6,901~~
			quotation total			$ 426,961

item	recurring costs: annual software maintenance		qty	units	rate	total
WA-701	Year 2 Software Maintenance Renewal [2]	Help Desk Support and Updates	24	users	18%	29,438
WA-702	Year 3 Software Maintenance Renewal [2]	Help Desk Support and Updates	24	users	18%	29,438
WA-703	Year 4 Software Maintenance Renewal [2]	Help Desk Support and Updates	24	users	19%	31,029
WA-703	Year 5 Software Maintenance Renewal [2]	Help Desk Support and Updates	24	users	19%	31,029
WA-703	Year 6 Software Maintenance Renewal [2]	Help Desk Support and Updates	24	users	20%	32,662
		five-year software maintenance costs			$	153,596

[1] Includes a single-processor Oracle Standard Edition Embedded Software License (ESL) for unlimited database users.

[2] "Year 2" begins twelve months from the Date of Installation as defined in the License Agreement. The maintenance fee is calculated by multiplying the cost for the HO, HC and OR software licenses by the Rate. The estimated Total cost in WA-703 is based on the software licensing units and quantities described in this Quotation. All Oracle licenses are Embedded Software Licenses (ESL). ChemWare agrees not to increase the Rate from year-to-year by the greater of the change in the U.S. Bureau of Labor Statistics Consumer Price Index or the Rate in this Quotation.

[3] Symbol Model LS4278 Cordless Barcode Scanner. Warranty provided directly through manufacturer.

[4] Zebra Model LP 2844, Direct thermal, parallel, serial & USB interfaces, 512KB RAM, 1MB flash. Warranty provided directly through manufacturer.

Terms and Conditions: Refer to ChemWare's proposal and/or attachments for details. Unless specified otherwise in ChemWare's proposal or purchase agreement, (1) this is a not-to-exceed quotation valid for 270 days; (2) sales/use taxes, S&H (if applicable) and travel expenses will be computed/billed separately unless itemized above; (3) payment terms are Net 30; (4) rates and subtotals above may be rounded; totals are accurate; (5) volume discounts are based on license size; some discounted and bundled prices are dependent on other items/quantities in this order; (6) customer agrees to take delivery on all items in this order no later than 12 months from P.O., unless specified otherwise in Exhibit B of the Software License Agreement.

Accepted by:

Signed: _____ Title: _____

Name: John Arnstein _____ Date: _____

EXHIBIT – B
PAYMENT SCHEDULE

PROJECT DELIVERY AND PAYMENT SCHEDULE

Activity	Invoice Date*	Deliverables	Payment	Payment Percentage
Project Startup and System Installation	21 days	• Executed Agreements • System Installation and Installation Qualification (IQ) Acceptance	$42,696	10%
Draft Project Control Document and Orientation Site Visit	30 days	• Project Control (Overview) Document • Draft Implementation Plan • Draft Training Plan • Draft System Test Plan • Orientation Site Visit	$64,044	15%
Requirements Analysis Site Visit and Training	45 days	• Requirements Analysis Site Visit • System Administrator I Training	$21,348	5%
Project Control Document and Requirements Analysis Report Acceptance	60 days	• Requirements Analysis Report • Implementation Plan and Project Schedule Acceptance • Training Plan Acceptance • System Test Plan Acceptance	$42,696	10%
System Configuration: Foundation	90 days	• Workflow Analysis • Analysis and Matrix Lists • Class and User Configuration • Client Information Lists	$42,696	10%
System Configuration: Analysis Codes and Instrument Interfaces	120 days	• Configuration of Test Codes • Data Migration Services • Job Parameter Configuration • Container Labels • Workflow Configuration • System Administrator II Training • Advanced Report Writer Training	$42,696	10%
Advanced Configuration	150 days	• Instrument Interfaces • Configuration of Test Codes to Clients • Configuration of Detection Limits, Control Limits, and Standards • Configuration of Secondary Control Tables	$42,696	10%
Special Programming and Customization	180 days	• Custom Reports • Other Specified Customizations	$42,696	10%
System Cutover	210 days	• Custom End-Users Guide • End User Testing • End-User Training • Parallel Testing and Acceptance • Cutover Assistance	$42,696	10%
System Live and Operating	240 days	• 30 Days Successful Operations	$42,697	10%
		Total	**$426,961**	**100%**

*Due Dates are all based on the number of days from the effective date of contract execution. These dates correspond to approximate delivery of software and services, subject to change based on mutually agreed upon Project Implementation Plan.

LA County ACWM/ETL LIMS Project

EXHIBIT – C

SOFTWARE LICENSE AGREEMENT

HORIZON® LABORATORY INFORMATION MANAGEMENT SYSTEM
This Software License Agreement ("**Agreement**") is entered into between ChemWare Inc., a North Carolina corporation ("**ChemWare**") with its principal office at 900 Ridgefield Drive, Suite 150, Raleigh, North Carolina, 27609, and Los Angeles County Agricultural Commissioner/Weights and Measures Department ("**Customer**"), with its principal office at 12300 Lower Azusa Road, Arcadia, California 91006.

PARAGRAPH 1
Definitions

1.1. "**Software**" means the executable code of the HORIZON Laboratory Information Management System Software, together with the executable code for the modules, add-ins, options, special functions, and other ChemWare products identified in Exhibit 1 under a "HC" or "HO' item designation.

1.2. "**Database**" means the single central Oracle® database including tables for housing Laboratory Information Management System (LIMS) data established by the Software, together with any Oracle software products identified in Exhibit A under a "OR" item designation.

1.3. "**Documentation**" means all information provided by ChemWare which describes the installation, operation and use of the Software, in printed or electronic format.

1.4. "**Materials**" means the Software, Documentation and Database.

1.5. "**Oracle**" means the Oracle Corporation, located at 500 Oracle Parkway, Redwood Shores, California 94065.

1.6. "**Installation Date**" means the earliest of the date on which: (a) the Software is delivered to the Customer; or (b) the Software is loaded onto Customer's hardware.

1.7. "**Licensed Unit**" means the unit of measurement used to define the quantity of Materials licensed to Customer according to the following definitions:

a. "**Named User**" means any real person authorized by Customer to use the Materials, regardless of whether that person is actively using the Materials at any given time.

b. "**Concurrent User**" means any real person authorized by Customer to use the Materials simultaneously with other authorized real persons.

c. "**Processor**" means the CPU in the computer on which the Materials are installed and/or running. In a virtual computing environment, to count as one (1) Processor it must be either dedicated to the Materials or the Materials must be bound to the Processor; otherwise all Processors in the computer must be counted when determining compliance with the license quantity.

d. "Server" means the computer on which the Materials are installed.

e. "**Instrument**" means the individual analytical instrument, or instrument data system controlling that instrument, as the case may be, on which the Materials are installed.

f. "Workstation" means the individual personal computer on which the Materials are installed.

g. "Device" means the individual hardware, hardware data system, network folder or other medium for data storage.

1.8. "Embedded Software License" means a special Database licensing option limiting the Customer's routine access to the Database to the functions provided through the Software interface.

1.9. "Licensor" means any third party software provider, including Oracle, from which ChemWare has secured the right to sublicense, distribute, integrate, and/or support the provider's product as a module, add-in, option or special function when used in conjunction with the Materials and the terms of this Agreement.

PARAGRAPH 2
License

2.1. Grant of License. ChemWare grants to Customer and Customer accepts, pursuant to the terms and conditions of this Agreement, nonexclusive, nontransferable license ("License") to use the Materials commencing on the Installation Date and continuing in perpetuity unless terminated in accordance with the terms herein, with the following restrictions:

a. The Materials may be used only by Customer. Customer may not sublicense, rent, distribute, lease, timeshare or otherwise transfer or assign Customer's rights in the Materials. Customer may not act as a service bureau or provide subscription services using the Materials.

b. Customer may not change, alter, modify, translate, disassemble, decompile or reverse engineer the Materials. If Customer has an Embedded Software License,

Customer may not modify the Database data structures except as may be provided through the Software interface.

c. The Materials may be installed and used by no more than the quantity of Licensed Units specified in Exhibit 1 (as may be amended from time to time). If Licensed Units are based on Concurrent Users or Named Users, authorization for use must be granted by defining unique individual user names and security credentials through the Software interface, which names and credentials may not be shared by other users. A previously authorized Named User may be deactivated and replaced by a new Named User, with no net change in license quantity.

d. Customer may not export or re-export the Materials or any copy, adaptation, or product thereof, directly or indirectly, in violation of any U. S. export law or other applicable regulation, or use the Materials for any purpose prohibited by these laws. The Materials, delivered to U.S. Government end users, are "commercial computer software" pursuant to the applicable Federal Acquisition Regulation ("FAR") and agency-specific supplemental regulations. As such, use, duplication, disclosure, modification, and adaptation of the Materials shall be subject to the license and license restrictions set forth in this Agreement, and, to the extent applicable, the additional rights set forth in FAR 52.227-19, Commercial Computer Software – Restricted Rights (June 1987).

e. Customer may not publish the results of any benchmark tests on the Materials.

f. Customer may not remove or modify any ChemWare or Licensor program markings, copyright notices, trademarks or other notices of proprietary rights in the Materials.

g. All rights not expressly granted are reserved to ChemWare and its Licensors.

2.2. Additional Units and Materials. Any updates or new versions, modules, add-ins, options, customizations or special functions to the Materials provided to Customer by ChemWare shall also become part of the Materials and shall be governed by the terms of this Agreement. Additional Units may be added by an Addendum to Exhibit 1 , subject to payment of the required fees pursuant to Paragraph 4.

2.3. Copies. Customer shall not make any copies of the Materials except in accordance with the following:

a. The Materials may be copied as part of the standard backup process used by Customer, provided that such copies are used only when restored to the primary production environment and only during the term of the License granted herein.

b. One copy of the Materials may be used on an unlicensed spare (failover) Server provided that (i) such use is exclusively in a failover environment; (ii) use of the failover Server does not extend beyond a total of ten separate days in any given calendar year;

and (iii) use of the failover Server in a production environment is discontinued when the primary production Server is repaired or replaced.

c. One copy of the Materials may be installed in development, test and/or training environments, provided that such copy is installed within a tablespace in the same database and on the same Server as the production environment.

d. ChemWare must approve, in advance and in writing, any additional copies, backups or archives Customer wishes to make, which approval may be contingent upon, among other conditions, the licensing rules of Oracle and other Licensors.

PARAGRAPH 3
<u>Term</u>

This Agreement is effective from the earlier of the date of its execution by the second party or the Installation Date, and shall continue until such time as it is terminated in accordance with the terms of this Agreement.

PARAGRAPH 4
<u>License Fees</u>

4.1. Customer agrees to pay ChemWare a license fee ("**License Fee**") for the License to use the Materials in accordance with the license quantities and payment terms specified in Exhibits 1 and 2, respectively. An additional license fee will be required if Customer adds to the quantity of Licensed Units or acquires licenses for additional modules, add-ins, options, special functions, customizations or other products from ChemWare, and such additional fee is deemed part of the License Fee.

4.2. Neither the License Fee nor any additional license fee shall include the right to new versions, updates, upgrades, or additional or different software or services of any kind.

