

SOFTWARE LICENSE AND SOFTWARE MAINTENANCE AGREEMENT

BETWEEN

PANORAMIC SOFTWARE CORPORATION

AND

NAPA COUNTY HEALTH AND HUMAN SERVICES AGENCY

Table of Contents

I. SOFTWARE LICENSE AGREEMENT	3
RECITALS	ERROR! BOOKMARK NOT DEFINED.
AGREEMENT	3
1 <i>CERTAIN DEFINITIONS</i>	3
2 <i>GRANT OF LICENSE</i>	3
3 <i>TERM</i>	4
4 <i>ACTIVATION, TRAINING and SUPPORT</i>	5
5 <i>COMPENSATION</i>	5
6 <i>WARRANTY</i>	5
7 <i>CONFIDENTIALITY</i>	5
8 <i>LIABILITY</i>	6
9 <i>TERMINATION</i>	7
10 <i>GENERAL PROVISIONS</i>	7
II. SOFTWARE MAINTENANCE AGREEMENT	9
1. TERM	9
2. RENEWAL	9
3. GENERAL MAINTENANCE SERVICES	9
4. CUSTOMER SYSTEM RESPONSIBILITIES.....	10
5. ADDITIONAL SERVICES/MAINTENANCE	10
6. CHARGES TO CUSTOMER.	11
7. PAYMENT.	11
8. TERMINATION	12
9. DISCLAIMER OF WARRANTY.....	12
10. LIMITATION OF LIABILITY.	12
11. GENERAL	13
12. SCHEDULE A	ERROR! BOOKMARK NOT DEFINED.

SOFTWARE LICENSE AND SOFTWARE MAINTENANCE AGREEMENTS

This SOFTWARE LICENSE AND SOFTWARE MAINTENANCE AGREEMENT ("Agreement") is made and entered into as of July 1, 2024 by and **between PANORAMIC SOFTWARE CORPORATION**, a California corporation ("**PANOSOFT**"), and **NAPA COUNTY HEALTH AND HUMAN SERVICES AGENCY** ("**CUSTOMERCUSTOMER**").

RECITALS

A. **PANOSOFT** has developed and owns all rights in and to the computer software and documentation referred to herein as the "**Software**".

B. **CUSTOMER** wishes to acquire from **PANOSOFT**, and **PANOSOFT** is willing to grant to **CUSTOMER**, certain rights with respect to the Software, on the terms and conditions set forth herein.

AGREEMENT

In consideration of the mutual agreements contained herein, the parties agree as follows:

1 CERTAIN DEFINITIONS

1.1 Software. As used herein, the term "Software" shall mean the computer application software known to **PANOSOFT** as the base system "PA-Pro Web", and all coding, (object code and source code), tapes, discs, modules, and similar materials comprising such software. The Software is described more specifically in the Documentation (defined below).

1.2 System. As used herein, the term "System" shall mean the Software. Reference to the System shall include any component thereof. All modifications and enhancements to the System shall be deemed to be part of the System as defined herein and shall be subject to all of the terms and conditions set forth herein.

1.3 License. As used herein, the term "License" shall have the meaning assigned to such term in [Section 2.1](#).

1.4 Access. Access to the System will be provided to **CUSTOMER** via the Internet by **PANOSOFT** with the sole purpose and intention of **CUSTOMER** performing services as required for **CUSTOMER's** stated business. **CUSTOMER** is solely responsible for any and all data entered and in turn provided to local, state and federal agencies as well as any other individual or entity.

2 GRANT OF LICENSE

2.1 Grant. **PANOSOFT** hereby grants to **CUSTOMER** a license with respect to the Software, subject to the terms and conditions set forth herein (the "License").

2.2 Scope. The License granted herein shall consist solely of: (i) the non-exclusive, non-transferable right of **CUSTOMER** to access the **PANOSOFT** System via the internet to provide services solely in connection with **CUSTOMER's** existing business; (ii) the non-exclusive, non-transferable right of **CUSTOMER** to copy the **CUSTOMER** data solely for backup purposes; and (iii) the right to receive and use the online Documentation. The License granted herein shall

not entitle **CUSTOMER** to access the **PANOSOFT** System other than in connection with **CUSTOMER**'s existing business; or (c) to permit any person or entity other than **CUSTOMER** and its employees to access the system; or (d) to copy or access the **CUSTOMER** data in any manner or in any form other than solely for backup purposes; or (e) to modify or enhance the System in any respect; or (f) to transfer any right in the Software to any other person or entity.

