

**FIRST AMENDMENT TO AGREEMENT BETWEEN CONTRA COSTA COUNTY AND  
GLOBAL TEL\* LINK CORPORATION FOR INMATE TELEPHONE SERVICE AND  
ADDITIONAL TECHNOLOGIES AT COUNTY ADULT FACILITIES**

This First Amendment ("First Amendment") is effective as of August 1, 2020 ("First Amendment Effective Date") between Contra Costa County ("County"), and Global Tel\*Link Corporation ("Contractor"), and amends the Agreement between County and Contractor for Inmate Telephone Service And Additional Technologies at County Adult Facilities, dated July 1, 2019 (the "Agreement").

RECITALS

WHEREAS, County and Contractor entered into the Agreement under which Contractor agreed to install and operate a high quality, fully operational turnkey inmate telephone system, a high quality, fully operational turnkey video visitation system, a high quality fully operational mobile device/tablet service, and a high quality, fully operational turnkey jail management system at the County's Facilities.

WHEREAS, the parties hereto desire to amend the Agreement to document their mutual agreement regarding, among other things, the provisioning of the JMS and Tablets, including a different software system for the JMS, and changes to the approved tablet applications and fees. Capitalized terms used in this First Amendment and not otherwise defined herein have the meaning given in the Agreement.

NOW, THEREFORE, for good and mutual consideration, the sufficiency of which is acknowledged, County and Contractor hereby amend the Agreement as follows:

AGREEMENT

**1. JMS SOFTWARE.**

a. Section 1 (Services Provided by Contractor) of the Agreement is hereby amended by deleting "DSI-ITI, Inc." therefrom and replacing it with "The ACT 1 Group, Inc. d/b/a ATIMS" and deleting "Exhibit VI, Dynamic Imaging Systems, Inc., End User License Agreement".

b. Section 7 (Assignment and Subcontracting) of the Agreement is hereby amended as follows:

i. Section 7(a) is hereby amended by deleting ", and DSI-ITI, Inc. will provide JMS" from the second sentence of that section.

ii. Section 7(a) is hereby amended by adding the following sentence to the end of the section:

"Subject to the provisions of this Agreement, including Section 7(d) below, County consents to Contractor subcontracting with The ACT 1 Group, Inc. d/b/a ATIMS to implement the JMS and provide the JMS software to County."

2. **NOTICE.** Section 14 (Notice) of the Agreement is hereby amended by deleting the addresses for the Contra Costa County Sheriff's Office and the Office of the County Counsel and replacing them with the following:

Sheriff's Office  
1850 Muir Road  
Martinez, CA 94553

Office of the County Counsel  
1025 Escobar Street  
Martinez, CA 94553

3. **ATTACHMENT A: SCOPE OF SERVICES.** Attachment A (Scope of Services) is hereby amended as follows:

- a. **Section A(4)** is hereby amended by deleting (1) "DSI-ITI, Inc., an Idaho corporation" therefrom and replacing it with "The ACT 1 Group, Inc., a California corporation d/b/a ATIMS" and (b) deleting "The PictureLink and Corretrack software used in the JMS and intellectual property related thereto is licensed to the County pursuant to the End-User License Agreement entered into between Dynamic Imaging Systems, Inc., a New Jersey corporation, and the County, which is attached hereto as Exhibit VI, Dynamic Imaging Systems, Inc., End User License Agreement ("Dynamic EULA")" in its entirety.

- b. **Section G(2)(A)(iii)** of Attachment A to the Agreement is hereby deleted in its entirety and replaced with the following:

"iii.) Contractor shall deliver an implementation plan for approval by County within 15 days following the JMS Kickoff Meeting. Once the updated implementation plan is approved by the County in writing, it shall indicate, among other milestones and deliverables, that the JMS will be available for County's use in a production setting no later than eighteen (18) months after the date the JMS implementation plan is approved in writing by County. The JMS implementation shall be completed in accordance with the timelines and milestones established in the County-approved JMS implementation plan."