4.3. All payments shall be made within the United States in U.S. dollars, and shall be nonrefundable.

4.4. Unless the License Fee is paid in full on or before the Installation Date, a temporary license key will be issued to Customer. At such time as Customer has paid the License Fee in full, Customer will be issued a permanent license key allowing access to the Materials. In the event Customer fails to pay the License Fee in full and pursuant to the terms of Exhibit 2 , the temporary license key will expire, certain functions of the Materials will cease to operate, and ChemWare may proceed with its remedies for breach.

PARAGRAPH 5
Ownership and Intellectual Property Rights

ChemWare and its Licensors retain all ownership and intellectual property rights in and to the Materials. Customer acknowledges that the Materials and any modifications, copies or derivatives thereof are the sole and exclusive property of ChemWare and its Licensors, regardless of the form or media in which the original or copies may exist. The Software, including its code, logic, design and structure, contains trade secrets which are the sole property of ChemWare, and Customer agrees to secure and protect the Software so that ChemWare's trade secrets therein are not disclosed to any third parties.

PARAGRAPH 6
Confidential Information

All information related to the nature and use of the Materials is confidential. Customer will use its best efforts and take all reasonable steps to protect the Materials from unauthorized reproduction, publication, disclosure or distribution subject to a valid California Public Records Act request..

PARAGRAPH 7
Limited Warranties

7.1. ChemWare makes the following warranties to Customer with respect to the Materials:

a. For the first sixty (60) days after the Installation Date, if the Software, as delivered (and, if applicable, installed) by ChemWare fails to perform in accordance with the functional specifications in the Documentation, and provided that ChemWare is given written notice of the failure within this warranty period, ChemWare will correct or bypass such error to the extent the error (i) materially affects the user's ability to use the Software in accordance with the Documentation; and (ii) can be reproduced or recreated by ChemWare under similar conditions and in a commercially reasonable manner. ChemWare shall have no obligation to correct or bypass errors under this warranty which result from: (iii) modification of the Materials by a person other than ChemWare; (iv) errors caused by defects, problems or failures of hardware, software or other components or systems not provided by ChemWare; or (v) introduction of errors caused by the negligence of Customer or other non-ChemWare personnel.

b. If the Materials, as delivered to Customer, are alleged to infringe any registered trademark, registered service mark, copyright or patent, or to misappropriate any trade secrets of a third party (or if ChemWare otherwise believes the Materials may infringe or misappropriate), ChemWare will make commercially reasonable efforts to either modify the Materials to be noninfringing (while substantially preserving the utility and functionality of the affected portion of the Materials) or obtain a license to continue use.

7.2. Other than the foregoing specific warranties, the Materials are provided "AS IS" and ChemWare makes no warranty, guaranty, condition, covenant or representation,

express or implied. All other warranties, including without limitation the implied warranties of merchantability, fitness for a particular purpose, noninfringement, timeliness, currency, accuracy or other attributes, or from a course of dealing or usage, are specifically disclaimed. Without limiting the foregoing, ChemWare and its Licensors make no warranty or representation that the operation of the Software or the Database will be uninterrupted or the Materials will be error-free.

PARAGRAPH 8
Limitations on Liability

8.1. In the event of a breach of the warranty set forth in Paragraph 7.1a, and provided that such breach continues for a period of thirty (30) days after Customer gives written notice to ChemWare of the breach, then Customer may terminate this Agreement and recover the License Fees paid to ChemWare through the date of termination and once the License is terminated. This is Customer's exclusive remedy.

8.2. In the event Customer alleges a breach of the warranty set forth in Paragraph 7.1b, or in the event ChemWare otherwise terminates part of the License granted hereunder based on an allegation or determination that any part of the Materials infringe the intellectual property of a third party, then ChemWare's liability shall be limited to a refund of the License Fees actually paid to ChemWare for the applicable part of the Materials for which the License has been terminated. This is Customer's exclusive remedy.

8.3. Except with respect to damages arising out of or related to a breach of Paragraphs 7.1a or 7.1b, the remedies for which are set forth exclusively above, or damages which may arise as a direct result of ChemWare's negligence, ChemWare's liability to Customer for damages arising from or related to this Agreement shall be limited to the amount of the License Fees Customer has paid to ChemWare hereunder, or the sum of $1 million, whichever amount shall be greater. However, this limitation of liability shall not apply to amounts that ChemWare is required to pay to third parties alleging bodily injury or personal injury.

8.4. Neither party shall be liable for any indirect, incidental, special, punitive, or consequential damages, whether in tort or contract or based on any other legal theory. Neither ChemWare nor its Licensors, including but not limited to Oracle, shall be liable for damages from interruption of business, loss of use of the Materials, loss of profits, revenue, data, or data use, cost of recreating data, cost of capital, cost of any substitute software, or losses caused by delay, even if ChemWare or its Licensors, including but not limited to Oracle, has been advised of the likelihood of such damages occurring.

8.5 The terms and conditions of this paragraph are subordinate to the terms and conditions of Contract Section 7.24, General Insurance Requirements and 7.25 Insurance Coverage Requirements.

PARAGRAPH 9
Indemnification

9.1. Subject to the limitations in Paragraph 9.2, ChemWare (or Oracle if the claims relate to the Database) agrees to indemnify and defend Customer with respect to any claim brought against Customer based on alleged infringement by the Materials of the claimant's intellectual property rights, provided Customer must:

a. Provide written notice to ChemWare not later than fifteen (15) days after Customer receives notice of a claim or suit; and

b. Give ChemWare (or Oracle if the claims relate to the Database) sole control of the defense and any settlement negotiations; and

c. Give ChemWare (or Oracle if the claims relate to the Database) the information, authority and assistance requested to defend against or settle the claim. ChemWare may settle any such claim in any manner it deems appropriate, provided that Customer shall have no obligation to make a payment under any such settlement without its prior consent. Customer shall have the right to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing.

9.2. ChemWare (or Oracle, as applicable) shall have no indemnification obligation to Customer other than as set forth in Paragraph 9.1. In clarification but not limitation of the foregoing, neither ChemWare nor Oracle will indemnify Customer if Customer:

a. Makes a claim based upon third party programs or ancillary programs not included in the Materials; or

b. Alters the Materials or uses a version of the Materials which has been superseded, and the infringement claim could have been avoided by using an unaltered current version of the Materials; or

c. Combines the Materials with any other software or hardware not furnished by ChemWare or Oracle; or

d. Uses the Materials outside the scope of use set forth in the Documentation.

9.3 The terms and conditions of this paragraph are subordinate to the terms and conditions of Contract Section 7.23, Indemnification.

PARAGRAPH 10
Notices

All notices under this Agreement shall be delivered by hand or by a reputable national overnight courier service, with recipient signature required, and addressed to

the recipient's physical address indicated in the first paragraph of this Agreement, or to such other address as the recipient may designate by providing notice. The notice shall be considered delivered on the day of delivery, as indicated by the signed receipt.

PARAGRAPH 11
Assignment

Neither party may assign any right, remedy, obligation, or liability under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided that ChemWare may, without the consent of Customer, assign all, but not less than all, of its rights and obligations under this Agreement to a third party purchaser of all or substantially all the assets or equity of ChemWare, or with which ChemWare affects a merger or business combination, provided any such third party agrees in writing to assume all obligations of ChemWare under this Agreement. ChemWare may require payment of an assignment fee to cover its administrative costs or assignment-related fees that may be required by Oracle or other relevant Licensors. Oracle may deny assignment of the Database for any reason, may require an assignment fee, and may assign its rights and obligations without further notice.

The terms and conditions of this paragraph are subordinate to the terms and conditions of Contract Section 7.2 Assignment and Delegation.

PARAGRAPH 12
Force Majeure

Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God, any acts of the common enemy, earthquakes, floods, fires, epidemics, riots, labor disputes, failures or delay in transportation or communications, or any act or failure to act by the other party or such other party's employees, agents or contractors (a "**Force Majeure Event**"); provided, however, that failure to make payment of the License Fee when due shall never be deemed to be a result of a Force Majeure Event.

PARAGRAPH 13
Termination

13.1. The License granted hereunder shall automatically terminate with the termination of this Agreement.

13.2. In the event of any default of any obligation under this Agreement which remains uncured thirty (30) days after receipt of a written notice identifying in detail the nature of the default and the expectations to cure the default, the non-defaulting party may terminate this Agreement.

13.3. Within ten (10) days after termination of this Agreement, Customer shall discontinue use of the Materials; shall either return to ChemWare the Materials and all copies thereof, or delete or destroy all copies of the Materials; and deliver to ChemWare a written certification as such.

13.4. Upon termination of this Agreement, except termination by Customer as a result of a breach by ChemWare of Paragraph 7.1a or 7.1b, all unpaid License Fees shall immediately become due and payable.

13.5. Notwithstanding Paragraph 13.4, no further License Fee payment shall be due in the event of termination of this Agreement pursuant to the terms of Paragraph 8.1 or 8.2, and Customer may recover damages as set forth in Paragraph 8.1 or 8.2, as applicable and as limited thereby.

13.5. Any provision of this Agreement which by its terms imposes continuing obligations, including but not limited to Paragraphs 4, 5, 6, 7, 8, 9, 13, 14 and 15, shall survive the termination of this Agreement.

PARAGRAPH 14
Relationship Between ChemWare and Oracle

The parties agree that Oracle is a third party beneficiary of this Agreement. ChemWare is an independent contractor/licensee in all matters relating to its contracts with Oracle. Except for as specifically identified in this Agreement, neither ChemWare nor Oracle has any authority to assume or create any obligation, express or implied, on behalf of the other party, nor to represent the other party as agent, employee, franchisee, or in any other capacity.

PARAGRAPH 15
Waiver and Severability

15.1. No term of this Agreement shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party giving the waiver or excuse. The failure of either party to exercise in any respect any right provided for in this Agreement shall not be construed as a waiver of any further right under this Agreement, and no waiver shall be a continuing waiver unless specifically so stated in the writing.

15.2. If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, such decision shall not affect, impair or invalidate the remainder of this Agreement, but shall be confined in its operation to the provision of this Agreement directly involved in the controversy in which the decision was rendered, the invalid or unenforceable provision shall be reformed by the arbitrator so that each party shall have

the obligation to perform reasonably alternatively to give the other party the benefit of the bargain.

PARAGRAPH 16
Taxes

Customer is responsible for and shall pay all sales, use, and excise taxes, and like charges imposed by any federal, state, or local governmental entity for products or services provided under this Agreement, excluding only taxes based solely on ChemWare's income. When ChemWare has the legal obligation to collect such taxes, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides ChemWare with a valid tax exemption certificate authorized by the appropriate taxing authority. Customer shall hold ChemWare harmless from all claims and liability arising from Customer's failure to pay any such taxes, duties, or charges.

PARAGRAPH 17
Whole Agreement

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Software License Agreement shall be subject to, and subordinate to, the terms and conditions set forth in the Contract. The parties further agree that this Agreement, including its Exhibits, is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be modified except by a written instrument duly executed by the parties hereto. Any term or condition on a printed form which shall be sent to ChemWare from Customer shall have no effect, and shall not modify, add to, or subtract from the obligations and rights set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as set forth below.