2.3 Ownership. **CUSTOMER** acknowledges and agrees that, as between **PANOSOFT** and **CUSTOMER**, title and full ownership of all rights in and to the System and all other materials provided to **CUSTOMER** hereunder shall remain with **PANOSOFT**. **CUSTOMER** further acknowledges and agrees that the System, and all ideas and expressions contained therein, are proprietary information and trade secrets of **PANOSOFT**.

2.4 In the event Contractor either: (i) ceases to transact business as a State of California licensed vendor; or (ii) discontinues supporting any software product licensed to **CUSTOMER** (the "Licensed Software") during the term of any such license, **CUSTOMER** shall have the option to purchase a perpetual, non-exclusive, nontransferable license to access, utilize, and modify the source code associated with the Licensed Software solely in connection with its operation and maintenance of the NAPA COUNTY system (the "Expanded License"). In addition, Panoramic will deploy a private cloud environment hosting an operational version of napaPG and all its data. The ownership of this environment will be handed to **CUSTOMER** along with source code and documentation. The Expanded License shall include the most recent supported version of each component or upgrade, together with any associated documentation. The purchase price for the Expanded License shall be 5 x annual license and support (\$105,000).

CUSTOMER may exercise its option to purchase the Expanded License by submitting a dated written request on its letterhead, which shall be signed by an authorized **CUSTOMER** representative. Contractor shall provide **CUSTOMER** with the source code and associated documentation within 90 days following its receipt of the written notice.

Notwithstanding the foregoing, it is understood and agreed that the Licensed Software includes components subject to third party licenses that may not be subject to transfer. **CUSTOMER** shall be solely responsible for obtaining any such licenses.

3 TERM

3.1 Duration. The License granted herein shall be effective as of the Activation Date (defined in [Section 4.1](#)) and shall remain in effect perpetually unless terminated as provided in [Section 3.2](#).

3.2 Termination. **CUSTOMER** may at any time terminate the License granted herein if **PANOSOFT** has breached a material provision of this Agreement and has failed to cure such breach within sixty (60) days after receiving written notice thereof. **CUSTOMER** upon ninety (90) days notice may terminate the license granted herein in the event of a change in the nature, scope, or requirements of **CUSTOMER**'s program or operations. **PANOSOFT** may at any time terminate the License granted herein if **CUSTOMER** has breached a material provision of this Agreement (which shall include without limitation Sections [5](#), [7](#), and [8](#)) and has failed to cure such breach within sixty (60) days after receiving written notice thereof.

3.3 Events upon Termination. Upon any termination of the License granted herein, the parties shall comply with the provisions of [Section 9](#).

4 SUPPORT

4.1 Support Services. **PANOSOFT** shall provide to **CUSTOMER** support services relating to the System described in Part II. Of this contract, entitled "[Maintenance Agreement](#)".

5 COMPENSATION

5.1 License Fee. As compensation for the License and Maintenance granted herein, **CUSTOMER** shall pay to **PANOSOFT** a fee in accordance with the schedule set forth in [Schedule A](#) attached hereto.

6 WARRANTY

6.1 General Warranty. **PANOSOFT** warrants to **CUSTOMER** that **PANOSOFT** has full right and authority to grant to **CUSTOMER** the License herein and that **CUSTOMER's** use of the System in accordance with the License herein shall not infringe any United States copyright or patent.

6.2 Performance. **PANOSOFT** warrants to **CUSTOMER** that the **PG-Pro Web** application software contracted for by **CUSTOMER** will perform in substantial compliance with the base **PG-Pro Web** system. There are no express or implied warranties, including the implied warranty of merchantability and fitness for a particular purpose not specifically set forth in this agreement, with respect to this agreement, or the software or other products, documentation or other products.

6.3 Sole and Exclusive Remedy. If **CUSTOMER** believes a product does not conform to the above warranties, **CUSTOMER** shall notify **PANOSOFT** in writing during the first three months after the Activation Date. **PANOSOFT** will use commercially reasonable efforts to repair or replace the software medium or bring the Licensed Programs into substantial conformance with the applicable specification, remedy within 30 days of the **CUSTOMER's** written notice, at no additional cost to the **CUSTOMER**.

