

EXHIBIT D  
PROFESSIONAL SERVICES AGREEMENT

1. DEFINITIONS

1.1 **Acceptance** means written acknowledgment by County that a particular Deliverable provided by Contractor and, if applicable, installed in County's environment pursuant to a particular Project, performs in accordance with and conforms to the applicable Acceptance Criteria; provided, however, that whenever Acceptance is required herein, it shall conclusively be deemed to have been given by County if it has not provided written notice to Contractor, in the manner and within the applicable time period set forth in Section 3 ("Acceptance"), that the Deliverable fails to meet the applicable Acceptance Criteria.

1.2 **Acceptance Criteria** means such set of written tests and protocols that Contractor and County may mutually develop prior to the commencement of any Services hereunder (as they may be mutually amended from time to time) for the purpose of determining whether a particular Deliverable performs in accordance with the applicable Specifications.

1.3 **Service Fees** means the fees to be paid by County, as determined in the Statement of Work, which entitle County to Services.

1.4 **Services** means those services provided by Contractor to County under Section 2 ("Services") of this Agreement.

1.5 **County** means the County of San Luis Obispo.

1.6 **Contractor** means Sustain Technologies, Inc.

1.7 **Deliverable(s)** means one or more items other than Services (which may include hardware, software, firmware or other items) to be delivered by Contractor to County, as specified under this Agreement or an applicable Statement of Work.

1.8 **Project** means each project undertaken by Contractor under Section 2 ("Services") pursuant to a Statement of Work.

1.9 **Specifications** means the specifications described in a Statement of Work or otherwise mutually agreed upon in writing by County and Contractor.

1.10 **Statement of Work** means a statement of work, prepared and executed pursuant to the provisions of Section 2 ("Services") of this Agreement.

## 2. SERVICES

2.1 Projects. Contractor agrees to provide Services to County, as such may be determined from time to time in accordance with the provisions of this Section 2 (“Services”). All Services will be rendered in accordance with the provisions of this Agreement, the applicable Statement of Work and any other guidelines agreed upon in writing by Contractor and County. The first two Statements of Work are attached as Exhibits E and F to the Contract for Information Technology Solution between County and Contractor.

2.2 Scope of Work. If County requests Services, County shall submit a Project request substantially in the form attached as Exhibit D-1. Contractor shall have the right to request additional details about the proposed Project described in the Project request. If Contractor believes that it can provide the requested Services, within a commercially reasonable time, Contractor shall submit a rough order of magnitude (“**ROM**”) cost estimate: (i) in the case of interfaces and data conversions, for the costs to develop a Statement of Work for the implementation of the work described therein, and (ii) in all other cases, for the implementation of such requested Project, change or the provision of such additional services, if any. Such ROM shall also include any impact or delay on the Deliverables and the milestone schedule set forth in any other affected Project and/or Statement of Work, in order to accommodate the requested service or change. In the event the County decides, based on the ROM cost estimate, to initiate the additional services or changes, Contractor shall (if it proposes to perform the services) submit to County a draft Statement of Work. Whether or not the County elects to proceed with work described in the Statement of Work delivered by Contractor, the County shall pay to Contractor, net thirty (30) days from the County’s receipt of an invoice from Contractor, an amount equal to Contractor’s time and materials reasonably expended to prepare the Statement of Work.

### 2.3 Completion of Statements of Work.

2.3.1 Final Statement of Work. Upon County’s receipt of a proposed Statement of Work, Contractor and County shall attempt reasonably to meet, consult and agree upon a final Statement of Work. Neither party shall unreasonably withhold approval to any reasonable modification proposed by the other party to a proposed Statement of Work.

2.3.2 Incorporations of Statement of Work. At such time as the parties shall have agreed upon a Statement of Work, the Statement of Work as so completed and approved shall constitute an agreement under and be subject to the non-conflicting provisions of this Agreement. If Services are to be provided without such a Statement of Work, they shall also be provided under and in accordance with this Agreement. In order to evidence their agreement to a Statement of Work, County and Contractor shall sign such agreement, electronically or otherwise. When executed by an authorized representative of

both parties, each such Statement of Work shall be incorporated herein by this reference and made a part hereof.

2.4 Delivery. Upon completion of a Project under a given Statement of Work, Contractor shall deliver to County any identified Deliverables specified in the applicable Statement of Work.

