

**AGREEMENT WITH CANON SOLUTIONS AMERICA PROVIDING TERMS AND CONDITIONS FOR ACQUISITION, OPERATION AND MAINTENANCE OF DIGITAL COPY MACHINES AND SUPPORTING PRODUCTS AND SERVICES AND SUPPLIES**

This Agreement is made and entered into by and between the County of Lake, hereinafter referred to as “County”, and Canon Solutions America, hereinafter referred to as “Contractor”, collectively referred to as the “parties”.

**RECITALS**

WHEREAS, the County of Lake desires to procure multi-functional digital copy machine equipment, supplies, software and services on a fair-market value lease basis for an initial Agreement Term of 60 months; and

WHEREAS, agreements offered through the National Integrated Purchasing Alliance (hereinafter, “NIPA”) are awarded through a competitive solicitation incorporating language which offers access to those public agencies and local governments which allow intergovernmental “piggyback” contract participation; and

WHEREAS, pursuant to Section 2-38.4 of the Lake County Code, the County is authorized to "piggyback" or use other agencies' competitively awarded contracts under the terms and conditions described therein; and

WHEREAS, NIPA provides access to a pre-competed, publicly awarded contract with Canon Solutions America for printing and document management solutions and services to public agencies and local governments, more specifically described as master NIPA Contract CP-002-13; and

WHEREAS, the County of Lake wishes to piggyback on the above-described contract in full compliance with the terms and conditions of Section 2-38.4 of the Lake County Code; and

WHEREAS, The County of Lake and Canon Solutions America agree to abide by all the terms and conditions of the master NIPA Contract CP-002-13 dated October 1, 2013, as amended, attached hereto as Exhibit F, and supplemented by the compatible terms and conditions in this Agreement.

NOW, THERFORE, in consideration of the covenants, conditions, agreements and stipulations hereinafter expressed, the parties do hereby agree as follows:

1. **SERVICES.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to County the services described in the Scope of Services attached hereto and incorporated herein as Exhibit B at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A – Definitions, Exhibit B – Scope of Services, Exhibit C – Fiscal Provisions, Exhibit D – Compliance Provisions, Exhibit E – Equipment List, and Exhibit F – NIPA Contract, the Agreement shall prevail.
2. **TERM.** This Agreement shall commence on June 30, 2017, and shall terminate in 60 months on June 30, 2022, unless earlier terminated as hereinafter provided. In the event County desires to temporarily continue services after the expiration of this Agreement, such continuation shall be deemed on a month-to-month basis, subject to the same terms, covenants, and conditions contained herein.
3. **COMPENSATION.** Contractor has been selected by County to provide the services described hereunder in Exhibit “B” (Scope of Services), attached hereto.

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The County shall compensate Contractor for services rendered, in accordance with the provisions set forth in Exhibit "C" (Fiscal Provisions), attached hereto, provided that Contractor is not in default under any provisions of this agreement. Compensation to Contractor is contingent upon appropriation of federal, state and county funds.

**4. TERMINATION/CANCELLATION.**

4.1 County Termination for Default: Subject to the limitations in Section 8 of Exhibit "D" (DUE PERFORMANCE – DEFAULT) hereinabove (and the NIPA Contract), County may terminate this Agreement and be relieved of any consideration to Contractor should Contractor be in default of the covenants herein contained at the time and in the manner herein provided. Default shall be judged to have occurred upon any of the following actions or inactions by the Contractor:

- A. Any material breach specified herein.
- B. Contractor provides equipment that does not meet the specifications of this Agreement.
- C. If Contractor should persistently or repeatedly refuse or should fail to perform its obligations enumerated in this Agreement.

4.2 Non-Appropriation: If the term of this Agreement extends into fiscal years subsequent to that in which it is approved, continued payment of any equipment is subject to the appropriation of funds by the Lake County Board of Supervisors such that if funds to effect such continued payment relative to any particular equipment provided pursuant to this Agreement are not appropriated, Contractor agrees to take back any equipment for which funds are no longer appropriated and relieve the County of any further obligation therefore. County agrees to provide written notice of an event of non-appropriation with at least thirty (30) days prior notice to end of funding. If this Agreement is terminated pursuant to this Paragraph 4.2 Non-Appropriation, the County agrees to return all equipment provided under this Agreement to the Contractor in substantially the same condition in which it was delivered, subject to normal wear and tear. County further agrees to pay for packing, crating and transportation to Contractor's nearest facility in California.