7 CONFIDENTIALITY

7.1 CUSTOMER Obligations. **CUSTOMER** acknowledges that, by virtue of the License granted herein, it will have access to certain proprietary information and trade secrets of **PANOSOFT**, including without limitation proprietary information and trade secrets relating to the System (collectively, the "Confidential Matters"). **CUSTOMER** agrees that the Confidential Matters, and all information comprising or relating to the Confidential Matters, shall be deemed confidential and proprietary to **PANOSOFT**, shall be held in trust by **CUSTOMER**, and shall be safeguarded by **CUSTOMER** to the same extent that **CUSTOMER** safeguards confidential matters relating to its own operation which in no event shall be less than the safeguards that a reasonably prudent person or business would exercise under similar circumstances.

7.2 To these ends, **CUSTOMER** agrees to take such steps as may be necessary to ensure that neither the Confidential Matters, nor any information comprising or relating to the Confidential Matters, are used by **CUSTOMER** or any of its employees, agents, or

representatives in any manner or for any purpose other than as provided herein or are made available by **CUSTOMER** or any of its employees, agents, or representatives to any other person or entity, without the prior written consent of **PANOSOFT**. Such steps shall include without limitation the execution by **CUSTOMER's** employees, agents and representatives having access to the Confidential Matters of binding agreements to maintain confidentiality in accordance with this provision.

7.3 Exceptions. **CUSTOMER's** obligations pursuant to [Section 7.1](#) shall not apply to: (i) information which is in the public domain, other than as a result of any breach of this Agreement; or (ii) information which **CUSTOMER** is obligated to disclose pursuant to the lawful order of any court or government instrumentality in the United States, but only to the extent required by such order.

7.4 PANOSOFT Obligations. **PANOSOFT** acknowledges that, by virtue of the **CUSTOMER**/developer relationship established herein, it will have access to certain confidential information relating to the **CUSTOMER's** clients and activities. **PANOSOFT** agrees that all information relating to the activities and the clients of **CUSTOMER** shall be deemed confidential and proprietary to **CUSTOMER**, shall be held in trust by **PANOSOFT**, and shall be safeguarded by **PANOSOFT** to the same extent that **PANOSOFT** safeguards confidential matters relating to its own clients and activities which in no event shall be less than the safeguards that a reasonably prudent person or business would exercise under similar circumstances.

7.4.1 To these ends, **PANOSOFT** agrees to take such steps as may be necessary to ensure that no information comprising or relating to the clients or activities of **CUSTOMER** are used by **PANOSOFT** or any of its employees, agents, or representatives in any manner or for any purpose other than as provided herein or are made available by **PANOSOFT** or any of its employees, agents, or representatives to any other person or entity, without the prior written consent of **CUSTOMER**. Such steps shall include without limitation the execution by **PANOSOFT's** employees, agents and representatives having access to the **CUSTOMER's** confidential information of binding agreements which impose on such persons the same obligations which are imposed on **PANOSOFT** under this section.

7.4.2 **CUSTOMER Data.** **PANOSOFT** will be responsible for the storage and security of **CUSTOMER** data including data management and protection. Data access will be accomplished via Secure Socket Layer (SSL). **CUSTOMER** is solely responsible for the content of data.

7.5 Exceptions. **PANOSOFT's** obligations pursuant to [Section 7.4](#) shall not apply to: (i) information which is in the public domain, other than as a result of any breach of this Agreement; or (ii) information which **PANOSOFT** is obligated to disclose pursuant to the lawful order of any court or government instrumentality in the United States, but only to the extent required by such order.

8 LIABILITY

8.1 Indemnification by **PANOSOFT**. **PANOSOFT** shall indemnify and hold harmless **CUSTOMER**, and its directors, officers, and employees from and against any and all liability, losses, damages, and expenses (including without limitation reasonable attorney's fees and costs) incurred by **CUSTOMER**, or its directors, officers, or employees which arise out of or

relate to **PANOSOFT's** breach of any provision hereof.