- c. **Section G(2)(c)** is hereby amended by deleting "and the Dynamic EULA".
- d. **Section G(4)(j) (Debit Link Accounts)** is hereby deleted in its entirety and replaced with "INTENTIONALLY OMITTED", and all references to "debit link" in Attachment A to the Agreement are hereby deleted in their entirety.

- e. **Section O(3)** is hereby deleted in its entirety and replaced with the following:

"3. Contractor shall solicit and receive written permission from County before scheduling or proceeding with any functionality changes to the ITS, VVS, or Tablets at the Facilities, especially if the changes will cause an interruption in service. Contractor shall provide at least 30 days written notification to County before scheduling or proceeding with any functionality changes to the JMS, especially is the changes will cause an interruption in service."

f. **Section O(4)** is hereby deleted in its entirety and replaced with the following:

“4. Contractor shall solicit and receive written permission from County before providing any upgrades to the ITS, VVS, or Tablets software. Contractor shall implement County-approved software upgrades within 30 days following written approval from County. Contractor shall provide at least thirty (30) days written notification to County of any proposed JMS software upgrades. All upgrades must be within one (1) release of newest operating system and provided to County at no additional cost.”

g. **Section Q(3)(c)** is hereby deleted in its entirety and replaced with the following:

“c) At no cost to County, Contractor shall provide County access to an unlimited number of licenses to Contractor's provided JMS, which will allow County, including County remote users, unlimited access to the JMS; provided, however, all use of the JMS shall be subject to the terms of the JMS EULA.”

h. **Section Q(5) (Test Period)** is hereby deleted in its entirety and replaced with the following:

- “a) Prior to implementation of Contractor’s JMS in a production setting, the implementation team from Contractor and County will conduct a user acceptance testing on the JMS.
- b) Beginning on the date of Contractor’s written notice to County that the JMS is available for use in a production setting, County will have a sixty (60) day test period (the “Test Period”) to test the JMS for material conformance with the requirements of this Agreement. At any point during the Test Period or upon completion of the Test Period, County will provide Contractor with written notice that it either approves the JMS for release into a production environment, or a list of reasons that the JMS is not ready for release into a production environment. If the County does not approve the JMS for release into a production environment, Contractor will promptly address the County identified issues of non-conformance to the requirements of this Agreement, which will then be followed with a new Test Period. County will provide Contractor with written notice that the JMS is ready for release into a production environment or the reasons that the JMS is not ready for release into a production environment.”

i. **Section Q(6)(a) (Conversion of Data)** is hereby deleted in its entirety and replaced with the following:

“a) Data conversion involves translating data from the County's current jail management systems to Contractor's provided JMS upon installation. County is responsible for providing the data in its current jail management system to Contractor in a format that will allow it to be imported into the JMS, such as SQL Server Backup or a set of text files.”

- j. **Section Q(6)(c) (Conversion of Data)** is hereby deleted in its entirety and replaced with the following:

“c) Contractor will deliver County a series of batches of converted data. County shall review the data converted from its existing jail management system into the JMS for accuracy and will bring any conversion errors promptly to the attention of Contractor. Contractor shall, to the extent reasonably possible, rectify such errors before the next data conversion delivery.”

4. **ATTACHMENT B: FEE COLLECTION, PAYMENTS AND REPORTING.** Section 4(h) of Attachment B (Fee Collection, Payments and Reporting) to the Agreement is hereby deleted in its entirety and replaced with the following:

“h. Contractor shall provide monthly Tablet detail reports/records in CSV format, which shall include a detailed breakdown of the activity for all transaction types, including but not limited to, electronic messages, photos, attachments, videos, and user profile use for the Tablets. Tablet detail reports/records shall include, at a minimum, each of the following items for each Tablet and each transaction or application type:

- (1) Facility Name;
- (2) Facility Identification Number/Site Identification Number;
- (3) Facility Address, Street, City, State, Zip;
- (4) Tablet Identifier (where applicable);
- (5) Number of Transactions for Each Transaction Type;
- (6) Minutes of Usage for Each Profile;
- (7) Gross Revenue for Each Transaction/Profile;
- (8) Revenue Share Rate;
- (9) Total Revenue Share;
- (10) Total Transactions/Profile, Minutes of Usage, Gross Revenue and Revenue Share;  
and
- (11) Traffic Period and Dates.”

