

STATE OF TEXAS           §  
  §  
COUNTY OF EL PASO   §

**MASTER AGREEMENT**

**AUTOMATED SCREENING, ASSESSING, AND CASE MANAGEMENT SYSTEM  
CONTRACT BETWEEN THE COUNTY OF EL PASO AND ALLVEST  
INFORMATION SERVICES, INC. D/B/A ASSESSMENTS.COM**

**This Agreement** is made and entered into by and between the following parties: El Paso County, Texas (the "COUNTY" or "Licensee"), on behalf of the El Paso County Juvenile Probation Department ("JPD"), and Allvest Information Services, Inc. d/b/a Assessments.com (the "CONTRACTOR" or "Licensor") for the purpose of licensing from the Licensor its web-based assessment software package, implementation consulting, and staff training.

**I.     RESPONSIBILITIES OF LICENSOR.**

Licensor shall provide the Licensee with products and services in the type and manner described in Exhibit A and Exhibit B, which are attached hereto and incorporated herein.

**II.    RESPONSIBILITIES OF LICENSEE.**

Licensee will pay the Licensor the compensation prescribed in section III of this agreement and shall monitor Licensor's performance.

**III.   COMPENSATION.**

- a.     Compensation, which includes all licensing fees, under this agreement, shall be \$2,406.00 per License for the first year. JPD will inform Contractor in writing of the number of licenses requested by JPD. Compensation for the first year shall include the Implementation and Training services listed in Exhibit A.
- b.     The total compensation for the first year shall not exceed 30 Licenses or \$72,180.00.
- c.     Compensation for each year after the first year, including any option periods, shall be limited to \$18,000 per year as a licensing fee for up to 30 Licenses. The \$18,000 is the pro-rata per-year amount for the licensing fee. Additional training, consulting, and customizations, will be compensated as mutually determined by both parties.

**IV.    GENERAL PROVISIONS:**

**4.1    Billing and Payment**

4.1(1) Contractor shall submit claims on invoices bearing Contractor's letterhead not later than ten (10) working days from the last day of the month for

which payment is requested to the El Paso County Juvenile Probation Department Director of Financial Services. The invoice shall be for all licenses issued to JPD in the preceding month.

- 4.1(2) When JPD receives an invoice from the Contractor, it will process the invoice for payment through the El Paso County Auditor's Office. The El Paso County Auditor's Office will mail out the check after Commissioners' Court approval. Checks are mailed directly to the Contractor. The first year, the County shall pay 25% of the original invoice, which original invoice shall be submitted immediately upon execution of this contract, within thirty (30) days of receipt and shall pay an additional 25% of the total contract amount within thirty (30) days of the second invoice, which second invoice shall be submitted immediately after 90 days from the execution of this contract. The County of El Paso shall pay the remaining 50% of the total contract amount thirty (30) days after the completion of the training referred to in Exhibit A., I., c. The County of El Paso shall make all other payments within thirty (30) days of receipt to County entity.
- 4.2 Under §231.006, Texas Family Code, the Contractor certifies that the individual or business entity named in this agreement is not ineligible to receive the specified grant, loan or payment and acknowledges that this agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 4.3 Contractor certifies that the individual(s) or business entity named in this agreement is in good standing with the Texas Comptroller of Public Accounts. **(EXHIBIT C)**
- 4.4 This agreement is conditional upon, subject to and contingent upon receipt of adequate Federal and/or State funding to meet the liabilities of this agreement. Contractor shall have no cause of action against El Paso County or JPD in the event El Paso County or JPD is unable to perform its obligations pursuant to this Agreement as a result of suspension, termination, withdrawal or failure of Federal and/or State funding to El Paso County or JPD.
- 4.5 All representations made by the Juvenile Probation Department are contingent upon availability of funds from which payments for the contract services can be made and do not represent an obligation on the part of the Juvenile Probation Department, the County of El Paso, or the Texas Juvenile Probation Commission.
- 4.6 As determined in the reasonable judgment of the Juvenile Probation Department, failure of Contractor to comply with any provisions of this agreement or a failure to achieve set goals and/or outcomes or failure of the Contractor to properly administer any subcontracts and take appropriate corrective action in the event of violations by any subcontractors may be considered a material breach of this contract and may result in withholding, suspension or reduction in payments or in

immediate termination of this agreement as well as refund of payments.  
Contractor may be ineligible to receive future contracts.

- 4.6(1) Contractor warrants that it is certified, approved or licensed by all Federal, State or local regulatory agencies or departments in compliance with all applicable regulatory agency or department policies, procedures and administrative rules to regulate any activity performed by the Contractor. Current proof of such certification, approval, license, registration or any other required regulatory permits shall be provided to the El Paso County Juvenile Probation Department within thirty (30) days of execution of this agreement.
- 4.6(2) Annually, Contractor shall disclose to El Paso County any pending or initiated criminal or governmental investigations within the last twelve (12) months preceding the execution of this agreement, as well as during the term of this agreement along with any results and/or findings related to the Contractor conducted by but not limited to the following agencies: Department of Justice, Texas Juvenile Probation Commission, Texas Department of Family and Protective Services or any other agency which may license or regulate the Contractor in the provision of these services.
- 4.6(3) Contractor shall ensure that all files and records generated or created, pursuant to this contract containing individually, identifiable health information in electronic, paper and oral form also known as protected health information (PHI) is maintained and/or disseminated in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

## **V. TERM AND TERMINATION:**

**Term:** This Agreement shall be effective upon execution and shall continue for one year. The County shall have the option to renew this agreement for two one-year terms upon the same terms and conditions contained in this agreement by providing written notice to Contractor.

**Termination:** The County or the Contractor may terminate this Agreement at any time by giving thirty (30) days written notice, sent by certified mail (Return Receipt Requested) of its intention to terminate. The County may terminate this agreement without notice immediately in the event Contractor fails to comply with any provision of this agreement. Contractor shall cease to incur costs associated with this agreement upon termination or receipt of written notice to terminate, whichever occurs first.

