Valley Oak Systems Software License Agreement 28849

THIS SOFTWARE LICENSE AGREEMENT, together with the applicable Schedules and Exhibits (collectively, the "Agreement") is made this *23rd* day of July 2004 (the "Effective Date"), by and between Valley Oak Systems, Inc., having a principal place of business at 5000 Executive Parkway, Suite 340, San Ramon, California 94583 (hereinafter referred to as "Licensor") and the City of Long Beach, having a principal place of business at 333 West Ocean Blvd, 13th Floor, Long Beach, CA 90802 (hereinafter referred to as "Client").

WHEREAS, Licensor owns certain software which it is willing and able to license to Client; and

WHEREAS, Client has a need and desire to license said software from Licensor.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the parties agree as follows:

DEFINITION
The following definition applies to the term as it appears in this Agreement:
> "Software Product" includes computer software, electronic documentation, and printed materials as listed in Schedule A.
> "Production Use" means using the system in a live environment (i.e. open new claims, make payments, set reserves, generate checks)

1.   LICENSE GRANT
a.   Licensor hereby grants to Client a nonexclusive, royalty-free, right and license (the **"License"**) to access and use the Software Product and the documentation solely for its own internal business operations. Subject to the terms and conditions of this Agreement, as part of the License, (i) the Software Product may be accessed and used by the number of user licenses acquired, and (ii) the Software Product may be accessed and used for backup, failover, disaster recovery, and testing.

b.   Except as reasonably required to give effect to the rights described in the foregoing clauses (i) through (ii) above, the License granted herein does not include a right of sublicense to any third party. Client may not and shall not distribute the Software Product or any derivative work created using the Software Product to any third party or commercialize or sublicense the Software Product or any derivative work created using the Software Product for manufacture or distribution by a third party. Client shall have the right to use, copy, maintain, modify and make enhancements all for the sole purpose of supporting and maintaining the Software Product for internal use by Client. The Software Product, as modified, shall remain subject to the same restrictions on use, reproduction and disclosure of the Software Product provided under this Agreement.

c.   Client will not permit any employee or other third party to copy, use, analyze, reverse engineer, decompile, disassemble, translate, convert, or apply any procedure or process to the Software Product in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings for the Software Product or any trade secret information or process contained in the Software Product or remove any product identification, copyright or other notices.

d.   Client agrees that, when making copies of the Software Product or documentation in accordance with this Agreement, the Software Product will only be displayed or read into or used on its own computers. Client agrees to make no more than two (2) copies of the Software Product for archival or backup purposes only, all of which copies (together with the original) shall be kept in the possession or direct control of Client. Client agrees to place a label on the outside of each backup copy showing the Software Product name, version number, and the

Licensor's copyright and trademark notices, in the same form as they appear on the original licensed copy. Client shall not obscure or delete any copyright, trademark and other proprietary notices included therein by Licensor.

2.   LICENSE AND SERVICE FEES

A.   Client agrees to pay Licensor for the License Fees, modules and services as set forth in Schedule A following the process outlined in Schedule B.

B.   Late Charges; Other Remedies. Any payment not received within thirty (30) days after the invoice date will accrue interest at a rate of one percent (1%) per month, or the highest rate allowed by applicable law, whichever is lower. If Client is delinquent in its payments, Licensor may, upon prior written notice to Client, and at Licensor's sole discretion (i) terminate this Agreement, (ii) in whole or in part suspend providing services to Client until payment in full has been made to Licensor, and/or (iii) require other assurances to secure Client's payment obligations hereunder.

C.   Taxes. Client shall pay to Licensor the sales tax relating to the taxable purchases of services under this Agreement at the appropriate rate. Licensor and Client shall cooperate to properly calculate any applicable taxes. Taxes payable under this Agreement will be added to the prices payable by Client to Licensor, as applicable, as a separately stated line item on each invoice, and submitted to Client at the time Licensor seeks payment, in accordance with this Agreement, of the applicable services. If Client asserts in writing that such fees are not subject to tax and provides reasonable support for its conclusions or provides Licensor with an exemption certificate, Licensor will refrain from collecting and remitting any taxes with respect to any fees charged pursuant to this Agreement. Client shall remain responsible for any taxes determined to be due by a taxing authority despite the determination not to collect and remit said taxes pursuant to Client's representations. Each party shall be responsible for payment of taxes, including federal, state, and municipal taxes, chargeable or assessed with respect to its own employees or agents.