2.5 Changes. Contractor acknowledges that County may need to revise one or more Statements of Work from time to time. Such changes may be accomplished by revisions to the Statement of Work or by written agreement of the parties at the time, with the modifications resulting in reduced or additional charges, and payments or adjustments appropriately made.

2.6 Contractor's Employees and Subcontractors. Contractor shall require all of its employees and subcontractors to comply with the terms of this Agreement and any reasonable and lawful employment and security policies and procedures adopted from time to time by County. Contractor shall procure all business permits necessary to perform under this Agreement and pay all related fees. Contractor and County shall each indemnify, defend and hold harmless the other and its affiliates, and their respective officers, directors, employees and agents, from and against any and all losses, liabilities, damages, causes of action, claims, demands, and expenses, including reasonable legal fees and expenses, of whatsoever kind and nature, arising out of or on account of, or resulting from, the violation by the indemnifying party or its employees, agents, or contractors of any applicable law, order, ordinance, regulation or code.

2.7 Status Reporting. Contractor will provide reasonable status reports to County upon request, the preparation of which shall constitute additional Services.

2.8 Status Meetings. If County so requests, Contractor shall hold periodic status meetings with County management in order to review the status of Contractor activities, preparation for which and attendance at which shall constitute additional Services.

2.9 Record Keeping and Inspection. Contractor shall maintain reasonable accounting records, in a form sufficient to substantiate Contractor's charges hereunder. Such records may include, but not be limited to, payroll records, attendance cards and job summaries. Contractor shall retain such records in accordance with its general record retention policies. County shall have the right to inspect any such records upon reasonable notice, at Contractor's site and during Contractor's normal business hours.

2.10 Ownership of Product of Services. Unless otherwise specified to the contrary in the applicable Statement of Work, all data, materials, Deliverables and other products developed by Contractor under a Statement of Work or other agreement shall be and remain the sole and exclusive property of Contractor, which shall retain all rights

therein; provided that upon full payment by County, County shall have the right to utilize such products for County's internal purposes on a perpetual, royalty-free basis.

### 3. ACCEPTANCE

3.1 Acceptance Testing. County will be solely responsible for the final acceptance testing of each Deliverable, if any. Upon notice from Contractor that a Deliverable is ready for testing, County shall commence acceptance testing of the same. County shall have thirty (30) days (or such other time as may be specified in a Statement of Work) from the date of Contractor's notice to examine and test the Deliverable, to determine whether the Deliverable conforms to the relevant Acceptance Criteria. Within that review period, County shall provide Contractor (in the manner required generally for notice) with Acceptance of the Deliverable, or a written statement of errors to be corrected.

3.2 Corrections. When a Deliverable has not been given Acceptance because an error was found and County has provided Contractor with a statement of errors, Contractor shall as promptly as practicable correct the identified errors or deficiencies and redeliver the Deliverable(s) in question to the County, giving County notice thereof. County shall then, within fifteen (15) days, repeat any necessary testing and provide Contractor with Acceptance or a further written statement of errors.

### 4. WARRANTIES

4.1 Services Warranties. Contractor warrants that the Services rendered to County pursuant to this Agreement shall be performed in a competent and professional manner, and that each of Contractor's employees, independent contractors or agents assigned to perform Services pursuant to this Agreement shall have training, background and skills reasonably commensurate with the level of performance reasonably expected for the tasks to which he or she is assigned.

4.2 Warranty of Law. Contractor warrants and represents that to the best of its Knowledge: (i) Contractor has full authority to enter into this Agreement and to consummate the transactions contemplated hereby and (ii) this Agreement is not prohibited by any other agreement to which Contractor is a party or by which it may be bound (the "**Legal Warranty**"). In the event of a breach of the Legal Warranty, Contractor shall indemnify and hold harmless County from and against any and all harm, injury, damages, costs, losses, liabilities, settlement amounts and expenses, including reasonable attorneys' fees and expenses, incurred by County arising out of said breach.

4.3 Effect of Breach of Warranty. If, at any time during the term of this Agreement, Contractor fails to perform according to any warranty under this Section 4 ("Warranties"), County shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall correct any deficiencies in Services provided or repair or replace all errors and malfunctions in any Deliverable at no additional charge

to County (except as set forth in a Statement of Work), so long as the errors or malfunctions are not caused by an act of County or any third party not under the control of or authorized by Contractor.

