

Statement of Work

GroupWise to Office 365 Full Migration

Prepared For:

Tulare County Information &
Technology Group

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Team

Michael Howden

Director of Security Services

P: (800) 949-9933, Ext. 5140

E: mhowden@novacoast.com

Shelly Cobb

Client Executive

P: 805-453-8792

E: scobb@novacoast.com

Randall Bender

VP of Sales

P: (800) 949-9933

E: rbender@novacoast.com

Billing Administration

Novacoast Accounting

P: 800.949.9933 x5012

E: billing@novacoast.com

Novacoast Corporate Office

1505 Chapala Street Santa Barbara, CA 93101

P: 800.949.9933 | F: 805.564.1809

<http://www.novacoast.com>

Document Information

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About this document:

Information found in this document is derived from a variety of sources, including but not limited to Novacoast partner product documentation, Novacoast partner Technical Support documents, sources publicly available on the Internet, as well as Novacoast's vast experience in implementing relevant technology solutions.

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The Tulare County Information & Technology Group, hereinafter referred to as "Customer", and Novacoast agree to the following provisions.

Change Control Process

The Change Control Process governs changes to the scope of this project throughout the project's duration. It applies to new components and to enhancements of existing components.

A written Change Request communicates any desired changes to this project. It describes the proposed change, the reason for the change, and the effect the change might have on the project. The Novacoast project manager supplies the appropriate Change Management documents.

Both Novacoast and the customer review the Change Request and approve or reject it. Both parties must sign the approval portion of the Change Request to authorize the implementation of any change that affects the project's scope, schedule, or fee.

Cancellation and Rescheduling Policy

For any project cancellations made by customer within five (5) business days of the scheduled start of services, customer will incur a cost of one-half of the total project costs as stated in this SOW. For any project cancellations made by customer within two (2) business days of the scheduled start of services, customer will incur the full cost of the project as stated in this SOW.

For any rescheduling of services requested by customer within five (5) business days of the start day of such services, customer shall incur all costs to modify travel arrangements and other related expenses. This clause becomes effective upon customer acceptance of the project schedule.

If Customer wishes to suspend or cancel project prior to completion of final milestone or project completion, Customer agrees to render payment for 100% of current milestone within thirty (30) days of suspension of project. A re-engagement fee of USD 10,000 will be payable if the project is restarted at a later date, not exceeding ninety (90) days.

The invoice for additional costs is issued against the existing purchase order. When and if the solution is started, the customer agrees to issue an amended purchase order to cover the additional costs.

Table of Contents

Team	2
Document Information	3
Table of Contents	4
About Novacoast	5
Who we are	5
What we do	5
How we work	5
Scope of Work	6
Overview	6
Phase 1 – Planning	6
Phase 2 – Validation of Environment	7
Phase 3 – Review and Validate Migration Plan	8
Phase 4 – Validation of Pre-Migration Activities	9
Phase 5 – Mailbox Seeding with Migration Passes	11
Phase 6 – Production Migration Cutover Weekend	12
Phase 7 – Post-Migration Support and Documentation Review	Error! Bookmark not defined.
Phase 8 – Project close out	Error! Bookmark not defined.
Cost of Assistance	14
Agreement of Standard Working Hours	14
Cost of Assistance	14
Terms and Conditions	15
13. TERMINATION:	16
Authorizing Signatures	20
Customer Contacts	21

About Novacoast

Who we are

Novacoast is an international IT Professional Services and Product Development company built on a foundation of engineering expertise and a culture of creative problem solving. Empowered on every level by our flexible and fearless perspective, Novacoast combines its advanced technical knowledge with our customers' expertise so together we can make informed decisions and avoid costly IT mistakes.

What we do

We specialize in identity and access management, security and compliance, network infrastructure, remote management, desktop management, and open source solutions.

We offer custom application and product development. The Novacoast Development team is made up of talented developers with agile skillsets and dedicated user interface designers. We have experience in designing mobile, social, web, and enterprise software applications along with customizations for existing software. We also provide technical staffing to our clients through our Staffing

Services division, which leverages our engineering expertise and extensive network of industry contacts to provide selection, grooming and training of contract, part time or full time appointments.

How we work

Our service areas are built around key engineers with expertise in certain technologies—specialists who are resources to clients and to other engineers within Novacoast. Basically, all Novacoast engineers have access to a collaborative cavalry. This means Novacoast combines specialist capabilities with a generalist approach to cross-functional needs in large enterprises. Our diverse know-how also allows us to support small to mid-size businesses, which typically have the same needs and IT dependencies as large businesses, but work within narrower budgetary constraints.

Although the ratio of technical personnel remains high at Novacoast, we have additional skill sets focused on client business needs, project management, and technical documentation.