ChemWare, Inc.   Organization

Signed:_____   Signed:_____(SEAL)
Print: Robert J. Whitehead   Print: _____
Title: Vice President   Title: _____
Date: _____   Date: _____

<u>EXHIBIT 1</u>
TO SOFTWARE LICENSE AGREEMENT

A. LICENSED MATERIALS:

The Materials included in this License are itemized in the Licensed Units and quantities described below:

Laboratory Information Management System (LIMS)

HC-002	HORIZON Central-One	Core LIMS, Database Licenses[1]	24	Named Users

Scientific Data Management System (SDMS)

HO-101	HORIZON Data Management-Vision®	Data Capture/Management	20	Named Users
HO-104	HDM-Extraction Template Builder®	HDM-Vision Interface Tool	1	Server
HO-105	HORIZON Data Management-WebVision®	Thin Client for HDM	1	Server

Enterprise Reporting and Business Intelligence (BI)

HO-106	HORIZON Report Manager-Actuate®	Web Report Portal, Dev Tools	1	Processor
HO-108	HORIZON Statistical Analysis-NWA Quality Analyst®	Control Charts/Analysis Tool	1	Workstation

Data Capture and Integration

HO-113	LimsLink® with Interface Library	Instrument Data Parsing Tool	5	Instruments

Database and Tools

OR-305	[1]Oracle9i® Database, ESL Standard Edition	Processor-Based (Unlim Users)	1	Processor
OR-303	Oracle Forms Services (Includes Oracle Reports)	Web-Based LIMS Deployment	24	Processors

Hardware

HW-118	Barcode Scanner	Symbol Model #LS4278	2	Scanners
HW-119	Barcode Printer	Zebra Model # LP2844	1	Printer

EXHIBIT 2
TO SOFTWARE LICENSE AGREEMENT

A. LICENSE FEE: **$163,309**

The License Fees, payment terms, and related Terms and Conditions are described in the attached quotation #200801064r3-JJ, dated January 22, 2008, and incorporated in Exhibit A of this Contract.

B. PAYMENT SCHEDULE:

The entire License Fee shall be paid upon execution of the License Agreement.

☒ The License Fee shall be paid in accordance with the attached payment schedule, incorporated in Exhibit B of this Contract.

EXHIBIT – D

TECHNICAL SERVICES AGREEMENT

HORIZON® LABORATORY INFORMATION MANAGEMENT SYSTEM

This Technical Services Agreement ("**Agreement**") is made and entered into as of the date of the last signature below, between ChemWare Inc., a North Carolina corporation ("**ChemWare**") with its principal office at 900 Ridgefield Drive, Suite 150, Raleigh, North Carolina, 27609, and Los Angeles County Agricultural Commissioner/Weights and Measures Department ("**Customer**"), with its principal office at 12300 Lower Azusa Road, Arcadia, California 91006.

In consideration of the services to be provided by ChemWare, the payments to be made by Customer, and the other promises set forth below, the parties agree as follows:

PARAGRAPH 1
Services

1.1. General Description. Subject to the terms of this Agreement, ChemWare agrees to provide certain services related to the installation, implementation, modification, customization and use of the HORIZON® Laboratory Information Management System (the "Software") licensed to Customer by ChemWare pursuant to a separate license agreement (the "License Agreement"). The services to be provided to Customer by ChemWare shall include only those services set forth in the Implementation, Training and Customizations provisions of the quotation(s) ("Quotations") attached hereto as Exhibit 1 to this Agreement (the "Service(s)"), and, if applicable, the Request for Services or Software Change ("RSSC") document(s) attached hereto as Exhibit 2 , (all Exhibits comprising the "Specifications"). Customer acknowledges and agrees that it is responsible for carefully reviewing the Specifications prior to acceptance. Customer further acknowledges that ChemWare shall not be responsible for any additional costs or delays incurred as a result of an error or omission in the Specifications. If there is any conflict between the Quotations, RSSC and this Agreement, the provisions of this Agreement shall control.

1.2. Performance of Services. ChemWare shall perform the Services in accordance with the terms and conditions set forth in the Quotations. Subject to the terms of this Agreement: (a) ChemWare has the sole and exclusive right to control and direct the manner and means by which ChemWare renders the Services, provided that such manner and means meet the specifications set forth in the Specifications; and (b) ChemWare may perform the duties at any time or pursuant to any schedule, provided that such performance meets any schedules set forth in the Specifications. Notwithstanding the foregoing, ChemWare may, at its option, cancel or reschedule any scheduled Service in case of instructor illness or other unforeseen circumstance beyond ChemWare's direct control. In the event of such cancellation, ChemWare shall make commercially reasonable efforts to reschedule the Service at the Customer's convenience.

1.3. Installation and Testing Services. If the Quotations indicate that ChemWare will provide installation Services pursuant to the Implementation portion of the Quotations, Customer shall provide ChemWare with a written description of Customer's system architecture, including but not limited to hardware and network configuration. ChemWare shall coordinate with Customer on timing, and at the agreed-upon time shall install the Software onto the hardware at such time as ChemWare has received: (a) the hardware shipped to ChemWare, or (b) notification from

Customer that all necessary hardware described in the Specifications is installed on the Customer's network and ready for the installation of the Software.

1.4. System Configuration Services. If the Quotations indicate that ChemWare will provide system configuration Services pursuant to the Implementation portion of the Quotations, Customer shall provide ChemWare with all requested documentation and input necessary for ChemWare to commence configuration Services.

1.5. Training Services. If the Quotations indicate that ChemWare will provide Services pursuant to the Training portion of the Quotations, ChemWare shall provide such training and instruction at a mutually agreed upon time. Unless otherwise agreed by the parties with respect to a specific training session, all training shall be scheduled for and take place between the hours of 8:00 am and 6:00 pm local time. Unless authorized in writing by ChemWare, training Services may not be attended by third party persons, entities or personnel, including but not limited to Customer's contractors or consultants.

1.6. Customization/Special Programming Services. If the Quotations indicate that ChemWare will provide any customization or special programming Services, a RSSC must be prepared by ChemWare, and reviewed and signed by Customer, prior to commencing Services. If the Quotations indicate that ChemWare will provide data export or migration Services, Customer shall provide ChemWare with: (a) the data files to be migrated, in a format required by ChemWare; and (b) a description of the third party software on which the Customer applications and files are currently running, which may include an entity relationship diagram. Customer shall pay the full cost of obtaining and installing the data and information, including any costs of reruns or reinstallation if the data or the media on which it has been provided are in any way defective. Customer is responsible for keeping a backup of all data and information files that allow for the recreation of the data and information files in the event that those provided to ChemWare are lost or destroyed.

PARAGRAPH 2
Customer Obligations

2. Customer shall provide the information and services set forth below. Any failure to meet such obligations in the time period set forth shall be a material breach of this Agreement by Customer.

2.1. Customer Information Delivery. Prior to the commencement of Services, Customer shall provide ChemWare with the information identified in the Specifications. In addition, Customer shall make good faith efforts to promptly provide ChemWare with all additional information requested by ChemWare and necessary for the provision of Services.

2.2. Availability of Human Resources. Customer hereby acknowledges and agrees that it will be necessary for certain of its employees and consultants to interact with ChemWare in order for ChemWare to perform the Services. Therefore, within five (5) days following a request by ChemWare that certain employees or consultants of Customer be made available on specified dates to participate in interactions with ChemWare, Customer will either make such individuals available to ChemWare or will provide ChemWare with alternative dates that such individuals could be available to ChemWare. Customer shall make commercially reasonable efforts to make such individuals available to ChemWare on the dates and times specified, but in no event more than

fifteen (15) days of the date of ChemWare's request, provided however Customer shall be under no obligation to make former employees or former consultants so available.

2.2. Third-Party Software. Customer shall provide ChemWare with any software required for the performance of the Services together with a license to use such software, which software shall be returned to Customer upon completion or termination of the Services.

2.3. Customer Location. Customer shall be responsible, at its own expense, for preparing its location/facilities for the Services, including but not limited to any modifications necessary to make the Customer location comply with any utility, climate control, communication interface or other specifications.

2.4. Working Facilities. Customer shall provide, at no cost to ChemWare, office space, parking facilities, clerical and reproduction services, and office supplies as needed to perform the Services. If performance of Services by ChemWare reasonably requires access to Customer facilities during non-business hours, Customer shall provide such access. In addition, Customer shall provide access to or use of its records or documents as well as of its computer equipment, as are reasonably required for the performance of the Services. In connection with any disclosure, ChemWare agrees to comply with state and federal privacy regulations.

PARAGRAPH 3
Acceptance of Services

3. ChemWare shall notify Customer at such time as any deliverable, milestone or other distinct portion of the Services provided under this Agreement has been completed. Unless otherwise set forth in the applicable specifications, Customer shall then have five (5) business days to either accept or reject the completed portion of the Services; provided however, that: (a) Customer must accept the completed Service if it conforms in all material respects with the objective specifications set forth in the Specifications; and (b) if Customer fails to notify ChemWare of its rejection or need for further time within the specified period, the completed Services shall be deemed accepted. Upon receipt of any corrected Services or any portion thereof, Customer shall again undertake the process specified above, and this shall continue until the Services are accepted. If ChemWare is unable to provide Customer with a correction to any portion of the Services that fails to comply with the Specifications, ChemWare will refund the portion of the Service fees paid with respect to the nonconforming portion of the Services, but shall be under no obligation to refund any portion of fees paid pursuant to other agreements by and between Customer and ChemWare, including but not limited to the License Agreement. Following acceptance, the Warranty shall be in effect, during which Customer shall have an additional sixty (60) days to report any non-conformance of any Service with its applicable Specifications, pursuant to Paragraph 8.1.

PARAGRAPH 4
Ownership and Intellectual Property Rights

4.1. Software. Customer acknowledges that any software code produced by ChemWare pursuant to this Agreement, whether in source, object or executable (human or machine-readable) form, regardless of whether it is compiled, and including without limitation all code for objects, algorithms, routines and utilities, and all documentation, regardless of the media on which it exists, is owned, and the copyright and trade secrets for such software, all interfaces to third party software, all patents rights and all right, title and interest associated with any ideas, concepts, techniques, inventions, processes, or works of authorship related to any modifications to the

Software, including but not limited to all copyrights, patents, trade secrets, or other intellectual property rights, that are not physically incorporated in such modifications to the Software, shall be owned solely by ChemWare. Such ownership shall exist regardless of whether Customer's employees or contractors shall have contributed to the idea or conception of any part of the modification. Customer agrees to execute any documents that may become necessary to evidence such ownership. Any use of software code produced by ChemWare pursuant to this Agreement shall be governed by the terms and conditions of the License Agreement.

4.2. Training Materials. To the extent that ChemWare may prepare, create, customize or deliver any training services materials, all right, title and interest in and to the materials, including but not limited to the underlying intellectual property rights, shall be owned by ChemWare.

