



## **Section 2. Personnel**

- A. Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.
- B. All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

## **Section 3. Compensation and Payment**

- A. Contractor's fees shall be calculated at the rates set forth in the VertiQ Quote, attached as Attachment "B," and incorporate by reference. The Maximum Compensation for the performance of Services is One Hundred Fifty-nine Thousand, Four Hundred Sixty and 00/100 dollars (\$159,460.00). In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.
- B. All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.
- C. County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County one (1) electronic copy and one (1) original copy of invoices showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

## **Section 4. Limit of Appropriation**

- A. Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of One Hundred Fifty-nine Thousand, Four Hundred Sixty and 00/100 dollars (\$159,460.00), specifically allocated to fully discharge any and all liabilities County may incur.
- B. Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed One Hundred Fifty-nine Thousand, Four Hundred Sixty and 00/100 dollars (\$159,460.00).

## **Section 5. Modifications and Waivers**

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

## **Section 6. Termination**

- A. Termination for Convenience: County may terminate this Agreement at any time upon thirty (30) days written notice.
- B. Termination for Default
  - 1. County may terminate the whole or any part of this Agreement for cause in the following circumstances:
    - a. If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;
    - b. If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.
  - 2. If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7A above.
- C. Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.
- D. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

## **Section 7. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., that may be developed by Contractor as a part of its work under this Agreement, shall remain the property of Contractor; however, Contractor grants County a perpetual nonexclusive right to use such documents for their own internal business purposes. Contractor shall promptly furnish all such data and material to County on request.

## **Section 8. Inspection of Books and Records**

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four (4) years.

## **Section 9. Insurance**

A. Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

1. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
2. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
3. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
4. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.

B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

- C. If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.
- D. Contractor shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
- F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of the Contractor.

**Section 10. Mutual Indemnification**

**CONTRACTOR SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**

**TO THE EXTENT ALLOWED BY APPLICABLE LAW, COUNTY SHALL INDEMNIFY AND DEFEND CONTRACTOR AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING FROM COUNTY'S USE OF THE SOFTWARE AND DOCUMENTATION, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF COUNTY'S OR ANY OF COUNTY'S AGENTS, SERVANTS OR EMPLOYEES.**

**Section 11. Confidential and Proprietary Information**

- A. Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

- B. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.
- C. Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.
- D. Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

**Section 12. Independent Contractor**

- A. In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.
- B. Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

**Section 13. Notices**

- A. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).
- B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County IT Department  
Attn: Director  
500 Liberty Street  
Richmond, Texas 77469

With a copy to: Fort Bend County  
Attn: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

Contractor: VertiQ Software, LLC  
Attn: CEO  
18625 Sutter Blvd., Suite 500  
Morgan Hill, CA 95037  
Fax: (408) 782-0850

- C. Notice is effective only if the party giving or making the Notice has complied with subsections 13(A) and 13(B) and if the addressee has received the Notice. A Notice is deemed received as follows:
  - 1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

**Section 14. Taxes**

County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request.

**Section 15. Attorney's Fees**

County does not agree to pay any and/or all attorney fees incurred by Contractor in any way associated with the Agreement.

**Section 16. Arbitration**

County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.

**Section 17. Compliance with Laws**

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**Section 18. Performance Warranty**

Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

**Section 19. Assignment and Delegation**

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.
- B. Neither party may delegate any performance under this Agreement.

C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

**Section 20. Applicable Law**

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

**Section 21. Successors and Assigns**

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Section 22. Third Party Beneficiaries**

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

**Section 23. Travel Expenses**

Travel and mileage expenses incurred in the performance of required Services will be compensated only when approved in advance by County and provided that expenses comply with the County's Travel Policy, a copy of which is available upon request.

**Section 24. Severability**

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

**Section 25. Publicity**

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

**Section 26. Certain State Law Requirements for Contracts**

A. As required by Chapter 2270, Texas Government Code, by signature below, Contractor verifies Contractor does not boycott Israel and will not boycott Israel during the terms of this Agreement.

- B. As required by Section 2251.152, Texas Government Code, by signature below, Contractor represents that Contractor is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

**Section 27. Limitation of Liability**

Except for instances of Gross Negligence or Willful Misconduct, in no event shall either party's aggregate liability arising out of or related to this Agreement, whether in Contract, Tort or under any other theory of Liability, exceed the amounts actually paid by County hereunder during the twelve months preceding the incident giving rise to liability. It is intended that this limitation apply to any lost profits or to any indirect, special, incidental, punitive, or consequential damages, unless otherwise prohibited by law, whether in Contract, Tort or equity. Liability for the County shall be governed by the provisions set forth in the Texas Tort Claims Act. Contractor's liability for Gross Negligence or Willful Misconduct, as excluded above, shall be limited to the amount actually paid under Contractor's insurance policy for such claims.

**Section 28. License to Use Service**

During the Initial Term and any subsequent Renewal Term, County shall have a limited, non-exclusive, non-transferable, license and worldwide right to use the service as specified in this Agreement in accordance with the Purchase Order and the Contractor's subscription and licensing terms, which are attached hereto and incorporated herein as Attachment A. Unless expressly authorized by Contractor in writing, County shall not reproduce, distribute, decompile, reverse engineer, or otherwise misappropriate the service for any reason.

**Section 29. Software Assurance**

Contractor represents and warrants that its software and any related systems and/or services related to its software (collectively, the "Software") furnished by Contractor to County will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. Contractor will, at its expense, defend any suit brought against County and will indemnify County against an award of damages and costs (including reasonable attorney's fees, court costs and costs of appeal), made against County by settlement or final judgment of a court that is based on a claim that the use of the Contractor's Software infringes an intellectual property right of a third party. Such defense and indemnity shall survive termination or expiration of the Agreement and the Contractor's liability for the above is not limited by any limitation of liability clauses that may appear in any document executed by the Parties.