3.   DELIVERY

Licensor shall provide Client with all necessary passwords, instructions, materials and/or information that will allow Client to successfully install or download the Software Product specified in Schedule A. Installation of the Software Product is the responsibility of Client.

4.   ACCEPTANCE

Acceptance shall be at the completion date of the services and initiation of Production Use of the Software Product.

5.   TERM

This Agreement shall commence as of the Effective Date and will be effective for one year after the date of Production Use

6.   TERMINATION

6.1 TERMINATION BY EITHER PARTY FOR MATERIAL BREACH. Either party may terminate this Agreement upon notice if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days following receipt of notice specifying the breach in detail.

6.2 EFFECT OF TERMINATION. Termination of this Agreement shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Client of its obligation to pay all fees that have accrued or are otherwise owed by Client under any order form. The parties' rights and obligations under Sections 7, 9, 10, 11, 12, 13, 18 and 19 shall survive termination of this Agreement.

6.3 HANDLING OF PROGRAMS UPON TERMINATION. If the License granted under this Agreement terminates, Client shall (i) cease using the applicable Software Product, documentation, and related Confidential Information of Licensor, and (ii) certify to Licensor within thirty (30) days after termination that Client has destroyed, or has returned to Licensor, the Software Product, documentation, related Confidential Information of Licensor, and all copies thereof, whether or not modified or merged into other materials.

7.   INDEMNITY, WARRANTIES, REMEDIES

7.1 LICENSOR'S INFRINGEMENT INDEMNITY. Licensor will defend and indemnify Client against any and all costs, damages and expenses (including reasonable attorney's fees, expert fees, and court costs) finally awarded against Client by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Licensor arising out of any claim that the Software Product directly infringes any U.S. patent issued as of the Effective Date or any copyright, trade secret or trademark ("IP Claim"), provided that: (i) Client promptly notifies Licensor in writing no later than sixty (60) days after Client's receipt of notification of a potential claim, (ii) Licensor may assume sole control of the defense of such claim and all related settlement negotiations; and (iii) Client provides Licensor, at Licensor's request and expense, with assistance, information and authority necessary to perform Licensor's obligations under this Section. Notwithstanding the foregoing, Licensor shall have no liability for any claim of infringement based on (a) the use of a superseded or altered release of the Software Product if the infringement would have been avoided by the use of a current unaltered release of the Software Product, which Licensor provided to Client, (b) the modification of the Software Product, or (c) the use of the Software Product other than in accordance with the documentation. If, due to an IP Claim, (i) the Software Product is held by a court of competent jurisdiction or is believed by Licensor to infringe, or (ii) Client receives a valid court order enjoining Client from using the Software Product, Licensor shall, in its reasonable judgment, and at its expense, (a) replace or modify the Software Product to be non-infringing; (b) obtain for Client a license to continue using the Software Product; or (c) if Licensor cannot reasonably obtain the remedies in (a) or (b), terminate the License Agreement for the infringing Software Product. Licensor's entire liability and Client's sole remedy in respect of any claim of infringement shall be limited to actual direct damages, not to exceed the aggregate of the contract price actually paid by the Client to the Licensor. This Section 7.1 states Licensor's entire liability and Client's exclusive remedy for any claim of infringement.

7.2 LIMITED WARRANTIES AND DISCLAIMERS
A.   LIMITED SOFTWARE WARRANTY. Licensor warrants for ninety (90) days after the date of Production Use that each Software Product, for which Client has a license, will perform in all material respects, the functions described in the documentation when operated on a supported platform.

B.   ANTI-VIRUS WARRANTY. Licensor warrants that to the best of its knowledge after employing reasonable technical means to detect computer viruses, the Software Product does not contain any virus or computer software code, routines or devices (other than as set forth in the documentation) designed to disable, damage, impair, or erase the Software Product or other software or data. For failure to comply with this warranty, Licensor shall, at Licensor's expenses, immediately replace all copies of the affected Software Product in the possession of Client. This Section states Client's sole and exclusive remedies and Licensor's entire liability for a breach of this warranty.

C.   DISCLAIMERS. Licensor does not warrant that the Software Product will meet Client's requirements, the Software Product will operate in combinations with other hardware, software, systems or data not provided by Licensor (except as expressly specified in writing by Licensor in the documentation) which Client may select for use; the operation of the Software Product will be uninterrupted or error free; or all Software Product errors will be corrected. Notwithstanding any provision to the contrary, pre-production programs, deliverables, and training materials are distributed "AS IS". EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER

WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.3 EXCLUSIVE REMEDIES. Client must report in writing any breach of the warranties to Licensor during the relevant warranty period. Client's exclusive remedy and Licensor's entire liability for such breach shall be to use commercially reasonable efforts to correct or provide a workaround for reproducible Software Product errors that cause a breach of this warranty.