4.3. Skills. Customer recognizes that ChemWare may develop certain analytical skills, prepare certain analyses, develop or discover certain trade secrets and acquire certain general knowledge in the course of performing the Services under this Agreement (the "Intellectual Property"). Customer agrees that ChemWare is the owner of this Intellectual Property, including without limitation each and every invention, creation, discovery, improvement, design, or process made or discovered by ChemWare employees or subcontractors while working for Customer under this Agreement. ChemWare may use or disclose the Intellectual Property on behalf of or to any party, at the sole discretion of ChemWare, without any liability to Customer, provided such use or disclosure does not violate the confidentiality requirements of Paragraph 7 of this Agreement. Customer further agrees that it has no right to use or disclose this Intellectual Property, except to the extent that it is part of the reports, documents, training materials, memoranda or other deliverables prepared by ChemWare pursuant to this Agreement or as otherwise authorized in writing by ChemWare.

PARAGRAPH 5
Fees and Charges

5.1. Fees. All Services shall be billed at the applicable rates set forth in Exhibit 1. ChemWare may change its rates from those specified in Exhibit 1 at any time after six (6) months from the effective date of this Agreement, provided that ChemWare gives at least thirty (30) days prior notice to Customer. ChemWare does not currently bill for travel time to and from Customer's site.

5.2. Cancellation Payment. Customer shall be obligated to pay the full amount that would have been due upon completion of any Service scheduled to be performed at Customer's site, if Customer: (i) cancels with less than one week's prior written notice, (ii) fails to show, or (iii) is otherwise unprepared to receive such Service. Customer shall be obligated to pay the full amount that would have been due upon completion of any Service scheduled to be performed at ChemWare's site, if Customer: (iv) cancels with less than one week's prior written notice, and (v) ChemWare is unable, through commercially reasonable efforts, to rebook the engagement to provide services of substantially the same type with the same or greater fees with another customer or, for training, rebook the Customer's reservation with another customer for substantially the same or greater fees. Notwithstanding the foregoing, if more than one (1) week prior to the scheduled date of performance of a Service, Customer delivers to ChemWare prior written notice of its intent to cancel such Service, Customer shall be under no obligation to pay for such Service. In the event a Service is cancelled by ChemWare and not rescheduled, Customer shall be under no obligation to pay ChemWare for such cancelled Service or portion of such Service.

5.3. Expenses. Customer shall reimburse ChemWare for all reasonable out-of-pocket expenses incurred in connection with its provision of any Services pursuant to this Agreement, including without limitation, air express, telephone, facsimile, reproductions, disposable supplies purchased exclusively for work for Customer, and travel (including airfare, rental cars, taxis, lodging, meals, parking and necessary incidentals). Such reimbursable expenses shall specifically include any expenses related to noncancellable travel and lodging, or cancellation charges that ChemWare may reasonably incur notwithstanding Customer's otherwise timely cancellation of the Services to which the travel and lodging relates. Expenses shall be billed in accordance with the standard practices and procedures of ChemWare in effect at the time the expenses are incurred.

5.4. Payment Terms. ChemWare will submit an invoice to Customer immediately following completion of each Service, covering the charges accrued pursuant to Paragraphs 5.1, 5.2 and 5.3 Payments are due to ChemWare within thirty (30) days from receipt of invoice. ChemWare may suspend all Services, without prior notice, at any time that payments for charges are late, and ChemWare shall have no liability related to such suspension.

PARAGRAPH 6
Termination

The term of this Agreement shall continue until Services are completed, unless terminated earlier as provided below.

6.1. Termination for Cause. If either Party materially defaults in the performance of any of its duties or obligations under this Agreement (except for a default in payments to ChemWare), which default is not substantially cured within thirty (30) days after written notice is given to the defaulting Party specifying the default, or, with respect to those defaults which are capable of being cured within a reasonable period of time but which cannot reasonably be cured within thirty (30) days, if the defaulting Party fails to proceed within thirty (30) days to commence curing said default and to proceed with all due diligence substantially to cure the default, then the Party not in default may, by giving written notice of termination to the defaulting Party, terminate this Agreement.

6.2. Termination for Nonpayment. If Customer defaults in the payment when due of any amount due to ChemWare and does not, within ten (10) working days of being given written notice, cure such default, then ChemWare may, by giving written notice to Customer, terminate this Agreement.

6.3. Termination for Other Reasons. Customer may terminate this Agreement at any time and without cause upon thirty (30) days prior written notice.

6.4. Effect of Termination or Expiration. Upon termination or expiration of this Agreement, ChemWare shall be paid for all Services performed or expenses incurred or obligated prior to the effective date of termination, including without limitation for all Services or portions of Services actually performed, all Services terminated without adequate notice, and all expenses incurred and not previously invoiced. Termination of this Agreement shall result in cancellation of all then-scheduled Services, as well as termination of all Services that may then be underway. Termination of this Agreement shall in no way impact the rights and obligations set forth in the License Agreement. Any provision of this Agreement, which by its terms imposes continuing obligations on the parties, shall survive the expiration or termination of this Agreement, including without limitation Paragraphs 2.5, 4, 5.4, 6.4, 7, 8, 9 and 16.

PARAGRAPH 7
Confidential Information

7.1. Definition. Each of the parties recognizes that during the term of this Agreement it may receive from the other party information that may be confidential ("**Confidential Information**"). For the purpose of this Paragraph, the party receiving the Confidential Information shall be referred to as the "**Receiving Party**" and the party disclosing the Confidential information shall be referred to as the "**Disclosing Party**." No information shall be considered as Confidential Information, however, unless it is provided in writing and the writing is clearly marked as "**Confidential**". It is understood, however, that no information shall be considered as Confidential Information, regardless of its having been marked as such, if: (i) it was in the public domain at the time of disclosure to Receiving Party; or (ii) it entered the public domain through no fault of Receiving Party; or (iii) it was in Receiving Party's possession free of any obligation of confidence at the time of Disclosing Party's disclosure to Receiving Party; or (iv) it was rightfully communicated by a third party to Receiving Party free of any obligation of confidence subsequent to the time of Customer's disclosure to ChemWare; or (v) it was communicated by Customer to a third party free of any obligation of confidence; or (vi) it is developed by employees or agents of ChemWare independently of and without reference to any of Customer's Confidential Information. Customer will use its best efforts and take all reasonable steps to protect the Materials from unauthorized reproduction, publication, disclosure or distribution subject to a valid California Public Records Act request.

7.2. Restrictions on Use. With respect to any information delivered and marked as Confidential, ChemWare agrees that it shall: (i) accord to such Confidential Information at least the same level of protection against unauthorized use or disclosure that it customarily accords its own Confidential Information; (ii) use or permit use of the Confidential Information solely and exclusively in carrying out its obligations under this Agreement; provided however such information may be disclosed pursuant to a court order; and (iii) return or destroy all copies of the Confidential Information upon Customer's request.

PARAGRAPH 8
Limited Warranties

8.1. Warranty by ChemWare. ChemWare warrants that for a period of sixty (60) days after delivery of any deliverable or completion of any service provided pursuant to any Service such deliverable and/or service shall conform to its applicable Specifications. EXCEPT AS PROVIDED IN THIS PARAGRAPH 8.1, CHEMWARE MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO, THE SERVICES, DELIVERABLES, REPORTS, ANALYSES, DOCUMENTS, MEMORANDA, SOFTWARE, ON-LINE WORKS OR OTHER MATTERS PRODUCED OR PROVIDED UNDER THIS AGREEMENT. IN NO EVENT SHALL ANY WARRANTY PROVIDED HEREUNDER APPLY TO THE FUNCTIONALITY OF THE SOFTWARE. ALL WARRANTIES RELATED TO THE SOFTWARE SHALL BE AS SET FORTH IN THE LICENSE AGREEMENT. The stated express warranties are in lieu of all obligations or liabilities on the part of ChemWare arising out of or in connection with the performance of this Agreement.

8.2. Warranty by Customer. Customer warrants that it owns all right, title, and interest in and all data and information, and any specifications, design requirements, or other information furnished by Customer to ChemWare in connection with ChemWare' performance of the Services, or to the extent that Customer does not have such ownership rights Customer warrants it shall

have obtained all rights required for ChemWare to make use of the data and information, prior to providing such other data and information to ChemWare.

PARAGRAPH 9
Limitations of Liability

Customer acknowledges that it is responsible for the successful configuration, application, validation, operation, management of the Software, including implementation of appropriate systems procedures and safeguards, whether or not any part of the Software is configured or modified through Services provided by ChemWare. Customer further acknowledges that it is solely responsible for the results produced by the Software as they pertain to the Customer's business and requirements, and is solely responsible for hiring and training appropriate personnel to operate the Software. Customer agrees that regardless of the form of any claim, customer's sole remedy and ChemWare's sole obligation with respect to any claims made related to or arising out of this agreement shall be governed by this agreement, and in all cases customer's remedies shall be limited specifically to, at ChemWare's option, correction of the Services or reimbursement of payments made for that portion of the Services in dispute; provided however that with respect to a claim of breach of the express warranty in paragraph 8.1, if Services are performed on a time and materials basis, customer shall pay the same time and materials rate for correction of the problems resulting in the breach of warranty, as if the problem had been identified prior to acceptance. It is expressly agreed that in no event shall ChemWare or anyone else who has been involved in the performance of this agreement on behalf of ChemWare, including its officers, directors, employees, agents, representatives, or subcontractors, be liable for any consequential, incidental or special damages arising from breach of warranty, breach of contract, negligence, or any other legal theory, whether in tort or contract, even if ChemWare has been apprised of the likelihood of such damages occurring, including without limitation damages from interruption of business, loss of income or opportunities, loss of use of software, loss of data, cost of recreating data or cost of capital. However, this limitation of liability shall not apply to claims made by third parties for bodily injury, personal injury or property damage arising out of the services provided hereunder. The terms and conditions of this paragraph are subordinate to the terms and conditions of Contract Sections 7.24, General Insurance Requirements and 7.25 Insurance Coverage Requirements.

PARAGRAPH 10
Relationship of Parties

It is understood and agreed that each of the parties to this Agreement is an independent contractor, and that neither party is, nor shall it be considered to be an agent or representative of the other for any purpose. Nothing in this Agreement is intended to nor shall be deemed to constitute a partnership or joint venture between the parties. Nothing shall operate to change or alter the status between the parties except a further agreement in writing between the parties that specifically addresses this issue.

PARAGRAPH 11
Force Majeure

Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God, any acts of the common enemy, earthquakes, floods, fires, epidemics, riots, labor disputes, failures or delay in transportation or communications, or any act or failure to

act by the other party or such other party's employees, agents or contractors (a "**Force Majeure Event**"); provided, however, that failure to make payment of the License Fee when due shall never be deemed to be a result of a Force Majeure Event.

PARAGRAPH 12
Non-Solicitation

Unless written approval is granted by the other party, each party agrees to refrain from soliciting, hiring or contracting or attempting to hire or contract the other's employees or subcontractors who have been involved with the provision of Services under this Agreement for a period of one (1) year from the last date of provision of such Services by such employee or subcontractor. In the event this provision is found to conflict with current labor laws or otherwise be unenforceable, or ChemWare grants permission to Customer to hire or contract with a ChemWare employee or subcontractor, ChemWare shall be entitled to receive from Customer a "placement fee," in the amount of 25% of the employee's or subcontractor's most recent total annualized compensation.