Notice Shall Be Mailed To JPD: Roger Martinez, Chief  
Juvenile Probation Officer  
El Paso Juvenile Probation Department

6400 Delta Drive  
El Paso, TX 79905-5408

To Contractor: Allvest Information Services, Inc. (“Allvest”)  
dba Assessments.com  
533 W 2600 S Suite #140  
Bountiful, Utah 84010

**VI. INDEPENDENT CONTRACTOR:**

Nothing contained herein shall be construed as creating the relationship of employer and employee between the County and the Contractor. The Contractor shall be deemed at all times to be an independent contractor.

**VII. ASSIGNMENT:**

Contractor shall not sell, assign, transfer or convey this agreement, in whole or in part, without the prior written consent of El Paso County and the Juvenile Probation Department.

**VIII. VENUE:**

This agreement will be governed and construed according to the laws of the State of Texas. This agreement is performable in El Paso County, Texas. Venue for any legal proceedings shall be in El Paso County, Texas.

**IX. INDEMNIFICATION:**

**9.1 Contractor shall defend, indemnify and hold harmless El Paso County and the El Paso County Juvenile Board, their officers, agents and employees from all claims or causes of action of any kind for injury or damage of any kind to any person or property brought by or on behalf of any person due to or related to the negligence or intentional act or omission of Contractor, its agents, employees or subcontractors. Contractor shall pay any and all damages assessed against El Paso County and the El Paso County Juvenile Board, their officers, agents or employees arising out of such negligence or intentional acts.**

9.2 Contractor shall purchase at its own expense, commercial public liability insurance in a general aggregate limit of not less than \$300,000.00 for each single occurrence for bodily injury or death and \$100,000.00 for each single occurrence for injury to or destruction of property. Such policies shall be with an insurance company licensed to do business in Texas and shall be satisfactory to the County. All of said insurance policies shall name the County, its officers, agents, and employees and the El Paso County Juvenile Board, its officers, agents, and employees as additional insureds and shall provide that the County shall be given at least thirty (30) days advanced written notice of any lapse, amendment or cancellation. A copy of the proof of insurance shall be provided annually to JPD as an attachment to the annual invoice or provided to JPD annually by the insurance company.

**X. AGREEMENT:**

This document expresses the entire agreement between the parties and shall not be amended or modified except by written instrument signed by the parties. In the event of conflict between the provisions of this Agreement and the provisions of any exhibits hereto, the provisions of this Agreement will prevail.

**XI. ENFORCEMENT:**

In the event that any portion of this agreement shall be found to be invalid or unenforceable, the remaining terms and conditions shall be severed and shall remain in full force and effect.

**XII. NONDISCRIMINATION AND EQUAL OPPORTUNITY:**

Contractor certifies that it will comply fully with the nondiscrimination and equal opportunity provisions of Title VII of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; the Americans with Disabilities Act of 1990, as amended; and with all applicable requirements imposed by or pursuant to regulations that implement those laws.

**IN WITNESS WHEREOF**, the parties execute this agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**ATTEST:**

**THE COUNTY OF EL PASO**

\_\_\_\_\_  
County Clerk

\_\_\_\_\_  
Hon. Anthony Cobos  
County Judge

\_\_\_\_\_  
Date

**Approved as to form:**

**ALLVEST INFORMATION SERVICES, INC.**

\_\_\_\_\_  
Assistant County Attorney

\_\_\_\_\_  
Sean Hosman  
President

\_\_\_\_\_  
Date  
**(Signer must have legal authority to bind Corporation)**

\_\_\_\_\_  
Roger Martinez  
Chief Juvenile Probation Officer

\_\_\_\_\_  
Date

IMPLEMENTATION and TRAINING SERVICES  
EXHIBIT A to Master Agreement  
between EL PASO COUNTY  
hereinafter referred to as "LICENSEE," and  
ALLVEST INFORMATION SERVICES, INC. hereinafter referred to as  
"LICENSOR"

1. DESCRIPTION OF SERVICES

a. AUTOMATED SCREENING, ASSESSMENT, and CASE MANAGEMENT SYSTEM

- i. Licensor will provide to Licensee a comprehensive screening, assessing, and case management tool to be utilized at the various stages in the juvenile justice process to identify criminogenic factors, assist in making detention/release decisions, assess risk and need, and generate output reports to develop case planning, supervision strategies, and define case outcomes.
- ii. The system will be capable of providing a validated continuum of risk and needs assessment, to include but not limited to: risk to re-offend, drug abuse, mental health, family management issues, and reintegration.
- iii. The system will be capable of providing a validated detention risk assessment.
- iv. The system will be a web-based automated system with evidence based applications, validated risk and screening assessment tools for juveniles between the ages of 10 and 17.
- v. The web-based automated system will have the ability to assess the risk and need of parent(s)/guardian(s), only insofar as it calculates towards the level of risk to re-offend for the juvenile.
- vi. Technical support (accessing the system) will be available seven days a week, 24 hours a day, and 365 days per year, with necessary exceptions for downtime or maintenance.
- vii. The assessment system:
  - will be capable of providing supervision strategies (appropriate level of supervision and appropriate interventions) based on identified criminogenic factors.
  - will be capable of providing evidenced based interventions for identified criminogenic factors (risk and protective factors). The PACT/YES Case Plan system begins with a valid, reliable

assessment of a youth's risk and protective factors naturally proceeding to the development of a case plan consisting of interventions that have been proven to successfully address that youth's specific and prioritized criminogenic needs. Staff choose from a list of interventions in the case plan, and then assign them to the juvenile. From there, Licensee staff can utilize local resources to see that those interventions actually take place.

