

**First Amendment to Agreement**

This First Amendment to Tulare County Agreement number 28790 is entered into as of \_\_\_\_\_, 2020, by and between the County of Tulare, hereinafter referred to as "COUNTY" and Journal Technologies, Inc., a Utah Corporation, hereinafter referred to as "CONTRACTOR." This Amendment is effective on the last date of signature below ("Amendment Effective Date").

A. The Parties previously entered into Tulare County Agreement No. 28790 ("the Agreement") on August 21, 2018 pertaining to the purchase of software licenses, installation, training, data conversion, interfaces and software maintenance and support for a new case management system, eProsecutor, for its District Attorney's Office; and

B. The Parties now desire to broaden the Agreement to include provisions for cloud hosting services.

**ACCORDINGLY IT IS AGREED:**

1. Section III (B) of the Agreement is amended to add subsection (7), to read as follows:

"7) HOSTED SERVICES: CONTRACTOR shall provide hosted services for the Application Software, in accordance with the terms and conditions set forth in Exhibit H ("HOSTED SERVICES"), and subject to COUNTY's payment of the requisite hosting and storage fees ("Hosting and Storage Fees") referenced therein and set forth in Subsection (5) of Section VII (A) for all periods during which CONTRACTOR provides Hosted Services, including during the conversion period prior to First Production Use of eProsecutor.

2. Section VII (A) is amended to add subsection (5), to read as follows:

"5) **Annual eProsecutor® Hosting and Storage Fee Structure:** \$113,000 (for 271 Total Users and which shall be adjusted for any CPI-U increase after the first year), which includes 1TB of database storage and 1TB of document storage. Each additional TB of storage will incur additional fees pursuant to the following pricing table.

<u>Tier TBs</u>	<u>Amount per TB</u>
1	Included
2-10	\$1,100
11+	600

If the number of Total Users increases or decreases from 271 Total Users, the annual Hosting and Storage Fees will be adjusted pursuant to the pricing table set forth below, but subject in all events to a minimum annual Hosting and Storage Fee of \$40,000:

Pricing Table for System User Licenses for  
Centralized System

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<u>User Groups*</u>	<u>Licenses</u>	<u>Annual Hosting Fees</u>	
		<u>Per User</u>	<u>For Group</u>
1-50	50	\$800	\$ 40,000
51-100	50	500	25,000
101-200	100	300	30,000
201-500	300	250	75,000

\*The actual number of Total Users will be used to determine the annual fee, with 50 Total Users being the minimum.

Payment of the Annual Hosting and Storage Fees shall be subject to the same payment schedule as the Annual License and Maintenance Fee as set forth in subsection (1) of Section VII (D) of the Agreement. The Annual Hosting and Storage Fees shall also be subject to the year-over-year CPI-U increase described in subsection (E) of Section VII of the Agreement.”

3. The table in Section VII (B)(1) of the Agreement is amended to add the following row at the bottom:

	<b>Annual Hosting and Storage Fees</b>	\$113,000
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4. Section XII of the Agreement is amended to add the following sentence at the end of the second paragraph:

“NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, IN NO EVENT SHALL CONTRACTOR’S TOTAL LIABILITY WITH RESPECT TO CLAIMS ARISING OUT OF THE SUBJECT MATTER OF EXHIBIT H OR THE HOSTED SERVICE PROVIDED FOR THEREIN EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT OF HOSTING FEES PAID HEREUNDER TO CONTRACTOR FOR THE PRIOR TWELVE MONTHS OF THE HOSTING TERM.”

5. The Agreement shall be amended to add **EXHIBIT H, “Hosted Services,”** attached.
6. Except as expressly amended, all other terms and conditions of the Agreement shall remain in full force and effect. After the Amendment Effective Date, any reference to the Agreement shall mean the Agreement as amended or modified hereby.