Headquartered in Santa Barbara, CA, Novacoast delivers services nationally and internationally.

The Novacoast Services Model

The Novacoast Services Model delivers these core services:

- Evaluation of your business needs
- Technical assessment of your current IT environment
- Planned information systems that grow with you
- Custom software development
- Automation of your business applications
- Front-end assessment of your technical training needs
- Training resources designed to improve employee skills
- Complete documentation and training manuals
- Cutting-edge tech support

Scope of Work

Overview

County of Tulare (Customer) is undertaking an email migration from GroupWise to Office 365. Customer has asked Novacoast to evaluate their existing infrastructure, provide a scope for the migration assistance, and assist with the migration go-live process which will take roughly 14 weeks to complete. Customer already owns and will be using Quest Coexistence Manager for GroupWise.

Phase 1 – Planning

Novacoast will work with Customer to develop a high-level project plan and project task checklist. This will detail out the work steps and timing for the implementation and migration. This will also include the determination of what customer resources will be required to complete the migration project. Tasks included in this phase:

- Kick off meeting
 - Review scope of work
 - Review existing network, server, workstation and email environment documentation
 - Review Customer processes, identify key stakeholders, outline operational procedures, etc.
 - Identify Customer project resources and availability
 - Review initial timetable and specific work blackouts, holidays, etc.
- Define project success factors
- Create initial project documentation
- Review and schedule onsite visits
- Deliver, update and review project plan as required

Novacoast anticipates that the Planning phase will require a minimum of six (6) 60-minute meetings (more may be required if all participants are not available during each meeting time) to review/discuss Customer's business and technical requirements.

Novacoast will have in attendance for these meetings the following resources: Novacoast project manager, Novacoast lead engineers and additional engineer/developer resources as needed.

It is requested that Customer be represented by Customer Project Sponsor, Customer Project Team Lead, Customer Project Manager, Customer representative with knowledge of existing email environment, Active Directory environment, and network environment.

Phase 1 Assumptions

- Customer will provide key project personnel with contact information
- Customer will provide Novacoast engineers access credentials
- Customer will provide Novacoast engineers with migration servers and/or workstations for any script development and production migrations (specifications to be provided by Novacoast)
- Multiple Novacoast resources will be required concurrently during this phase

Phase 1 Deliverables

- Draft Project Schedule by phase
- Project team communication list
- RACI Matrix

Phase 1 Duration

Phase 1 will take approximately 2 days

Phase 2 – Validation of Environment

During this phase, Novacoast will review the Active Directory, GroupWise, Exchange 2016, Office 365 and network environments to determine its health and readiness for migration. As part of this process, Novacoast may run data gathering scripts and/or tools developed by Microsoft, Novacoast and/or industry leaders. This phase is to ensure no roadblocks have emerged since the POC.

- Verify current Active Directory infrastructure, including
 - Validate Forests, Domains, Sites and Functional Levels
 - Validate Domain Trusts and Federation
 - Validate Office 365 user synchronization roadblocks
 - Validate authentication mechanisms
 - Validate directory OU design
 - Validate user account provisioning process
- Verify current network infrastructure (specific to project scope), including
 - Validate Network (WAN) and LAN connectivity in between sites
 - Validate infrastructure security (firewalls, IDS/IPS, identity and access management)
- Verify current email infrastructure, including
 - Validate mail flow
 - Validate mailbox sizes and counts
 - Validate DNS records related to GroupWise
 - Validate client versions
 - Validate Shared Folders
 - Validate Proxies
 - Validate POA Scheduled Maintenance Content statistics logs
- Documentation development
 - Create remediation process documentation (if necessary)
- Communication
 - Send initial communication drafts to executive team for approval

Novacoast anticipates Phase 2 will require a minimum of four (4), 60-minute meetings (more may be required if all participants are not available during each meeting time) to review/discuss Customer environment.

Novacoast will have in attendance for these meetings the following resources: Novacoast project manager, Novacoast lead engineer and additional engineer/developer resources as needed.

It is requested that Customer be represented by Customer Project Sponsor, Customer Project Team Lead, Customer Project Manager, and Customer representative with knowledge of existing email environment, Active Directory environment, and network environment.