5. **Exhibit II. Rates and Fees, APPROVED TABLET APPLICATIONS AND FEES.** Exhibit II (Rates and Fees) is hereby amended by deleting the Approved Tablet and Application Fees table therein in its entirety and replacing it with the following:

APPROVED TABLET APPLICATIONS AND FEES					
Profiles	Category	Per Minute Rate to Inmate	Revenue Share on Inmate Rate	Rate to End User	Revenue Share on End User Rate
Free Tablet Services	Facility Inmate handbook	FREE	N/A	N/A	N/A
	Inmate requests and grievances	FREE	N/A	N/A	N/A
	Commissary ordering	FREE	N/A	N/A	N/A
	ITS calling capabilities (subject to ITS rates)	FREE	N/A	N/A	N/A
	Electronic debit purchases via trust transfer (if applicable)	FREE	N/A	N/A	N/A
	Trust/commissary/debit account look up (if applicable)	FREE	N/A	N/A	N/A
	Inmate notices/bulletins	FREE	N/A	N/A	N/A
	PREA (via the phone application)	FREE	N/A	N/A	N/A
Promotional Period Profile	TBD	\$0.03 per minute	0%	N/A	N/A
	TBD	\$0.03 per minute	0%	N/A	N/A
	TBD	\$0.03 per minute	0%	N/A	N/A
	TBD	\$0.03 per minute	0%	N/A	N/A
Premium Period Profile	Electronic messages	\$0.05 per minute	0%	\$0.25 per message	0%
	Entertainment media - Movies	\$0.05 per minute	0%	N/A	N/A
	Entertainment media - Games	\$0.05 per minute	0%	N/A	N/A
	Entertainment media - Music	\$0.05 per minute	0%	N/A	N/A
	Entertainment media - Books	\$0.05 per minute	0%	N/A	N/A

6. **Exhibit V – JMS End User Software License Agreement.** Exhibit V (DSI-ITI End User Software License Agreement) attached to the Agreement is hereby deleted in its entirety and replaced with the The ACT 1 Group, Inc., a California corporation d/b/a ATIMS Licensed Software Agreement attached hereto and incorporated herein by this reference.
7. **Exhibit VI – Dynamic Imaging Systems, Inc., End User License Agreement.** Exhibit VI (Dynamic Imaging Systems, Inc., End User License Agreement) attached to the Agreement is hereby deleted in its entirety.
8. Except as expressly modified by this First Amendment, the provisions and conditions of the Agreement, are unchanged and shall remain in full force and effect. The Agreement, as expressly modified by this First Amendment, is the complete agreement of the parties and supersedes all prior or contemporaneous agreements and representations, whether written or oral and may not be further modified or amended except by written amendment.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, and intending to be bound as of the First Amendment Effective Date, each of the parties has caused this First Amendment to be signed by its duly authorized representatives on the date(s) shown below.

CONTRA COSTA COUNTY:

By:

Mary Jane Robb

Name:

Commander

Title

GLOBAL TEL\*LINK CORPORATION:

Janna Peters  
By:

Janna Peters  
Name:

Director of Contracts and Procurement  
Title

FORM APPROVED  
Sharon L. Anderson, County Counsel

By Deputy Eric Edstrom, Deputy

By:

Jon Walker  
Name:

EVP, Business Development  
Title:

Exhibit V  
The ACT 1 Group, Inc., d/b/a ATIMS EULA

See attached Licensed Software Agreement.

## LICENSED SOFTWARE AGREEMENT

This Licensed Software Agreement ("Agreement") is made and entered into as of August 1, 2020 ("Effective Date"), by and between The ACT 1 Group, Inc. dba ATIMS, with its principal place of business located at 21622 Plummer Street, Suite 210, Chatsworth, CA 91311 ("ATIMS") and Contra Costa County, a political subdivision of the State of California, located at 1850 Muir Road, Martinez, CA 94553 ("Licensee").