8.2 Indemnification by CUSTOMER. **CUSTOMER** shall indemnify and hold harmless **PANOSOFT**, and its directors, officers, and employees from and against any and all liability, losses, damages, and expenses (including without limitation reasonable attorney's fees and costs) incurred by **PANOSOFT**, or its directors, officers, or employees which arise out of or relate to **CUSTOMER's** breach of any provision hereof.

8.3 Limitations on Liability Notwithstanding the provisions of [Sections 8.1](#) and [8.2](#), the liability of the parties and the remedies of the parties shall be limited as follows:

8.3.1 Uncontrollable Events. Neither party shall bear any liability arising out of events beyond the control of such party, including without limitation acts of God, acts of a public enemy, fires, floods, storms, earthquakes, riots, strikes, lock outs, wars, restraints of government, court orders, power shortages or outages, equipment or communications malfunctions, nonperformance by any third parties, or other events which cannot be controlled or prevented with reasonable diligence by such party.

8.3.2 Consequential Damages. Neither party shall bear any liability for special, consequential, incidental, or indirect damages (including without limitation loss of anticipated income or profits, loss of goodwill, or other loss or damages), even if such party has been informed of the possibility of such damages.

8.3.3 Value of Contract. In no event shall the aggregate liability of **PANOSOFT** to **CUSTOMER** or **CUSTOMER** to **PANOSOFT** (regardless of the form, whether in contract or tort) exceed the amount of the fee paid by **CUSTOMER** to **PANOSOFT** pursuant to [Section 5.1](#).

8.3.4 Passage of Time. In no event shall a cause of action be asserted by **CUSTOMER** against **PANOSOFT** or **PANOSOFT** against **CUSTOMER** which arises out of or relates to any event, condition, breach, or claim occurring more than one (1) year prior to the filing of such cause of action.

9 TERMINATION

9.1 Upon any termination of the License granted herein: (i) **CUSTOMER** shall immediately cease any and all use of System. Notwithstanding the preceding sentence, if **CUSTOMER** has terminated this Agreement in accordance with [Section 3.2](#) and **CUSTOMER** has paid to **PANOSOFT** the full amount of the fee provided in [Section 5.1](#) and all other amounts then owing to **PANOSOFT** under [Section 5](#), then **CUSTOMER** may continue to use the System for the time period paid, subject to the provisions of [Sections 2, 7, 8, and 10](#).

10 GENERAL PROVISIONS

10.1 Compliance with Laws. Each party shall, in performing its obligations hereunder, comply with all laws, rules, regulations and governmental orders applicable to such party.

10.2 Amendments. This agreement may be amended or supplemented from time to time, but only by a written instrument executed by **CUSTOMER** and **PANOSOFT**. As used herein, the

term "Agreement" shall include any future amendments or supplements made hereto.

10.3 Construction. The terms "Section" or "Sections" used herein shall refer to the section or sections of this Agreement. The titles and subtitles used herein are not a part of this Agreement, are included solely for convenient reference to the Sections hereof, and have no bearing on the terms and conditions hereof. The singular used herein shall include the plural, and the plural used herein shall include the singular.

10.4 Recitals and Schedules. The Recitals to this Agreement and the Schedules attached to this Agreement shall be considered part of the Agreement and are incorporated herein by this reference.

10.5 Survival. The provisions of Sections [5](#), [6](#), [7](#), [8](#), [9](#), and [10](#) shall survive any termination or expiration of this Agreement and the License granted herein.

10.6 Relation between the Parties. This Agreement shall not be construed to constitute either party as the agent or legal representative of the other for any purpose whatsoever. Neither party is granted any express or implied right or authority by the other party to assume or create any obligation or responsibility on behalf of or in the name of the other party, or to bind the other party in any manner or thing whatsoever.

10.7 Assignment. Neither this Agreement, the License granted herein nor any other right or obligation hereunder shall be assigned, delegated or otherwise transferred by either party, without the prior written consent of the other party. Notwithstanding the preceding sentence, **PANOSOFT** may assign, delegate, or otherwise transfer this Agreement, the License granted herein, and **PANOSOFT's** rights and obligations hereunder to any affiliate of **PANOSOFT** or to any successor of **PANOSOFT's** business or any part thereof, without the prior written consent of **CUSTOMER**.

10.8 Successors. Subject to the restrictions in Section 10.8, this Agreement shall bind and inure to benefit of the respective assigns, successors, representatives and affiliates of the parties.