8.   GENERAL INDEMNITY

Separately from Licensor's obligation to defend and indemnify in Section 7.1 above, each party (an "Indemnitor") shall defend and indemnify the other party and its employees, officers, directors and agents (the "Indemnitee") against all damages for bodily injury, death, or damage to real or tangible personal property proximately caused by the Indemnitor in the course of performing this Agreement; provided that (i) the Indemnitor receives prompt notice of the claim from the Indemnitee under this Section, (ii) the Indemnitor has the right to control the defense of such claim and any related settlement negotiations, and (iii) the Indemnitee provides to the Indemnitor, at the Indemnitor's request and expense, the assistance, information and authority necessary to perform the Indemnitor's obligations under this Section.

9.   LIMITATION OF LIABILITY

Except as stated in section 7.1 above, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Except for Licensor's liability for infringement claims under Section 7.1, Licensor's aggregate and cumulative liability for damages hereunder shall in no event exceed the amount of fees paid by Client under this Agreement, and if such damages result from Client's use of the Software Product or services, such liability shall be limited to fees paid for the relevant Software Product or services giving rise to the liability. Client's aggregate and cumulative liability for damages hereunder shall in no event exceed the amount of fees paid by Client under this Agreement.

10.   CONFIDENTIAL INFORMATION

A.   For purposes of this Agreement, **"Confidential Information"** shall mean certain financial, technical, legal, marketing, computer network, and/or other business information, including, but not limited to, any software (in both source and object code), programming language, systems, analyses, interfaces, algorithms, passwords, procedures, output, sales data, vendor lists, customer lists, customer-related information, business strategies, advertising, marketing, and promotional plans, creative concepts, and related specifications and designs, which the disclosing party deems, and the receiving party should consider, proprietary and/or confidential to (and of independent economic value to) the disclosing party.

B.   Each party may from time to time under the terms of this Agreement either disclose to the other party (each a "disclosing party") or receive or obtain from the other party (each a "receiving party") Confidential Information. The receiving party agrees to treat all Confidential Information provided by the disclosing party pursuant to this Agreement and any Schedules issued hereunder as proprietary and confidential to the disclosing party, and the receiving party shall not (without the prior written consent of the disclosing party) disclose or permit disclosure of such Confidential Information to any third party, provided that the receiving party may disclose, on a need-to-know basis, such Confidential Information to its third party subcontractors who have signed non-disclosure agreements with the receiving party, and/or to its current employees, officers, or directors, or legal or financial representatives. The receiving party agrees to safeguard all Confidential Information of the disclosing party with at least the same degree of care (which in no event shall be less than reasonable care) as the receiving party uses to protect its own

Confidential Information. The receiving party shall use the disclosing party's Confidential Information solely for the purpose of fulfilling its obligations under this Agreement. The receiving party further agrees not to use or disclose the disclosing party's Confidential Information for its own benefit or for the benefit of others, except as otherwise authorized by this Agreement, the applicable Schedules, and/or the disclosing party in writing.

C. Notwithstanding the foregoing, the parties agree that the following information shall not be deemed Confidential Information, and the receiving party shall have no obligation with respect to any such information: (i) that is independently developed by the receiving party without any breach of this Agreement by the receiving party, and which can be shown by documentary evidence; (ii) that is or becomes in the public domain by no fault or wrongful act of the receiving party; (iii) that is known by the receiving party prior to disclosure by the disclosing party; (iv) that is disclosed to the receiving party by third party who was not under a similar restriction or obligation of confidentiality to the disclosing party, and without breach of this Agreement; (v) that is approved for release by written authorization of the disclosing party and/or the third party owner of the disclosed information; or (vi) that is disclosed pursuant to the lawful requirement or order of a court or governmental agency, provided that, upon the receiving party's request for such a disclosure, the receiving party gives prompt notice thereof to the disclosing party (unless such notice is not possible under the circumstances) so that the disclosing party may have the opportunity to intervene and contest such disclosure and/or seek a protective order or other appropriate remedy.