PARAGRAPH 13
Severability

In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, such decision shall not affect, impair or invalidate the remainder of this Agreement, but shall be confined in its operation to the provision of this Agreement directly involved in the controversy in which the decision was rendered. The invalid or unenforceable provision shall be reformed by the arbitrator so that each party shall have the obligation to perform reasonably alternatively to give the other party the benefit of the bargain. The remaining provisions shall be enforced to the maximum extent permitted by applicable law.

PARAGRAPH 14
Assignment

Neither party may assign any right, remedy, obligation, or liability under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided that ChemWare may, without the consent of Customer, assign all, but not less than all, of its rights and obligations under this Agreement to a third party purchaser of all or substantially all the assets or equity of ChemWare, or with which ChemWare affects a merger or business combination, provided any such third party agrees in writing to assume all obligations of ChemWare under this Agreement. The terms and conditions of this paragraph are subordinate to the terms and conditions of Contract Section 7.2 Assignment and Delegation.

PARAGRAPH 15
Waiver

No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Failure to enforce any of the provisions of this Agreement shall not be construed as a waiver of future rights to enforce the same or other provisions of this Agreement.

PARAGRAPH 16
Entire Agreement

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this Agreement, including its Exhibits, is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be modified except by a written instrument duly executed by the parties hereto. Any term or condition on a printed form which shall be sent to ChemWare from Customer shall have no effect, and shall not modify, add to, or subtract from the obligations and rights set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as set forth below.

ChemWare, Inc.   Organization

Signed:_____   Signed:_____(SEAL)
Print: Robert J. Whitehead   Print: _____
Title: Vice President   Title: _____
Date: _____   Date: _____

EXHIBIT 1
TO TECHNICAL SERVICES AGREEMENT

A. QUOTATION:

The Implementation, Training and/or Customization/Special Programming section(s) of the attached HORIZON Laboratory Information Management Systems Quotations, #200801064r3-JJ and dated January 22, 2008, describes the quantities and units of deliverables and other Services acquired under this Technical Services Agreement.

B. RATE SCHEDULE FOR SERVICES:

The following rates apply to Other Services (as defined in the ChemWare, Inc. Standard Software Maintenance Agreement), dependent upon the service provided, expertise required, whether or not a written specification is available, and whether Services are provide at Customer's site or remotely from ChemWare. Fixed Price rates are available for Services scheduled in advance and performed with a written specification. **All rates are billable in ½ hour increments, and are exclusive of any travel expenses or applicable sales or use taxes, which will be computed and billed separately. ChemWare does <u>not</u> bill for travel time to and from Customer site. Lower rates may be available for extended engagements.**

Type and Location of Service	Scheduled in Advance, with Specification		Unscheduled, no Specification	
	General Services/ Fixed Price	Advanced Services/ Fixed Price	General Services/ T&M Rates	Advanced Services/ T&M Rates
Normal Working Hours, at ChemWare[1]	**$995/day or $125/hour**	**$1,295/day or $160/hour**	$1,295/day or $210/hour	$1,795/day or $290/hour
Normal Working Hours, at Customer Site	$1,295/day or $160/hour	$1,795/day or $225/hour	$1,795/day or $380/hour, one day minimum	$2,495/day or $530/hour, one day minimum
Emergency Hours, at ChemWare[2]	Not Applicable	Not Applicable	$380/hour, 4 hour minimum	$530/hour, 4 hour minimum
Emergency Hours, Requires Overtime, at Customer Site[2]	Not Applicable	Not applicable	$2,695/day or $570/hour 2 day minimum	$3,740/day or $795/hour 2 day minimum

General Services Level: Project Managers, Customer Support, Programmers

- Software Installation and Testing
- Custom Programming
- Methods Customization and Control Table Enhancements

- System Configuration Assistance
- Data Migration/Conversion
- Introductory Training

Advanced Services Level: Sr. Project Managers, Sr. Programmers, Developers, Certified Specialists/Engineers, Managers/Executives

- LIMS/Automation Needs Analysis
- Oracle Troubleshooting and Tuning
- Systems Consulting or Business Process Analysis

- Intermediate and Advanced Training
- Assistance with Hardware, Network, Printers, Operating Systems, Communications Systems

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[1]Over 99% of all Other Service requests fall into this category, and over 99% of those requests fall into the "Scheduled in Advance" subcategory, available at a fixed price (represented by the two light-gray shaded cells in the table above).

[2]Requires Customer to establish Emergency Support Option coverage in advance, based on the terms and rates published at www.chemware.com. Overtime is any time beyond the normal 8-hour day shift, local time, or any time on weekends or holidays.

EXHIBIT 2
TO TECHNICAL SERVICES AGREEMENT

A. REQUEST FOR SERVICES OR SOFTWARE CHANGE (RSSC):

The attached RSSC(s) provide the Task Description and Developer Specifications to be used in the provision of associated Services pursuant to this Technical Services Agreement. The price for the Services may be described on the RSSC cover sheet or on a separate Quotation attached to Exhibit 1 .

Task Name	RSSC Date Requested	Corresponding SCR	Date of Quotation	Purchase Order
Not applicable				

EXHIBIT – E

SOFTWARE MAINTENANCE AGREEMENT

HORIZON® LABORATORY INFORMATION MANAGEMENT SYSTEM

This Standard Software Maintenance Agreement ("**Agreement**") is made and entered into as of the date of the last signature below, between ChemWare Inc., a North Carolina corporation ("**ChemWare**") with its principal office at 900 Ridgefield Drive, Suite 150, Raleigh, North Carolina, 27609, and Los Angeles County Agricultural Commissioner/Weights and Measures Department ("**Customer**"), with its principal office at 12300 Lower Azusa Road, Arcadia, California 91006.

WITNESSETH:

WHEREAS, ChemWare and Customer entered into a Software License Agreement dated _____ ("**License Agreement**"); and

WHEREAS, Customer desires to obtain from ChemWare certain software maintenance services with respect to the License Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set out in this Agreement, the parties agree as follows:

PARAGRAPH 1
Definitions

1.1. "**Software**" means the executable code of the HORIZON Laboratory Information Management System Software, together with the executable code for the modules, add-ins, options, special functions, and other ChemWare products included in the terms of the License Agreement.

1.2. "**Database**" means the single central Oracle® database including tables for housing Laboratory Information Management System (LIMS) data established by the Software, together with any other Oracle software products included in the terms of the License Agreement.

1.3. "**Documentation**" means all information provided by ChemWare which describes the installation, operation and use of the Software, in printed or electronic format.

1.4. "**Materials**" means the Software, Documentation and Database.

1.5. "**Oracle**" means the Oracle Corporation, located at 500 Oracle Parkway, Redwood Shores, California 94065.

1.6. "**Parser**" means an executable program, routine, or other code or method developed by ChemWare to reformat data and generate an output file.

1.7. "**Error Correction**" means (i) a software modification or addition that, when made or added to the Materials, establishes material conformity of the Materials to the Documentation; (ii) a procedure or routine that, when observed in the regular operation of the Materials, eliminates or

bypasses the practical adverse effect on Customer of such nonconformity; or (iii) an update to the Documentation to reflect the intended description of the proper use of the Materials.

1.8. "Updates" means any additional or supplemental releases of the Materials made generally available under this Agreement, and which may include Error Corrections or enhancements to the Materials. The Updates do not include fundamental changes to the graphical user interface technology, supported database or operating system platform, or any additional hardware or software necessary to support such changes.

1.9. "**Unsupported Items**" shall include but not be limited to the following, whether or not provided by ChemWare: (i) scripts; (ii) Materials or other software beyond the warranty period; (iii) example software (e.g., off-the-shelf reports, calculations, triggers or interfaces) to assist users in extending the Software's functionality; (iv) Parsers for versions of instruments or data sources other than those for which the Parsers were originally developed; (v) Updates other than the most recent Update of the Materials, provided that ChemWare shall continue to support prior Updates for a period of sixty (60) days from the date of the most recent Update; and (vi) hardware.

1.10. "Customer Error" means an error in the functioning of the Materials which results from (i) defects, problems, failures, or use with hardware, software or other components or systems not provided by ChemWare; (ii) use with Unsupported Items; (iii) negligence of Customer or other non-ChemWare personnel; or (iv) modification of the Materials by Customer, including without limitation changes made by Customer to the control tables and computation routines in a manner inconsistent with the Documentation or ChemWare-provided training. Customer Error shall also mean an error resulting from Customer's use of the Materials (v) in a manner that is not within ordinary use of the Materials as described in the Documentation; or (vi) in a computing environment not certified or recommended by ChemWare for use with the Materials.

1.11. "Error" means any error in the Documentation or failure of the Software, as delivered (and, if applicable, installed) by ChemWare, that materially affects the user's ability to use the Software in accordance with the Documentation, to the extent the error or failure is not the result of Customer Error.

1.12. "Normal Working Hours" means the hours between 8:00 A.M. and 6:00 P.M. Eastern time, Monday through Friday, excluding regularly scheduled ChemWare holidays.

<center>**PARAGRAPH 2**
Obligations and Services</center>

2.1. Customer Obligations.

a. Customer shall be responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, operating systems and other hardware and software necessary to operate the Materials in conformance with the Documentation.

b. Customer shall be responsible for installing and implementing the Materials, unless such services are provided by ChemWare pursuant to a separate agreement.

c. Customer shall designate up to three (3) contact persons ("**Customer Technical Representatives**") for all software support and maintenance communication with ChemWare's designated Technical Support and Project Management points-of-contact, and each Customer Technical Representative shall only be designated as such following successful completion of all ChemWare-recommended training on implementation and use of the Materials.

d. Prior to contacting ChemWare for assistance, the Customer Technical Representative shall use his or her own expertise and careful review of the Documentation to attempt to resolve Customer's questions or issues relating to the Materials.

e. The Customer Technical Representative shall provide ongoing and timely feedback to ChemWare in support of all troubleshooting and resolution activities relating to the Materials. In some cases, this feedback may require the Customer Technical Representative to supply a reproducible test case, database export, documentation (such as screen captures), or remote or on-site access to Customer's software and hardware.

2.2. Covered Services. During Normal Working Hours and throughout the term of this Agreement:

a. ChemWare shall provide to the Customer Technical Representatives telephone and e-mail support related to (i) Error notification and resolution; (ii) questions on functional and operational issues related to the Materials; (iii) configuration of the control tables and results computations; and (iv) installation of new Updates.

b. ChemWare shall adequately staff a call support center with trained, full-time employees capable of rendering the Covered Services.

c. ChemWare shall maintain a technical support request database for tracking the disposition of all technical support requests, software change requests, and related communications and diagnostic information.

d. ChemWare shall be responsible for Error Correction, provided that (i) ChemWare is given written notice of the Error by the Customer during the term of this Agreement; and (ii) the Error can be reproduced or recreated by ChemWare under similar conditions and in a commercially reasonable manner.

e. If the Error affects the use of the Materials in a production environment, ChemWare shall provide Error Correction through a "service pack" or "patch," which may be downloaded from ChemWare's web site, and ChemWare shall include the Error Correction in all subsequent Updates of the Materials.