10.9 Waiver. The failure of either party to insist upon strict performance of any provision of this Agreement when and as called for or due, or to exercise any right provided for in this Agreement, shall not be deemed a waiver or relinquishment for the future of any such provision or right, and no waiver of any provision or right shall affect the right of the waiving party to enforce or exercise any other provision or right in this Agreement.

10.10 Certain Remedies. The parties acknowledge and agree that any breach by **CUSTOMER** of [Section 7](#) of this Agreement would cause irreparable damage to **PANOSOFT**, the exact amount of which would be impossible to ascertain, and for that reason, **PANOSOFT** shall be entitled to injunctive relief in the event of any actual or threatened breach of [Section 7](#). Such relief shall be in addition to any remedies to which **PANOSOFT** may be entitled under law or otherwise.

10.11 Governing Law. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California, U.S.A., without regard to such state's choice of laws.

10.12 Severability. If any of the provisions of this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions

hereof shall not be affected thereby and shall remain enforceable to the fullest extent permitted by law.

10.13 Notices. Any notice, payment or other communication required or permitted under this Agreement shall be in writing and shall be deemed to be properly given either: (i) upon personal delivery; or (ii) two (2) calendar days after being sent by facsimile, e-mail, telex, or telegram, or five (5) calendar days after being deposited in the mail (registered or certified first class, postage prepaid), addressed to the parties at their addresses as set forth in this contract, or to such other addresses as the parties shall furnish by written notice.

10.14 Enforcement. If either party shall bring an action of any nature against the other party by reason of the breach of any provision of this Agreement, or otherwise arising out of this Agreement, whether for declaratory or other relief, the prevailing party in such action shall be entitled to such party's reasonable expenses relating to such action, including its costs of suit and attorneys' fees.

10.15 Entire Agreement. The parties acknowledge that each has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter contained herein, and supersedes all prior or contemporaneous proposals, understandings, representations, conditions, warranties, covenants and other communications between the parties, whether oral or written, relating to such subject matter.

10.16 Venue. For any action against any party by reason of breach of this agreement is in **The County of Napa**.

II. SOFTWARE MAINTENANCE AGREEMENT

11. Term. This agreement shall be effective for the period of July 1, 2024 to June 30, 2025

12. Renewal. At the end of the term in item 1 above, this Agreement may be renewed by agreement of both parties and may be subject to new terms and conditions upon renewal. If **CUSTOMER** intends not to renew, notice of cancellation must be provided at least sixty (60) days prior to the end of the effective period. If **PANOSOFT** is unwilling or unable to continue to provide the services as set forth in this Agreement, **CUSTOMER** will be notified thereof at least 60 (60) days prior to the renewal date. Panoramic Software will provide an up-to-date database copy.

13. General Maintenance Services. **PANOSOFT** will provide to **CUSTOMER** the following types of services under this Agreement on all weekdays, Monday through Friday, from 8:30 to 4:30 Pacific Standard Time, excluding holidays.

13.1 Telephone Support. **PANOSOFT** staff will be available to answer questions by telephone concerning **PG-Pro Web** application software.

13.2 PG-Pro Web. System Updates to **PG-Pro Web** will be provided to fix application software errors or improve security. Such updates may include changes necessary to meet federal, state, and county mandated requirements. All software enhancements will be provided at the discretion of **PANOSOFT**.

13.3 Error Correction. An error is defined as any aspect of the software performance which does not conform substantially to the specifications developed during the implementation project. **CUSTOMER** identified errors will be corrected and brought into conformance with the user documentation.

14. **CUSTOMER SYSTEM RESPONSIBILITIES.** **CUSTOMER** is responsible for performing the following duties relating to the successful operation of PG-Pro Web. PANOSOFT will provide assistance to **CUSTOMERs** in performance of **CUSTOMER System Responsibilities** at an additional charge. PANOSOFT recommends that **CUSTOMER** appoint a System Administrator who will be responsible for **CUSTOMER System Responsibilities**.

14.1 Customer Hardware/Software. **CUSTOMER** must ensure that the versions of all underlying computer operating systems and internet browsers are the versions recommended by **PANOSOFT** for use with the most current version of **PG-Pro Web**.