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below:

**JOURNAL TECHNOLOGIES, INC:**

Date: 1/10/2020

By   
Print Name: MARY JOE ROOPE  
Title: VICE PRESIDENT

Date: 1/10/2020

By   
Print Name: DANNY HEMANI  
Title: DIRECTOR OF IMPLEMENTATION

Pursuant to Corporations Code section 313, County policy requires that contracts with a Corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract.

**COUNTY OF TULARE:**

Date: \_\_\_\_\_

By \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: Jason T. Britt  
County Administrative Officer/  
Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy

Approved as to Form:  
County Counsel

By  2/27/2020  
Deputy County Counsel  
20191520

## **EXHIBIT H**

### **HOSTED SERVICES**

**CONTRACTOR Hosting.** In consideration for COUNTY'S payment to CONTRACTOR of the Annual Hosting and Storage Fees set forth in Section VII (A)(5), CONTRACTOR will provide Licensed Software hosted services (the "**Hosted Service**"), which COUNTY may access via an Internet connection.

**Definitions.** Capitalized terms used and not otherwise defined in this **Exhibit H** shall have the respective meanings given them in the Agreement. Licensed Software as used in **Exhibit H** shall have the same meaning as the term Application Software in the Agreement.

**"Customer Data"** means all non-configuration, case-related data entered into, contained in, modified in, or deleted from the Licensed Software, but not the Licensed Software itself.

**CONTRACTOR Responsibilities.** CONTRACTOR'S responsibilities with respect to the Hosted Service are as follows:

- a. Provide infrastructure for the hosting of COUNTY data.
- b. Provide Maintenance of the Hosted Service.
- c. Provide services as described below in **CONTRACTOR Services**.
- d. CONTRACTOR shall not be responsible, for any accidental or unlawful access or disclosure of confidential Customer Data that results from COUNTY'S failure to comply with subparagraph b. below under the heading "COUNTY Responsibilities."

**COUNTY Responsibilities.** COUNTY'S responsibilities with respect to the Hosted Service are as follows:

- a. Pay the Annual Hosting and Storage Fees listed in Section VII (A) (5) of the Agreement.
- b. COUNTY is solely responsible for, and shall indemnify, defend, and hold harmless CONTRACTOR regarding any unlawful or accidental access to or unauthorized or improper disclosure of Customer Data that results from (i) the conduct of an authorized COUNTY User, (ii) an unauthorized person obtaining an authorized User's account credentials from such a User or COUNTY, (iii) changes that COUNTY makes to the configuration of the Licensed Software or the hosted database, or (iv) software scripts added to the Licensed Software or the hosted database by COUNTY. Without limiting the foregoing, COUNTY shall: (A) notify CONTRACTOR immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (B) report to CONTRACTOR immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by COUNTY or Users; and (C) not impersonate another User or provide false identity information to gain access to or use the Hosted Service.
- c. Accept that each hosted instance allows for one (1) terabyte of storage. Storage required for database and document storage is covered by the Hosting Fees. COUNTY will be notified when storage usage thresholds exceed 80% of the then available storage and the storage will automatically be expanded by one (1) terabyte and COUNTY'S Annual Hosting and Storage Fees

will be adjusted accordingly at the then current annual rate. The current rate is listed in Section VII (A) (5) of the Agreement. Additional storage may be pre-purchased at any time.

Force Majeure. Neither party will be liable for any delay or failure to perform any obligation under this Agreement (except for any obligations to make payments) where the delay or failure results from any cause beyond such party's reasonable control including, without limitation, acts of God, labor disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, internet service provider failures or delays, denial of service attacks, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

System Period of Maintenance.

- a. *Weekly Maintenance Window* (Wednesday, 9:00PM to Thursday, 4:00AM MT). The Hosted Service shall be subject to a maintenance window each Wednesday evening or as agreed upon by COUNTY. Hosted Service maintenance window may include loss of network access, the servers, and the operating system during such window. The Hosted Service will not always be disrupted during each weekly maintenance window.
- b. *Extended Maintenance Outage.* If CONTRACTOR requires additional time for maintenance or installation, CONTRACTOR shall provide written notification to COUNTY at least 24 hours prior to implementing an extended maintenance outage. CONTRACTOR'S notice shall explain the nature and expected duration for the extended maintenance outage.