D. All Confidential Information transmitted or disclosed hereunder will be and remain the property of the disclosing party, and the receiving party shall (at the disclosing party's election) promptly destroy or return to the disclosing party any and all copies thereof upon termination or expiration of this Agreement, or upon the written request of the disclosing party. An officer or director for the receiving party shall certify in writing to the destruction of the disclosing party's Confidential Information by the receiving party.

E. The parties acknowledge and agree that, given the unique and proprietary nature of the Confidential Information, monetary damages may not be calculable or a sufficient remedy for any breach of this section by the receiving party, and that the disclosing party may suffer great and irreparable injury as a consequence of such breach. Accordingly, each party agrees that, in the event of such a breach or threatened breach, the disclosing party shall be entitled to seek equitable relief (including, but not limited to, injunction and specific performance) in order to remedy such breach or threatened breach. Such remedies shall not be deemed to be exclusive remedies for a breach by the receiving party but shall be in addition to any and all other remedies provided hereunder or available at law or equity to the disclosing party.

11. OWNERSHIP
Licensor is the owner of the Software Product and the documentation or otherwise has the irrevocable right to grant to Client the rights granted in this Agreement (including but not limited to the License).

12. COPYRIGHT and OTHER RESTRICTIONS
The Software Product is licensed, not sold, and is not transferable. Title and copyrights in and to the Software Product (including any images, photographs, video, audio, and text incorporated into the Software Product), accompanying printed material, and any copies you are permitted to make herein are owned by Licensor and are protected by United States copyright laws and international treaty provisions.

13. ASSIGNMENT
Client may not assign, voluntarily or by operation of law, any of its rights or obligations under this Agreement without the prior written consent of Licensor, which will not be unreasonably withheld. Licensor may at all times assign its rights and obligations under this Agreement. Subject to the foregoing, this Agreement shall be binding on the parties and their respective successors and assigns.

14.   INSURANCE

A) **Certificate of Insurance**. Licensor agrees to maintain, during the term of this Agreement, all insurance required by Client, as set forth at the time of the execution of this Agreement. Insurance must be placed with an insurer admitted to write insurance in California or a non-admitted insurer on California's List of Eligible Surplus Lines Insurers (LESLI) that has a rating of or equivalent to A:VIII by A.M. Best Company:

   i) **Commercial general liability** (equivalent in coverage to ISO form CG 00 01 11 85 or 11 88) in an amount not less than $1,000,000 per occurrence and $2,000,000 general aggregate. Such insurance shall include coverage for products and completed operations liability, broad form contractual liability, independent contractor's liability, and cross liability protection. The "City of Long Beach, its officials, employees, and agents" must be separately endorsed to the policy as additional insureds using Client's endorsement form or a form equivalent to Insurance Services Office, Inc. (ISO) forms CG 20 10 11 85 or CG 20 26 11 85.

   ii) **Automobile liability** (equivalent in coverage to ISO form CA 00 01 06 92) in an amount not less than $500,000 combined single limit per accident for bodily injury and property damage covering Auto Symbol 1 (Any Auto).

   iii) **Professional liability or errors and omissions** in an amount not less than $1,000,000 per occurrence.

   iv) **Workers' compensation and employer's liability** in an amount not less than $1,000,000 per accident if workers' compensation coverage is required by the California Labor Code.

B) **Endorsements**. Licensor also must provide all applicable original endorsements before the purchase order can be issued:

   i) **An additional insured endorsement** (equivalent in coverage scope to Client's endorsement for Professional Services Consultants or to ISO endorsements CG 20 10 11 85 or CG 20 26 11 85) naming "The City of Long Beach, its officials, employees and agents" as additional insureds under the general liability policy.

   ii) **Cancellation notice endorsements** to each policy stating that each such policy shall not be cancelled or non-renewed or reduced in coverage or limits (other than by paid claims) except after thirty (30) days prior written notice to Client (ten (10) days prior written notice for cancellation due to nonpayment of premium is acceptable).

   iii) **Primary and noncontributory coverage endorsements** to each liability policy providing that each such policy shall apply on a primary basis in relation to any insurance or self-insurance, primary or excess, of Client, its officials, employees, or agents, and that any insurance-or self-insurance of Client, its officials, employees, or agents shall not contribute to it.

C) Any alterations to these insurance requirements shall require approval of Licensor which said approval shall not be unreasonably withheld.

15.   FORCE MAJEURE
Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include, but are not limited to, acts of God, riots, acts of War, epidemics, fire, earthquakes, or other disasters. Licensor shall promptly notify Client of any delay due to reasons beyond its control, and the expected duration of such delay.