14.2 Software Maintenance Agreement. This Agreement must be in effect for **CUSTOMER** to receive from **PANOSOFT** any of the services listed in this Agreement. Services listed in this Agreement will be unavailable to **CUSTOMERs** who are not under a current Software Maintenance Agreement. In the event **CUSTOMER** discontinues this Agreement and subsequently desires to reinstate the Agreement in order to receive any of the services listed in this Agreement, **CUSTOMER** will be required to pay the normal monthly charge for all months during which service was discontinued before service will be reinstated.

15. Additional Services / Maintenance. **PANOSOFT** will provide additional maintenance services at an additional charge. **PANOSOFT** may require **CUSTOMER** authorization in writing and/or a **CUSTOMER** Purchase Order before any service which results in billable costs is performed. Additional Maintenance Services include, but is not limited to, the following:

15.1 Additional Training. Additional software training is available at **CUSTOMER** sites.

15.2 Data and Systems Corrections. Data and Systems corrections include any corrective actions accomplished by **PANOSOFT** staff on-site or via internet access which are necessary due to **CUSTOMER** error(s) or unauthorized data access by **CUSTOMER**. Unauthorized data access by **CUSTOMER** is defined as any **CUSTOMER** editing or entering of data other than through normal system usage as described in the user documentation.

15.3 CUSTOMER Site Visits. Visits to **CUSTOMER** sites requested by **CUSTOMER** for reasons such as, but not limited to additional system training, system usage, and/or resolution of system difficulties not resulting from actions by or otherwise the responsibility of, **PANOSOFT** (as determined by mutual agreement between **PANOSOFT** and **CUSTOMER**

15.4 Custom Software Modules. Software Modules are developed to address **CUSTOMER**-specific areas of information management not currently or significantly addressed by **PG-Pro Web**. The License for any such Custom Software Modules will

be available for **CUSTOMER** to purchase under separate contractual agreement with **PANOSOFT**.

15.5 Custom Programming. Requests for supplemental programming or customization of system features will be available for **CUSTOMERS**. Such requests will be reviewed by **PANOSOFT** and if accepted for implementation by **PANOSOFT** will be subject to the current hourly programming rate. For any given request, **PANOSOFT** will provide an estimate of the total programming charges in advance of beginning work and further notify **CUSTOMER** if the ongoing estimate of total charges to completion should ever exceed the initial estimate. In no case will **CUSTOMER** be billed for charges in excess of the greatest approved estimate.

16, Charges to Customer.

16.1 General Maintenance Service. Monthly maintenance charges will be charged at the rate of \$1750 per month. These charges are payable monthly and in advance. This maintenance service charge will remain at this rate for a period of 60 months from the initial effective date. See 6 (g) below for changes in rate.

16.2 Additional Maintenance Services. The rate for all Additional Maintenance Services is \$2,000.00 per day on-site, with a one-day, or an hourly charge of \$ 175.00 per hour when services are provided on an ad-hoc basis from **PANOSOFT** headquarters.

16.3 Additional Training. Any visits to **CUSTOMER's** site by **PANOSOFT** staff other than for Initial Training, will be made at the **CUSTOMER's** written request. Such visits will be invoiced at a rate of \$2,000.00 per day, with a one (1) day minimum.

16.4 Travel. Travel cost is included in the associated charges for on-site service.

16.5 Custom Programming. Charges for custom programming will be on an hourly basis at a rate of \$ 175.00 per hour after the initial deployment project. For any given request, **PANOSOFT** will provide an estimate of the total programming charges in advance of beginning work and further notify **CUSTOMER** if the ongoing estimate of total charges to completion should ever exceed the initial estimate. In no case will **CUSTOMER** be billed for charges in excess of the greatest approved estimate

16.6 Taxes. All maintenance charges under this Agreement are exclusive of any taxes legally imposed on the licensing, delivery, and use of **PG-Pro Web**. **CUSTOMER** shall pay, or reimburse **PANOSOFT**, for any such taxes, and **PANOSOFT** may add such taxes to the invoices submitted to **CUSTOMER** by **PANOSOFT**.

16.7 Changes in Charges. After the initial 12-month period ending 6/30/2025 **PANOSOFT** may change the charges for Maintenance Services upon 30 days written notice effective at the beginning of any anniversary of the maintenance.