4.3 Upon termination as provided in Section 4.1 or Section 4.2 hereinabove, Contractor agrees that County will then be released from obligations to make any further payments to Contractor or to any third-parties that may otherwise be due pursuant to any financing agreements, except that County shall be responsible for payment of all sums that may be due and owing up to the effective termination date of this Agreement and Contractor agrees to assume any remaining payment obligations in their entirety that may be owed pursuant to any such financing agreements.

4.4 Contractor Termination for Default: Subject to the limitations in Section 8 of Exhibit "D" (DUE PERFORMANCE –DEFAULT) hereinabove (and the NIPA Contract) and subject to the County's termination as provided for in Section 4.1 and Section 4.2 hereinabove, County shall be in default under this Agreement if Contractor does not receive payment within 30 days after the date it is due. Upon default, Contractor may cease services and require immediate payment, as liquidated damages for loss of bargain and not as a penalty, of all amounts then due.



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**9. INTEGRATION.** The Purchase Order (PO), the NIPA Contract and this Agreement, including attachments, constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior Agreements, related proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties.

Executed at \_\_\_\_\_, California on \_\_\_\_\_.

COUNTY OF LAKE

CONTRACTOR

\_\_\_\_\_  
CHAIR, Board of Supervisors

\_\_\_\_\_  
By:  
Title:  
Address:

ATTEST:  
CAROL J. HUCHINGSON  
Clerk to the Board of Supervisors

Telephone:  
Federal Tax ID:

By: \_\_\_\_\_

APPROVED AS TO FORM:  
ANITA L. GRANT  
County Counsel

By: \_\_\_\_\_

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**EXHIBIT “A” – DEFINITIONS**

1. **Reasonably Comparable** means a machine with per-copy speed that is no less than 10 copies per minute different than the machine being replaced.
  
2. **Equipment or Product** means all the digital copy machines detailed on Attachment E, which is attached hereto and incorporated by this reference as if fully set forth herein, as well as any software or supporting hardware necessary for said equipment to operate according to manufacturer’s specifications and to operate in accordance with the intent of the Agreement.

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**EXHIBIT “B” – SCOPE OF SERVICES**

**1. CONTRACTOR RESPONSIBILITIES.**

1.1 Beginning on or about June 15, 2017, Contractor shall provide and install the equipment listed on Attachment E. Said equipment shall be priced as indicated therein and shall be fully installed and operational by June 30, 2017. Said equipment shall be minimally configured as follows:

A. HARD DRIVE SECURITY: At a minimum, machines must have end-of-life “secure erase” of the hard drive such that no traces of any temporary data or deleted documents remain vulnerable on the hard drive. The County’s contract administrator must be able to perform the secure erase function on-site.

B. Network Printing Capabilities: Contractor shall ensure that their proposed equipment is compatible with the County’s computer network. PCL 6-E and all related software and kits are required. If needed by departments, either Adobe Postscript2 or a Postscript2 emulator will be supplied at an agreed upon cost.

C. Contractor must provide print drivers to support the County’s diverse computing environments. All firmware upgrades to be included and to be installed by vendor including those available from the internet. Ninety percent (90%) of unit features are to be available but at a minimum must include full functionality of finishing, basic paper selection and stapling. Drivers must allow user to see status of the machine from their computer and such status must include, but not be limited to the following: printer error, paper jam, door open, machine offline, toner low, paper low, add toner, add paper, add staples, job complete.

1.2 DELIVERY AND REMOVAL: Contractor shall be responsible for all delivery costs of all equipment placed under this Agreement. Contractor shall be responsible for removal of all packing material. Contractor shall be responsible to coordinate removal of old machines with any prior vendor. If Contractor fails to deliver the equipment as mutually agreed upon by the County and Contractor, the County may cancel the Agreement without penalty.

1.3 INSTALLATION: At no cost to County, Contractor shall perform complete installation of equipment and verify satisfactory operation of all equipment placed under this Agreement. Contractor must work cooperatively with County staff. Contractor shall perform all standard installation. Contractor shall provide at no cost to County, fully operational drivers and software/firmware needed for County IT staff to load to the network. Prior to operation of equipment, Contractor shall provide at no cost to County, uninterruptible power supplies (UPS) on all digital copy machines. In accordance with the machine’s configuration, Contractor must demonstrate the machine’s ability to successfully copy, print, fax and/or scan from the machine and desktop.