- will be capable of generating a strength based case plan based on identified criminogenic factors and parent/guardian risk and need assessment. The system must also have the capability of modifying the initial case plan.
- will provide database of assessment and case outcomes, identified by individual juveniles and specialized juvenile justice programs so that JPD will be able to generate reports to identify juveniles by level of risk and any other typology the system offers and know if the proposed interventions decreased the risk level by the end of the probationary period.
- will have the capability to re-asses for the purpose of determining impact of interventions on identified criminogenic factors.
- will provide management reports which efficiently analyze individual and aggregate data and measure outcomes.
- the web-based automated system will be secure.

#### b. IMPLEMENTATION CONSULTING

- i. Licensor will work with the Licensee to create and execute an Implementation and Project plan.
- ii. Licensor shall provide the installation, configuration, consulting, customizations and training of assessment software application, hereinafter referred to as Assessments.com, together with the associated library of risk and needs instruments.
- iii. Licensor shall work with Licensee as necessary throughout Product installation, configuration and training to jointly review its progression and to work out any identified issues to achieving a successful Product implementation.

- iv. Licensor shall configure the client's installation of Assessments.com to accommodate the P.A.C.T., the Positive Achievement Change Tool, and configure the software for the Licensee.
- v. Licensor shall work with Licensee as necessary throughout Product installation, configuration and training to jointly review its progression and to work out any identified issues to achieving a successful Product implementation.
- vi. Licensor shall provide Licensee with a list of all hardware and software requirements for Licensee in order to install and successfully use the Product. This list shall be attached to the Master Agreement as Exhibit D.

c. STAFF TRAINING

- i. Licensor will train Licensee personnel in the use of the automated assessment software application. Training will be delivered to provide Probation staff with the fundamental skills needed to effectively and accurately utilize the Product. Training will consist of three phases, initial, interviewing, and booster course.
- ii. Licensor will provide on-site training to identified users and education to key stakeholders, e.g., court staff, administrative staff and other personnel.
- iii. Licensor will provide "*Train the Trainer*" training for identified department personnel.
- iv. Licensor will provide training and refresher training to enhance the effectiveness of the user. Training must include but not be limited to the Principles of Evidenced Based Practices (EBP), Principles of Effective Intervention, and motivational interviewing.
- v. Licensor shall provide the first phase that is the initial training. The initial training covers the Research, Principles of Evidence Based Practices (EBP), the Assessment Instrument, and the Software Application (ADC). Initial training will be one (1) session of two (2) day. Each day shall consist of eight (8) hours training sessions. Licensee shall provide the facility for initial training.
- vi. Licensor shall provide Motivational Interviewing training. Interviewing training will be provided over two (2) days. Interviewing training will be two (2) eight (8) hours training sessions. Licensee shall provide facility for initial training.



- vii. Licensor shall provide the booster course that will take place 60-120 days after the initial training. Booster course will be provided over two (2) days. Booster course will be two (2) eight (8) hours training sessions. Licensee shall provide the facility for booster training.
- viii. Licensor will train JPD's line staff to administer the tool, and supervisory and administrative staff on managing their case loads electronically, and will instruct them on how and when they can contact the help desk staff for further assistance.
- ix. Licensor will provide manuals and training materials for users being trained. The material will be provided either by hard copy or electronically at the discretion of Licensor.

## 2. STANDARD OF PERFORMANCE AND ACCEPTANCE TESTING

- a. Licensor shall be required to meet the standard of performance, as specified in the following, for the Product (software/database) implementation.

Product is successfully installed and performs appropriately when the following occurs:

- Product is installed on server,
- Data is successfully written to the database as appropriate,
- Data is successfully displayed from the database as appropriate,
- Search features successfully return the correct records,
- Page navigation works correctly,
- Licensee can successfully log on to Assessments.com using Microsoft Internet Explorer,
- When system algorithms are applied to user entered data and prints system generated risk assessments, supervision strategies, treatment models, case plans and assessment results.

EXHIBIT B to Agreement  
between EL PASO COUNTY  
hereinafter referred to as "Customer" or "LICENSEE," and  
ALLVEST INFORMATION SERVICES, INC. hereinafter referred to as  
"LICENSOR"

**SOFTWARE LICENSE, SUPPORT AND HOSTING AGREEMENT**

This Software License, Support and Hosting Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010 ("Effective Date") by and between:

Allvest: Allvest Information Services, Inc. ("Allvest")  
dba Assessments.com  
533 W 2600 S Suite #140  
Bountiful, Utah 84010  
Phone: (801) 295-1385  
Fax: (801) 295-1401

and

Customer: El Paso County on behalf of  
El Paso County Juvenile Probation Department  
6400 Delta Drive  
El Paso, TX 79905-5408

## TERMS

*In consideration of the foregoing and of the mutual promises and covenants hereinafter set forth, including, without limitation, Allvest's providing to Customer a license to certain software, and certain hosting and support services, and Customer's payment of certain fees and other consideration to Allvest, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:*

1. DEFINITIONS. In addition to terms defined elsewhere in this Agreement, the capitalized terms listed in this section 1 shall have the meanings set forth below for purposes of this Agreement:

1.1 "Allvest Programs" means the computer programming code in solely Object Code form that is sometimes referred to as the Assessments.com Enterprise Software Application, as used in database management, tracking, assessment, risk analysis, treatment, reporting and management of prisoners, parolees and others in the criminal justice system, and including all program output in the form of screen displays, printer output, plotter output and sounds that are

part thereof, with such additions and deletions as Allvest may determine from time to time in its sole discretion, but excluding Other Programs.

1.2 “Confidential Information” means (a) the Programs, Program Upgrades and Documentation; (b) the Source Code, Object Code and executable code for the Programs and Program Upgrades; (c) all ideas, information, procedures, technology, research, documents, inventions, items, materials, input and output relating to the foregoing; (d) information regarding Allvest, its customers, suppliers, marketing plans, business plans, financial status, agreements and business; and (e) any other information, documents, items or materials that, if disclosed by Allvest in tangible form, is marked in writing as “Confidential,” or if disclosed by Allvest orally or visually, is designated orally at the time of disclosure as “Confidential.” Notwithstanding the foregoing, “Confidential Information” does not include information that (a) is generally known in the industry in which Allvest competes; (b) is readily ascertainable by proper means by competitors of Allvest, through sources independent of Customer, Customer Personnel and Allvest, through no act or fault of Customer or Customer Personnel; (c) is already known by Customer prior to the date of this Agreement as evidenced by reasonable supporting documentation; or (d) is independently developed by Customer without use of any information derived from Allvest.