2.3. Other Services. Any services not specified in Paragraph 2.2 above will be considered "Other Services."

a. Other Services shall include, but not be limited to, (i) correction of Customer Errors; (ii) services provided outside of Normal Working Hours; (iii) assistance with installation of Updates if it is more practical, in ChemWare's sole opinion, to provide the service at Customer's site; (iv) training; (v) system configuration; (vi) custom programming; (vii) methods customization; (viii) data imports or conversion (such as client and sample results data migration); (ix) control table

enhancements; (x) custom interface development; (xi) report customization or development; (xii) consulting or project management services; or (xiii) network, database management or recovery, operating system, hardware or other IT service not specifically identified in Paragraph 2.2 as a Covered Service.

b. Other Services may be provided by ChemWare, at its sole discretion, subject to staff availability and pursuant to the additional payments and terms specified in Paragraph 3, Exhibit 1 and (if applicable) a separate Technical Services Agreement by and between the parties.

c. If Customer notifies ChemWare of an Error, and after investigation by ChemWare it is determined that the problem is the result of Customer Error, ChemWare reserves the right to bill Customer as an Other Service for all time and expenses accrued in making this determination.

PARAGRAPH 3
Fees and Charges

3.1. Maintenance Fees. Fees for the term of this Agreement shall be as set forth in Exhibit 1 and shall be due and payable upon execution of this Agreement. Thereafter, Customer may renew this Agreement for consecutive one year terms upon payment of the annual maintenance fee; provided however, ChemWare hereby reserves the right to adjust annual maintenance fees and make other modifications to this Agreement so long as ChemWare notifies Customer of such changes no later than sixty (60) days prior to the renewal of this Agreement. A renewal notice and quotation shall be sent to Customer at least sixty (60) days before the beginning of each renewal term, followed by an invoice no later than thirty (30) days before the beginning of each renewal term. Full payment shall be due on or before the first day of the renewal support period.

3.2. Emergency Support. This Agreement **does** include 24-hour/365 days "on-call" support, for so long as Customer maintains an open purchase order or retainer in sufficient amount to provide requested services. Any services provided outside of Normal Business Hours will be considered "Emergency Support;" applicable terms and rates are described in the Technical Services Agreement and published on ChemWare's Web site at www.chemware.com.

3.3. Travel Expenses. Customer shall reimburse ChemWare for reasonable travel expenses (e.g., transportation, lodging, and meals), courier fees, and long distance telephone or modem expenses incurred by ChemWare in rendering services to Customer more than twenty five (25) miles from ChemWare's principal office. ChemWare shall provide documentation with the invoice in the form of copies of receipts for all billable expenses incurred. CHEMWARE SHALL NOT CHARGE CUSTOMER FOR TIME SPENT TRAVELING TO AND FROM CUSTOMER'S SITE.

3.4. Payment Terms. Payments are due to ChemWare within thirty (30) days from receipt of invoice.

3.5. Late Payment and Nonpayment. If Customer fails to pay any invoices issued when due, ChemWare reserves the right to withhold any and all services to the Customer, and no refund shall be due if services are so suspended. If ChemWare does suspend services, Customer may have the services reinstated only upon payment of all overdue invoices. ChemWare also reserves the right to seek any other remedies available to collect delinquent payments from Customer. Withholding of services by ChemWare for nonpayment does not release Customer of any

obligations to ChemWare, including without limitation the obligation to pay the remaining amounts due for the term of this Agreement.

PARAGRAPH 4
Proprietary Rights

4.1. Any Updates or Error Corrections received by Customer shall also become part of the Materials and shall be governed by the terms and conditions of this Agreement and the License Agreement.

4.2. The Materials are and shall remain the sole property of ChemWare and its licensors, regardless of whether Customer, its employees, or contractors shall have contributed to the conception of such work, joined in the effort of its development, or paid ChemWare for the use of the work product. Customer shall take any further action and execute and deliver any further instrument, including documents of assignment or acknowledgment that ChemWare may reasonably request in order to establish and perfect ChemWare's exclusive ownership rights in such works. Customer shall not assert any right, title, or interest in such works, except for the non-exclusive right of use granted to Customer at the time of its delivery or on-site development.

PARAGRAPH 5
Limited Warranties and Disclaimer of Liability

5.1. Except as set forth in this Agreement, ChemWare expressly disclaims any and all warranties concerning the Materials or the services to be rendered hereunder, whether expressed or implied, including (without limitation) any warranty of merchantability or fitness for a particular purpose.

5.2. Customer expressly agrees that in no event shall ChemWare be liable for any consequential or special damages arising from breach of warranty, breach of contract, negligence or any other legal theory, whether in tort or contract, even if ChemWare has been advised of the likelihood of such damages occurring, including without limitation, damages from interruption of business, loss of profits or business opportunities, loss of use of software, loss of data, cost of recreating lost data, cost of any substitute software, or losses caused by delay.

5.3. ChemWare shall not be liable for any failure or delay in performance of any obligation under this Agreement if such failure or delay is caused by circumstances not directly or substantially under the control of ChemWare, including without limitation, failures resulting from acts of God, acts of public authorities, fires or other natural disasters, delays of suppliers or carriers, or serious illnesses of key ChemWare personnel.

5.4. ChemWare shall not be liable for recovery of the database or lost data due to Customer Error, disk corruption or other factors outside of ChemWare's control, including but not limited to acts of God, power surges or other electrical malfunction, neglect or inadequate maintenance of the Software, or problems caused by or related to the operating system, network or system hardware, which problems shall also be considered Other Services.

5.5. ChemWare's liability for damages to Customer shall be limited in all cases to the annual maintenance fee paid by Customer for this Agreement, for the year in which the alleged liability first arose.

PARAGRAPH 6

6.1. The initial term of this Agreement shall commence on the date identified in Exhibit 1, Paragraph C, and shall continue for a period of one year. This Agreement shall automatically terminate at the conclusion of any term if payment for the next consecutive term is not received by ChemWare as specified in Paragraph 3.

6.2. This Agreement may be terminated as follows:

a. This Agreement shall immediately terminate upon the termination of the License Agreement.

b. This Agreement may be terminated by either party upon the expiration of the then-current term of this Agreement, provided that at least thirty (30) days' prior written notice is given to the other party.

c. This Agreement may be terminated by either party upon thirty (30) days' prior written notice if the other party has materially breached the provisions of this Agreement and has not cured such breach within such notice period.

6.3. Following termination of this Agreement, ChemWare shall immediately invoice Customer for all accrued fees and charges and all reimbursable expenses, and Customer shall pay the invoiced amounts immediately upon receipt of such invoices.

6.4. Termination of this Agreement prior to the expiration of the then-current term specified in Exhibit 1 , and pursuant to the terms of this Paragraph, shall not obligate ChemWare to refund any amount paid by Customer for this Agreement nor result in any liability, under any theory of law or equity, of ChemWare to Customer, other than to provide Customer with all currently available Updates through the date of termination.

6.5. Provided that the License Agreement remains in effect, then upon termination of this Agreement Customer shall be permitted to continue use of the Materials pursuant to the terms of the License Agreement. If the License Agreement has terminated, Customer shall take such actions with respect to the Materials as required under the License Agreement upon its termination.

6.6. Notwithstanding termination of this Agreement, all obligations related to Proprietary Rights under Paragraph 4, all disclaimers and limitations under Paragraphs 5 and 6.4, and the terms in Paragraphs 3.5, 7.1, 7.2, 7.3, 7.4 and 7.6 shall remain in effect.

6.7. Unless the provisions of this Agreement are changed by ChemWare prior to renewal, the terms of the Agreement shall renew automatically; in such cases, only the prior term's Exhibit 1 will be superseded by a revised Exhibit 1 for the renewal term.

7.1. Unless written approval is granted by the other party, each party agrees to refrain from soliciting or hiring or contracting or attempting to hire or contract the other's employees or subcontractors who have been involved with the provision of services under this Agreement for a period of one (1) year from termination of such employee's provision of services under this Agreement. In the event this provision is found to conflict with current labor laws or otherwise be unenforceable, or ChemWare grants permission to Customer to hire or contract a ChemWare employee or subcontractor, ChemWare shall be entitled to receive from Customer a "placement fee," in the amount of 25% of the employee's or subcontractor's most recent total annualized compensation.

7.2. Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this Agreement, including its Exhibits, is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be modified except by a written instrument duly executed by the parties hereto. Any term or condition on a printed form which shall be sent to ChemWare from Customer shall have no effect, and shall not modify, add to, or subtract from the obligations and rights set forth herein.

7.3. In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, such decision shall not affect, impair or invalidate the remainder of this Agreement, but shall be confined in its operation to the provision of this Agreement directly involved in the controversy in which the decision was rendered. The invalid or unenforceable provision shall be reformed by the arbitrator so that each party shall have the obligation to perform reasonably alternatively to give the other party the benefit of the bargain. The remaining provisions shall be enforced to the maximum extent permitted by applicable law.

7.4. Neither party may assign any right, remedy, obligation, or liability under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided that ChemWare may, without the consent of Customer, assign all, but not less than all, of its rights and obligations under this Agreement to a third party purchaser of all or substantially all the assets or equity of ChemWare, or with which ChemWare affects a merger or business combination, provided any such third party agrees in writing to assume all obligations of ChemWare under this Agreement. The terms and conditions of this paragraph are subordinate to the terms and conditions of Contract Sections 7.24, General Insurance Requirements and 7.25 Insurance Coverage Requirements.

7.5. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Failure to enforce any of the provisions of this Agreement shall not be construed as a waiver of future rights to enforce the same or other provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as set forth below.

ChemWare, Inc.   Organization

Signed:_____   Signed:_____(SEAL)
Print: Robert J. Whitehead   Print: _____
Title: Vice President   Title: _____
Date: _____   Date: _____

EXHIBIT 1
TO SOFTWARE MAINTENANCE AGREEMENT

A. RATE SCHEDULE FOR SERVICES:

Type and Location of Service	Service Level Rate Schedule
Normal Working Hours, at ChemWare	Covered under this Agreement.
Normal Working Hours, at Customer Site	Other Service[1]; requires Technical Services Agreement.
Emergency Hours, Support Staff Contacted at ChemWare	No additional charge if resolvable without overtime.
Emergency Hours, Requires On-Site Work, Overtime or Support Staff Contacted Off-Site	Requires Customer to establish in advance an Emergency Support Option account.[2]

B. RESPONSE TIME OBJECTIVES:

Service Level	Priority 1	Priority 2	Priority 3	Priority 4	Priority 5
	Production Systems		**Bug Report/ Question**	**Test System/ Implementation**	**Unsupported Item**
Acknowledgement	Immediate	Immediate	10 hours	10 hours	10 hours
Response	1 hour	4 hours	10 hours	2 days	Other Service[2]
Temporary Fix	1 hour	2 days	Not Applicable	Not Applicable	Other Service[2]
Software Update	Next Update or General Release	Next Update or General Release	Next Update or General Release	Not Applicable	Other Service[2]
Description/ Examples	Down production system; Oracle crash; critical sample or data processing halted.	System usability compromised; low priority samples or data processing impacted; form failure or data processing error.	Issue not affecting data delivery; production or parallel testing questions; implementation halted during parallel testing; bug with reason-able workaround or non-critical feature with no workaround; custom work under warranty.	System configuration and control table setup; database information; general implementation questions; enhancement request.	As defined in Paragraph 2.3: printer setup; networking and hardware issues; custom work not under warranty.[2]

C. STANDARD SOFTWARE MAINTENANCE FEES:

The price for this term period, _____ through _____, shall include the following:

☒ Software maintenance fee for the Software and Documentation, at $00.00.

