



AGREEMENT FOR SUBSTANTIVE MODIFICATION and BIENNIAL AUDIT(S)

WHEREAS, the CALIFORNIA ELECTRONIC RECORDING TRANSACTION NETWORK AUTHORITY (“**CERTNA**”) seeks audit services as specified herein.

WHEREAS, MGO Technology Group, LLC, an affiliate of Macias Gini & O’Connell LLP, (“**CONTRACTOR**”) agrees to provide such services, and in accordance with the terms and conditions of this Agreement, and has represented and warrants to **CERTNA** that **CONTRACTOR** possesses the necessary knowledge, qualifications, skills and personnel to provide such services.

NOW THEREFORE, it is mutually agreed as follows:

CERTNA hereby retains **CONTRACTOR**, and **CONTRACTOR** hereby accepts such assignment to perform those services, subject to those terms and conditions hereinafter set forth.

A. SCOPE OF WORK: CONTRACTOR shall perform the following services:

Requirements:

1. Perform Substantive Modification Audit(s) per California Department of Justice Electronic Recording Delivery Act (ERDA) regulations.
2. Perform Biennial System Audit per California Department of Justice ERDA regulations.
3. Utilize CERTNA-approved standardized format for all audit reports to include draft (if any) and final.
4. Work with County representative and/or CERTNA as needed to resolve any negative findings prior to delivery of final audit report. Should the resolution of negative findings extend past 60 days, the final report will be delivered and a new audit engagement initiated.

Deliverables:

1. Draft Audit Report(s) (if any) PDF format encrypted with pre-shared password.
2. Final Audit Report in PDF format encrypted with pre-shared password.



Completion Criteria:

1. Completion is acceptance of the Final Audit Report by the CeRTNA Executive Director.

B. COMPENSATION

As total compensation for all services to be performed by **CONTRACTOR** under this contract, **CERTNA** shall pay **CONTRACTOR** as follows:

1. Services will be provided on a fixed cost basis and will be invoiced in full upon completion.
2. Total fixed cost per substantive modification audit is \$3,000.00
 - i. The fixed cost per substantive modification audit will increase by \$125.00 on October 1, 2021 and each subsequent year.
3. Total fixed cost per biennial audit is \$7,500.00
 - i. The fixed cost per biennial audit will increase by \$250.00 on October 1, 2021 and every other subsequent year.

C. CONTRACTOR shall perform all services as an independent contractor. **CONTRACTOR** or personnel of **CONTRACTOR** engaged in the performance of such services shall not represent themselves to be, nor shall they be deemed to be, employees of **CERTNA** for any purpose whatsoever.

D. CONTRACTOR agrees that it and its personnel shall preserve as confidential any confidential records or information that it may be required to examine in the performance of services under this contract, including, but not limited to, the types of records mentioned in California Government Code § 6254 and in accordance with the **CERTNA** Unilateral Non-Disclosure Agreement. However, **CONTRACTOR** shall not be restricted in any way from releasing information in response to a subpoena, court order, or legal process, but shall notify **CERTNA** of the demand for information before **CONTRACTOR** responds to such demand.

E. CONTRACTOR shall maintain for five (5) years all reports, notes, records, or other written information obtained in performance of this agreement and **CERTNA** or its agent shall have access to the same for examination or copying.



- F. **CERTNA** agrees that its employees will cooperate with and assist representatives of **CONTRACTOR** in every reasonable way to enable **CONTRACTOR** to secure all information and data required to perform the services herein provided for. **CONTRACTOR** shall have no liability for defects in the services attributable to **CONTRACTOR's** reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by **CERTNA** or third parties retained by **COUNTY**.
- G. **CONTRACTOR** shall notify **CERTNA** in writing, of any change in mailing address within ten (10) business days of the change.
- H. **CONTRACTOR** agrees not to enter into any subcontracting agreements for work contemplated under the Agreement without first obtaining written approval from **CERTNA**. Any subcontractor shall be subject to the same terms and conditions as **CONTRACTOR**. **CONTRACTOR** shall be fully responsible for the performance and payments of any subcontractor's contract.
- I. Without the prior written consent of **CERTNA**, the agreement is not assignable by **CONTRACTOR** either in whole or in part except that it may be assigned without such consent to a related entity, an affiliate or wholly owned subsidiary of **CONTRACTOR**.
- J. **CONTRACTOR** agrees any alterations, variations, modifications, or waivers of the provisions of the Agreement, shall be valid only when reduced to writing, executed and attached to the original Agreement and approved by the required persons.
- K. **CERTNA** or **CONTRACTOR** may terminate this Agreement in whole or in part for convenience upon thirty (30) calendar day's written notice. If such termination is effected, an equitable adjustment in the price provided for in this Agreement shall be made. Such adjustment shall provide for payment to the **CONTRACTOR** for services rendered and expenses incurred prior to the effective date of termination plus any reasonable termination expenses incurred by **CONTRACTOR** (including but not limited to cancellation or demobilization costs or fees). Upon receipt of termination notice **CONTRACTOR** shall promptly discontinue services unless the notice directs otherwise. **CONTRACTOR** shall deliver promptly to **CERTNA** and transfer title (if necessary) all completed project specific work, and project specific work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.
- L. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party
- M. The venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, County of San Bernardino, Central District. Each party hereby waives any law or rule of the court which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to San Bernardino County.