1.3 “Customer Authorized Employees” means solely those employees of Customer that are authorized to utilize the Programs and Documentation on behalf of and for the benefit of Customer pursuant to the terms and conditions of this Agreement.

1.4 “Customer Personnel” means all persons engaged from time to time as officers, employees and agents of Customer.

1.5 “Customer’s Premises” means all places of business, business offices and locations of Customer.

1.6 “Data” means all information initially in the possession of and provided by Customer relating to juveniles and others in the juvenile justice system, and relating to Customer’s business, that is downloaded onto the System by Customer. Notwithstanding the foregoing, “Data” does not include information that (a) is generally known in the industry in which Customer is engaged; (b) is readily ascertainable by proper means by others, through sources independent of Allvest, Allvest’s officers and employees, and Customer, through no act or fault of Allvest or Allvest’s officers or employees; (c) is already known by Allvest prior to the date of this Agreement as evidenced by reasonable supporting documentation; (d) is independently developed by Allvest without use of any information derived from Customer; or (e) that is Confidential Information of Allvest.

1.7 “Documentation” means all documents, notes, memoranda, correspondence, disks, diskettes, items, devices and materials that contain information about the Programs and/or Program Upgrades, including, but not limited to, manuals, specifications, instructions, drawings, flow charts, training materials, educational materials or printed materials, if any, that Allvest may elect to make available to Customer from time to time, subject to such terms and limitations as Allvest may impose.

1.8 “Intellectual Property” means the Programs, Program Upgrades and Documentation, including those in both Object Code and Source Code forms, now existing or used, or to be developed or used in the future, and all intellectual property and other rights therein, including, but not limited to, all copyrights, patents, patent rights, shop rights, trademarks, service marks, trade names, goodwill, registrations, registration rights, pending applications, rights provided by law, statute or international convention, and other rights, throughout the world.

1.9 “Internal Use” means use solely for Customer’s own internal business, data processing and computing needs.

1.10 “Object Code” means software written in machine readable form generated by compilation of the Source Code and contained in a medium that permits it to be loaded in and operated on a computer.

1.11 “Other Programs” means the computer programming code in solely Object Code form owned by third parties other than Allvest for which Allvest has been granted a license to sublicense use thereof to others, including those identified and described in Exhibit “E” attached to the Master Agreement and by this reference made a part hereof, and including all program output in the form of screen displays, printer output, plotter output, text, drawings, diagrams and sounds that are part thereof, that Allvest may elect to provide to Customer pursuant to this Agreement, with such additions and deletions as Allvest may determine from time to time in its sole discretion.

1.12 “Programs” means the Allvest Programs and Other Programs.

1.13 “Program Upgrades” means new versions or releases of the Programs incorporating modifications, additions, substitutions, corrections, updates or enhancements to the Programs, in solely Object Code form, that Allvest may elect to make available to Customer from time to time in Allvest’s sole discretion, subject to such terms and limitations as Allvest may impose.

1.14 “Source Code” means software written in programming language in a form intelligible to trained programmers and capable of being translated into Object Code readable and usable by machines.

1.15 “System” means the Programs, Program Upgrades and Documentation furnished by Allvest pursuant to the terms of this Agreement.

1.16 “Third Party Products” means hardware, equipment, telephone lines, communications interfaces, components, software, programs, documents, items, materials and products that Customer acquires from third parties, other than Allvest, excluding the Programs, Program Upgrades and Documentation.

## 2. LICENSED RIGHTS.

2.1 Programs, Program Upgrades and Documentation. Conditional upon Customer paying the applicable fees set forth above in Section III of this Agreement, and, with respect to each Program Upgrade, upon Allvest making the same available to Customer and Customer meeting all requirements relating to the same, Allvest grants to Customer, and Customer receives, a nonexclusive, nonassignable license authorizing Customer, and Customer Authorized Employees, to execute and run, the Programs and Program Upgrades, as the case may be, in Object Code form only, solely for Customer's Internal Use on Customer's equipment, and to use the Documentation, solely for Customer's Internal Use in connection with the Programs and Program Upgrades licensed to Customer. All Programs, Program Upgrades and Documentation shall be used consistent with the guidelines provided by Allvest to Customer from time to time.

2.2 Prohibited Use. Under no circumstances shall Customer or Customer Authorized Employees use the System or any portion thereof except as authorized in this Agreement. Customer may not exceed the number of Customer Authorized Employees set forth at the beginning of this Agreement. Customer may not export the System or any elements thereof. This Agreement does not give Customer or Customer Authorized Employees the right to exercise or grant any sublicenses, rental rights, lease rights, sale rights, distribution rights or other rights in the System. Under no circumstances shall Customer or Customer Authorized Employees modify, de-compile, disassemble, re-configure, reverse-compile, reverse-assemble or reverse-engineer the Programs, Program Upgrades or Documentation, or copy or mimic the expression of the System or any portion thereof, or prepare, use, offer, sell or distribute anything similar to the System or any portion thereof, except as licensed in this Agreement.

2.3 Conditions Precedent. The obligations of Allvest under this Agreement are subject to and conditioned upon the timely performance of Customer's obligations under this Agreement.