17. Invoicing. **PANOSOFT** will invoice **CUSTOMER** for General Maintenance Service and Other Charges as follows:

17.1 General Maintenance. **PANOSOFT** will invoice **CUSTOMER** in advance for

each month payment due for General Maintenance Services during the term of the Agreement. Such invoices may include pro-rated charges for any General Maintenance Services provided prior to the invoice date. **CUSTOMER** will pay such invoices within the time specified thereon. In addition, if any charges are not paid when due, **PANOSOFT** may, at its option, suspend performance hereunder until payment is made.

17.2 Other Charges. **PANOSOFT** will invoice **CUSTOMER** for all other charges incurred, and **CUSTOMER** will pay such invoices within the time specified thereon.

17.3 Late Charges. In addition to any other remedies allowed by law, **PANOSOFT** may charge **CUSTOMER** one-half percent (0.5%) per month on any amount which **CUSTOMER** is delinquent in paying to **PANOSOFT** hereunder, except that such charge may not exceed the maximum amount permitted under law.

17.4 Compensation Maximum. In consideration of **PANOSOFT's** fulfillment of the promised work, **CUSTOMER** shall pay **PANOSOFT** at the rates and/or in the amount(s) set forth in paragraph 6, CHARGES TO **CUSTOMER**. The maximum payment for the five (5) year term of this Agreement shall not exceed \$109,000 provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

18. Termination. This Agreement may be terminated by either party upon material failure of the other party to perform its responsibilities and obligations hereunder (except failure of **CUSTOMER** to pay monetary obligation hereunder) by submitting notice in writing to the other party of material failure, provided the material failure has not been corrected within sixty (60) days after receipt of such notice. This Agreement may be terminated by **PANOSOFT** upon ten (10) days notice of failure by **CUSTOMER** to pay any monetary obligation hereunder or failure by **CUSTOMER** to pay any monetary obligation outstanding under **CUSTOMER's** Software License Agreement with **PANOSOFT**.

19. Other Termination. This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least ninety days (90) prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by **CUSTOMER** unless an opportunity for consultation is provided prior to the effective date of the termination.

20. Disclaimer of Warranty. **PANOSOFT** disclaims all warranties or conditions, either expressed, implied, or statutory, including all warranties or conditions of merchantability and fitness for a particular purpose arising in any way out of, related to, or under this agreement.

21. Limitation of Liability. **CUSTOMER** agrees that **PANOSOFT's** liability under this agreement is limited to four times the quarterly general maintenance services charge. In no event shall **PANOSOFT** be liable to **CUSTOMER** for costs of procurement of substitute goods or services, or any loss or injury to earnings, profits, or goodwill, or for any incidental, special, or

consequential damages suffered by customer, caused directly or indirectly by any breach of the agreement or the provision of any products, materials, or services pursuant to this agreement. **PANOSOFT** shall not be liable for any loss or use thereof, nor any claim made against **PANOSOFT** by any other party.

22. INSURANCE. **PANOSOFT** shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

22.1. **Workers' Compensation Insurance.** To the extent required by law during the term of this Agreement, **PANOSOFT** shall provide workers' compensation insurance for the performance of any of **PANOSOFT's** duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide **CUSTOMER** with certification of all such coverages upon request by **CUSTOMER's** Risk Manager.

22.2 **Liability Insurance.** **PANOSOFT** shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

22.2.1. **General Liability.** Commercial general liability [COL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of **PANOSOFT** or any officer, agent, or employee of **PANOSOFT** under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

22.3. **Comprehensive Automobile Liability Insurance.** Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with **PANOSOFT's** business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol I (any Auto) or the exact equivalent. If **PANOSOFT** owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(i) above. If **PANOSOFT** or **PANOSOFT's** employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, **PANOSOFT** shall provide evidence of personal auto liability coverage for each such person upon request.

22.4. **Certificates of Coverage.** All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of **CUSTOMER's** Risk Manager, demonstrated by other evidence of coverage acceptable to **CUSTOMER's** Risk Manager, which shall be filed by **PANOSOFT** with the Comprehensive Services for Older Adults prior to commencement of performance of any of **PANOSOFT's** duties.