16.   NOTICES
Any notice, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed delivered to a party: (i) when delivered by hand or nationally recognized overnight courier; or (ii) six (6) days after the date of mailing if mailed by United States certified mail, return receipt requested, postage prepaid, in each case to the

address of such party set forth below (or at such other address as the party may from time to specify by notice delivered in the foregoing manner):

If to Licensor, to: Valley Oak Systems, Inc.
                      5000 Executive Parkway, Suite 340
                      San Ramon, CA 94583
                      Attn: President

If to Client: City of Long Beach
                      333 West Ocean Blvd, 13th Floor
                      Long Beach, CA 90802
                      Attn: City Manager

17.   GENERAL

This Agreement constitutes the entire agreement between Client and Licensor relating to the subject matter of this Agreement, and supersedes any and all prior proposals, agreements, understandings, and contemporaneous discussions, whether oral or written, between the parties with respect to the subject matter of this Agreement.

18.   MEDIATION

A.   If a dispute arises out of or relates to this Agreement, or the breach thereof, and the dispute cannot be settled, the parties agree first to try in good faith to settle the dispute by mediation.

B.   *Waiver.* No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof.

C.   *Severability.* If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.

19.   JURISDICTION AND VENUE

This Agreement, including the performance and enforceability hereof, shall be governed by and construed in accordance with the laws of the State of California, without reference to the principles of conflicts of law. If a dispute is not resolved by mediation, each party hereby submits itself for the sole purpose of this Agreement and any controversy arising hereunder to the exclusive jurisdiction of the federal or state courts located in the State of California, , and waives any objection (on the grounds of lack of jurisdiction, or forum non conveniens or otherwise) to the exercise of such jurisdiction over it by any such courts.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representative for and on behalf of said entity.

Valley Oak Systems, Inc.   **CITY OF LONG BEACH**

By: _(signature)_   By: _(signature)_
Name: Robert Faulhaber   Name: Gerald R. Miller
Title: President   Title: City Manager

Date: _7/23/04_   Date: _7.30.04_

By: _(signature)_
Name: Randy Wheeler   **APPROVED AS TO FORM**
Title: CEO
                                                           _____7/27, 2004_____
Date: _July 23, 2004_   **ROBERT E. SHANNON, City Attorney**

                                                           BY _(signature)_
   **SENIOR DEPUTY CITY ATTORNEY**

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

On _July 23, 2004_, before me, Carolyn K. Whene, Notary, (insert name and title of the officer), personally appeared Robert Faulhaber, President and Randy Wheeler, CEO, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me they executed the same in their authorized capacities, and that their signatures on the instrument the persons, or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL

(signature) K Whene
Signature (Seal)
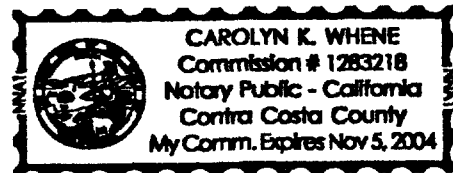
Acknowledgment (by Corporation, Partnership or Individual)

Schedule A: Pricing

Overall Project Costs / Contract Value
This document details the costs associated with implementation of iVOS. Client and Licensor will work together to monitor the progress of work by both Client and Licensor to help ensure that hours for Licensor remain within the stated fee amounts. Client approval will be required in advance for any implementation or data conversion fees not already included in this price schedule that will be billed and considered for payment in excess of the stated fee amounts. Any changes that either party may wish to make to this price schedule shall be reviewed by both parties to assess the cost and schedule impacts of those changes. All changes must be approved in writing on a document of their choosing executed by both parties. Client also agrees to provide all the necessary resources for a successful implementation. Items are not taxable. The breakdown is as follows:

Software License Fees
Base System Enterprise Single Site License (One Time Fee)

$35,000

iVOS Claims Administration System – Enterprise
(Single Site/Server License) Modules included:

> **Modules included in base system:**
> ➢ Workers' Compensation
> ➢ Policy Maintenance
> ➢ Reporter Server

User License Fees (One Time Fee):
User License Fee   **$126,820**
(Based on 32 Worker's Compensation Concurrent Users)
(Based on 2 Reporter Only Concurrent Users)

> ➢ Workers' Compensation Full Access Users   @ $3,900/user
> ➢ Reporter Only Users   @ $2,500/user

VOS per user pricing is on a concurrent user basis. For example, the City may have any number of users with access to the system but only up to the total number of user licenses may be on the system at any one time, regardless of being remote or local. Further discussions are needed to provide the City with a more firm quotation.