### 3. SERVICES.

3.1 Related Obligations. Except as expressly stated otherwise in this Agreement, Customer shall be solely responsible for providing, maintaining and paying for its own hardware, other software not provided pursuant to this Agreement, local and other connections to the internet and world wide web, network and internet problems, electronic communications, e-mail, files and other functions and aspects. Customer acknowledges that the total number of Customer Authorized Employee users may affect the System's performance and that Customer is responsible for the same. Customer shall also be responsible for utilizing login, password, backup, recovery, firewall and other security controls and measures sufficient to protect its Data, communications and business, with the foregoing being consistent with any requirements imposed by Allvest relating to the same. Customer acknowledges and agrees that Allvest does not provide any guarantees or assurances that the Data, communications or business of Customer, or the System, are protected against third party interference, interception, or other actions. Customer and Customer Personnel shall comply with all laws and legal requirements pertaining to the internet, world wide web, electronic communications, e-mails, spam, viruses, files, data, privacy, confidentiality and business activities, and shall not engage in any false, deceptive, fraudulent or other illegal conduct.

### 4. SUPPORT SERVICES.

4.1 Telephone and E-Mail Support. During that period during which Customer is current with respect to all amounts owed to Allvest as set forth in this Agreement, Allvest shall provide telephone and e-mail support to Customer, at one or more telephone and e-mail addresses designated by Allvest from time to time, wherein Customer may report problems and request assistance regarding the use and operation of the System. Telephone support and e-mail support shall be provided between 8:30 a.m. – 5:00p.m., Mountain Standard Time, Monday – Friday. In the event Allvest is unable to respond at that time, Customer may leave a telephone voice mail message or e-mail message, in which event Allvest shall make a reasonable effort to reply as soon as possible thereafter.

4.2 Error Procedures. Upon detection of an error with respect to the System, Customer shall immediately provide electronic or other written notice of the same to Allvest, along with full and complete information, data and documentation sufficient to permit Allvest to resolve the same, and full and complete access and cooperation in resolving the same. Upon compliance by Customer with all of the foregoing, Allvest may assign a priority level as determined by Allvest to the error according to the following: (a) an error that results in the System being substantially or completely nonfunctional or inoperative shall be considered a “Priority A Error”; and (b) an error that results in the System operating or performing other than as represented in written documentation, but not such that the System is substantially or completely nonfunctional or inoperative, shall be considered a “Priority B Error.” Upon compliance with all of the foregoing by Customer, Allvest shall use reasonable efforts as determined by Allvest in its sole discretion in an attempt to provide modifications or additions to correct the error or to provide work-around solutions for the error, and, if a work-around solution is the immediate solution, Allvest shall use reasonable efforts to provide a final solution of the error thereafter to the extent reasonable. In this regard, reasonable efforts will be made to respond to the error within the following time frames after receiving notice and complete information, data and documentation, and access and cooperation, as noted above: (a) Priority A Errors – correction or work-around in two business days, and if work-around then a final resolution in 15 days; and (b) Priority B Errors – correction or work-around in 7 days, and if work-around then a final resolution in 30 days. Allvest shall determine the means and mediums used in all events. Allvest’s obligations with respect to errors as noted above shall be conditioned on Customer fully complying with all of the requirements of this subsection and the Agreement, and on the following additional conditions: (a) that the System has not been modified, changed, or altered, in whole or in part, by anyone other than Allvest; (b) that the operating environment, including both hardware and software, meets Allvest’s recommended specifications; (c) that the hardware is in good operational order and is installed in a suitable operating environment; (d) that Customer promptly notifies Allvest of its need for service; and (e) that all fees due to Allvest by Customer have been timely paid.

4.3 Contacts. Allvest and Customer may from time to time, in their discretion, designate one or more persons as the principal contact for the other with respect to support matters, including, initially, the following:

For Allvest:

Name	Garrett Kelly
Title	Director, Customer Support
Phone Number	(801) 295-1385
Email Address	<a href="mailto:gkelly@assessments.com">gkelly@assessments.com</a>

For Customer:

Name	
Title	
Phone Number	
Email Address	

4.4 Liability Limitation. Notwithstanding anything in this Agreement to the contrary, in no event does Allvest warrant or guarantee its support services, or that through its support services any or all errors in the System can or will be corrected or resolved.

## 5. FINANCIAL OBLIGATIONS.

5.1 Payments for System, Hosting, Support and Other Rights. Customer shall pay all fees, royalties and other payments for the System, hosting services, support services, renewal and other rights in the amounts, rates and on the dates, and subject to the terms and conditions set forth above in Section III of the Master Agreement.

5.2 Payments for Customization and Other Services. In the event Customer requests customization of the System or any parts thereof, or otherwise requests any services not expressly contemplated by this Agreement or beyond the scope of this Agreement, Customer shall pay for the same in the amounts, rates and on the dates, and subject to the terms and conditions, determined by Allvest at that time.

## 6. WARRANTY LIMITATIONS.

6.1 Disclaimer of Warranties. ALLVEST PROVIDES NO WARRANTY THAT THE HOSTING SERVICES OR SUPPORT SERVICES SHALL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY INFORMATION, DATA, PROGRAMS, PROGRAM UPGRADES, DOCUMENTATION OR OTHER MATERIAL ACCESSIBLE THROUGH HOSTING SERVICES, SUPPORT SERVICES OR OTHER SERVICES ARE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS.

6.2 Limitation of Liability. Customer acknowledges and agrees that Allvest offers no representations or warranties regarding the quality, nature, accuracy, truth, completeness,

operation, functions, performance, usefulness, compatibility, obsolescence, defects, data, data storage, data integrity or use of the System, any part thereof, Third Party Products used with respect thereto, the hosting services, support services or other services or rights referred to in this Agreement except for those contained in Exhibit A to the Master Agreement, "Implementation and Training Services." Customer shall bear all risk of loss with respect to the rights licensed to it or otherwise provided under this Agreement, except for those losses covered by the Indemnification provisions set forth above in Section VIII of the Agreement. Allvest shall not be responsible for any Third Party Products, whether or not Allvest recommended them or assisted in their evaluation, selection or supervision. The failure of Third Party Products or third party services to perform or meet Customer's requirements or needs shall not affect Customer's obligations to Allvest under this Agreement, including Customer's payment obligations. Allvest shall not be required to offer uniform licensed rights to Customer and other customers.