Phase 2 Assumptions

- Customer will provide Novacoast with all data and documentation for items listed in above bullet points
- Office 365 licenses are purchased, and tenant is active
- Multiple Novacoast resources will be required concurrently during this phase
- Validation will be limited to the GroupWise and Active Directory domains specific to project scope
- Scope is limited to active users who have logged into a mailbox within the previous 60 days

Phase 2 Out of Scope

- Remediation of newly discovered roadblocks that take longer than 8 hours total to fix

Phase 2 Deliverables

- Validation Documentation
- Up to 8 hours total remediation (if needed)

Phase 2 Duration

Phase 2 will take approximately 1 week

Phase 3 – Review and Validate Migration Plan

Based on data reviewed and validated in phases 1, 2, and previous POC, and using experience and industry best practices, Novacoast will architect the migration plan to meet Customer business and technical requirements. Novacoast's strategy for the migration will be to capture all current, relevant data (including user mailboxes, resource mailboxes, client applications, etc), current methods for accessing email, and infrastructure services as defined during the project. For the end user, the goal for the migration team is to be undistruptive and will depend on planning, communication and testing. Novacoast will work with Customer staff to define success criteria for project and Novacoast will validate any data that is being migrated. It will be necessary for Customer staff to be involved in the validation process.

- Review migration methodology
 - Create/Review mappings for,
 - User Mailboxes -> User Mailboxes
 - User Mailboxes -> Shared Mailboxes
 - Resource Mailboxes -> Resource Mailboxes
- Review requirements for email migration tool
- Review email client migration via deployment application
- Review migration fall back procedure
- Review User Acceptance Testing and Success Criteria plan
 - Login
 - Send/Receive Email
 - Calendar Items
 - Address Books
 - Shared Folders
 - Proxies <-> Delegates
- Update communication plan
 - Send approved initial communications to end users

Novacoast will provide a review of the recommended migration plan as it relates to the business and technical requirements. This is anticipated to be a 2-hour discussion.

Novacoast will have present: Novacoast project manager, Novacoast lead engineer and any additional resources as needed.

It is requested that Customer be represented by Customer Project Sponsor, Customer Project Team Lead, Customer Project Manager, and any other managerial or technical representatives Customer determines should be present.

Phase 3 Assumptions

- Customer's configuration management environment is updated and functional, and configuration management client agents are fully deployed to all endpoints
- Customer to assist with setup and procurement of tools
- Multiple Novacoast resources will be required concurrently during this phase

Phase 3 Deliverables

- Migration methodology and process document
- User Acceptance Testing plan

- Migration Success Criteria document

Phase 3 Duration

Phase 3 will take approximately 2 days

Phase 4 – Validation of Pre-Migration Activities

Novacoast will work with Customer to acquire migration tool for production migrations. Novacoast will not be responsible for modifying any applications but will need to work with Customer to ensure applications dependent on migrated services are working correctly. Novacoast can bring in additional resources at additional cost, if required, to directly assist with application migration support. Novacoast is not including physically visiting workstations within the Customer environment as a part of the migration process. If it is determined that the desktop/laptop system will require physical visits, a change order will be issued, or Customer staff will be responsible for visiting desktop/laptops.

Active Directory

- Update Active Directory per design
 - Extend OU structure as needed (customer task)
- Production users and security groups
 - Identify users and distribution groups to migrate to Office 365 (customer task)
 - Run Microsoft's IdFix to identify errors
 - Modify accounts to prepare for synchronization (UPN & Email attribute match)

GroupWise

- Post office maintenance
 - Content fix with statistics, attachment option and MISC options
 - Validate all domain and post office databases

Exchange

- Database backup
- Validate all database maintenance logs
- Hybrid connection to Office 365

Email Archiving

- Configure retention policies for email archiving in Customer chosen solution
- Test pilot mailboxes for email archive
- Prepare for cutover of archiving as required

Office 365

- Deploy Windows server to host Office 365 directory synchronization
 - Configure virtual/physical compute resources (customer task)
 - Install/license/update supported Windows OS (customer task)
 - Configure virtual/physical storage and attach to Windows servers (customer task)
 - Install/configure Azure AD Connect in root domain
 - Register Azure AD Connect Health (If Azure AD Premium is licensed)
- Deploy Office 365/provisioning
 - Configure Office 365 tenant as needed
 - Apply licensing groups as needed
- Configure Internet connectivity
 - Configure firewall connections as needed for GroupWise coexistence (customer assisted task)
 - Verify/configure Internet access from each location per Microsoft requirements (customer assisted task)

- Validate Azure AD Connect can synchronize

Migration Tools

- Deploy migration tool workstations as needed
- Obtain licensing for tool(s)
- Install\Configure migration tools for coexistence
- Complete prerequisites for Office 365 connection(s)
- Prepare the seed migration to begin populating Office 365
- Create production migration groups

Office Software Deployment

- Download and configure Office Desktop Software (Click-to-Run or C2R version) deployment point
- Review licensing requirements and activation for Office Desktop Software
- Configure Office C2R XML
- Configure Group Policy for user/computer settings as needed
- Configure configuration management application package(s) to remove GroupWise, and install Office/Outlook 365