**Section 30. Warranty**

Contractor hereby warrants to County: (a) Contractor is the owner of the Software and the Documentation or has the right to grant to County the license to use the Software and Documentation in the manner and for the purposes set forth in this Agreement without violating any rights of a third party, and (b) the media containing the software will be free from defects for a period of thirty (30) days from the date of delivery to County, provided that this warranty does not cover defects in the diskettes due to County's misuse of the software media or an accident subsequent to delivery to County.

**Section 31. Captions**

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

**Section 32. Conflict**

If there is a conflict between this Agreement and the attached Attachment(s)/Exhibits, the provisions of this Agreement shall prevail with regard to the conflict(s).

**Section 33. Understanding, Fair Construction**

By execution of this Agreement, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Agreement. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the non-drafting party.

{EXECUTION PAGE FOLLOWS}

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IN WITNESS WHEREOF, this Agreement is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Agreement and the Attachments hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY



Grady Prestage, Commissioner, Precinct 2  
Presiding Officer, Commissioners Court, November 26, 2019

VERTIQ SOFTWARE, LLC



Authorized Agent - Signature

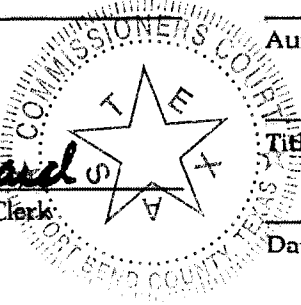
Anthony Kessel

Authorized Agent - Printed Name

Date

ATTEST:

  
Laura Richard, County Clerk



CEO

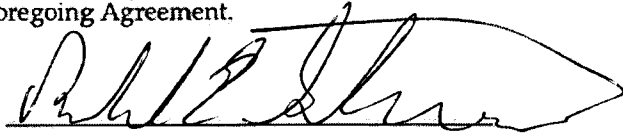
Title

11/13/2019

Date

#### AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$ 159,460.00 are available to pay the obligation of Fort Bend County within the foregoing Agreement.



Robert Ed Sturdivant, County Auditor

Attachment A: VertiQ Hosted SaaS Subscription Agreement

Attachment B: Quote for CME-V3 Base Application

# **ATTACHMENT A**

## **VERTIQ HOSTED SOFTWARE (SaaS) SUBSCRIPTION AGREEMENT**

## **VertiQ Hosted Software (SaaS) Subscription Agreement**

This Hosted Software (SaaS) Subscription Agreement, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 ("Effective Date", by and between VertiQ Software, LLC (hereinafter, "Vendor") with its principal address at 18625 Sutter Blvd., Suite 500, Morgan Hill, CA 95037 and the Fort Bend Medical Examiner (hereinafter, "Customer") with its principal address \_\_\_\_\_

### **Background**

Vendor is in the business of providing case management software for coroners and medical examiners. The parties desire that Vendor make such software available to Customer under the terms and conditions of this Agreement, and Customer's access to and use of the software shall conform to these terms and conditions.

In consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **1. Definitions**

As used in this Agreement and in Exhibit A hereto (and any mutually agreed upon modifications thereto), the following terms shall have the following meaning:

**"CME Hosted"** means the case management software for coroners and medical examiners offered via Software as a Service (SaaS), the "Service" provided under the terms of this Agreement, designed as an alternative to a CME application residing locally on a customer's server.

**"Content"** means the audio and visual information, documents, software, products, and services contained or made available to Customer in the course of using the Service.

**"Customer Data"** means any data, information, or material provided or submitted by Customer to the Service in the course of using the Service.

**"Initial Term"** means the initial period during which Customer is obligated to pay for the Service as defined in Exhibit B attached to this Agreement.

**"Intellectual Property Rights"** means any unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

**"License Administrator(s)"** means those Users designated by Customer who are authorized to purchase licenses and to create User accounts and otherwise administer Customer's use of the Service.

**"License Term(s)"** means the period(s) during which a specified number of Users are licensed to use the Service pursuant to this Agreement.

**"Vendor Technology"** means all of Vendor's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information) made available to Customer by Vendor in providing the Service.

**"Service(s)"** means access under the terms of this Agreement to Vendor's case

management software, which is developed, operated, and maintained by Vendor, accessible via <http://www.vertiq.com> or another designated website or IP address, or ancillary online or offline products and services provided to Customer by Vendor, to which Customer is being granted access under this Agreement, including the Vendor Technology and the Content.

"User(s)" means Customer employees, representatives, consultants, contractors, or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by Vendor at Customer's request) each of which must be individual and not shared.

## **2. License Grant and Restrictions**

Vendor hereby grants Customer a *nonexclusive, nontransferable, worldwide right to use the Service, solely for Customer's own internal business purposes, subject to the terms and conditions of this Agreement*, and all rights that are not expressly granted to Customer are hereby reserved by Vendor as outlined in Exhibit A VERTIQ SOFTWARE L.L.C. END-USER LICENSE AGREEMENT.

Customer shall not (i) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.