6.3 Limitation of Recovery. ALLVEST'S SOLE AND EXCLUSIVE LIABILITY TO CUSTOMER OR ANY OTHER PERSON OR BUSINESS FOR ANY LOSS RESULTING FROM ANY CLAIMS, DEMANDS OR ACTIONS ARISING FROM OR RELATING TO THE SYSTEM SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO ALLVEST FOR THE USE OF THE SYSTEM FOR THE PRECEDING TWELVE MONTH PERIOD, EXCEPT FOR THOSE LOSSES COVERED BY THE INDEMNIFICATION PROVISIONS SET FORTH ABOVE IN SECTION VIII OF THE MASTER AGREEMENT. ALLVEST'S SOLE AND EXCLUSIVE LIABILITY TO CUSTOMER OR ANY OTHER PERSON OR BUSINESS FOR ANY LOSS RESULTING FROM ANY CLAIMS, DEMANDS OR ACTIONS ARISING FROM OR RELATING TO THE HOSTING SERVICES, THE SUPPORT SERVICES OR THE MASTER AGREEMENT (OTHER THAN THE SYSTEM AS NOTED ABOVE) SHALL BE TO DISCONTINUE USING THE HOSTING SERVICES, SUPPORT SERVICES AND OTHER SERVICES, EXCEPT FOR THOSE LOSSES COVERED BY THE INDEMNIFICATION PROVISIONS SET FORTH ABOVE IN SECTION VIII OF THE MASTER AGREEMENT. IN NO EVENT SHALL ALLVEST BE LIABLE TO CUSTOMER OR OTHERS FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOST PROFITS, WHETHER RELATING TO THE SYSTEM, HOSTING SERVICES, SUPPORT SERVICES, THIS AGREEMENT OR OTHERWISE, OR ANY FAILURE OF PERFORMANCE WITH RESPECT THERETO, EVEN IF ALLVEST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES , EXCEPT FOR THOSE LOSSES COVERED BY THE INDEMNIFICATION PROVISIONS SET FORTH ABOVE IN SECTION VIII OF THE MASTER AGREEMENT.

## 7. PROTECTION OF INTELLECTUAL PROPERTY.

7.1 Ownership. Customer acknowledges that all Intellectual Property (excluding the Other Programs and elements derived there from) is the exclusive property of Allvest. The foregoing shall be so regardless of whether Customer or Customer Personnel may have contributed to the conception or development of the same, or may have paid Allvest for the development or use of the same. Nothing in this Agreement shall be construed as an assignment, transfer or grant to Customer of, nor shall Customer otherwise acquire pursuant to this Agreement, any ownership rights in, the Intellectual Property. All use of the Programs, Program



Upgrades and Documentation by Customer shall be solely as provided in this Agreement. Customer shall not in any manner represent that it has any ownership rights in the Intellectual Property. Customer acknowledges that use of the Allvest Programs, Program Upgrades and Documentation and the goodwill generated thereby shall inure solely to the benefit of Allvest. Customer further acknowledges the value of and Allvest's exclusive rights in the goodwill in the foregoing. Customer agrees that it will not, during the term of this Agreement or thereafter, attack or otherwise challenge Allvest's exclusive ownership rights in the Allvest Programs, Program Upgrades and Documentation or the validity of this Agreement, or do anything that would jeopardize or diminish Allvest's rights in the Intellectual Property.

7.2 Proprietary Notices. Customer shall not remove any copyright, trademark, service mark, patent or other proprietary or restrictive notice or legend contained in or included on any Programs, Program Upgrades or Documentation. Customer shall modify existing notices and apply such additional notices as Allvest may request from time to time.

7.3 Protective Action. Customer shall immediately notify Allvest of any infringement of or challenge to Customer's licensed use of the Allvest Programs, Program Upgrades or Documentation, or Allvest's rights in the Intellectual Property, or of any claim by any person, business or entity to any rights in the Intellectual Property, whenever it first comes to Customer's attention. Allvest shall have sole discretion to take such action as it deems appropriate, and the right to exclusively control any litigation, action, or proceeding, whether before a court, administrative agency or otherwise, arising out of any such infringement, challenge or claim, or otherwise relating to the Intellectual Property, and Customer agrees to execute any and all instruments and documents, render such assistance and do such acts or things as may be reasonably necessary to protect or maintain the interests of Allvest in any such litigation, action or proceeding, or to otherwise protect and maintain the interests of Allvest in the Intellectual Property. Customer relies upon Allvest's representation that it is the sole owner of the application and its associated Intellectual Property.

7.4 Exclusion of Liability. Customer shall have no liability to any third party claiming infringement by Allvest or to Allvest for any claim, action, proceeding or litigation by third parties for infringement relating to or arising from the Intellectual Property.

## 8. PROTECTION OF CONFIDENTIAL INFORMATION.

8.1 Ownership. Customer acknowledges and agrees that the Confidential Information is proprietary and confidential, that it is not generally known or available in the industry, that it constitutes trade secrets of and is of great value to Allvest, and that all rights to the same are and shall remain the sole property of Allvest.

8.2 Use, Disclosure or Copying. Customer acknowledges and agrees that at all times, both during the term of this Agreement and thereafter, Customer shall not use, disclose, copy or remove, nor permit any Customer Personnel to use, disclose, copy or remove, any Confidential Information, except to the extent such use, disclosure, copying or removal is specifically authorized by this Agreement.

8.3 Limited Access. Customer shall require that all copies of Confidential Information shall be kept on Customer's Premises in secure locations so as to preclude unauthorized access. Customer shall limit access to Confidential Information to such Customer Authorized Employees with a legitimate need to access the same consistent with the intent of this Agreement. Customer shall provide the names of those Customer Authorized Employees with access to Confidential Information upon request from Allvest. Upon request by Allvest, Customer Authorized Employees with access to Confidential Information shall sign written agreements approved as to form by Allvest wherein said Customer Authorized Employees are obligated to abide by the restrictions in this section 8 of the Agreement and all other sections and provisions of this Agreement relating to protection of the System and/or Confidential Information. Customer shall take all actions necessary to assure that all Customer Authorized Employees comply with the provisions of this Agreement.