Network Infrastructure Configuration

- Review best practice for network planning and throttled migration performance
- Review Office 365 URLs and IP Address ranges
- Create/Validate DNS records for Office 365
- Reduce existing MX DNS record TTL, when appropriate

Communication

- Review documentation and FAQ for Production end user communication

Phase 4 Assumptions

- Customer responsible for visiting workstations
- Customer responsible for application functionality
- Customer responsible for delivering end user communication and training sessions
- Customer will provide a local technical support contact for each site's migration
- Customer responsible for licensing for email archive
- Every Office software user will have a provisioned G1 or higher Office 365 license
- Office desktop software to be 32-bit version with no custom settings (out-of-box experience)
- Office desktop software deployment not to include Visio or Project
- If required, Customer resources to manually install Visio and/or Project desktop software
- 1 forest to provide a unified UPN namespace (required for Office 365 synchronized accounts)
- UPN suffix will match the user's primary email address.
- Sufficient bandwidth and routing to support mailbox migration to Office 365
- Network infrastructure admin access is remotely available
- Multiple Novacoast resources will be required concurrently during this phase

Phase 4 Deliverables

- Staged Migration Plan/Schedule for Production users
- GroupWise preparation reports
- Azure AD Connect process documentation
- Administration documentation

Phase 4 Out Of Scope

- Office 365 services other than Exchange Online
- PKI services

- GPOs, DNS, DHCP or other services not relating to this project
- Active Directory Federation Services

Phase 4 Duration

Phase 4 will take approximately 2 weeks

Phase 5 – Mailbox Seeding with Migration Passes

Novacoast will work with Customer to determine proper order for users, groups and resource mailboxes for production migrations of up to 5,400 user mailboxes and up to 600 resource (shared) mailboxes on GroupWise, and up to 400 mailboxes on Exchange 2016. Novacoast and Customer will perform at least 2 pilot user migrations to validate success using up to 5 resource (shared) mailboxes, and up to 10 Production users' accounts (preferably IT friendly). Results to be captured using user acceptance testing document. Any issues determined to block migration efforts will be remediated before going to cutover.

- Configure users, groups, and resource accounts in Office 365
- Validate and update migration process documentation
- Communicate upcoming cutover changes to users (customer task)
- Copy user and resource mailbox data to Office 365 (up to 365 days of live data only)
- Messaging problem management and remediation for users
- Continue synchronizing user accounts in Office 365

Phase 5 Assumptions

- Customer responsible for all internal change management requests
- Customer responsible for visiting workstations
- Customer will provide a local technical support contact for each site's migration
- Customer will provide a local test workstation for each site's migration
- Mobile device testing to be performed by customer if remote assistance unavailable
- Customer to test resource availability and user experience regarding messaging applications, mail integrations, etc.
- Clients can be easily identified using domain and/or network boundaries
- Every Office software user will have a provisioned G1 or higher Office 365 license
- Office desktop software to be 32-bit version with no custom settings (out-of-box experience)
- Office desktop software deployment not to include Visio or Project
- If required, Customer resources to manually install Visio and/or Project desktop software
- UPN suffix will match the user's primary email address.
- Sufficient bandwidth and routing to support mailbox and file migrations to Office 365
- Pilot migration is continuous and to be performed as a single event.
- Workstations and user accounts could be secondary to the users' primary workstation.
- Customer team will provide first line of support and delegate/escalate user messaging problems to Novacoast
- Customer will perform end user communication and assist with software deployment tasks
- Some remediation steps may require technical support from Microsoft which may impact the phase timeline. Customer agrees to provide Novacoast with their support contract or reimburse Novacoast for any fees incurred
- Multiple Novacoast resources will be required concurrently during this phase
- Mailbox seeding will take multiple passes for up to 2 contiguous calendar months; change to schedule not permitted without written agreement from Novacoast

Phase 5 Deliverables

- UAT and migration success reports for each group of mailboxes getting seeded

- Updated migration process documentation (if needed)

Phase 5 Out Of Scope

- Office 365 services other than Exchange Online
- PKI services
- GPOs, DNS, DHCP or other services not relating to this project
- Active Directory Federation Services

Phase 5 Duration

Phase 5 will take approximately 8 weeks

Phase 6 – Production Migration Cutover Weekend

Novacoast will work with Customer to determine proper timing of production migration cutover. Any issues will be remediated by Customer with escalation support provided by Novacoast.