(A $2,980 volume discount has been applied to the user License Fees)

iVOS Standard Modules and Interfaces (each is a one-time fee)

$97,000

> ➢ Laser Check Printing   **$7,500**
> ➢ Employee Interface   **$7,500**
> ➢ *Medical Bill Review Interface   **$7,500**
>   o *Medical Treatment Module   **$5,000**
> ➢ ISO Claim Search (Index Bureau)   **$7,500**
>   Automated Interface
> ➢ PRDP Workers' Compensation Interface   **No Charge**
> ➢ VOS Express   **$12,500**
>   o Email Express Module
>   o Correspondence Express Module
> ➢ Document Imaging   **$12,500**

   ➤ California Commutation Calculator   **$4,500**
   ➤ Incident Reporting Module   **$25,000**
   ➤ Positive Pay Bank Reconciliation Interface   **$7,500**

*If iVOS Review Service is selected by Client, prior to initiation of Production Use, client will not be charged nor granted a license for above software modules with an asterisk.

Custom Interfaces and Development
Pricing is based on a rate of $1,200/day. Actual development costs will be incurred on a time and expense basis.

<div align="right">

$60,000

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➤ Vendor Table Interface   **$7,500**
     o Importing Vendor information from FAMIS
     o Per reference document entitled "Vendor File Layout"
     o Estimated at 7 days

➤ Workers Compensation Incident Reporting Intake Form   **$12,000**
     o Combining CA 5020 form with Supervisors Report of Incident to create a custom on-line Incident Report Form
     o Per reference documents entitled "Incident Report Form 2004-06-21" and "5020 Report Form used for Intake 2004-06-21"
     o Estimated at 10 days

➤ TTD Payment Interface   **$10,000**
     o 1 Way batch interface that sends check payment request adjustment (pre check processing) information from iVOS to Tesseract for the up coming pay period
     o Data transferred in the interface is limited to the employee ID, the start date (actually the injury date) and the ending date for which the TTD has been approved, plus the amount of the check to be paid from iVOS during the payroll period
     o Estimated at 9 days

➤ FileNet Integration   **$12,000**
     o iVOS will be used to assign images to claim files.
     o iVOS work flow will be used for image assignment, viewing, etc.
     o iVOS will be used for all aspects of document imaging except for storage
     o Assumptions:

- FileNet has the
  capability to
  accommodate this type
  of interface
- iVOS can access
  FileNet through URL
  access.
- The City will need to
  provide VOS access to
  a FileNet test system so
  development can be
  done at VOS
- The City will provide
  FileNet technical
  assistance
  o Estimated at 10 days

➤ Check Auditing Modifications   **$6,000**

The City of Long Beach has a unique check issuance auditing
process mandated by the City's Charter that requires a
financial auditor to view the payment request (currently a
paper voucher) and all supporting documents associated with
the payment request (EOR if medical bills, invoices if non-med
bills) prior to allowing the check to be issued. This audit
happens after all approvals from the Workers Compensation
Departments Examiners and Supervisors have been
completed. This requirement will be supported using the
iVOS Batch Payment Approval page with minor modifications

Estimated at 5 days

➤ Custom General Ledger Interface- Non TTD   **$12,500**

o 1 Way interface that sends
  issued check information for PD,
  Medical, and Non-Medical
  payments from iVOS to FAMIS
o Per reference document entitled
  "FMCWIFD"
o Estimated at 11 days

Implementation Management
VOS Implementation Support   **$270,000**

*Resources for implementation management and support vary based on the project
requirements. The estimated range of cost for the City is:*

➤ **1.5 Full Time Equivalent (FTE) Personnel** including Project Manager and
  Systems/Business Analyst

Pricing is based on a rate of $1,500/day. The pricing quoted assumes an
implementation time frame of 6 months from the first kickoff meeting to initiation of
Production Use of the system. Actual implementation cost will be invoiced monthly
on a time and expense basis as incurred.

Training

The cost for training has been calculated based on the assumption of VOS providing training for up to 28 users, primarily Workers Compensation Claim Department Employees; the City will be responsible for training all other iVOS users. Additional training can be provided by VOS on a time and expense basis. Actual Fees are based on $1,500/day/trainer.