WHEREAS, ATIMS has developed one or more proprietary software applications for the public safety and security markets; and

WHEREAS, Licensee desires to license such software from ATIMS and ATIMS desires to grant such license; and

WHEREAS, Licensee desires ATIMS to implement such software and ATIMS desires to implement such software for Licensee; and

WHEREAS, Licensee and Global Tel\*Link Corporation ("GTL") entered into an agreement dated July 1, 2019 (the "JMS Agreement") under which GTL is to provide, among other things, a jail management system to Licensee; and

WHEREAS, ATIMS will be acting as a subcontractor to GTL under the JMS Agreement through a Master Services Agreement, dated May 20, 2020, between GTL and ATIMS (the "GTL-ATIMS MSA"); and

WHEREAS, ATIMS and Licensee desire that the terms and conditions of this Agreement shall govern the rights and obligations of the parties with respect to all software and services provided by ATIMS to Licensee, including such software and services as have been provided prior to the date hereof.

NOW, THEREFORE, in consideration of the premises set forth above, and the mutual covenants contained herein, and intending to be legally bound hereby, ATIMS and Licensee agree as follows:

1. Definitions. Unless the context otherwise requires, the following terms when used in this Agreement shall have the meanings ascribed to them in this Section 1:

a. "Documentation" means all printed and/or electronic material and/or media relating to the Software provided by ATIMS.

b. "Embedded Programs" means all third party software, modules, products, interfaces, data files and/or other files and programs provided by ATIMS as part of or in connection with its proprietary software.

c. "Fees" means the fees set forth in Section 5 (Fees; Payment).

d. "Licensed Software" means (i) the Software, (ii) the Documentation, (iii) the Embedded Programs, (iv) the Updates, (v) the Work Product and (vi) all instructions, manuals, diagrams and other materials, in whatever medium or format, pertaining to the foregoing.

e. "Services" means the project management, installation, training services, the annual warranty and support services and any Additional Services, each as defined herein. Services also include any and all services previously performed or provided by ATIMS to Licensee in connection with the Software. Such

Services include all services associated with Data Conversion and/or Data Migration Services.

f. "Data Conversion Services" means the process of examining Licensee's electronic data and/or data files that are in a format NOT usable in the ATIMS Licensed Software and ATIMS then converting such data and/or data files into a format which is usable in the ATIMS Licensed Software.

g. "Data Migration Services" means the process following Data Conversion Services of migrating and/or merging the Licensee's readable data and/or data files into the Licensee's existing "live" ATIMS system.

h. "Software" means ATIMS's proprietary software applications set forth on Exhibit A (Software).

i. "Updates" means "bug" fixes and other updates, enhancements, upgrades or re-releases of the Licensed Software which are made generally available without charge by ATIMS to ATIMS's customers; provided, however, that Updates shall not include (i) updates, enhancements, upgrades, re-releases or new releases which incorporate new functionality in the Licensed Software and/or for which ATIMS charges a fee to its customers, or (ii) new products or modules.



j. "Maintenance Releases" means any patches, "bug" fixes, updates, upgrades or re-releases of the Licensed Software, which are related to specific Software and/or a Licensee Environment. ATIMS reserves the right to limit deployment of Maintenance Releases.

k. "Licensee Environment" means the minimum infrastructure in which the Licensed Software will be installed and/or used as set forth on Exhibit B (Licensee Environment) attached hereto, which may include without limitation, hardware components (server(s), desktop workstation(s), laptop(s), etc.), software components (operating systems, other third party software, etc.), wired and wireless (where applicable) network components and infrastructure (routers, network identification cards, switches, wiring, etc.).

l. "Work Product" means inventions, discoveries, software, or other works of authorship and other proprietary materials or work product developed by ATIMS, its employees, agents or contractors in the course of ATIMS's performance of any services regardless of any participation, assistance or cooperation by Licensee, its employees, agents or contractors in connection therewith.