Customer may use the Service only for Customer's internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws causing any IP address associated with the service provider to be Black Listed; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

## **3. Customer Responsibilities**

Customer is responsible for all activity occurring under Customer's User accounts, including activity initiated by third parties, whether such parties are known or unknown to Customer, with the *sole exception* of activities which are specifically initiated by Vendor or caused by the gross negligence of Vendor and can be verifiably shown as such, and shall abide by all applicable local, state, and federal laws and regulations in connection with Customer's use of the Service, including those related to data privacy, and the transmission of technical or personal data, except to the extent such activity is outside of Customer's reasonable control. Customer shall: (i) notify Vendor immediately of any unauthorized use of any password or account or any other known or suspected breach of

security; (ii) report to Vendor immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Customer or Customer Users; and (iii) not impersonate another Vendor user or provide false identity information to gain access to or use the Service.

**4. Account Information and Data**

Vendor does not own any Customer Data. Customer, not Vendor, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Vendor shall not be responsible or liable for the deletion, correction, destruction, damage, loss, or failure to store any Customer Data, except to the extent that any such deletion, correction, destruction, damage, loss, or failure to store such Customer Data is the result of Vendor's gross negligence in performing services pertaining to Customer Data pursuant to this Agreement. In the event this Agreement is terminated, Vendor will make available to Customer a quality, industry standard, and useable file of the Customer Data within 10 days of termination if Customer so requests at the time of termination for cause. Upon termination for cause, Customer's right to the Services shall cease, but Vendor will make available to Customer a file of the Customer Data within 10 days of termination.

**5. Intellectual Property Ownership**

Vendor (and its licensors, where applicable) shall exclusively own all right, title, and interest, including all related Intellectual Property Rights, in and to the Vendor Technology, the Content, other than Customer's data, and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Customer or any other party relating to the Service. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Service, the Vendor Technology, or the Intellectual Property Rights owned by Vendor. Vendor's name, Vendor's logo, and the product names associated with the Service are trademarks of Vendor or third parties, and no right or license is granted to use them as outlined in Exhibit A VERTIQ SOFTWARE L.L.C, END-USER LICENSE AGREEMENT.

**6. Charges and Payment of Fees**

Customer shall pay all fees or charges to Customer's account in accordance with the terms and conditions set forth herein. The initial charges will be equal to the current number of total User licenses requested times the User license fee currently in effect, pursuant to Exhibit B, which is hereby incorporated by reference. Payments must be made annually in advance unless otherwise mutually agreed upon in Exhibit B. Customer is responsible for paying for all User licenses ordered for the year, whether or not such User licenses are actively used. An authorized License Administrator may add licenses by initiating an amendment to Exhibit B, hereto. Added licenses will be subject to the following: (i) added licenses will be coterminous with the preexisting License Term (either Initial Term or renewal term); (ii) the license fee for the added licenses will be the then current, generally applicable license fee; and (iii) licenses added in the middle of a billing month will be charged on a pro-rated basis for that billing month. Vendor reserves the right to modify its fees and charges and to introduce new charges at any time, pursuant to Exhibit B.

**7. Excess Data Storage Fees**

The maximum disk storage space provided to Customer at no additional charge shall

be set forth in Exhibit B. If the amount of disk storage required exceeds such maximum disk storage space, Customer will be charged the then-current storage fees. Vendor will use reasonable efforts to notify Customer when the average storage used per license reaches approximately 90 percent of the maximum; however, any failure by Vendor to so notify Customer shall not affect Customer's responsibility for such additional storage charges. Said notice shall be in addition to a monthly usage report to Customer, which shall provide Customer with its current storage usage and the remaining storage space remaining. Vendor reserves the right to establish or modify its general practices and limits relating to the storage of Customer Data. Vendor shall notify Customer of any changes, limitations, or additions to its general practices and limits relating to the storage of Customer's Data 30 days prior to the effective date of said changes. Storage Fees shall be charged upon upload of legacy data for a year and then will be pro-rated to line up with the Annual Hosted Renewal.

**8. *Billing and Renewal***

Payment for each year of the initial term is as set forth in Exhibit B. Vendor will automatically issue an invoice to Customer each year on the subsequent anniversary or as otherwise mutually agreed upon. Renewal fees will be equal to the then current number of total User licenses times the current license fees at the time of renewal. Annual Storage Fees will be pro-rated to line up with Annual Hosted renewal and added to that bill. Other services will be charged on an as-quoted basis. Vendor's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties, excluding only U.S. (federal or state) taxes based solely on Vendor's income. The parties understand and agree that the transaction resulting from this Agreement shall not be subject to sales taxes in California, as further provided in Section 6010.9, 6011, and 6012 of the California Revenue and Taxation Code. If Customer believes its bill is incorrect, Customer must contact Vendor in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

**9. *Nonpayment and Suspension***

In addition to any other rights granted to Vendor herein, Vendor reserves the right to suspend or terminate this Agreement and Customer's access to the Service if Customer's account becomes delinquent by more than 60 days—Customer will continue to be charged for User fees during any period of suspension. If Customer or Vendor initiates termination of this Agreement, Customer will be obligated to pay the balance due on Customer's account computed in accordance with Section 8 above. Customer agrees that Vendor may bill Customer for such unpaid fees.

Vendor reserves the right to impose a reconnection fee in the event Customer is suspended and thereafter requests access to the Service. Customer agrees and acknowledges that in the event of suspension or termination, Vendor will provide Customer with a file of the Customer Data upon Customer's request or before 10 days of account delinquency, as Vendor has no obligation to retain Customer Data after this time period, and Customer hereby specifically acknowledges that such Customer Data may be irretrievably deleted by Vendor if Customer's account is 120 days or more past due.