8.4 Remedies. Customer recognizes and acknowledges that any use, disclosure or copying of Confidential Information, or infringement of Intellectual Property, by Customer or Customer Authorized Employees, in a manner inconsistent with the provisions of this Agreement, will cause Allvest irreparable harm for which other remedies may be inadequate. Consequently, Customer agrees that in the event of any actual or threatened unauthorized use, disclosure or copying of any Confidential Information, or actual or threatened infringement of Intellectual Property, by Customer or Customer Authorized Employees (a) Allvest shall be entitled to both an immediate injunction to prevent continuation of the same, and Customer shall not oppose the same on grounds that an adequate remedy is available at law. Nothing in this Agreement shall be construed to prohibit Allvest from also pursuing any other right or remedy, the parties having agreed that all remedies shall be cumulative. Nothing in this Section shall be deemed to be a waiver by Customer of any sovereign or governmental immunity enjoyed by it under the laws of the State of Texas and the United States.

## 9. PROTECTION OF DATA.

9.1 Ownership. Allvest acknowledges and agrees that the Data is proprietary and confidential, that it is not generally known or available in the industry, that it constitutes trade secrets of and is of great value to Customer, and that all rights to the same are and shall remain the property of Customer. Synthesized data that is stored in Customer's data base system belongs to Customer.

9.2 Use, Disclosure or Copying. Allvest acknowledges and agrees that at all times, both during the term of this Agreement and thereafter, Allvest shall not use, disclose, copy or remove, nor permit any officer, employee or agent of Allvest to use, disclose, copy or remove, any Data, except to the extent such use, disclosure, copying or removal is specifically authorized by this Agreement, by law or by a court or government agency.

9.3 Limited Access. Allvest shall require that all copies of Data within its possession shall be kept on Allvest's premises in secure locations so as to preclude unauthorized access. Allvest shall limit access to Data within its possession to officers, employees and agents of Allvest with a legitimate need to access the same consistent with the intent of this Agreement.

Allvest shall take all actions necessary to assure that all officers, employees and agents of Allvest comply with the provisions of this Agreement regarding Data. Any and all copies of the County's Data shall be destroyed or returned to the County upon the termination of this contract.

**9.4 Limited Use. Notwithstanding anything in this Agreement to the contrary, and subject to the approval of the Presiding Judge of the 65<sup>th</sup> Judicial District Court for El Paso County, Texas, the parties agree that Allvest shall have access to all Data that is downloaded and/or stored on the System pursuant to and during the term of this Agreement, with Allvest authorized to select, aggregate and use anonymized Data for purposes of research, analysis, statistical study and instrument validation, during and after the term of this Agreement. Actual disclosure or release of Data by Allvest beyond that noted above or beyond the scope of this Agreement shall be permitted solely upon the written consent of Customer and the unauthorized use or release by Allvest shall be punishable as provided by the laws of the State of Texas.**

#### 10. TERM AND TERMINATION.

10.1 Term. The term of this Agreement shall begin as of the date of this Agreement, and shall continue for one (1) year, unless earlier terminated in accordance with the provisions of this Agreement. Licensee shall have the option to renew this agreement for two one-year terms upon the same terms and conditions contained in this agreement by providing written notice to Licensor.

10.2 Termination. This Agreement shall terminate upon the earlier of the following events:

- (a) upon expiration of the term provided above;
- (b) upon the mutual written consent of Allvest and Customer;
- (c) upon delivery of written notice of termination by Allvest to Customer in the event of any unauthorized assignment of rights under the Agreement by Customer, any assignment of assets or the business by Customer for the benefit of creditors, upon appointment of a trustee or receiver to conduct Customer's business or affairs or to take possession of its assets, upon insolvency by Customer, upon Customer's being adjudged in any legal proceeding to be either voluntarily or involuntarily bankrupt, upon the winding-up, sale, consolidation, merger or any sequestration of Customer by governmental authority or otherwise, or upon any criminal misconduct or material violation of law on the part of Customer;
- (d) upon delivery of written notice of termination by Allvest to Customer in the event of a failure by Customer to timely make any payment to Allvest; or
- (e) upon delivery of written notice of termination by Allvest to Customer in the event of a failure by Customer to cure any breach or default within thirty (30) days after delivery of written notice of said breach or default.

10.3 Effect of Termination. Upon termination of this Agreement, the following shall occur:

- (a) All rights and licenses granted to Customer under this Agreement shall terminate.

(b) All money owed by either party to the other party shall be immediately due and payable.

(c) Customer and Customer Authorized Employees shall immediately cease using all Programs, Program Upgrades and Documentation and all other Confidential Information, and all copies of the same, in any and all forms and mediums.

(d) Customer and Customer Authorized Employees shall immediately deliver to Allvest all Programs, Program Upgrades and Documentation and all other Confidential Information, and all copies of the same, in any and all forms and mediums, and shall certify to Allvest that neither Customer nor Customer Authorized Employees has retained any copies of the same.

(e) All obligations of Customer and Customer Authorized Employees set forth in sections 1, 2.2, 5, 6, 7, 8, 9, 10 and 11 of this Agreement, and all other Customer and Customer Authorized Employees obligations in this Agreement which expressly or by their nature survive or are intended to survive termination of this Agreement, shall continue in full force and effect subsequent to and notwithstanding termination of this Agreement.

## 11. MISCELLANEOUS.

11.1 Compliance with Laws. Customer and Allvest shall comply with all applicable foreign, federal, state and local laws, rules, ordinances and regulations, and shall maintain any and all permits, certificates and licenses required by law.