4.4 No Other Warranties. THE WARRANTIES AND REPRESENTATIONS STATED WITHIN THIS AGREEMENT ARE EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 5. PAYMENT

5.1 Payment. Fees shall be payable for all Services provided by Contractor (and any Deliverables provided by Contractor) as set forth in the applicable Statement of Work. If such Services are requested and provided without a Statement of Work, they will be billed by Contractor to County in accordance with Contractor's normal billing practices at the time, on a time-and-expense basis, with hourly rates at the then-standard rates, and expenses charged at cost, or as the parties may otherwise agree in writing; provided that (i) for any approved changes or additions during the implementation of eCourt, the rate will be \$150/hour, and (ii) for the first year of the term of the eCourt license, the fee will be a flat \$12,500. (Otherwise, Contractor's current hourly rate, which may be adjusted by Contractor from time to time, is \$200/hour for help desk support services.)

## 6. LIMITATIONS ON LIABILITY

6.1 Limitations on Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF ANTICIPATED PROFITS IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT. FURTHERMORE, IN NO EVENT SHALL CONTRACTOR BE LIABLE TO COUNTY FOR ANY AMOUNT IN EXCESS OF THE AMOUNT OF SERVICE FEES ACTUALLY RECEIVED BY CONTRACTOR UNDER THIS AGREEMENT; PROVIDED THAT THIS LIMITATION SHALL NOT APPLY TO CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 4.2 ("WARRANTY OF LAW").

## 7. CONFIDENTIALITY

7.1 County's Responsibilities. County hereby agrees that (i) the materials received from Contractor under this Agreement are the confidential and proprietary information of Contractor, (ii) County shall take all necessary steps to protect and ensure the confidentiality of such confidential information, and (iii) except as permitted by a Statement of Work, none of such materials shall be in any way disclosed by County to any third party, in whole or in part, without the prior written consent of Contractor, which may be granted or withheld in its sole discretion. If County becomes aware of the unauthorized possession of such materials, it shall promptly notify Contractor. County shall also assist Contractor with preventing the recurrence of such unauthorized

possession and with any litigation against the third parties deemed necessary by Contractor to protect its proprietary rights.

7.2 Contractor's Responsibilities. Contractor hereby agrees that (i) any information related to the official business of County that Contractor obtains from County in the course of the performance of this Agreement is the confidential and proprietary information of County, (ii) Contractor shall take all necessary steps to protect and ensure the confidentiality of such information, and (iii) such information shall not be in any way disclosed by Contractor to any third party, in whole or in part, without the prior written consent of County, which may be granted or withheld in its sole discretion.

7.3 Confidentiality Breach. In the event a party breaches any of its obligations under this Section 7 ("Confidentiality"), the breaching party shall indemnify, defend and hold harmless the non-breaching party from and against any and all harm, injury, damages, costs and expenses incurred by the breaching party arising out of such breach. In addition, the non-breaching party will be entitled to injunctive relief against the breaching party.

7.4 Exclusions. The provisions of this Section 7 ("Confidentiality") shall not apply to any information (i) that is in the public domain prior to the disclosure or that becomes part of the public domain other than by way of a breach of this Agreement, (ii) that was in the lawful possession of Contractor or County, as the case may be, prior to the disclosure without a confidentiality obligation to any person, (iii) that was disclosed to Contractor or County, as the case may be, by a third party who was in lawful possession of the information without a confidentiality obligation to any person, or (iv) that was independently developed by Contractor or County, as the case may be, outside the scope of this Agreement.

## 8. TERM AND TERMINATION

8.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated in accordance with the terms of this Section 8 ("Term and Termination").

8.2 Term of Statements of Work. Each Statement of Work pertaining to the provision of Services, and each other agreement for such services shall commence on the date of execution of such Statement of Work or other agreement and shall continue in full force and effect thereafter until terminated in accordance with the provisions thereof or this Section 8 ("Term and Termination"), or until the Services required have been provided.

### 8.3 Termination by Contractor.

8.3.1 Payment Default. Contractor shall have the right to terminate this Agreement or any Statement of Work (but reserving cumulatively all other rights and remedies under this Agreement, in law and/or in equity), for any failure of County to make payments of moneys due when the same are due, and such failure continues for a period of thirty (30) days after written notice thereof by Contractor to County.

8.3.2 Other County Defaults. Contractor may terminate this Agreement (but reserving cumulatively all other rights and remedies under this Agreement, in law and/or in equity), for any material violation or breach by County which violation or breach continues for a period of thirty (30) days after written notice thereof by Contractor to County.