**10. *Termination upon Expiration/Reduction in Number of Licenses***

Either party may terminate this Agreement or reduce the number of licenses, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least thirty (30) days prior to the expiration of the term. Customer shall

be entitled to a pro-rata refund of all payments tendered for any period in excess of the remaining year in which termination notice was served. In the case of free trials, notifications provided through the Service indicating the remaining number of days in the free trial shall constitute notice of termination. In the event this Agreement is terminated, Vendor will make available to Customer a quality, industry standard and useable file of the Customer Data within 10 days of termination if Customer so requests at the time of termination. Customer agrees and acknowledges that Vendor has no obligation to retain the Customer Data, and may delete such Customer Data, more than 120 days after termination.

**11. Termination for Cause**

Any breach of Customer's payment obligations or unauthorized use of the Vendor Technology or Service will be deemed a material breach of this Agreement. Vendor, in its sole discretion, may terminate Customer's password, account, or use of the Service if Customer breaches or otherwise fails to comply with this Agreement, provided that Customer fails to cure or otherwise resolve a verified breach within 60 days of receipt of Vendor's notice. Customer agrees and acknowledges that Vendor has no obligation to retain the Customer Data, and may delete such Customer Data, if Customer has not cured within 120 days of notice of such breach; however, in this instance, Vendor agrees to provide Customer with a file of the Customer Data upon Customer's request or within 10 days of such termination.

**12. Representations and Warranties**

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Vendor represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online Vendor help documentation under normal use and circumstances. Customer represents and warrants that Customer has not falsely identified Customer nor provided any false information to gain access to the Service.

**13. Mutual Indemnification**

Customer shall indemnify and hold Vendor, Third Party Server Host, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys, and agents harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by Customer of Customer's representations and warranties; or (iii) a claim arising from the breach by Customer or Customer Users of this Agreement, provided in any such case that Vendor (a) gives written notice of the claim promptly to Customer; (b) gives Customer sole control of the defense and settlement of the claim; (c) provides to Customer all available information and assistance; and (d) has not compromised or settled such claim.

Vendor shall indemnify and hold Customer and Customer's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys, and agents harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including attorneys' fees and costs) arising out of or in connection with its gross negligence in its performance under this Agreement, or arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.S. patent

issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by Vendor of its representations or warranties; or (iii) a claim arising from breach of this Agreement by Vendor; provided that Customer (a) promptly gives written notice of the claim to Vendor; (b) gives Vendor sole control of the defense and settlement of the claim (provided that Vendor may not settle or defend any claim unless it unconditionally releases Customer of all liability); (c) provides to Vendor all available information and assistance; and (d) has not compromised or settled such claim. Vendor shall have no indemnification obligation, and Customer shall indemnify Vendor pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of Customer products, service, hardware or business process(es).

**14. Disclaimer of Warranties**

VENDOR AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. VENDOR AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (B) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (C) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ALL OTHER CONDITIONS, REPRESENTATIONS, AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY VENDOR AND ITS LICENSORS.

**15. Internet and Host Service Delays or Downtime**

VENDOR'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, DOWNTIME, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS, AND THIRD PARTY SERVER HOSTS WHICH WILL BE LOCATED IN THE USA. VENDOR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**16. Limitation of Liability** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR, OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**17. Additional Rights**

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential, or certain other types of damages, so the exclusions set forth above may not apply to Customer.

**18. Local Laws and Export Control**

Notwithstanding anything to the contrary in this Agreement, Vendor agrees not to store Customer's data in any manner whatsoever outside of the continental United States of America. Vendor provides services and uses software and technology that may be subject to U.S. export controls administered by the U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. Customer acknowledges and agrees that the software and Services shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries on which the United States, Switzerland, and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By entering into this Agreement, the parties represent and warrant that they are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National.

The software and Service may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

Vendor and its licensors make no representation that the Service is appropriate or available for use in other locations. Customer is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to U.S., Swiss, or European Union (including European Union Member States) law is prohibited. None of the Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical, or biological weapons, or missile projects, unless specifically authorized by the U.S. government or appropriate European body for such purposes.

**19. Notice**

The parties may give notice by means of an email to the other party's address on record in Vendor's account information or this Agreement, or by written communication sent by first class mail or pre-paid post to the receiving party's address on record in Vendor's account information or this Agreement. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). Customer may give notice to Vendor (such notice shall be deemed given when received by Vendor) at any time by any of the following: letter sent by confirmed facsimile to Vendor at the following fax number: (408) 782-0850; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Vendor or Customer at the following address. Vendor will notify Customer of receipt of such notification:

(Vendor)	(Customer)
VertiQ Software LLC	
P. O. Box 787	
Morgan Hill, CA 95037	

**20. Modification to Terms**

Parties have the right to amend as long as both parties consent in writing.

**21. Assignment; Change in Control**

This Agreement may not be assigned by Customer without the prior written approval of Vendor but may be assigned without Customer's consent by Vendor to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Vendor shall provide written notice as provided in Section 19, above, of any proposed or actual assignments or changes in control. Said notice shall include information on the effects, if any, made to Customer's service by the assignment. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of Customer that results or would result in a direct competitor of Vendor directly or indirectly owning or controlling 50 percent or more of Customer shall entitle Vendor to terminate this Agreement for cause immediately upon written notice.

**22. General**

This Agreement shall be governed by California law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims, or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state courts located in Santa Clara County, California.

No text or information set forth on any other purchase order, preprinted form, or document shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Customer and Vendor as a result of this agreement or use of the Service. The failure of any party hereto to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by the other party in writing. This Agreement, together with the specific terms set forth in Exhibits A and B, comprises the entire agreement between Customer

and Vendor and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

**23. Third Party Beneficiary Rights.** This Agreement is not intended to and does not create any third party beneficiary rights in any person not a party hereto.