**CONTRACTOR Services:**

CONTRACTOR shall host COUNTY data and software [REDACTED]

**FLEXIBLE COMPUTE POWER**

CONTRACTOR shall provide and configure flexible compute power to meet COUNTY'S needs during the life cycle of the eProsecutor implementation and during live production. CONTRACTOR shall rapidly scale and deploy compute power and storage to meet COUNTY'S changing needs.


**DATA STORAGE**

One terabyte (TB) of data storage and one TB of document storage is included with the hosting service. Additional storage is always available and is automatically provisioned when required. At the end of each billing period, CONTRACTOR will compare the actual storage COUNTY is using to the contracted amount and adjust the storage cost for the next period, per the storage rate table in Section VII of this agreement.

**SECURITY**

**Secure Hosted Environment –** [REDACTED]

[REDACTED]



**Data Security** – COUNTY data shall always be encrypted at rest.

**Data Transport Security** - The connection to COUNTY’S location shall be established by CONTRACTOR using a FIPS 140-2 compliant virtual private network (VPN) or by using the secure HTTPS protocol. COUNTY data shall always be encrypted to Federal standards while in route to or from the cloud servers.

**Penetration Testing** - CONTRACTOR shall conduct quarterly penetration and vulnerability tests on every hosted customer environment. Tests shall span discovery, exploitation, brute-forcing and reporting, providing pro-active security controls.

### **DATA OWNERSHIP**

All the hosted data remains COUNTY property during and after the lifetime of the Agreement. COUNTY may have access to it at any time, subject to appropriate security controls and procedures. CONTRACTOR shall never make COUNTY data available to third-parties or use it internally except to support COUNTY’S operation.

At the termination of the Agreement, COUNTY’S data (full database backup file plus any other digital files such as documents, video, images, etc.) will be provided to COUNTY in the form of a Microsoft SQL Backup file. Copies of COUNTY data shall also be available upon COUNTY request and will be provided to COUNTY up to two times per month in the form of a Microsoft SQL Backup file upon three days’ advance notice to CONTRACTOR, and COUNTY shall be responsible for any significant data transfer charges, at the following rates:

Less than, or equal to, 1 TB: If the total amount of data is less than 1TB, it will be placed in a secure access controlled site for network download at no cost to COUNTY.

Greater than 1 TB: If the amount of data is greater than 1TB, it will be sent on an encrypted device at a cost of a \$500 dollar flat fee plus \$0.05 per GB. The device will have at least 256 bit encryption and be shipped to COUNTY via a certified carrier, requiring an authorized signature for release. COUNTY will have 7 days after receipt to extract data and return the device. After 7 days a charge of \$20 per day will be added until the device is returned. Return shipping is included in the price. Rates are subject to change.

### **DATA BACKUPS**

CONTRACTOR shall backup COUNTY’S production database every two hours to storage media in CONTRACTOR’S primary hosting region. At the end of each day, the 00:00 backup is archived, and the other hourly backups are overwritten the next day. CONTRACTOR shall maintain a minimum of fourteen days of archival data backup.

CONTRACTOR shall snapshot COUNTY’S running Compute Instances (CI) once every 24 hours and rotate the CI backups every three business days.

Both data backups and CI snapshots shall be “encrypted at rest” with FIPS 140-2 compliant encryption techniques.

### **DISASTER RECOVERY (DR)**

CONTRACTOR shall provide for disaster recovery by exporting COUNTY data backup to a geographically remote hosting region. These database backups shall rotate every six hours at 00:00, 06:00, 12:00 and 18:00.

CONTRACTOR shall snapshot COUNTY’S running compute instances once every 24 hours and export those snapshots to a remote hosting region. Compute instance backups rotate every three business days.

If CONTRACTOR’S primary hosting region is not available for a period of two hours or more, CONTRACTOR shall begin the process of failing over to CONTRACTOR’S remote regions.