8.4 Termination by County. County shall have the right to terminate this Agreement or any Statement of Work (reserving cumulatively all other rights and remedies under this Agreement, in law and/or in equity) without further obligation or liability to Contractor (except as specified herein) if Contractor commits any material violation or breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by County to Contractor of such breach. County shall have the right to terminate this Agreement effective immediately and without prior notice if Contractor goes into liquidation or bankruptcy.

8.5 Effect of Termination. Termination of this Agreement or any Statement of Work shall not affect rights and/or obligations of the parties which arose prior to any such termination (unless otherwise provided herein) and such rights and/or obligations shall survive any such termination. Upon termination, each party shall return the confidential property of the other party obtained under this Agreement. Within thirty (30) days after the effective date of termination, County shall pay Contractor's fees and expenses at its then-standard rates for all services rendered up to the effective date of termination, including, without limitation, all work in process.

## 9. GENERAL

9.1 Waiver, Amendment or Modification. The waiver, amendment or modification of any provision of this Agreement or any right, power or remedy hereunder shall not be effective unless made in writing and signed by both parties. No failure or delay by either party in exercising any right, power or remedy with respect to any of its rights hereunder shall operate as a waiver thereof.

9.2 Notice. All notices under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person, by commercial overnight courier or by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Contractor: Sustain Technologies, Inc.  
915 East First Street  
Los Angeles, CA 90012  
Attention: President  
Phone Number: (213) 229-5434

To County: James E. Salio, Chief Probation Officer  
San Luis Obispo County Probation Department  
1730 Bishop Street  
San Luis Obispo, CA 93401  
Phone Number: (805) 781-5300

9.3 No Third Party Beneficiaries. This Agreement is not intended to create any right in or for the public, or any member of the public, any subcontractor, supplier or any other third party, or to authorize anyone not a party to this Agreement to maintain a suit to enforce or take advantage of its terms.

9.4 Successors and Assigns. Neither party may assign this Agreement in whole or part without the prior written consent of the other party. Any attempt to assign this Agreement without the prior written consent of the other party is void and without legal effect, and such an attempt constitutes grounds for termination by the other party. Subject to the foregoing, all of the terms, conditions, covenants, and agreements contained herein shall inure to the benefit of, and be binding upon, any successor and any permitted assignees of the respective parties hereto. It is further understood and agreed that consent by either party to such assignment in one instance shall not constitute consent by the party to any other assignment. A transfer of corporate control, merger, sale of substantially all of a party's assets and the like, even though including this Agreement as an assigned asset or contract, shall not be considered an assignment for these purposes.

9.5 Governing Law; Venue. The validity, construction and performance of this Agreement and the legal relations among the parties to this Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to its conflict of law principles. Any lawsuit or other action based on a claim arising from this Agreement shall be brought in a court or other forum of competent jurisdiction within Los Angeles County, California.

9.6 Independent Contractor. Contractor, in performance of this Agreement, is acting as an independent contractor. Personnel supplied by Contractor (including personnel supplied by subcontractors) hereunder are not County's personnel or agents,

and Contractor assumes full responsibility for their acts. Contractor shall be solely responsible for the payment of compensation of Contractor employees assigned to perform services hereunder, and such employees shall be informed that they are not entitled to the provision of any County employee benefits. County shall not be responsible for payment of worker's compensation, disability or other similar benefits, unemployment or other similar insurance or for withholding income or other similar taxes or social security for any Contractor employee, but such responsibility shall solely be that of Contractor.

9.7 Severability. In the event any one or more of the provisions of the Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a provision, which, being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

EXHIBIT D-1

FORM OF PROJECT REQUEST

Contractor Agreement # \_\_\_\_\_

PR Tracking Number \_\_\_\_\_; Description: \_\_\_\_\_

This Project request is issued pursuant to the Professional Services Agreement dated \_\_\_\_\_, 2013 (the “**Agreement**”), by and between Sustain Technologies, Inc. (“**Sustain**”) and the County of San Luis Obispo Probation Department. Any term not otherwise defined herein, shall have the meaning ascribed to it in the Agreement. Upon completion by Sustain of a corresponding Statement of Work, and execution by the parties, this Project Request and the corresponding Statement of Work shall constitute a Project, and shall become part of and be binding on the parties to the Agreement.

1. **Services to be performed/Objectives of the Project:**
  
2. **Requirements:**
  
3. **Deliverables to be provided:**
  
4. **Requested schedule:**
  
5. **Budget:**

Project Request Approved by:

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

Fax or email to Project Manager, SUSTAIN Technologies, Inc., at \_\_\_\_\_.