1.4 SUPPLIES: Contractor shall provide, at no cost to County including no shipping charges, all consumable supplies, except paper, throughout the term of this Agreement. Said supplies shall include, but are not limited to, toner, developer, copy cartridges, fusers and staples.



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1.7 **Changes:** Except as specifically provided for in this Agreement, County personnel have no authority to order or direct any changes to this Agreement. Contractor must not provide any equipment; services or other items that would cause County to incur additional costs beyond those stated in this Agreement, without the prior approval of the County's Purchasing Agent or his/her designee. If any changes require the approval of the Lake County Board of Supervisors, such modifications shall not be effective until the required approval is received by said Board. Failure by Contractor to secure proper written authorization from County for additional equipment, services or other items beyond those specifically provided for in this Agreement, may be a waiver by Contractor of any claim for additional compensation related to such items.

1.8 **Network Technical Support:**

A. Network connection is to be completed and fully functional within an average of two days of being notified by staff of the County Information Technology Department (IT) that the data jack is available and active and any necessary software and drivers have been installed on any computers needing access to the copier/printers. Additional time will be provided when several connections are requested at one time.

B. At no cost to the County, Contractor must provide both telephone support and timely on-site support for network related problems by primary and back-up systems engineers that have been trained as computer network technicians. These technicians may not have direct access to the network or to computers but County IT staff will be available to coordinate troubleshooting efforts.

C. At no cost to the County, Contractor agrees to timely erase in the presence of County staff, all data on hard drives from machines that are removed from County service.

1.9 **Property taxes:** Contractor shall be responsible to pay personal property taxes on all equipment.

1.10 **Administrative Fees:** Payment of any administrative fees that may be due to DuPage County and/or National Intergovernmental Purchasing Alliance (NIPA) pursuant to the use of the cooperative purchasing agreement awarded by the County of DuPage (CP-002-13) shall be the sole responsibility of Canon Solutions America, Inc.

2. **RECORDS RETENTION.** Contractor shall prepare, maintain and/or make available to County upon request, all records and documentation pertaining to this Agreement, including financial, statistical, property, recipient and service records and supporting documentation for a period of five (5) years from the date of final payment of this Agreement. If at the end of the retention period, there is ongoing litigation or an outstanding audit involving the records, Contractor shall retain the records until resolution of litigation or audit. After the retention period has expired, Contractor assures that confidential records shall be shredded and disposed of appropriately at County's request.

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**EXHIBIT “C” – FISCAL PROVISIONS**

**1. PRICING:**

1.1 Lease Pricing: It is mutually understood and agreed that the prices reflected in Attachment E are inclusive of sales tax. Contractor guarantees that the present value of the lease payments shall not equal or exceed 90% of the fair market value of the leased property. Minimum lease payments include the minimum payments the lessee is obligated to make to the Lessor under the lease agreement.

1.2 Maintenance Charge: Throughout the full Term of this Agreement, Contractor shall provide maintenance services, inclusive of consumable supplies on all equipment, at a Cost-Per-Copy of \$0.0056 cents for black & white copies and \$0.045 cents for color copies.

**2. CONTRACTOR’S FINANCIAL RECORDS.** Contractor shall keep financial records for funds received hereunder, separate from any other funds administered by Contractor, and maintained in accordance with Generally Accepted Accounting Principles and Procedures and the Office of Management and Budget’s Cost Principles.

**3. INVOICES.**

3.1 At Contractor’s option, invoices may be submitted either monthly or quarterly, to the address stipulated by the County Purchasing Agent. Invoices shall reflect total copies made in the billing period compared to total copies made in the billing period immediately prior.

3.2 County shall make payment within 20 business days of an undisputed invoice for the compensation stipulated herein for supplies delivered and accepted or services rendered and accepted, less potential deductions, if any, as herein provided. Payment on partial deliverables may be made whenever amounts due so warrant or when requested by the Contractor and approved by the Assistant Purchasing Agent.

**4. AUDIT REQUIREMENTS AND AUDIT EXCEPTIONS**

4.1 Contractor warrants that it shall comply with all (commercially reasonable) audit requirements established by County and will provide a copy of Contractor’s Annual Independent Audit Report, if applicable.

4.2 County may conduct periodic audits of Contractor’s financial records, notifying Contractor no less than 48 hours prior to scheduled audit. Said notice shall include a detailed listing of the records required for review. Contractor shall allow County, or other appropriate entities designated by County, during regular business hours, access to all financial records pertinent to this Agreement.