22.4.1. The certificate(s) or other evidence of coverage shall reference this Agreement by its **CUSTOMER** number or title and department; shall be kept current during the term of this Agreement; shall provide that **CUSTOMER** shall be given no less than thirty (30) days prior written notice of any non-renewal,

cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

22.4.2. Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, **PANOSOFT** shall also file with the evidence of coverage an endorsement from the insurance provider naming **CUSTOMER**, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, **PANOSOFT** shall file an endorsement waiving subrogation with the evidence of coverage.

22.4.3. The certificate or other evidence of coverage shall provide that if the same policy applies to activities of **PANOSOFT** not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of **CUSTOMER** shall pertain only to liability for activities of **PANOSOFT** under this Agreement, and that the insurance provided is primary coverage to **CUSTOMER** with respect to any insurance or self-insurance programs maintained by **CUSTOMER**. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

22.4.4. Upon request by **CUSTOMER's** Risk Manager, **PANOSOFT** shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

22.5. Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, **CUSTOMER's** Risk Manager, which approval shall not be denied unless the **CUSTOMER's** Risk Manager determines that the deductibles or self- insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of **PANOSOFT** by this Agreement. At the option of and upon request by **CUSTOMER'** s Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects **CUSTOMER**, its officers, employees, agents and volunteers or **PANOSOFT** shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

22.6. Inclusion in Subcontracts. **PANOSOFT** agrees to require all **PANOSOFTs** subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability

insurance requirements set forth in this Paragraph 22.

23. NOTICES. All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

CUSTOMER

Joe Cherry
650 Imperial Way
#101
Napa, CA 94559

PANOSOFT

Jeff von Waldburg
32932 Pacific Coast Highway #14-
482
Dana Point, CA 92629

24. General.

This Agreement shall be governed by the laws of the State of California and constitutes the entire agreement between the parties hereto with respect to maintenance of software licensed by **PANOSOFT** to **CUSTOMER**, and shall supersede all previous or contemporaneous negotiations, commitments and writings with respect to matters set forth herein. It may only be modified by a writing signed by authorized representatives of both parties. The terms and provisions shall prevail over any conflicting, additional, or other terms appearing on any purchase order submitted by **CUSTOMER** at any time.

Agreed to:

Napa County

Panoramic Software Corporation

Joelle Gallagher, Chair

Jeff von Waldburg President

Date: _____

Date: 4/24/24

APPROVED AS TO FORM Office of County Counsel By: <u>Douglas Parker (via e-sign)</u> Deputy County Counsel Date: <u>April 22, 2024</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____
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SCHEDULE A

Fee and Payment Schedule

- (a) General Maintenance Service. Monthly maintenance charges will be charged at the rate of \$1750 per month. These charges are payable monthly and in advance. This maintenance service charge will remain at this rate for a period of 60 months from the initial effective date. See 6 (g) below for changes in rate.
- (b) Additional Maintenance Services. The rate for all Additional Maintenance Services is \$2,000.00 per day on-site, with a one-day, or an hourly charge of \$ 175.00 per hour when services are provided on an ad-hoc basis from PANOSOFT headquarters.
- (c) Additional Training. Any visits to CUSTOMER's site by PANOSOFT staff other than for Initial Training, will be made at the CUSTOMER's written request. Such visits will be invoiced at a rate of \$2,000.00 per day, with a one (1) day minimum.
- (d) Travel. Travel cost is included in the associated charges for on-site service.
- (e) Custom Programming. Charges for custom programming will be on an hourly basis at a rate of \$ 175.00 per hour after the initial deployment project. For any given request, PANOSOFT will provide an estimate of the total programming charges in advance of beginning work and further notify CUSTOMER if the ongoing estimate of total charges to completion should ever exceed the initial estimate. In no case will CUSTOMER be billed for charges in excess of the greatest approved estimate.
- (f) Taxes. All maintenance charges under this Agreement are exclusive of any taxes legally imposed on the licensing, delivery, and use of PG-Pro Web. CUSTOMER shall pay, or reimburse PANOSOFT, for any such taxes, and PANOSOFT may add such taxes to the invoices submitted to CUSTOMER by PANOSOFT.
- (g) Changes in Charges. After the initial 12-month period ending June 30, 2025, PANOSOFT may change the charges for Maintenance Services upon 30 days written notice effective at the beginning of any anniversary of the maintenance.