General User Training 8 attendees/class 10 days	**$15,000**
iVOS Reporter 8 attendees/class 2 days	**$3,000**
System Administrator 2 -6 attendees/class 4 days	**$6,000**
Report Designer 2 -6 attendees/class 2 days	**$3,000**

Total: $27,000

Data Conversion

$24,000

- ➢ Convert data for up to 25,000 claims
- ➢ Includes the importing of the City Law System Notes
- ➢ This estimate will include one trial data conversion, and one final data conversion

The figures provided for Data Conversion are estimates only. Conversion is billed monthly on a time and materials basis at a rate of $150/ hr.

Customization/Consultation Rates (if required)   **Hourly rates: $150 - $250/hr**

Schedule B: Payment Terms

This document has been prepared to detail how payment for software licensing and implementation services will be made. All 'time line' days are approximate end dates, and are subject to change based on the project plan. Delays to the schedule caused by Client response or Client deliverables as defined in this Schedule B, shall factor into the ability for Licensor to meet all milestone commitments. Such delays identified and mutually agreed upon by both parties will not constitute a breach of this Agreement or trigger a cause for cancellation.

Milestone 1 – Project Plan Acceptance

The first phase of the project is the Project Planning and is initiated with an official Kick-Off Meeting. The purpose of this phase is to perform initial project planning and preparation tasks. During Project Planning, the focus will be on getting the project started, identifying the project team members, and developing a detailed project plan. The key processes required to monitor and guide the progress of the project are designed and put into place during this activity, that will ensure that the project meets the Client goals and remains on schedule, including; status reporting, issue tracking and resolution, scope management and quality assurance.

Completion Criteria: The Project Plan is delivered to Client and is accepted and signed by Licensor and Client. Both the Client and Licensor sign off that this milestone is complete.

Time Line: 14 days from Project Kick-Off.

Payment Term: Client will be billed $68,774 (representing 50% of the Base System Enterprise Single Site License and User License Fees, less 15% for payment upon final system acceptance) upon completion of this milestone.

Milestone 2 – Delivery of iVOS Software

Licensor will make available the software to be downloaded by the Client from the VOS website, and the Client will download the software from the VOS website. The software downloaded will include a working copy of iVOS and an Oracle Backup of the iVOS demo database. Licensor will advise Client on installing iVOS and installing the demo database.

Completion Criteria: The iVOS software and an Oracle Backup of the iVOS demo database are successfully downloaded and installed by Client. Client is able to successfully log into the system. Both the Client and Licensor sign off that this milestone is complete.

Time Line: 30 days from Project Kick-Off.

Payment Term: Client will be billed $68,774 (representing 50% of the Base System Enterprise Single Site License and User License Fees, less 15% for payment upon final system acceptance) upon completion of this milestone.

Milestone 3 – Delivery of Trial Data

This milestone will include the initial conversion of claim, injury and Client Law notes data supplied by Client.

Dependency: Client Claim Data and Client Law Notes data are delivered to Licensor in a mutually agreeable format with corresponding balancing reports within 45 days of the Project Kick-off.

Completion Criteria: A trial database, accessible by iVOS, in Oracle backup format that contains Client's converted Workers' Compensation data is delivered to Client. Balancing reports are also delivered that match to the balancing reports provided with the source data. All balancing variances between the source and converted data are explained and documented. Both the Client and Licensor sign off that this milestone is complete.

Time Line: 90 days from project start date.

Payment Terms: Client will be billed on a time and expense basis monthly as incurred.

Milestone 4 – Completion of System testing

During the Trial Phase, Client, with the guidance of Licensor, will configure business rules, security, correspondence, interfaces to 3rd party systems, etc. to meet Client's claim processing requirements. Prior to signing off that iVOS is ready for Production Use, Client will run a series of test scripts for opening new claims, making payments, setting reserves and generating checks, etc. Client will execute the tests in the test scripts. Software bugs identified as critical to production will be corrected and re-tested. Non-critical bugs will be documented and target dates for correction established.

A critical software bug is defined in the VOS Software Maintenance and Support Agreement's Exhibit A entitled VOS Service Level Agreement in section D1:

D. Prioritization of Problem Reports

1. Priority 1- Customer is unable to perform critical business functions as a result of Software bug, such as:

   - Unable to add claims;
   - Unable to process checks or create Accounts Payable export;
   - Data corruption caused by a VOS Software bug.