4.3 Contractor shall reimburse County for any overpayments discovered by the audit within 30 days of written demand or shall make other repayment arrangements subject to the approval of County.

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**EXHIBIT “D” – COMPLIANCE PROVISIONS**

1. **INFORMATION INTEGRITY AND SECURITY.** Contractor shall promptly notify County of any known or suspected breach of personal, sensitive and confidential information related to Contractor’s work under this Agreement.
2. **NON-DISCRIMINATION.** Contractor shall not unlawfully discriminate against any qualified worker or recipient of services because of race, religious creed, color, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status or age.
3. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**
  - 3.1 The Contractor certifies to the best of its knowledge and belief, that it and its subcontractors:
    - A. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in the preceding paragraph; and
    - D. Have not, within a three-year period preceding this Agreement, had one or more public transactions terminated for fraud, violation of law, or acts of moral turpitude.
  - 3.2 Contractor shall report immediately to County, in writing, any incidents of alleged fraud and/or abuse by either Contractor or Contractor’s subcontractor. Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by County.
4. **AGREEMENTS IN EXCESS OF \$100,000.** Contractor shall comply with all applicable orders or requirements issued under the following laws:
  - 4.1 Clean Air Act, as amended (42 USC 1857).
  - 4.2 Clean Water Act, as amended (33 USC 1368).
  - 4.3 Federal Water Pollution Control Act, as amended (33 USC 1251, et seq.)
  - 4.4 Environmental Protection Agency Regulations (40 CFR, Part 15 and Executive Order 11738).
5. **INDEMNIFICATION AND HOLD HARMLESS.** Contractor shall indemnify and defend County and its officers, employees, and agents against and hold them harmless from any and all claims, losses, damages, and liability for damages, including attorney's fees and other costs of defense incurred by County, for damage to or loss of property, or injury to or death of person, including properties of

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County and injury to or death of County officials, employees or agents, arising out of, or connected with Contractor's negligent operations hereunder or the negligent performance of the work described herein, unless such damages, loss, injury or death is caused solely by the negligence of County.

Contractor's obligations under this Section shall survive the termination of the Agreement.

**6. STANDARD OF CARE.** Contractor represents that it is specially trained, licensed, experienced and competent to perform all the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Contractor or designated subcontractors, in a manner according to generally accepted practices.

**7. INTEREST OF CONTRACTOR.** Contractor assures that neither it nor its employees has any interest, and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder.

**8. DUE PERFORMANCE – DEFAULT.** Each party agrees to fully perform all aspects of this agreement. If a default to this agreement occurs then the party in default shall be given written notice of said default by the other party. If the party in default does not fully correct (cure) the default within 30 days of the date of that notice (i.e. the time to cure) then such party shall be in default. The time period for corrective action of the party in default may be extended in writing executed by both parties, which must include the reason(s) for the extension and the date the extension expires.

Notice given under this provision shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable time period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so elects in a subsequent written notice after the time to cure has expired.

**9. INSURANCE.**

9.1 Contractor shall procure and maintain Workers' Compensation Insurance for all of its employees.

9.2 Contractor shall procure and maintain Comprehensive Public Liability Insurance, both bodily injury and property damage, in an amount of not less than one million dollars (\$1,000,000) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverage: personal injury, premises-operations, products and completed operations, blanket contractual, and independent contractor's liability.

9.3 Contractor shall procure and maintain Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased and non-owned vehicles used in connection with Contractor's business in an amount of not less than one million dollars (\$1,000,000) combined single limit coverage per occurrence.

9.4 Contractor shall procure and maintain Professional Liability Insurance for the protection against claims arising out of the performance of services under this Agreement caused by errors, omissions or

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other acts for which Contractor is liable. Said insurance shall be written with limits of not less than one million dollars (\$1,000,000).

9.5 Contractor shall not commence work under this Agreement until it has obtained all the insurance required hereinabove and submitted to County certificates of insurance naming the County of Lake as additional insured. Contractor agrees to provide to County, at least 30 days prior to expiration date, a new certificate of insurance.

9.6 In case of any subcontract, Contractor shall require each subcontractor to provide all of the same coverage as detailed hereinabove. Subcontractors shall provide certificates of insurance naming the County of Lake as additional insured and shall submit new certificates of insurance at least 30 days prior to expiration date. Contractor shall not allow any subcontractor to commence work until the required insurances have been obtained.