BY SIGNING IT IS AGREED THAT THIS AGREEMENT, INCLUDING THE ACCOMPANYING TERMS AND CONDITIONS, ITS EXHIBITS AND ITS EXHIBITS ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES AND THAT THIS AGREEMENT SUPERSEDES ALL PROPOSALS OR PRIOR AGREEMENTS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THE AGREEMENT. THIS AGREEMENT SHALL BECOME EFFECTIVE WHEN IT IS EXECUTED BY YOU AS THE CUSTOMER, AND APPROVED AND EXECUTED BY VERTIQ.

IN WITNESS WHEREOF, the parties have executed this Hosted Software (SaaS) Subscription Agreement on the day and in the year as set forth above.

**VENDOR:**

**BY:** \_\_\_\_\_

**By:** Anthony Kessel

**Title:** CEO

**CUSTOMER:**

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

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

**Title:** \_\_\_\_\_

**EXHIBIT A**

Between

Address: VertiQ Software LLC  
18625 Sutter Blvd., Suite 500  
Morgan Hill, CA 95037

Telephone: (408) 778-0608

Principal Contact: Anthony Kessel, CEO

And

Customer Name: ("You  
Address:  
Telephone:

Principal Contact:

**VERTIQ'S PRODUCTS ARE COPYRIGHTED AND LICENSED (NOT SOLD). VERTIQ DOES NOT SELL OR TRANSFER TITLE TO THE LICENSED PRODUCT TO YOU. YOUR LICENSE OF THE LICENSED PRODUCT WILL NOT COMMENCE UNTIL AN AUTHORIZED REPRESENTATIVE OF VERTIQ HAS RECEIVED, APPROVED, AND EXECUTED THIS AGREEMENT.**

This Agreement is an exhibit to and supplementary to the Agreement between the parties hereto and consists of the accompanying Terms and Conditions; and which are hereby incorporated by reference.

## TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1. **"You or your"**: Means the single end-user customer organization signing this Agreement.
- 1.2. **"Product"**: Is the computer software application for medical examiners, coroners and toxicology laboratories that can be customized by VertiQ for your purposes and known as 'CME-V3' in object code only, and its accompanying documentation.
- 1.3. **"Material Error"**: Means any material reported and verifiable failure of the Product to perform substantially in accordance with its system specifications. **"Material"** shall mean an error that prevents use of the Product, or which seriously impacts use of the Product.
- 1.4. **"Error Correction"**: Means either a modification or addition that, when made or added to the Product, brings the Product into material conformity with its published specifications, or a procedure or routine that, when observed in the regular operation of the Product, avoids the practical adverse effect of such nonconformity.
- 1.5. **"Maintenance Services"**: Means the maintenance and support services provided by VertiQ pursuant to, and more fully described herein.
- 1.6. **"Upgrades"**: Shall mean any Error Corrections, Enhancements, software modifications or additions, which are provided at VertiQ's sole discretion.

### 2. SCOPE OF RIGHTS

- 2.1. **Grant of License**: You are granted a non-exclusive right to use the Product (including any Error Corrections, standard enhancements or Upgrades for your use only upon payment of the Fees, specified in Exhibit B, in machine-readable form. This license specifically prohibits redistribution, transfer or resale of the Product.
- 2.2. **Limitations on Use**: You may not use, copy, modify, or distribute the Product (electronically or otherwise), or make any copy, adaptation, transcription, or merge any portion thereof, except as expressly authorized by VertiQ in writing. You may not reverse assemble, reverse compile, or otherwise translate the Product. Your license may not be transferred, leased, assigned, or sub-licensed without VertiQ's prior written consent, which will not be unreasonably withheld. If you copy or modify the Product in any way not expressly authorized by VertiQ, your license is automatically terminated.

### 3. YOUR RESPONSIBILITIES

- 3.1. **Your Responsibilities**: You are responsible for the following actions:
- 3.1.1. Determining whether the Product will achieve the results you desire;
- 3.1.2. Procuring, installing, and operating computers, operating systems, and networking software to run the Product, and providing the hardware and software configuration requirements identified by VertiQ in Exhibit B;
- 3.1.3. Providing a proper environment and proper utilities for the computers on which the Product operates;
- 3.1.4. Selecting and training your personnel to familiarize them with the operation of the Product;
- 3.1.5. Promptly notifying VertiQ in the event your use of the Product exceeds that set forth in Exhibit B, and paying for any additional fees that result from such excess use.

### 4. ACCEPTANCE

- 4.1. **Acceptance of Work**: Within thirty (30) business days ("Acceptance Period") of delivery by VertiQ of the Product you will examine and test the Product to determine whether it conforms to its documentation. You will provide

VertiQ with a written notice of acceptance of the Product ("Acceptance") within the Acceptance Period or a statement of Material Errors (the "Statement of Errors"). In the event you do not provide VertiQ with a Statement of Errors within the Acceptance Period the Product shall be deemed to be accepted. Within sixty (60) days of receipt of your Statement of Errors, VertiQ, will correct such Material Errors set forth in the Statement of Errors and redeliver the Product to you. The procedure set forth in this Section will be repeated for one more cycle. In the event you do not accept the Product after VertiQ has resubmitted the corrected Material Errors to you for the second time you, at your sole option, may either terminate this Agreement and receive a full refund within 30 days of invoiced and paid services, or extend additional time to VertiQ to correct the reported Material Errors.