## 2. License.

a. Subject to the terms and conditions hereof, ATIMS hereby grants Licensee a perpetual non-exclusive, non-transferable, limited license for the maximum number of concurrent user sessions, named users, employees, agents or contractors of Licensee on Exhibit A (Software) (the "Users") to use the Licensed Software (the "License"). Prior to the use, review, examination, setup, configuration, etc. of the Licensed Software by any non-employee User, Licensee shall cause such person or entity to execute an ATIMS's standard nondisclosure agreement and shall deliver such executed agreement to ATIMS. Unless the context otherwise requires, all references herein to "Licensee" includes the Users, and, except as otherwise provided herein, Licensee shall be liable for all acts and omissions of the Users.

b. Licensee and its Users may use the Licensed Software solely for Licensee's internal business operations. Any other use of the Licensed Software (including without limitation timesharing, rental, leasing, facility management, provision of subscription services or service bureau usage) is strictly prohibited.

c. Licensee shall not give, sell, lease, assign, sublicense or otherwise transfer, in whole or in part, this Agreement, the License, the Licensed Software, other ATIMS-provided materials, or any licenses or rights granted hereunder, except as approved by ATIMS in writing. If Licensee grants a security interest in this Agreement, the License, the Licensed Software or any

other ATIMS-provided materials, or any licenses or rights granted hereunder, the secured party shall have no right to use or transfer such materials.

d. The License granted hereunder is for the object code version of the Licensed Software only. Licensee has no rights to the source code for the Licensed Software. Licensee shall not and shall not permit anyone under Licensee's direction or control to, reverse engineer, disassemble or de-compile the Licensed Software or attempt to do so. Licensee may not modify, adapt, translate or create derivative works of the Licensed Software without ATIMS's express written consent. The Licensed Software is licensed as a single product. Embedded Programs may be used only in conjunction with the Licensed Software.

e. Licensee shall not copy the Licensed Software or any part thereof, except for a single copy for inactive backup and archival purposes only and must include on all copies of the Licensed Software all copyright, government restricted rights and other proprietary notices or legends included on or in the Licensed Software as provided to Licensee.

f. Notwithstanding anything to the contrary herein, Licensee's access to and use of the Embedded Programs is and shall remain subject to all terms, conditions and licenses imposed by the manufacturers and/or third party licensors ("Licensors") of such Embedded Programs and Licensee shall comply with the same.

g. Licensee shall permit ATIMS at any time upon reasonable notice to Licensee, to audit Licensee's use of the Licensed Software and Embedded Programs for compliance with the terms hereof and to report the results of such audit to ATIMS's Licensors. ATIMS may assign its audit rights hereunder to one or more of its Licensors, but only to the extent that such Licensor owns the applicable Embedded Programs.

## 3. Licensee Obligations.

a. Licensee shall provide ATIMS with reasonable access to Licensee's technical personnel, facilities, systems, databases, information, as well as security clearance as necessary for ATIMS to perform its obligations under this Agreement. Licensee shall appoint a Project Manager to act as liaison between Licensee and ATIMS.

b. Except as otherwise expressly provided herein, Licensee and Users shall have sole responsibility for acquiring and maintaining their own Licensee Environment. Licensee hereby represents warrants, and covenants to ATIMS that (i) the Licensee Environment meets or exceeds and at all times during the use of the Licensed Software shall meet or exceed the Licensee Environment specifications, (ii) Licensee has not and will not make any material changes to the Licensee

Environment, except solely for those changes required by ATIMS, and (iii) at all times during the use of the Licensed Software, Licensee shall maintain in full force and effect maintenance, service and support agreements with all relevant third parties with respect to the Licensee Environment and all components thereof. Due to volatility in the software and hardware market, the requirements are subject to reasonable change throughout the course of this Agreement. Except as otherwise provided in the JMS Agreement, Licensee shall be responsible for making any current and future modifications and/or upgrades to the Licensee Environment necessary to remain in accordance with the then current requirements, and to successfully access or use the Licensed Software.