☒ Software maintenance fee for the Database, at $00.00.

A renewal notice and quotation for fees to renew this Agreement shall be provided to Customer no later than sixty (60) days prior to the expiration of the then-current term. An invoice for renewal fees shall be provided to Customer no later than thirty (30) days prior to expiration, and shall be payable on the date the new agreement commences. Unless the provisions of this Agreement are changed by ChemWare prior to renewal, the terms of the Agreement shall renew automatically; in such cases, only the prior term's Exhibit 1 will be superseded by a revised Exhibit 1 for the renewal term.

_____
[1]See Paragraph 2.3 and Technical Services Agreement for applicable terms and rates.
[2]See Paragraph 3.2 and www.chemware.com.

EXHIBIT – F

RELEVANT CORRESPONDENCE

INCORPORATED BY REFERENCE

Letter from ChemWare dated May 9, 2008

Letter from Los Angeles County to ChemWare dated May 8, 2008

Cost Proposal: BAFO from ChemWare dated April 22, 2008

ChemWare Response to ETL Questions dated March 25, 2008

EXHIBIT – G

CONTRACTOR'S PROPOSAL
DATED JANUARY 24, 2008

INCORPORATED BY REFERENCE

EXHIBIT – H

COUNTY'S RFP
DATED DECEMBER 5, 2007

COUNTY'S ADDENDUM #1
DATED JANUARY 14, 2008

INCORPORATED BY REFERENCE

EXHIBIT – I
COUNTY'S ADMINISTRATION

CONTRACT NO. _____

COUNTY PROJECT DIRECTOR:

Name:	Richard K. Iizuka_____
Title:	Chief Deputy_____
Address:	12300 Lower Azusa Rd_____
	Arcadia, CA 91006_____
Telephone:	626-575-5453_____
Facsimile:	626-350-3243_____
E-Mail Address:	riizuka@acwm.lacounty.gov_____

COUNTY PROJECT MANAGER:

Name:	Maggie Xuan_____
Title:	Sr. Industrial Hygiene Chemist_____
Address:	11012B S. Garfield Ave._____
	South Gate, CA 90280_____
Telephone:	562-622-10437_____
Facsimile:	562-622-0440_____
E-Mail Address:	mxuan@acwm.lacounty.gov_____

EXHIBIT – J
CONTRACTOR'S ADMINISTRATION

CONTRACT NO: _____

CONTRACTOR NAME: ChemWare, Inc.

CONTRACTOR'S PROJECT DIRECTOR:

Name: Jason Asher

Title: Director, Professional Services

Address: 900 Ridgefield Drive, Suite 150

                Raleigh, NC 27609

Telephone: 919-855-8716

Facsimile: 919-981-7436

E-Mail Address:jasher@chemware.com

CONTRACTOR'S PROJECT MANAGER

Name: Ben Moore

Title: Project Manager

Address: 900 Ridgefield Drive, Suite 150

                Raleigh, NC 27609

Telephone: 919-855-8716

Facsimile: 919-981-7436

E-Mail Address:bmoore@chemware.com

Notices to Contractor shall be sent to the following:

Name: Robert Whitehead

Title: Vice President

Address: 900 Ridgefield Drive, Suite 150

                Raleigh, NC 27609

Telephone: 919-855-8716

Facsimile: 919-981-7436

E-Mail Address:rwhitehead@chemware.com

EXHIBIT – K

CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT

(Note: This certification is to be executed and returned to County with Contractor's executed Contract. Work cannot begin on the Contract until County receives this executed document.)

CONTRACTOR NAME _____   Contract No._____

GENERAL INFORMATION:

The Contractor referenced above has entered into a contract with the County of Los Angeles to provide certain services to the County. The County requires the Corporation to sign this Contractor Acknowledgement and Confidentiality Agreement.

CONTRACTOR'S ACKNOWLEDGEMENT:

Contractor understands and agrees that the Contractor employees, consultants, Outsourced Vendors and independent contractors (Contractor's Staff) that will provide services in the above referenced agreement are Contractor's sole responsibility. Contractor understands and agrees that Contractor's Staff must rely exclusively upon Contractor for payment of salary and any and all other benefits payable by virtue of Contractor's Staff's performance of work under the above-referenced contract.

Contractor understands and agrees that Contractor's Staff are not employees of the County of Los Angeles for any purpose whatsoever and that Contractor's Staff do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles by virtue of my performance of work under the above-referenced contract. Contractor understands and agrees that Contractor's Staff will not acquire any rights or benefits from the County of Los Angeles pursuant to any agreement between any person or entity and the County of Los Angeles.

CONFIDENTIALITY AGREEMENT:

Contractor and Contractor's Staff may be involved with work pertaining to services provided by the County of Los Angeles and, if so, Contractor and Contractor's Staff may have access to confidential data and information pertaining to persons and/or entities receiving services from the County. In addition, Contractor and Contractor's Staff may also have access to proprietary information supplied by other vendors doing business with the County of Los Angeles. The County has a legal obligation to protect all such confidential data and information in its possession, especially data and information concerning health, criminal, and welfare recipient records. Contractor and Contractor's Staff understand that if they are involved in County work, the County must ensure that Contractor and Contractors' Staff, will protect the confidentiality of such data and information. Consequently, Contractor must sign this Confidentiality Agreement as a condition of work to be provided by Contractor's Staff for the County.

Contractor and Contractor's Staff hereby agrees that they will not divulge to any unauthorized person any data or information obtained while performing work pursuant to the above-referenced contract between Contractor and the County of Los Angeles. Contractor and Contractor's Staff agree to forward all requests for the release of any data or information received to County's Project Manager.

Contractor and Contractor's Staff agree to keep confidential all health, criminal, and welfare recipient records and all data and information pertaining to persons and/or entities receiving services from the County, design concepts, algorithms, programs, formats, documentation, Contractor proprietary information and all other original materials produced, created, or provided to Contractor and Contractor's Staff under the above-referenced contract. Contractor and Contractor's Staff agree to protect these confidential materials against disclosure to other than Contractor or County employees who have a need to know the information. Contractor and Contractor's Staff agree that if proprietary information supplied by other County vendors is provided to me during this employment, Contractor and Contractor's Staff shall keep such information confidential.

Contractor and Contractor's Staff agree to report any and all violations of this agreement by Contractor and Contractor's Staff and/or by any other person of whom Contractor and Contractor's Staff become aware.

Contractor and Contractor's Staff acknowledge that violation of this agreement may subject Contractor and Contractor's Staff to civil and/or criminal action and that the County of Los Angeles may seek all possible legal redress.

SIGNATURE: _____   DATE: _____/_____/_____

PRINTED NAME: _____

POSITION: _____

EXHIBIT - L
SAFELY SURRENDERED BABY LAW

Posters and Fact Sheets are available in English and Spanish for printing
purposes at the following website:

www.babysafela.org

No shame.

No blame.

No names.

Newborns can be safely given up at any Los Angeles County hospital emergency room or fire station.

In Los Angeles County:
1-877-BABY SAFE
1-877-222-9723
www.babysafela.org

State of California
Gray Davis, Governor

Health and Human Services Agency
Grantland Johnson, Secretary

Department of Social Services
Rita Saenz, Director

Los Angeles County Board of Supervisors
Gloria Molina, Supervisor, First District
Yvonne Brathwaite Burke, Supervisor, Second District
Zev Yaroslavsky, Supervisor, Third District
Don Knabe, Supervisor, Fourth District
Michael D. Antonovich, Supervisor, Fifth District

This initiative is also supported by First 5 LA and INFO LINE of Los Angeles.

What is the Safely Surrendered Baby Law?

California's Safely Surrendered Baby Law allows parents to give up their baby confidentially. As long as the baby has not been abused or neglected, parents may give up their newborn without fear of arrest or prosecution.

How does it work?

A distressed parent who is unable or unwilling to care for a baby can legally, confidentially and safely give up a baby within three days of birth. The baby must be handed to an employee at a Los Angeles County emergency room or fire station. As long as the child shows no signs of abuse or neglect, no name or other information is required. In case the parent changes his or her mind at a later date and wants the baby back, workers will use bracelets to help connect them to each other. One bracelet will be placed on the baby, and a matching bracelet will be given to the parent.

What if a parent wants the baby back?

Parents who change their minds can begin the process of reclaiming their newborns within 14 days. These parents should call the Los Angeles County Department of Children and Family Services at 1-800-540-4000.

Can only a parent bring in the baby?

In most cases, a parent will bring in the baby. The law allows other people to bring in the baby if they have legal custody.

Does the parent have to call before bringing in the baby?

No. A parent can bring in a baby anytime, 24 hours a day, 7 days a week so long as the parent gives the baby to someone who works at the hospital or fire station.

Does a parent have to tell anything to the people taking the baby?

No. However, hospital personnel will ask the parent to fill out a questionnaire designed to gather important medical history information, which is very useful in caring for the child. Although encouraged, filling out the questionnaire is not required.

What happens to the baby?

The baby will be examined and given medical treatment, if needed. Then the baby will be placed in a pre-adoptive home.

What happens to the parent?

Once the parent(s) has safely turned over the baby, they are free to go.

Why is California doing this?

The purpose of the Safely Surrendered Baby Law is to protect babies from being abandoned by their parents and potentially being hurt or killed. You may have heard tragic stories of babies left in dumpsters or public bathrooms. The parents who committed these acts may have been under severe emotional distress. The mothers may have hidden their pregnancies, fearful of what would happen if their families found out. Because they were afraid and had nowhere to turn for help, they abandoned their infants. Abandoning a baby puts the child in extreme danger. It is also illegal. Too often, it results in the baby's death. Because of the Safely Surrendered Baby Law, this tragedy doesn't ever have to happen in California again.

A baby's story

At 8:30 a.m. on Thursday, July 25, 2002, a healthy newborn baby was brought to St. Bernardine Medical Center in San Bernardino under the provisions of the California Safely Surrendered Baby Law. As the law states, the baby's mother did not have to identify herself. When the baby was brought to the emergency room, he was examined by a pediatrician, who determined that the baby was healthy and doing fine. He was placed with a loving family while the adoption process was started.

Every baby deserves a chance for a healthy life. If someone you know is considering abandoning a newborn, let her know there are other options.

It is best that women seek help to receive proper medical care and counseling while they are pregnant. But at the same time, we want to assure parents who choose not to keep their baby that they will not go to jail if they deliver their babies to safe hands in any Los Angeles County hospital ER or fire station.

¿Qué es la Ley de Entrega de Bebés Sin Peligro?

La Ley de Entrega de Bebés Sin Peligro de California permite a los padres entregar a su recién nacido confidencialmente. Siempre que el bebé no haya sufrido abuso ni negligencia, padres pueden entregar a su recién nacido sin temor a ser arrestados o procesados.