- N. **CONTRACTOR** and **CERTNA** hereby waive their respective rights to trial by jury for any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding, and/or hearing brought by either **CONTRACTOR** against **CERTNA** or **CERTNA** against **CONTRACTOR** on any matter arising out of, or in any way connected with this Agreement, the relationship of **CONTRACTOR** and **CERTNA**, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.
- O. **CONTRACTOR** shall ensure that it has all necessary certificates, licenses and permits required by federal, state, county, and municipal laws, ordinances, rules and regulations. The **CONTRACTOR** shall maintain these certificates, licenses and permits in effect for the duration of this Agreement. **CONTRACTOR** will notify **CERTNA** immediately of loss or suspension of any such certificates, licenses and permits. Failure to maintain a required certificate, license or permit may result in immediate termination of this Agreement.
- P. **CONTRACTOR** shall strictly adhere to the applicable provisions of the Labor Code regarding the employment of apprentices; minimum wages; travel and subsistence pay; retention and inspection of payroll records; workers compensation; payment of wages. The **CONTRACTOR** shall forfeit to **CERTNA** the penalties prescribed in the Labor Code for violations.
- Q. In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under this Agreement, the **CONTRACTOR** shall notify **CERTNA** within one (1) working day, in writing and by telephone.
- R. All documents, data, products, graphics, computer programs and reports prepared by **CONTRACTOR** for **CERTNA** pursuant to this Agreement shall be considered property of **CERTNA** upon payment for services. All such items shall be delivered to **CERTNA** as provided in Paragraph A hereof, subject to the requirements of Paragraph K (Termination for Convenience). Unless otherwise directed by **CERTNA**, **CONTRACTOR** may retain copies of such items.
- S. **CONTRACTOR** agrees to indemnify, defend and hold harmless **CERTNA** and its authorized officers, employees and agents from any and all claims, actions, losses, damages and/or liability resulting from death or bodily injury to any person or damage or destruction to third-party property to the extent arising from **CONTRACTOR's** negligent acts, errors or omissions and for any costs or expenses incurred by the **CERTNA** on account of any claim therefore, except where such indemnification is prohibited by law. In the event such liability, claims, actions, causes of action or demands are caused by the joint or concurrent negligence of more than one party, such liability shall be borne by each party in proportion to their own fault.
- T. This agreement is intended by the parties hereto as a final expression of their agreement and understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms hereof and supersedes any and all prior and contemporaneous agreements and understandings. This agreement may be changed or modified only upon the written consent of the parties hereto.

Contract # CONT-2020-002

CERTNA Agreement for Substantive Modification Audit(s)

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U. Any notices and reports required or desired to be serviced by either party upon the other shall be addressed to the respective parties as set forth below:

CERTNA: Sean Saldavia, Chairman of the Board
CERTNA
473 E Carnegie Drive, Suite 200
San Bernardino, CA 92408

CONTRACTOR: Linda Hurley
MGO Technology Group, LLC, an affiliate of
Macias Gini and O’Connell LLP (MGO)
500 Capitol Mall, Ste. 2200
Sacramento, CA 95814

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below. The individuals signing below for their respective organizations have been authorized by those organizations to enter into and be bound by this Agreement on behalf of the organization.


CERTNA

Sean Saldavia, Chairman of the Board

_____ DATED: _____
Authorized Signature

CONTRACTOR

MGO Technology Group, LLC


_____ DATED: 09/04/2020
Authorized Signature