9.7 For any claims related to the work performed under this Agreement, the Contractor's insurance coverage shall be primary insurance as to the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, agents or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

9.8 The Commercial General Liability and Automobile Liability Insurance must each contain, or be endorsed to contain, the following provision:

The County, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds and shall be added in the form of an endorsement to Contractor's insurance on Form CG 20 10 11 85. Contractor shall not commence work under this Agreement until Contractor has had delivered to County the Additional Insured Endorsements required herein.

Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of California Civil Code Section 2782.

9.9 Insurance coverage required of Contractor under this Agreement shall be placed with insurers with a current A.M. Best rating of no less than A: VII.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude County from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of County to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

9.10 Any failure of Contractor to maintain the insurance required by this section, or to comply with any of the requirements of this section, shall constitute a material breach of the entire Agreement.

**10. ATTORNEY'S FEES AND COSTS.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, each party shall be responsible for its own attorney's fees, costs, and necessary disbursements in addition to any other relief to which such part may be entitled.

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**11. ASSIGNMENT.** Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of County except that invoicing and claims for money due or to become due Contractor from County under this Agreement may be assigned by Contractor to a bank, trust company, or other financial institution (i.e., Contractor's affiliate, Canon Financial Services, Inc.) without such approval. Written notice of any such transfer shall be furnished promptly to County. Any attempt at assignment of rights under this Agreement except for those specifically consented to by both parties or as stated above shall be void.

**12. PAYROLL TAXES AND DEDUCTIONS.** Contractor shall promptly forward payroll taxes, insurances, and contributions to designated governmental agencies.

**13. INDEPENDENT CONTRACTOR.** It is specifically understood and agreed that, in the making and performance of this Agreement, Contractor is an independent contractor and is not an employee, agent or servant of County. Contractor is not entitled to any employee benefits. County agrees that Contractor shall have the right to control the manner and means of accomplishing the result contracted for herein.

Contractor is solely responsible for the payment of all federal, state and local taxes, charges, fees, or contributions required with respect to Contractor and Contractor's officers, employees, and agents who are engaged in the performance of this Agreement (including without limitation, unemployment insurance, social security and payroll tax withholding.)

**14. OWNERSHIP OF DOCUMENTS.** All non-proprietary reports, drawings, renderings, or other documents or materials prepared by Contractor hereunder are the property of County.

**15. SEVERABILITY.** If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

**16. ADHERENCE TO APPLICABLE DISABILITY LAW.** Contractor shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C. Sections 12101, et seq.). California Government Code Sections 12920 et seq., and all related state and local laws.

**17. HIPAA COMPLIANCE.** Contractor will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.

**18. SAFETY RESPONSIBILITIES.** Contractor will adhere to all applicable CalOSHA requirements in performing work pursuant to this Agreement. Contractor agrees that in the performance of work under this Agreement, Contractor will provide for the safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.

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- 19. JURISDICTION AND VENUE.** This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue of any action or proceeding regarding this Agreement or performance thereof shall be in Lake County, California. Contractor waives any right of removal it might have under California Code of Civil Procedure Section 394.
- 20. RESIDENCY.** All independent contractors providing services to County for compensation must file a State of California Form 590, certifying California residency or, in the case of a corporation, certifying that they have a permanent place of business in California.
- 21. NO THIRD-PARTY BENEFICIARIES.** Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in or for the benefit of third parties.
- 22. EXTENSION OF AGREEMENT TO OTHER PUBLIC AGENCIES.** The terms and conditions of this Agreement (excluding delivery schedule and specific quantities) may be extended, at the option of Contractor, to any other public agency, including any town, city, County, special district, school district, community college district, or state college, within Contractor's service area.
- 23. CONFIDENTIALITY:** In the performance of the work authorized under this Agreement, Contractor agrees to comply and to require employees to comply with the provisions of Welfare and Institutions Code Section 10850 to assure that all applications and records concerning individuals made or kept by any officer or agency in connection with the administration of or delivery of services under this Agreement will be kept confidential and not open to examination for any purpose not directly related to such administration. No person will publish or disclose, use or permit, or cause to be published, used or disclosed any confidential information pertaining to a recipient. Contractor agrees to inform all of its employees, agents and subcontractors of this provision (or its equivalent) and further agrees that any person knowingly and intentionally violating the provisions of said laws is guilty of a misdemeanor.”