## 5. SERVICES

5.1. **Training:** VertiQ shall provide you with training services as part of the services set forth in Exhibit B.

5.2. **Support:** VertiQ shall provide you access to telephone and electronic mail during normal business hours (8.00 AM to 5.00 PM Pacific Standard Time Monday - Friday excluding holidays) that allows you to report problems in the functionality of the Product. Calls or emails by your designated representative will be directed to 800-222-7947 or [V3TechSupport@vertiq.com](mailto:V3TechSupport@vertiq.com). This includes all external user access for expected death agencies and any other outside agency, County or otherwise, that the the Customer has allowed access to the application.

In the event that your system becomes inoperable outside of normal business hours, please email us at the following address: [VertiQsitedown@vertiq.com](mailto:VertiQsitedown@vertiq.com). An email along with a text message will be generated and distributed to our entire support team to ensure you receive a prompt response.

5.3. **Customization:** VertiQ offers customization of the Product for specific customer requirements. VertiQ provides such customization services at the rates set forth in Exhibit B.

## 6. DATA

Should it be required, you acknowledge that data conversion is subject to the likelihood of human and machine errors, omissions, delays, and losses, including inadvertent loss of data or damage to media, that may give rise to loss or damage. VertiQ shall not be liable for any such errors, omissions, delays, or losses, unless caused by its negligence or willful act or omission. VertiQ may not be able to perform its responsibilities under this Agreement unless you adopt reasonable measures to limit the impact of such problems and adopting procedures to ensure the accuracy of input data; examining and confirming results prior to use; and adopting procedures to identify and correct errors and omissions, replace lost or damaged media, and reconstruct data. Both parties hereto are responsible for complying with all local, state, and federal laws pertaining to the use and disclosure of any data.

## 7. FEES

7.1. **Services Fees:** VertiQ will provide you with the services described in Exhibit B, at the Services Fees set forth there under.

7.2. **Expenses:** Services Fees do not include travel and living expenses ("Expenses") incurred by VertiQ when providing you with such services. If time allows, an estimate of the Expenses to be incurred shall be provided to Customer prior to Vendor's incurring said Expenses. Customer shall have the right to object to the proposed or actual Expenses if deemed excessive and shall likewise have the right to propose an alternative amount as fair and full compensation to Vendor prior to any expense being incurred. You agree to pay promptly the Expenses when and as the services are rendered and/or the Expenses are incurred, upon receipt of an invoice from VertiQ. VertiQ agrees to use the same diligence in controlling Expenses as it uses in its own business. VertiQ reserves the right to require prepayment or advance deposit for Services Fees or Expenses, at its discretion.

7.3. **Payment Terms:** You agree to the payment terms as set forth in Exhibit B. All invoices from VertiQ shall be due and payable within thirty (30) days of the date of each invoice, subject to Paragraph 8 of the Agreement.

7.4. **Taxes:** You are responsible for sales or use taxes, and state or local property or excise taxes associated with your licensing, possession, or use of the Product, modifications, or any associated services. The parties understand and agree that, as this agreement concerns the sale and transfer of intangible property, California sales taxes do not

apply to this transaction. In the event this understanding is incorrect, Customer shall be responsible for the payment of any assessed sales taxes.

## 8. CONFIDENTIAL INFORMATION

**8.1 "Confidential Information":** Of a party (the "Disclosing Party") means any and all technical and non-technical information (including, but not limited to, patent, copyright, trade secret, and proprietary information) related to the current, future and proposed business, products and services of the Disclosing Party, Disclosing Party's suppliers and customers, and information concerning development, design details and specifications, customer lists, business forecasts, sales, and marketing plans and any other similar information or data which is disclosed to the other party ("Receiving Party"). "Confidential Information" also includes proprietary or confidential information of any third party that may disclose such information to the Disclosing Party or the Receiving Party in the course of the Disclosing Party's business. Confidential Information does not include information, technical data or know-how which is required by law to be disclosed or is subject to Customer's public records laws, or which: (i) is in the Receiving Party's possession at the time of disclosure as shown by the Receiving Party's files and records immediately prior to the time of disclosure or other credible evidence; (ii) before or after it has been disclosed to the Receiving Party, enters the public domain, not as a result of any action or inaction of the Receiving Party; (iii) is approved for release by written authorization of the Disclosing Party; (iv) is disclosed to the Receiving Party by a third party not in violation of any obligation of confidentiality; or (v) is independently developed by the Receiving Party without reference to Confidential Information. During the Term of this Agreement and thereafter, the Receiving Party will (a) use the Confidential Information of the Disclosing Party solely for the purposes set forth in this Agreement, (b) take suitable precautions and measures to maintain the confidentiality of the Confidential Information of the Disclosing Party, and (c) not disclose or otherwise furnish the Confidential Information of the Disclosing Party to any third party other than employees or contractors of the Receiving Party who have a need to know such Confidential Information to perform its obligations under this Agreement, provided such employees or contractors are obligated under confidentiality obligations substantially similar to those set forth herein.

**8.2 Injunctive Relief:** Each party acknowledges that, in the event of breach of the foregoing provision, the Disclosing Party will not have an adequate remedy in money or damages. The Disclosing Party shall, therefore, be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request without the necessity of posting a bond. The Disclosing Party's right to obtain injunctive relief shall not limit its right to seek further remedies.

**8.3 Survival:** Notwithstanding the termination of this Agreement for any reason, the rights and duties of the parties (Fees), (Ownership), (Confidential Information), and (Indemnification) shall survive such termination and remain in full force and effect.