c. Prior to any installation and/or operation of the Licensed Software, Licensee shall provide ATIMS with advanced written confirmation, on a form and/or in a manner reasonably prescribed by ATIMS, that the Licensee Environment, as installed, configured, tested and prepared for ATIMS, meets and/or exceeds the Licensee Environment specifications to successfully access or use the Licensed Software.

d. Licensee shall be solely responsible for the supervision, management, operation and control of the use of the Licensed Software, including without limitation: (i) establishing adequate backup plans in the event of a computer or software failure or disaster, (ii) implementing sufficient procedures to provide adequate security and accuracy of data; (iii) informed use of output of data and (iv) security maintenance and password distribution.

e. Licensee shall be solely responsible for ensuring that performance of its obligations and exercise of its rights (including without limitation its use of the Licensed Software) under this Agreement comply with all applicable present and future federal, state and local laws, rules, regulations and orders (collectively, "Laws"), including without limitation all present and future Laws relating to the privacy of individually identifiable medical, financial or other information.

#### 4. Project Management, Installation, Training and Additional Services.

a. In connection with the Licensed Software, ATIMS shall provide Licensee with project management, installation, training and the other services set forth in the GTL-ATIMS MSA, which is pursuant to GTL's obligation under the JMS Agreement.

b. From time-to-time during the term hereof, Licensee may desire to have ATIMS perform certain additional services ("Additional Services"). ATIMS shall perform such Additional Services agreed to in writing by the parties subject to the terms and conditions hereof.

c. Except as otherwise provided in this section or as otherwise required in the GTL-ATIMS MSA, which is pursuant to the JMS Agreement, Licensee is solely responsible for installation of the Licensed Software.

#### 5. Fees; Payment.

a. Except as otherwise set forth in this Agreement, Licensee is not responsible for the direct payment of any Fees to ATIMS. In consideration of the License, Licensee shall pay GTL fees in such amounts and at such times as set forth in the JMS Agreement. GTL will in turn pay ATIMS for its services pursuant to the GTL-ATIMS MSA.

b. Licensee shall pay ATIMS for Additional Services, if any, in accordance with ATIMS's then-current rates, or as otherwise agreed in writing between ATIMS and Licensee.

#### 6. Proprietary Rights; Confidentiality.

a. ATIMS and its Licensors own all right, title and interest (including but not limited to all copyrights, patents, trademarks, trade names, trade secrets and other proprietary rights) in and to the Licensed Software and all components, reproductions, modifications or derivative works thereof, in whole or in part. ATIMS may utilize all ideas, suggestions, feedback, improvements, data, reports or the like that Licensee provides to ATIMS with respect to the Licensed Software without any obligation to Licensee. Licensee shall not publish any results of any benchmark tests run on the Licensed Software or any portion thereof.

b. Although copyrighted, the Licensed Software is unpublished and contains proprietary and confidential information of ATIMS and its Licensors. Licensee agrees to maintain the Licensed Software in confidence and to use its reasonable best efforts to protect the confidentiality of the Licensed Software.

c. Licensee acknowledges and agrees that any violation by it, its Users, employees, agents or contractors of the provisions or covenants of this Agreement contained in Sections 2 (License), 6 (Proprietary Rights; Confidentiality), or 9 (U.S. Government Restricted Rights) may cause immediate and irreparable harm to ATIMS for which money damages will not constitute an adequate remedy. Therefore, Licensee agrees that, in the event of a breach or threatened breach of said provisions or covenants, ATIMS shall be entitled to seek injunctive and/or other preliminary or equitable relief, in addition to any other remedies available at law or in equity.

#### 7. Copyright and Trademark Indemnification.

a. ATIMS will defend, at its expense, any action brought against Licensee to the extent that it is based on a claim that the use of the Licensed Software within the scope of this Agreement infringes any United States

patent, copyright or trademark. ATIMS will defend and indemnify Licensee from any costs, claims, losses, demands, liabilities, damages, penalties, expenses and fees (including, without limitation, court costs and attorneys' fees) incurred by Licensee which are attributable to such claim, provided that Licensee notifies ATIMS promptly in writing, not later than fifteen (15) days after Licensee receives actual notice of the claim (or sooner if required by applicable law). Licensee shall permit ATIMS and/or its Licensors, as applicable, to assume sole control of the defense and any settlement negotiations, and shall provide all available information, assistance and authority to enable ATIMS and/or its Licensors to do so. Licensee shall have no authority to settle any claim on behalf of ATIMS.