Dependency: Client will develop a series of test scripts that Licensor will approve. These test scripts will be used by Client to test the functionality of iVOS.

Completion Criteria: System testing is completed and any iVOS system issues where iVOS is not functioning as documented that are critical to production have been resolved. Both the Client and Licensor sign off that this milestone is complete.

Time Line: 150 days from project start date

Payment Terms: The Client will be billed for all remaining fees for optional modules and custom interfaces (estimated at $133,450, representing the selected optional modules and custom interfaces, less 15% for payment upon final system acceptance) upon completion of this milestone. In that actual costs for custom interfaces/development will not be final until completion of the work, the actual amount will not be computed until completion of this milestone.

Milestone 5 – Delivery of Final Data

Licensor will modify all necessary conversion programs to implement data conversion changes agreed upon during the Trial Period. Licensor will run all necessary programs to convert Client's Workers Compensation data into iVOS and to generate balancing reports that compare to the source data balancing reports provided by Client.

Completion Criteria: Delivery of a database containing the Final converted data, accessible by iVOS, in Oracle backup format that contains Client's converted Workers' Compensation data. Balancing reports are delivered that match to the balancing reports provided with the source data. All balancing variances between the source and converted data are explained. All items identified during trial conversion will be resolved. Both the Client and Licensor sign off that this milestone is complete.

Time Line: 180 days from project start date.

Payment Terms: Client will be billed on a time and expense basis monthly as incurred.

Milestone 6 – Training

Training will be split into two phases: 1) Project Team Training, 2) User Community Training. Licensor will provide training for up to 8 Client project personnel with the intent to provide the Project Team the knowledge necessary to make informed decisions regarding the set up and implementation of iVOS. User Community Training will be completed near the end of the project immediately prior to initiation of Production Use.

Payment Terms: Client will be billed on a time and expense basis monthly as incurred.

Milestone 7 – Implementation Management

The Implementation Management provides the linkage across all project activity and ensures success of the project. Implementation managers are responsible for all aspects of the project including planning, coordination, requirements analysis, custom specification, and project delivery.

Post-Production Use Implementation Management Support

The Client Project Team will support the system and new workflows until the implementation is determined successful. To facilitate the Client Project Team, Licensor will provide a dedicated Implementation Manager for 3 days on-site and .5 FTE of an Implementation Manager for 7 business days over the first two weeks of Production Use.

Payment Terms: Implementation Management fees will be billed on a time and expense basis monthly as incurred

Milestone 8 – Final System Acceptance

Client shall have a period of twenty-one (21) days from initiation of Production Use to determine whether the services and Software Product conform to the terms and conditions of this Agreement. Upon Client's completion of such review, Client shall promptly notify Licensor in writing either that (a) the Software Product satisfies this Agreement and is accepted (hereinafter **"Acceptance"**), or (b) the Software Product (in Client's reasonable discretion exercised in good faith) is not in conformance with this Agreement, in which case Client shall provide to Licensor a written description of any such non-conformities in the Software Product. In the event that Client

has not provided Licensor with written notice of its Acceptance or written notice of non-conformance within said twenty-one (21)day period, such failure to provide notice shall constitute Acceptance of the applicable Services and/or Software Product.

Retesting - If Client determines (in its reasonable discretion exercised in good faith) that the Software Product is not in conformance with this Agreement, Client shall promptly notify Licensor in writing, specifying the non-conformities with as much detail as reasonably possible. Licensor shall correct and/or modify the non-conforming Software Product within a period of time as mutually agreed upon in writing between the parties. If Licensor fails or is unable to correct or modify the non-conforming Software Product within a period of time as mutually agreed upon in writing between the parties, Client may terminate the applicable work order, without further obligation, in which case (i) Licensor shall refund to Client all software license fees referenced in Schedule A: Pricing (which include: Base System Enterprise Single Site License Fees, User License Fees, iVOS Standard Modules and Interfaces, and Custom Interfaces and Development) and (ii) Client shall promptly return the Software Product and associated documentation to Licensor.

Dependency: System will have been turned over to Production Use.

Completion Criteria: iVOS is functioning as per the Agreement. Both the Client and Licensor sign off that this milestone is complete.

Time Line: 21 days after initiation of Production Use.

Payment Terms: The Client will be billed for the remaining 15% of licensing, optional modules and custom interfaces, (estimated at $47,822) upon completion of this milestone. In that actual costs for customer interfaces/development will not be final until completion of the work, the actual amount will not be computed until completion of this milestone.