- Communication to all users (customer task)
- Final delta sync of mailbox data to Office 365
- Update MX record (customer task)
- Reconfigure Spam Management (customer task)
- Launch software package(s) with endpoint management to ensure GroupWise client removal and Office installation
- Configure Outlook clients with new profile to connect to Office 365 via 3rd party utility as needed
- Validate email archives as necessary

Phase 6 Assumptions

- Customer responsible for all internal change management requests
- Customer responsible for visiting workstations
- Customer to provide per site lists of workstations
- Customer will provide a local technical support contact for each site's migration
- Customer to provide per site lists of VIP and regular mailboxes
- Mobile device testing to be performed by client
- Customer to test resource availability and user experience regarding messaging applications, mail integrations, etc.
- UPN suffix will match the user's primary email address.
- Sufficient bandwidth and routing to support mailbox migration to Office 365
- Customer team will provide first line of support and escalate user messaging problems to Novacoast
- Customer will perform end user communication and assist with software deployment tasks
- Some remediation steps may require technical support from Microsoft which may impact the phase timeline. Customer agrees to provide Novacoast with their support contract or reimburse Novacoast for any fees incurred
- 3rd party software or scripts may be deployed to each workstation to configure Outlook Profiles
- Office has been upgraded to supported versions
- Customer to migrate applications and core services as needed
- Customer to update devices (multifunction scanners, monitoring applications, etc.) to relay using Office 365 or client deployed local mail systems.
- Multiple Novacoast resources will be required concurrently during this phase

Phase 6 Out Of Scope

- Office 365 services other than Exchange Online
- GPOs, DNS, DHCP or other services not relating to this project

- Issue remediation escalation impacting less than 5 users with the same problem
- Server and application migration

Phase 6 Duration

Phase 6 will take approximately 4 days (1 long weekend)

A Limited Assistance Novacoast Delivery Manager is added to this project. Novacoast's "Limited Assistance" Delivery Manager roles and duties include:

- A weekly status report will be generated using Novacoast's pre-defined templates to capture and communicate the current status of the project. The report will include current expected timelines, major project phase and task assignments, and any project risks identified and recommended resolutions by the project team.
- The Delivery Manager will host and participate in a single weekly project status meeting to gather the necessary details for the status report and discuss any issues or risks currently pending. The Delivery Manager will not be required to join other project meetings.
- The Delivery Manager will maintain regular contact with Novacoast project staff.
- Customer will be responsible for providing a single primary contact that can work with the Novacoast Delivery Manager. The Novacoast Delivery Manager will not be responsible for managing or direct communication with the customer's extended project team outside of the weekly status meetings.
- Delivery Management will be provided remotely for the entirety of this project.
- Specific deliverables and dates for their sign-off will be mutually agreed upon by the Delivery Manager for Consultant and Customer Project Manager

Cost of Assistance

Agreement of Standard Working Hours

This proposal covers services performed via remote access during the standard business hours of Monday through Friday, 8am to 6pm, and scheduled required after-hours work.

Cost of Assistance

This SOW and the figures quoted within are valid for thirty (30) days from date of SOW delivery. This term may be extended based on mutual agreement of the Parties.

Table 1: Cost of Assistance

DESCRIPTION	COST
Phases 1-6 Tasks and Deliverables – GroupWise and Exchange Email Migration	\$458,347.83
Fixed Cost Total	\$458,347.83
Travel*	\$20,000.00
Fixed Cost + Travel Total	\$478,347.83

All rates quoted in this SOW are in US Dollars unless otherwise stated.

* Travel costs shown are budgetary. All costs to be billed as actuals.

Payment Terms

Novacoast will invoice 25% of the total fixed project cost upon signature of this Statement of Work.

Further billing is determined by the following mutually agreed upon milestones:

- 25% upon completion of Phase 2
- 20% upon completion of Phase 4
- 20% upon completion of Phase 5
- 10% upon completion of Phase 6

An authorized signature shall constitute acceptance of these services and products in the attached document and is required to schedule Novacoast resources.

Terms and Conditions

COUNTY OF TULARE'S GENERAL AGREEMENT TERMS AND CONDITIONS (Form revision approved 01/01/2018)

1. **PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK:** CONTRACTOR is not entitled to any payments from COUNTY until services are delivered to the County Department for which services are provided under the Agreement. Payments to CONTRACTOR by COUNTY shall not excuse CONTRACTOR from its obligation to replace unsatisfactory deliverables, including equipment, components, materials, or services even if the unsatisfactory character of such deliverables, equipment, components, materials, or services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and services that do not conform to the requirements of this Agreement may be rejected by COUNTY and in such case must be replaced by CONTRACTOR without delay and at no cost to the COUNTY.
2. **DISALLOWANCE:** If CONTRACTOR requests or receives payment from COUNTY for services hereunder, reimbursement for which is later disallowed by the State of California or United States Government, CONTRACTOR shall promptly refund the disallowed amount to COUNTY upon COUNTY'S request. At its option, COUNTY may offset the amount disallowed from any payment due or to become due to CONTRACTOR under this Agreement or any other Agreement between CONTRACTOR and COUNTY. CONTRACTOR'S obligations under this section 2 will survive the expiration or termination of this Agreement.
3. **LIABILITY:** COUNTY'S payment obligations under this Agreement shall be limited to the payment of the compensation provided for in section 3, "PAYMENT FOR SERVICES," of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall either party be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.
4. **QUALIFIED PERSONNEL:** CONTRACTOR shall utilize only competent personnel under the supervision of, and in the employment of, CONTRACTOR (or CONTRACTOR'S authorized subcontractors) to perform the services. CONTRACTOR will comply with COUNTY'S reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at COUNTY'S request, must be supervised by CONTRACTOR. CONTRACTOR shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.
5. **INDEPENDENT CONTRACTOR STATUS:** The Parties enter into this Agreement with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. The Parties agree that the CONTRACTOR and any of its agents, employees, or officers cannot be considered agents, employees, or officers of COUNTY.

CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR will be solely responsible for determining the means and methods of performing the specified services and COUNTY will have no right to control or exercise any supervision over CONTRACTOR as to how the CONTRACTOR will perform the services. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- (1) Withhold FICA (Social Security) from CONTRACTOR'S payments.
- (2) Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- (3) Withhold state or federal income tax from payments to CONTRACTOR.
- (4) Make disability insurance contributions on behalf of CONTRACTOR.
- (5) Obtain unemployment compensation insurance on behalf of CONTRACTOR.

Notwithstanding this independent contractor relationship, COUNTY will have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

6. **COMPLIANCE WITH LAW:** CONTRACTOR must provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.
7. **LICENSES AND PERMITS:** CONTRACTOR represents and warrants that it possesses and will maintain during the term of this Agreement all licenses and permits required for its performance of the services required under this Agreement.
8. **GOVERNING LAW:** The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.
9. **RECORDS AND AUDIT:** CONTRACTOR must maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR must maintain complete and accurate records with respect to any payments to employees or subcontractors. All of the records must be prepared in accordance with generally accepted accounting procedures, must be clearly identified, and must be kept readily accessible. Upon request, CONTRACTOR must make the records available within Tulare County to the Auditor of Tulare County and to his or her agents and representatives, for the purpose of auditing and/or copying the records for a period of five (5) years from the date of final payment under this Agreement.
10. **CONFLICT OF INTEREST:**

- (a) At all times during the performance of this Agreement, CONTRACTOR must comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to, Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which the officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision that has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.
- (b) CONTRACTOR agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts of interests laws, then it will immediately inform COUNTY and provide all information needed for resolution of this question.

11. INSURANCE: The attached **Exhibit C** outlines the minimum scope, specifications, and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in **Exhibit C** cannot be used to reduce limits available to COUNTY as an additional insured from CONTRACTOR'S full policy limits. Insurance policies cannot be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer(s). If CONTRACTOR fails to maintain or renew coverage, or to provide evidence of renewal, then COUNTY may consider that failure a material breach of this Agreement. COUNTY may also withhold any payment otherwise due to CONTRACTOR for failure to provide evidence of renewal until CONTRACTOR provides such evidence.

12. INDEMNIFICATION AND DEFENSE:

- (a) To the fullest extent permitted by law, CONTRACTOR must indemnify, defend (at CONTRACTOR'S sole cost and expense and with legal counsel approved by COUNTY, which approval may not be unreasonably withheld), protect and hold harmless COUNTY, all subsidiaries, divisions and affiliated agencies of COUNTY, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and COUNTY general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of CONTRACTOR with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors and/or omissions of CONTRACTOR, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). CONTRACTOR'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR'S indemnification obligation shall be reduced in proportion to the established comparative liability.
- (b) The duty to defend is a separate and distinct obligation from CONTRACTOR'S duty to indemnify. CONTRACTOR shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to CONTRACTOR of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to CONTRACTOR by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than CONTRACTOR are responsible for the Claim does not relieve CONTRACTOR from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if CONTRACTOR asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR may submit a claim to the COUNTY for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Indemnified Party. CONTRACTOR'S indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. CONTRACTOR'S liability for indemnification under this Agreement is in addition to any liability CONTRACTOR may have to COUNTY for a breach by CONTRACTOR of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be construed to limit CONTRACTOR'S indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.
- (c) CONTRACTOR must indemnify and hold COUNTY harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

13. TERMINATION:

- (a) **Without Cause:** COUNTY may terminate this Agreement without cause by giving thirty (30) days' prior written notice to CONTRACTOR of its intention to terminate under this provision, specifying the date of termination. COUNTY will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of any compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. COUNTY will not impose sanctions on CONTRACTOR under these circumstances.
- (b) **With Cause:** Either Party may terminate this Agreement immediately, by written notice to the other Party, should the other Party:

- (1) Be adjudged a bankrupt, or
- (2) Become insolvent or have a receiver appointed, or
- (3) Make a general assignment for the benefit of creditors, or
- (4) Suffer any judgment that remains unsatisfied for 30 days, and that would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) Materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) Material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR'S behalf, as to any matter related in any way to COUNTY'S retention of CONTRACTOR, or
- (7) Other misconduct or circumstances that, in the sole discretion of COUNTY, either impairs the ability of CONTRACTOR to competently provide the services under this Agreement, or exposes COUNTY to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If CONTRACTOR fails to perform according to the terms and conditions of this Agreement, then COUNTY may, in addition to any other remedy it may have, issue a declaration of default after 10 days written notice to CONTRACTOR.

Upon a material breach, the Agreement may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party within 5 days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the non-defaulting Party may terminate this Agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5-day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting Party may terminate this Agreement upon written notice specifying the date of termination.

COUNTY will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated profits or other economic loss, nor will COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If COUNTY terminates this Agreement for cause and the expense of finishing CONTRACTOR'S scope of work exceeds the unpaid balance of the Agreement, then CONTRACTOR must pay the difference to COUNTY. COUNTY may impose sanctions under these circumstances, which may include possible rejection of future proposals based on specific causes of CONTRACTOR'S non-performance.

(c) **Effects of Termination:** Expiration or termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where COUNTY terminates CONTRACTOR'S services, that termination will not affect any rights of COUNTY to recover damages against CONTRACTOR.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of the COUNTY department or agency for which CONTRACTOR'S services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

14. LOSS OF FUNDING: It is understood and agreed that if COUNTY'S funding is either discontinued or reduced for the services to be provided hereunder, then COUNTY will have the right to terminate this Agreement under section 13 (a) ("Termination Without Cause") as of the end of the term for which funds are appropriated. Such termination shall be without penalty, liability, or expense to COUNTY of any kind, provided that COUNTY shall pay CONTRACTOR in accordance with section 13 (a) for services satisfactorily performed prior to the date of such termination and to the extent funds have been appropriated for such payment.

15. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES: Under applicable federal and state law, if CONTRACTOR submits a false claim to COUNTY under this Agreement, then CONTRACTOR will be liable to COUNTY for the statutory penalties set forth in those statutes, including but not limited to statutory fines, treble damages, costs, and attorneys' fees. CONTRACTOR will be deemed to have submitted a false claim to COUNTY if CONTRACTOR:

- (a) Knowingly presents or causes to be presented to COUNTY a false claim or request for payment or approval;
- (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by COUNTY;
- (c) Conspires to defraud COUNTY by getting a false claim allowed or paid by COUNTY;

(d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to COUNTY; or

(e) Is a beneficiary of an inadvertent submission of a false claim to COUNTY, later discovers the falsity of the claim, and fails to disclose the false claim to COUNTY within a reasonable time after discovery of the false claim.

16. FORM DE-542: If CONTRACTOR is an individual, CONTRACTOR acknowledges that this Agreement is subject to filing obligations under Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include CONTRACTOR'S full name, social security number, address, the date this Agreement was executed, the total amount of the Agreement, its expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make that information available and to complete Form DE-542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

17. WORKS FOR HIRE: CONTRACTOR acknowledges that all work(s) under this Agreement are "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to COUNTY all rights and interests CONTRACTOR may have in the work(s) it prepares under this Agreement, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Agreement for COUNTY will be the sole property of COUNTY, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to COUNTY. CONTRACTOR will execute all necessary documents to enable COUNTY to protect COUNTY'S intellectual property rights under this section.

18. WORK PRODUCT: All work product, equipment, or materials created for COUNTY or purchased by COUNTY under this Agreement belong to COUNTY and CONTRACTOR must immediately deliver them to COUNTY at COUNTY'S request upon termination or completion of this Agreement.

19. TIME OF ESSENCE: The Parties agree that time is of the essence under this Agreement, unless they agree otherwise in writing.

20. CONFIDENTIALITY: CONTRACTOR may not use or disclose any information it receives from COUNTY under this Agreement that COUNTY has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by COUNTY. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, COUNTY may not disclose to third parties any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential. If COUNTY determines that it must disclose any information that CONTRACTOR previously identified as confidential, then it shall promptly give CONTRACTOR written notice of its intention to disclose such information and the authority for such disclosure. CONTRACTOR shall have period of five (5) calendar days thereafter within which to seek a protective court order to prevent such disclosure or to notify COUNTY that it will not seek such an order. COUNTY shall cooperate with CONTRACTOR in any efforts to seek such a court order. COUNTY shall not disclose the information until the five (5) day period has expired without a response from CONTRACTOR, or CONTRACTOR has notified COUNTY that it will not seek such an order, or CONTRACTOR has sought and a court has declined to issue a protective order for such information. If CONTRACTOR seeks a protective order for such information, CONTRACTOR shall defend and indemnify COUNTY from any and all loss, injury, or claim arising from COUNTY'S withholding of the information from the requestor. This includes any attorney's fees awarded to the requestor. The duty of COUNTY and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Agreement.

21. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY, which consent COUNTY may grant, delay, deny, or condition in its absolute discretion.

22. DISPUTES AND DISPUTE RESOLUTION: CONTRACTOR shall continue with its responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute.

23. PROPERTY TAXES: Under the terms of California Revenue and Taxation Code section 107.6 (possessory interest tax), CONTRACTOR'S possession or use of any COUNTY-owned real property under this Agreement may create a "possessory interest" in the real property. If a possessory interest is created, then it may be subject to property taxation and CONTRACTOR may be subject to the payment of property taxes on that possessory interest.

24. FURTHER ASSURANCES: Each Party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

- 25. CONSTRUCTION:** This Agreement reflects the contributions of all Parties and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.
- 26. HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.
- 27. NO THIRD-PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
- 28. WAIVERS:** The failure of either Party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any later breach. The acceptance by either Party of either performance or payment will not be considered a waiver of any preceding breach of the Agreement by the other Party.
- 29. ORDER OF PRECEDENCE:** In the event of any conflict or inconsistency between or among the body of the Agreement (which includes these "General Agreement Terms and Conditions") and any Exhibit, Schedule, or Attachment, then the terms and conditions of the body of the Agreement shall prevail.
- 30. CONFLICT WITH LAWS OR REGULATIONS/ SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the Parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either Party is lost, then the Agreement may be terminated at the option of the affected Party. In all other cases, the remainder of the Agreement will continue in full force and effect.
- 31. ENTIRE AGREEMENT:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding will be of any force or effect. No part of this Agreement may be modified without the written consent of both Parties.
- 32. ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR must not discriminate in employment or in the provision of services based any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation. The Parties recognize that both CONTRACTOR and COUNTY have the responsibility to protect COUNTY employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, CONTRACTOR agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. COUNTY, in its sole discretion, has the right to require CONTRACTOR to replace any employee who provides services of any kind to COUNTY under this Agreement with other employees where COUNTY is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. COUNTY'S right to require replacement of employees under this section does not preclude COUNTY from terminating this Agreement with or without cause as provided for under this Agreement.
- 33. DRUG-FREE WORKPLACE POLICY:** CONTRACTOR acknowledges that under the Federal Drug-Free Workplace Act of 1989 and the California Drug-Free Workplace Act of 1990, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on COUNTY premises. CONTRACTOR agrees that any violation of this prohibition by CONTRACTOR, its employees, agents, or assigns will be deemed a material breach of this Agreement.
- 34. RECYCLED PAPER CONTENT:** To the extent CONTRACTOR'S services under this Agreement include printing services, pursuant to Public Contract Code section 22153 CONTRACTOR shall use paper that meets the recycled content requirements of Public Contract Code section 12209.
- 35.** Without prior written consent, neither CONTRACTOR nor COUNTY nor any of its affiliates will, for a period of one (1) year following the termination of this Agreement, solicit for employment or employ any employee of the other Party. In the event of a violation, the hiring Party will pay within ten (10) days of retention of said employee a lump sum fee equal to 50% of the previous year's earnings, including commission and bonus payments, of the employee at the time of separation. This section shall not be construed as prohibiting either party from engaging in any general or public solicitation for positions (ie., through newspaper advertisements, job posting boards etc.) or from hiring the other parties personnel who independently respond to such general and public solicitation.

Authorizing Signatures

The undersigned acknowledge that they are authorized to enter into this SOW on behalf of their respective organizations. Signatures below will constitute acceptance of all terms contained in this SOW and any supporting documents referenced throughout.

COUNTY OF TULARE		NOVACOAST
	Printed Name	President/CEO Paul Anderson
	Signature	
	Date	
	Printed Name	COO/Treasurer Janice Newlon
	Signature	
	Date	

Customer Contacts

CUSTOMER INFORMATION	
Company Name:	County of Tulare TCiCT
Billing Address:	221 South Mooney Boulevard, Room 9E Visalia CA 93291
County:	Tulare County
To the Attention of:	Kennon Keoseyan
Tax Status, if exempt please provide certificate	

IT CONTACT	
Name:	Jon Jones
Phone:	559-622-7360
Email:	Jcjones@co.tulare.ca.us

A/P CONTACT	
Name:	
Phone:	
Email:	