b. Should the Licensed Software become, or in ATIMS's opinion, be likely to become the subject of a claim of infringement of a patent, copyright or trademark, ATIMS may (i) procure for Licensee the right to continue to use the Licensed Software, (ii) replace or modify the Licensed Software to make same non-infringing, or (iii) if the right to continue to use cannot be procured or the Licensed Software cannot be replaced or modified, terminate the license to use such Licensed Software, and remove the Licensed Software.

c. ATIMS shall have no liability for any claim of infringement based on the (i) use of Licensed Software which has been altered or modified by persons other than ATIMS (unless such alteration or modification was made by Licensee, its officers, employees or agents pursuant to the express written instruction of ATIMS), if such infringement could have been avoided by the use of the unaltered Licensed Software, (ii) use of other than the then latest release of the Licensed Software from ATIMS, if such infringement could have been avoided by the use of the latest release of the Licensed Software and such latest version had been made available to Licensee, or (iii) combination of the Licensed Software with software not provided by ATIMS and such combination is the cause of the claim of infringement.

d. THIS SECTION 7 STATES THE ENTIRE LIABILITY OF ATIMS AND ITS LICENSORS WITH RESPECT TO INFRINGEMENT BY THE LICENSED SOFTWARE OR ANY PART THEREOF AND NEITHER ATIMS NOR ITS LICENSORS SHALL HAVE ANY ADDITIONAL LIABILITY WITH RESPECT TO ANY ALLEGED OR PROVEN INFRINGEMENT.

8. Indemnification by Licensee. To the extent permitted by Law, Licensee shall defend, indemnify and hold ATIMS harmless from and against any third party claims, losses, liabilities, damages, demands, penalties and expenses (including, without limitation, court costs and attorneys' fees) arising out of or in connection with (a) except as provided elsewhere in this Agreement, Licensee's or Users' use of the Licensed Software, (b)

access to and/or use of the Licensed Software by or through the Licensee Environment or any portion thereof, even if such access or use was not authorized by Licensee, or (c) any breach by Licensee, its Users, employees, agents or contractors of any representation, warranty or covenant of Licensee hereunder.

9. U.S. Government Restricted Rights. If the Licensed Software is provided to the United States Government, use, duplication or disclosure of same shall be governed by this Agreement and any applicable FAR provisions. Without limiting the generality of the foregoing, Licensed Software delivered subject to the DOD FAR Supplement is "commercial computer software" and use, duplication and disclosure of same, including documentation, shall be subject to the licensing restrictions set forth herein and, with respect to the Embedded Programs, all applicable third party license agreements. Otherwise, the Licensed Software delivered subject to the Federal Acquisition Regulations is "restricted computer software" and use, duplication and disclosure of same, including documentation, shall be subject to the restrictions in FAR 52.227-19, Commercial Computer Software-Restricted Rights (June 1987).

10. Force Majeure. ATIMS shall not be liable to Licensee for any failure or delay caused directly or indirectly by events beyond ATIMS's reasonable control, which could not have been anticipated by ATIMS, including, without limitation, sabotage; failure or delays in transportation or communication; ; labor stoppages; or shortages of fuel, raw materials or equipment.

11. Miscellaneous.

a. This Agreement, including all Exhibits attached hereto, supersedes all prior discussions, understandings and agreements (whether verbal or in writing) between the parties with respect to the subject matter hereof, and constitutes the entire agreement between the parties with respect to the matters contemplated herein. Without limiting the generality of the foregoing, this Agreement supersedes all previous license or similar agreements with respect to software and services previously provided by ATIMS to Licensee, which agreements are hereby terminated; provided, however, that Licensee shall continue to pay all fees and other amounts payable pursuant to such prior agreements, which payment provisions shall survive termination thereof. With the exception of the payment obligations referenced in the preceding sentence, and subject to the JMS Agreement, all rights and obligations of ATIMS and Licensee with respect to the Software and related Services shall be defined exclusively by this Agreement. This Agreement shall not be modified or amended except in a writing executed by both parties hereto. This License Agreement shall survive the termination of the