## 9. GENERAL

**9.1 Assignment:** This Agreement shall not be assignable by you without the prior written consent of VertiQ.

**9.2 Waiver of Construction Against the Drafter:** This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against either of the parties to this Agreement.

**9.3 Severability:** In the event that any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT, IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL OTHER LIMITATIONS OF LIABILITY AND EXCLUSION OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT.

**9.4 Force Majeure:** Neither party shall be responsible for any failure to perform due to unforeseen circumstances or to causes beyond the parties' reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor, or materials. In the event of any such delay, either party may defer any delivery dates for a period equal to the time of such delay. Notwithstanding the foregoing, if either party is in default under this Section for more than forty five (45) days, the non defaulting party may terminate this Agreement.

# **ATTACHMENT B**

## **VERTIQ QUOTE FOR CME-V3 BASE APPLICATION**



VertiQ Software LLC  
 18625 Sutter Blvd. Suite 500  
 P. O. Box 787 (Mailing Address)  
 Morgan Hill, CA 95037  
 Phone: 408-778-0608  
 Fax: 408-782-0850

**CME Quotation for Fort Bend County Medical Examiner  
 Hosted Case Management Database  
 10/04/2019**

**This Quote Is For The CME-V3 Base Application:**

**Product: CME-V3 Hosted**

CME Hosted is an "off the shelf" case management program offered via Software as a Service (SAAS) and was designed to be an alternative to a customized CME application residing on servers at the Customer's location. **As a CME Hosted customer, you are not purchasing a perpetual license to the Program.** You are granted a non-exclusive, annually renewable right to use the Program. CME Hosted customer's annual usage fee includes any VertiQ Updates to the application, initial usage training and ongoing support and complete set up specifically for their agency.

**DURATION OF TERM**

*Customer agrees to an initial Term of 5 years (60 months), during which no rate or fee increases shall occur, except to the extent Customer may add new users or projected data storage limits are exceeded. The charge for the new user will be equal to the then current user fee in effect at the time of renewal times the number of new users. There after automatically renewing for successive one-year terms at Vendor's then current fees, unless terminated by either Customer or VertiQ pursuant to Section 10 of the Agreement.*

<b># of Concurrent Users</b>	<b>Annual Fee</b>
15 Users year 1	\$26,100
15 Users year 2	\$26,100
15 Users year 3	\$26,100
15 Users year 4	\$26,100
15 Users year 5	\$26,100
<b>Total Hosted Fee over 5 years</b>	<b>\$130,500</b>

**\* You will be charged for 2 users, \$300 monthly, upon installation of the application on the Azure hosted server until moved into production.**

*User(s)" means Customer employees, representatives, consultants, contractors, or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by Vendor at Customer's request) each of which must be individual and not shared.*

*Should you require additional users price will be at the then current rate per user at the time of purchase.*

**DATA STORAGE LIMITS:**

The CME Hosted Fee provides for unlimited storage of the database.

**Annual Fees**

Estimated 1 <sup>st</sup> year growth of 400GB @\$.18/GB/Mo	
Annual Estimated Payment Year 1	\$ 864
Annual Estimated Payment Year 2	\$ 1,728
Annual Estimated Payment Year 3	\$ 2,592
Annual Estimated Payment Year 4	\$ 3,456
Annual Estimated Payment Year 5	\$ 4,320
Total 5 year Estimated Payments	<b>\$12,960</b>

Documents and Images whether legacy or new will have a separate storage fee for the term of the contract. This fee is subject to change depending on the amount of legacy and projected storage that was anticipated at the time of contract. You will be notified if you are getting close to your limit. We will work with you to determine your expected storage over the remainder of the year and bill accordingly at \$.18/GB/Mo.

**INCLUDED SERVICES\*\***

- Logos and Personnel report alterations specific to your agency
- System Administrator training via WebEx for up to 8 hours will allow you to:
  - o Set up users and roles
  - o Create menus for all roles
  - o Create Customized dropdown lists for all drop downs
  - o Create and edit system help, tooltip and captions
  - o Overview of the application

**ADDITIONAL SERVICES**

There may be a need to provide additional services for you. These services will be quoted separately at our current per diem rate of \$1400 or \$175/hour. Payment for services is due upon completion of the specific service item and receipt of invoice.

**Customization:** Upon further review of the CME-V3 system, you may want to implement some modifications. Such modifications upon review will be completed by VertiQ at our per diem rate. Customization will require establishment of a SOW (Statement of Work) to be approved by both parties. Upon establishment of a SOW, development will be scheduled and then installed on your server. VertiQ will allow you 15 days to review the modifications for sign off once it has been installed on your server. If you are non-responsive, it will be assumed to be approved and you will be invoiced for services performed. **HAS NOT BEEN QUOTED.**

**Report development:** We support the use of Microsoft SQL Reporting Services (SRS) for report development. SRS is a free report writing tool with extensive functionality.

CME-V3 includes a set of "canned" reports and the ability to glean reports from various form grids. Any additional reports deemed necessary by you to be designed by VertiQ or integrated with another report service will be chargeable at our per diem rate. If there is a field that does not exist in CME-V3, that field will require modification and will constitute additional costs. **HAS NOT BEEN QUOTED.**

**End User Training:** We recommend train the trainer approach to end user training. This could include a person(s). Should end user training be required by VertiQ, either by WebEx or in person, this will constitute a chargeable expense to you.

Training can be provided at the customer site and will be charged at our per diem rate plus necessary travel time and expenses.

Our current Per Diem Rate for Services is \$1,400 per day (\$175 per hour) plus reasonable travel and related costs.