11.2 Relationship of Parties. The relationship of the parties shall be solely that of independent contractors. No partnership, joint venture, franchise, employment, agency or other relationship is formed, intended or to be inferred under this Agreement. Neither party to this Agreement shall attempt to bind the other, incur liabilities on behalf of the other, act as agent of the other, or make or authorize any representation contrary to the foregoing.

11.3 Notices. All notices required or permitted to be given or made under this Agreement shall be in writing and shall be given by personal delivery, by confirmed air courier, by certified mail, return receipt requested, or by first class mail, postage-prepaid. Notices sent by courier or mail shall be addressed to the parties as their addresses appear in Section V. of the Master Agreement, except that in the event written notice of a change of address is given in accordance with this subsection, then such notices shall be addressed to the party in question at the new address. If sent by confirmed air courier or by certified mail, return receipt requested, a notice shall be deemed delivered upon the earlier of the date upon which it is actually received by the addressee or the day upon which delivery is made at such address, as confirmed by the air courier or mail service. If mailed by first class mail, postage prepaid, a notice shall be deemed delivered upon the earlier of the date upon which it is actually received by the addressee or the fourth business day following the date upon which it is deposited in the United States mail.

11.4 Modification. This Agreement may not be altered, modified, amended or changed, in whole or in part, except by a writing executed by the parties.

11.5 Assignment. This Agreement is not assignable by Allvest. This Agreement is personal to Customer and neither the Agreement, nor the rights or duties hereunder, may be

voluntarily or involuntarily, directly or indirectly, assigned or otherwise transferred or encumbered by Customer (including without limitation by will, declaration of or transfer in trust, the laws of intestate succession, or by operation of law) without the prior written approval of Allvest. Any unauthorized assignment, transfer or encumbrance shall constitute a breach hereof and shall be voidable by Allvest.

11.6 Waiver. The failure of either party to take any action under this Agreement, or the waiver of a breach of this Agreement, shall not affect that party's rights to require performance hereunder or constitute a waiver of any subsequent breach. Any waiver of any term or condition of this Agreement is invalid unless set forth in a writing signed by the party waiving the same.

11.7 Force Majeure. Should either party be delayed in performance or completion of their duties under this Agreement due to any cause or event not within the reasonable control of such party and without such party's fault or negligence, including, but not limited to, acts of nature, explosions, strikes, lockouts, riots, fire, shortages of materials, shortages of transportation, war, or government regulations, the affected party shall, upon providing written notice to the other party, be entitled to an extension of time not exceeding the period of delay due to the cause or event in question, and shall not be liable for the delay. In the event of such delay, all dates of performance for both parties shall be extended for a corresponding period. Should the period of delay continue for more than one (1) year, either party may rescind this Agreement upon written notice to the other party. Neither party shall be liable for any delay or failure in performance of its obligations under this Agreement that directly results from any delay or failure of performance by the other party.

11.8 Enforcement. Should Allvest or Customer incur attorneys' fees or costs in order to enforce the terms and conditions of this Agreement, whether or not a legal action is instituted, the party not in default shall be entitled to reimbursement of such attorneys' fees and costs, in addition to all other rights and remedies either party may have at law or in equity.

11.9 Interpretation. This Agreement shall be governed by the laws of the State of Texas, excluding application of conflicts of law rules. The headings herein are for reference only and shall not define or limit the provisions hereof. The provisions of this Agreement shall be construed according to their fair meaning and not strictly for or against either party.

11.10 Severability. If any provision of this Agreement is found to be invalid, illegal or unenforceable by a court, tribunal or administrative agency, whether due to particular time limits or unreasonableness or otherwise, it is agreed that the provision in question shall be reduced or otherwise modified by such court, tribunal or agency, but only to the extent necessary to permit its enforcement and only in such court, tribunal or agency's jurisdiction. If the particular provision cannot be reduced or modified to make it enforceable, that provision shall then be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect giving maximum validity and enforceability to this Agreement.

11.11 Entire Agreement. The recitals hereto are a part of this Agreement. This Agreement and the exhibits attached hereto which are incorporated by reference constitute the entire agreement between the parties with respect to the subject matter addressed herein, and

there are no terms or conditions, express or implied, other than as set forth or referred to herein. This Agreement supersedes all prior and contemporaneous agreements between the parties hereto, whether written or oral, relating to all or part of the subject matter herein. No party has made any representations, oral or written, modifying or contradicting the terms of this Agreement.

11.12 Authority. Each party represents that it has full power and authority to enter into this Agreement, that the execution of this Agreement and the matters contemplated in this Agreement have been fully authorized by all necessary legal action, and that this Agreement is binding upon the parties. Each party further represents that it has not entered into, nor will it enter into, any agreements that would conflict with its obligations under this Agreement or would render it incapable of satisfactorily performing hereunder.

11.13 Counterparts. This Agreement may be simultaneously executed in two (2) or more counterparts, each of which shall be deemed a fully enforceable original.

11.14 Successors. This Agreement shall be binding upon the parties and their successors, assigns, estates, transferees, grantees and legal representatives.

11.15 Conflict. To the extent that this Agreement and the Master Agreement are in conflict, the Master Agreement shall control.

IN WITNESS WHEREOF, the parties hereto executed this Software License, Support and Hosting Agreement as of the Effective Date set forth above.

“Allvest”

ALLVEST INFORMATION SERVICES, INC.  
dba Assessments.com

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

“Customer”

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**COUNTY LEGAL REVIEW FORM**

**KK-09-166**

**Contract Description: JPD/Assessments.com/AUTOMATED  
SCREENING, ASSESSING, CASE MANAGEMENT SYSTEM**

**COUNTY ATTORNEY ACTION\*\***

**\*\*Requested Amendments/Clarifications:** We assume you have submitted any questions or comments you have regarding the terms of the contract, as well as any specific provisions to which you object, or which you want to have changed.

Approved as to Form as Submitted  
 Approved as to Form with Amendments/Modifications/Reservations  
Noted Below\*  
 Not Approved

\*1)

This document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

**Kitty Schild**  
**Assistant County Attorney**