JMS Agreement or any follow on maintenance agreement.

b. This Agreement is made under and shall be governed by and construed in accordance with the laws of the State of California without regard to conflicts of laws provisions thereof. Any dispute arising out of or in connection with this Agreement shall be adjudicated exclusively in the state or federal courts located in the County of Contra Costa in the State of California and all parties consent to personal jurisdiction and venue therein.

c. ATIMS's Licensors are intended third party beneficiaries of this Agreement to the extent of the Embedded Programs provided by them. Except as otherwise expressly provided herein, this Agreement will not be construed as conferring any rights on any other persons.

d. All notices, consents, waivers or other communications which are required or permitted hereunder will be sufficient if given in writing and delivered personally, by overnight mail service, by facsimile or electronic mail or by registered or certified mail, return receipt requested, postage prepaid, to the parties at the addresses set forth above (or to such other addressee or address as will be set forth in a notice given in the same manner). All such notices will be deemed to have been given three (3) business days after mailing if sent by registered or certified mail, one (1) business day after mailing if sent by overnight courier service, or on the date received if delivered personally or sent by facsimile or electronic mail.

e. Neither party will by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of

any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other party will not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this Agreement.

f. If any provision of this Agreement will be held illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions hereof will not be affected thereby. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH PROVISION OF THIS AGREEMENT, WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, INDEMNIFICATION OR OTHER REMEDY IS INTENDED TO BE ENFORCED AS SUCH. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY UNDER THIS AGREEMENT IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES OR OTHER REMEDIES SHALL REMAIN IN EFFECT.

g. This Agreement may be executed in one or more counterpart copies, each of which will be deemed an original and all of which will together be deemed to constitute one agreement.

h. Each of the parties represents and warrants that the execution, delivery and performance of the Agreement has been duly authorized on its behalf by the requisite governing board, council, management official or representative in accordance with applicable legal requirements and procedures and that the person signing on its behalf has sufficient authority.

IN WITNESS WHEREOF, the parties hereto have, by their duly authorized representatives, executed this Agreement as of the Effective Date.

THE ACT 1 GROUP, INC. DBA ATIMS

By: Felix Rabinovich

Printed Name: Felix Rabinovich

Title: Divisional Vice President, ATIMS

CONTRA COSTA COUNTY

By: Mary Jane Robb

Printed Name: Mary Jane Robb

Title: Commander

FORM APPROVED  
Sharon L. Anderson, County Counsel

By Deputy Eric Gelston

**Exhibit A**  
**Software**

Software: ATIMS Jail Management System  
Number of Users: Unlimited

## **Exhibit B**

### **Licensee Environment**

#### **Web Server**

- RAM (GB) - 8 minimal, 16 recommended
- # of CPU Cores - 2 minimal, 4 recommended
- Data Storage (GB) – Specify Size Letter and Volume Label
  - C drive - should be minimum 60 GB (Windows and Applications)
  - D drive - should be 200 GB (host websites and files)
  - E or I drive - should be reserved for images
- Load balancing – Optional
- Roles and Features
- Annual Data Growth (GB) – minimal

#### **Database Server**

SQL Server 2016 or later:

- RAM (GB) -16GB
- # of CPU Cores - 4
- Data Storage (GB)
  - C:\ should be minimum 60 GB (Windows and Applications)
  - D:\ - Data and Backups. Should be minimum of 500 GB– 2TB.
  - E drive – for logs – minimum 100GB
  - T drive for Temp Databases- Minimal 100GB, recommended 300GB.
- Load balancing Optional
- Always Encrypted – Optional
- Annual Data Growth – 50-100GB

#### **Reporting Server**

Linux (preferred) or Windows 2016

- RAM (GB) -8 minimal, 16 recommended
- # of CPU Cores - 2 minimal, 4 recommended