*Please note that VertiQ will only bill for services after they have been provided.*

<b>Estimated Project Services for CME-V3 COTS application as is</b>	<b>Total:</b>
Installation for hosted environment – 1 testing which becomes production upon go-live	
<b>Customization/Configuration:</b>	
Preliminary training upon install in order for the customer to proceed with gap analysis	
SOW, configuration and associated services are <b>TBD</b>	
<b>Reports:</b>	
V3 Canned Reports - VertiQ will configure your logo, header and personnel to our existing reports	
<b>Training:</b>	
System Administrator - via WebEx Includes; Setting up specific roles and users; Setting up menus for roles and individual users; Creating application dropdowns, Tasks, up-front configuration of application	
End User by Role - via WebEx or On-Site. See associated travel costs	
Support for acceptance testing & moving the system into production. Go-Live Support	
<b>Estimated Services</b>	<b>\$5,600</b>
<b>OPTIONAL SERVICES:</b>	
<b>NMS Integration</b> - Work with NMS team to configure web services that will allow for the importing of Tox related data. Includes test of incoming Toxicology results and running the NMS report from within CME. <b>Note:</b> NMS is the responsible party involved in sending the information to VertiQ for toxicology results. VertiQ only processes the information that is sent by NMS using their methods and protocols.	\$5,000
<b>Form Additions</b> - The Transcription Form and the Daily Discussion Form. (Exam Scheduler with photo viewer)	\$4,550
<b>Associated Travel Costs</b> - A VertiQ representative will conduct end-user training at client's site.	\$850
<b>TOTAL ESTIMATED SERVICES 'AS IS'</b>	<b>\$16,000</b>

*VertiQ reserves the right to utilize funds from one service item to another if those funds are available; otherwise a change order will be required.*

**Payment Terms**

1. You will be charged for 2 users, \$300 monthly, upon installation of the application on the Azure hosted server until moved into production.
2. Your first full Annual Hosted Fee shall be invoiced upon go live.
3. Estimated Annual Storage Fees will be charged to you upon installation of data on hosted server.
4. Payment for services is due upon completion of the specific service item and receipt of invoice.

All invoices from VertiQ shall be due and payable within thirty (30) days of the date of each invoice.

***This quotation is valid for 90 days.***

**Costs Synopsis for a 5-year term**

<b>Number of Concurrent Users</b>	<b>Annual Hosted Fee:</b>
Based on 15 concurrent Users at \$26,100 annual fee	<b>\$130,500</b>
Estimated Accumulated Storage Fees for Images and Documents based on 400 GB per year	<b>\$12,960</b>
<b>Service Fees</b>	<b>One-Time Fee:</b>
Estimated Service costs associated with the CME-V3 hosted application taken as is:	<b>\$5,600</b>
<b>Optional Service(s)</b> - NMS Lab Integration, Travel Costs and/or Form Additions.	<b>\$10,400</b>
<b>Total Potential Costs over 5 years:</b>	<b>\$159,460</b>

***PLEASE NOTE THAT THE NUMBERS DEPICTED ABOVE ARE NOT TO BE USED FOR BUDGET PURPOSES AS THERE ARE MANY COSTS THAT ARE UNKNOWN AT THIS TIME. FOR YOUR OWN PROTECTION, PLEASE SIGN BELOW THAT YOU ACKNOWLEDGE THIS.***

ACCEPTED BY:

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

\_\_\_\_\_  
Print Name and Title

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






## **HARDWARE AND SOFTWARE REQUIRED:**

Server Requirements: None – Fully Hosted

- Workstations:

- The client workstation or device should have installed the appropriated software in order to display, edit and/or print these files (PDF, Word, images, audio, video, etc.) that may be stored or generated in the server.

- Current Browser Support

<b>Browser (*) \ OS</b>	<b>Windows</b>	<b>IOS</b>	<b>Android</b>
 Edge	42.0+	-	-
 Firefox	62+	62+	62+
 Chrome	69+	69+	69+
 Opera	55+	-	-
 Safari	-	11+	-

\* Notes:

- Browsers with no HTML 5 implemented are not supported
- Browsers must have JavaScript support enabled
- Browsers in Beta stage are not supported
- All Discontinued browsers are not supported for example: IE & Netscape



**VertiQ  
Software  
LLC**

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Fax: 408-782-0850

### **Sole Source Statement for VertiQ Software CME-V3**

#### **To Whom It May Concern**

VertiQ Software LLC., including its affiliates, subsidiaries and divisions, are the sole source providers for purchases, upgrades and maintenance of VertiQ Case Management Software System.

VertiQ Software LLC is the only company that can support VertiQ Case Management Software System and associated maintenance services.

VertiQ Software version CME-V3 is integrated with NMS Laboratories. VertiQ works with the NMS team to configure web services that will allow for the importing of Toxicology related data, toxicology results, and running the NMS report from within CME application. This allows for a seamless, error free input of data and considerable time savings for staff.

As of October 1, 2019, NMS Laboratory is the only toxicology laboratory that is integrated with CME-V3.

Additionally, all data concepts in CME-V3 have the ability to be queried.

When installed, CME-V3 taken 'out of the box' is a fully functioning application.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Anthony Kessel, CEO

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

08/26/2019

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2019-561069

Date Filed:  
11/13/2019

Date Acknowledged:  
11/26/2019

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

VertiQ Software LLC  
MORGAN HILL, CA United States

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

Fort Bend County

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.**

28117  
License and subscription

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

**5 Check only if there is NO Interested Party.**

**6 UNSWORN DECLARATION**

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)