¿Cómo funciona?

El padre/madre con dificultades que no pueda o no quiera cuidar de su recién nacido puede entregarlo en forma legal, confidencial y segura, dentro de los tres días del nacimiento. El bebé debe ser entregado a un empleado de una sala de emergencias o de un cuartel de bomberos del Condado de Los Angeles. Siempre que el bebé no presente signos de abuso o negligencia, no será necesario suministrar nombres ni información alguna. Si el padre/madre cambia de opinión posteriormente y desea recuperar a su bebé, los trabajadores utilizarán brazaletes para poder vincularlos. El bebé llevará un brazalete y el padre/madre recibirá un brazalete igual.

¿Qué pasa si el padre/madre desea recuperar a su bebé?

Los padres que cambien de opinión pueden empezar el proceso de reclamar a su recién nacido dentro de los 14 días. Estos padres deberán llamar al Departamento de Servicios para Niños y Familias (Department of Children and Family Services) del Condado de Los Angeles, al 1-800-540-4000.

¿Sólo los padres podrán llevar al recién nacido?

En la mayoría de los casos, los padres son los que llevan al bebé. La ley permite que otras personas lleven al bebé si tienen la custodia legal del menor.

¿Los padres deben llamar antes de llevar al bebé?

No. El padre/madre puede llevar a su bebé en cualquier momento, las 24 horas del día, los 7 días de la semana, mientras que entregue a su bebé a un empleado del hospital o de un cuartel de bomberos.

¿Es necesario que el padre/madre diga algo a las personas que reciben al bebé?

No. Sin embargo, el personal del hospital le pedirá que llene un cuestionario con la finalidad de recabar antecedentes médicos importantes, que resultan de gran utilidad para los cuidados que recibirá el bebé. Es recomendado llenar este cuestionario, pero no es obligatorio hacerlo.

¿Qué ocurrirá con el bebé?

El bebé será examinado y, de ser necesario, recibirá tratamiento médico. Luego el bebé se entregará a un hogar preadoptivo.

¿Qué pasará con el padre/madre?

Una vez que los padres hayan entregado a su bebé en forma segura, serán libres de irse.

¿Por qué California hace esto?

La finalidad de la Ley de Entrega de Bebés Sin Peligro es proteger a los bebés del abandono por parte de sus padres y de la posibilidad de que mueran o sufran daños. Usted probablemente haya escuchado historias trágicas sobre bebés abandonados en basureros o en baños públicos. Es posible que los padres que cometieron estos actos hayan estado atravesando dificultades emocionales graves. Las madres pueden haber ocultado su embarazo, por temor a lo que pasaría si sus familias se enteraran. Abandonaron a sus recién nacidos porque tenían miedo y no tenían adonde recurrir para obtener ayuda. El abandono de un recién nacido lo pone en una situación de peligro extremo. Además es ilegal. Muy a menudo el abandono provoca la muerte del bebé. Ahora, gracias a la Ley de Entrega de Bebés Sin Peligro, esta tragedia ya no debe suceder nunca más en California.

Historia de un bebé

A las 8:30 a.m. del jueves 25 de julio de 2002, se entregó un bebé recién nacido saludable en el St. Bernardine Medical Center en San Bernardino, en virtud de las disposiciones de la Ley de Entrega de Bebés Sin Peligro. Como lo establece la ley, la madre del bebé no se tuvo que identificar. Cuando el bebé llegó a la sala de emergencias, un pediatra lo revisó y determinó que el bebé estaba saludable y no tenía problemas. El bebé fue ubicado con una buena familia, mientras se iniciaban los trámites de adopción.

Cada recién nacido merece una oportunidad de tener una vida saludable. Si alguien que usted conoce está pensando en abandonar a un recién nacido, infórmele qué otras opciones tiene.

Es mejor que las mujeres busquen ayuda para recibir atención médica y asesoramiento adecuado durante el embarazo. Pero al mismo tiempo, queremos asegurarles a los padres que optan por no quedarse con su bebé que no irán a la cárcel si dejan a sus bebés en buenas manos en cualquier sala de emergencia de un hospital o en un cuartel de bomberos del Condado de Los Angeles.

CIO ANALYSIS
AGREEMENT WITH CHEMWARE, INC. FOR A
LABORATORY INFORMATION MANAGEMENT SYSTEM (LIMS)

CIO RECOMMENDATION: ☒ APPROVE   ☐ APPROVE WITH MODIFICATION
☐ DISAPPROVE

Contract Type:
☒ New Contract   ☐ Contract Amendment   ☐ Contract Extension
☐ Sole Source Contract   ☐ Hardware Acquisition   ☐ Other

New/Revised Contract Term: Base Term: 48 Months   # of Option Months: 24

Contract Components:
☒ Software   ☐ Hardware   ☐ Telecommunications
☒ Professional Services

Project Executive Sponsor: Kurt Floren, Agricultural Commr/Director, Weights & Measurers

Budget Information :

Y-T-D Contract Expenditures	$ 0
Requested Contract Amount	559,562
Aggregate Contract Amount	$ 559,562

Project Background:

Yes	No	Question
☐	☒	Is this project legislatively mandated?
☐	☒	Is this project subvented? If yes, what percentage is offset?
☒	☐	Is this project/application applicable to (shared use or interfaced) other departments? If yes, name the other department(s) involved. Department of Public Works; Wastewater and Watershed Management Divisions.

Strategic Alignment:

Yes	No	Question
☒	☐	Is this project in alignment with the County of Los Angeles Strategic Plan?
☒	☐	Is this project consistent with the currently approved Department Business Automation Plan?
☒	☐	Does the project's technology solution comply with County of Los Angeles IT Directions Document?
☒	☐	Does the project technology solution comply with preferred County of Los Angeles IT Standards?
☒	☐	This contract and/or project and its milestone deliverables must be entered into the Information Technology Tracking System (ITTS).

Project/Contract Description:

The Agricultural Commissioner/Weights and Measures Department (ACWM) is requesting Board approval of a proposed Agreement with ChemWare, Inc. (ChemWare) for a Laboratory Information Management System (LIMS) for the Department's Environmental Toxicology Laboratory (ETL). The Agreement includes ChemWare's commercial-off-the-shelf (COTS) laboratory software package, HORIZON LIMS, and professional services required for its successful configuration, training, and implementation as well as three years of software maintenance and support. The contract term is four years effective upon Board approval with two one-year options for a maximum contract amount of $559,562.

Background:

The mission of ACWM is to provide environmental and consumer protection through the enforcement of laws and County ordinances in the areas of health, safety and consumer concerns. The ETL, with a staff of 24, is one of six bureaus of ACWM. It is organized into two primary sections: Inorganic Testing/Field Section and Organic/Microbiology Testing Section. The ETL routinely performs chemical analysis on drinking water, wastewater, produce, plants, paint chips and soil. The majority of samples are received from the Los Angeles County Department of Public Works' Watershed Management Division and Waterworks Division and the Los Angeles County Department of Health Services Lead Program.

The ACWM identified in its FY 2007-2008 Business Automation Plan the need to improve the efficiency and capacity of the ETL by acquiring and implementing a proven LIMS software system. Currently, the ETL uses PC spreadsheet software to automate some logging and billing functions. However, it provides only limited automation within the lab, and does not effectively meet current operational, regulatory and data reporting requirements.

Project Justification/Benefits:

ETL personnel conducted research regarding the availability of COTS LIMS software for environmental labs and found that there were numerous COTS applications available. ETL determined that by acquiring and implementing a comprehensive LIMS that it should be able to improve:

- efficiency of laboratory operations, especially by automating the login and reporting processes;
- quality of laboratory data;
- customer service, including response times; and
- laboratory work capacity.

The LIMS project will utilize ISD for server hardware hosting and backup/recovery. Virtualization software will minimize the number of physical servers needed to host the LIMS software.

Project Metrics:

A nine-month implementation plan has been proposed. The first task of the implementation project will be to add additional detail to the implementation plan. In addition, ETL may develop Key Performance Indicators (KPIs), and measure the impact after implementation of the LIMS.

Impact On Service Delivery Or Department Operations, If Proposal Is Not Approved:

If the proposed Agreement with ChemWare is not approved, it will be much more difficult for ETL to improve efficiency, capacity and service to the public and other County departments, including DPW. In addition, several DPW divisions may be required to implement their own software solutions.

Alternatives Considered:

ACWM considered leveraging LIMS software deployed by laboratories at Department of Health Services and Department of Public Health, but determined that the requirements for an environmental lab system were sufficiently unique to justify a separate implementation. Custom software development was not considered a viable alternative given the availability of proven COTS software systems. As a result of the competitive selection process, a total of seven LIMS vendors were considered before ETL selected ChemWare.

Project Risks:

Typical risks for COTS software implementation projects include the following:

- Software functionality does not meet current or future business requirements;
- Software vendor does not have the resources to support the implementation or the ongoing use of the software;
- Lack of department executive/management support for the project;
- Lack of sufficient departmental resources for implementation and ongoing administration of the system;
- Lack of user support for the project; and
- Schedule and/or cost overruns.

Risk Mitigation Measures:

Each of the potential project risks have been addressed by the LIMS project to date, and will continue to be managed during implementation, as follows:

- Users developed comprehensive functional and technical requirements, which were incorporated into the RFP and the vendor contract. In addition, the software was demonstrated to ACWM and ETL management and staff.
- ChemWare reference checks were very positive, including the Sanitation Districts of Los Angeles County. ChemWare has been in business for 17 years.
- Active executive and management project participants include the Agricultural Commissioner, Chief Deputy, Administrative Deputy and ETL Director.

- Executive management has explicitly committed to providing the internal personnel resources identified by ChemWare needed to support system implementation and ongoing operations. This includes agreement to support the initial and ongoing training, some of which takes place at ChemWare's offices offsite.
- Key members of the ETL staff actively participated throughout the LIMS project to date, and unanimously supported the selection of ChemWare.
- Project costs and schedule have been established and reviewed prior to completing the Agreement. Weekly project meetings between ACWM and ChemWare will take place throughout the implementation in order to manage cost, schedule and all other implementation elements. Weekly project status memos will be produced by ChemWare. The Chief Information Office (CIO) will provide ongoing project management assistance.

Financial Analysis:

The maximum contract sum is $559,562. The cost breakdown is identified in the table below:

Description	Amount
Software Licenses	$ 164,561
Implementation Services	262,400
Contingency Pool Dollars	42,696
Software Maintenance and Support (3 years)	89,905
Total	$ 559,562

If the Department chooses to exercise the two one-year options for software maintenance and support it will cost an additional $63,691 and increase the maximum to $623,253.

Annual recurring costs for Internal Services Department (ISD) hosting are $61,139. ACWM represents that funding for the implementation is included in ACWM's FY 2008-09 Adopted Budget.

CIO Concerns:

None.

CIO Recommendations:

My Office recommends Board approval of the Amendment current the existing Agreement.

CIO APPROVAL

Date Received: 7/8/2008

Prepared by: _John Clunstein_

Date: 7/14/2008

Approved: _Greg Meland_

Date: 7/16/2008