

## AVSS/NET SOFTWARE AGREEMENT

This AVSS/NET Software Agreement (hereinafter the "Agreement"), effective as of July 1<sup>st</sup>, 2017 (hereinafter the "Effective Date"), is made by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California public corporation, (hereinafter the "University") on behalf of the Institute for Social, Behavioral, and Economic Research at its Santa Barbara campus and MONTEREY COUNTY having a principal place of business at 1270 Natividad Road, Salinas, CA 93906-3198 (hereinafter the "Licensee").

### WITNESSETH

WHEREAS, the Automated Vital Statistics System on the Internet (hereinafter "AVSS/NET") is an interactive public health information computer program developed and made available through the Internet by the University of California, Santa Barbara; and

WHEREAS, the Licensee has requested a license to use the computer program known as AVSS/NET; and

WHEREAS, the University are willing to grant such a license;

NOW, THEREFORE, for and in consideration of the mutual covenants and undertakings hereinafter set forth, and for other good and valuable consideration, it is agreed as follows:

#### 1. GRANT OF LICENSE

1.1 The University grants and the Licensee accepts, upon the terms and conditions hereinafter set forth, a nonexclusive and nontransferable license to use the computer program known as AVSS/NET (hereinafter the "Program").

1.2 No right to sublicense or to make commercial use of the Program is granted hereunder.

#### 2. PROGRAM CONDITION

2.1 The University is providing the Program at the Licensee's request on an "as is and with all defects" basis. The Licensee agrees to accept the Program "as is and with all defects."

#### 3. ASSIGNMENT

3.1 The parties hereby agree that neither the license granted hereunder nor the Program may be assigned, sublicensed, or otherwise transferred by the Licensee.

#### 4. DELIVERY OF SOFTWARE

4.1 Upon the Effective Date of this Agreement, the University agrees to make the Program available to the Licensee by means of the Internet.

4.2 The Licensee acknowledges and agrees that the University is not obligated to provide maintenance services, installation services, debugging services, improvements, or support services of any kind and that the University accepts no liability for any damage to the Program or its backup copies, except as otherwise provided in this Agreement.

#### 5. INFRINGEMENT PROTECTION AND INDEMNIFICATION

5.1 If the Program is, or in the University's opinion is likely to become, the subject of a claim, suit, or proceeding of infringement, the University may: (1) procure, at no cost to the Licensee, the right to continue use of the Program; or (2) replace or modify the Program, at no cost to the Licensee, to make it non-infringing; or (3) if the right to continue use of the Program cannot be procured for the Licensee on a reasonable basis, or if the Program cannot be replaced or modified to make it non-infringing, terminate the use of the Program and grant the Licensee a refund, on a prorated basis, of any funds received by the University from the Licensee for licensing rights not yet provided.

5.2 To the extent permitted by law, Licensee shall indemnify, defend with counsel acceptable to the University, and hold harmless the University and the developers of the Program, their successors, agents, officers, and employees against any and all claims, liability, cost, damage, deficiency, loss, or obligation, of any kind or nature (including, without limitation, reasonable attorney's fees and other costs and expenses of defense) to the extent arising out of the Licensee's use of the Program or other exercise of its rights under this Agreement. This provision shall survive termination of this Agreement.

## **6. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

6.1 The University represents and warrants that the University owns the Program and that the University has the right to grant the license provided herein. Except as provided in the foregoing express warranty, the University makes no warranties, either express or implied, as to any matter whatsoever including, but not limited to, the condition of the Program and warranties of merchantability or fitness for a particular purpose. The Licensee acknowledges and agrees that, except as otherwise provided in this Article 6.1, the Program is provided without warranties of any kind.

6.2 The Licensee acknowledges and agrees that the University will not be liable for any indirect, consequential, or incidental damages suffered by the Licensee, or by any others, resulting from the use of the Program. The Licensee further acknowledges and agrees that the University's aggregate liability will not exceed the amount received by the University from the Licensee pursuant to this Agreement.

6.3 Nothing in this Agreement grants by implication, estoppel, or otherwise any rights to the University's intellectual property except as explicitly set forth herein.

## **7. TITLE**

7.1 The Licensee acknowledges and agrees that all rights to the Program, and all copies of the Program, are owned by the University and that the Licensee shall take all reasonable precautions to preserve the University's rights therein. The University reserves the right to grant any rights to the Program to other persons or entities upon such terms and conditions as the University shall determine in their sole discretion.

7.2 The Licensee acknowledges and agrees that this Agreement does not transfer title to the Program and grants only a license for the use expressly described herein.

## **8. USE RESTRICTIONS**

8.1 The Licensee agrees that the Licensee will protect the Program from all unauthorized use.

8.2 The Licensee agrees that the Licensee will not alter, change, or remove from the Program any identifications, including copyright and trademark notices, which indicate ownership thereof by the University.

8.3 The Licensee agrees that the Licensee will not knowingly provide access to, or otherwise make available, the Program, or the Program code, in any form, to any person, party, or entity without the prior written consent of the University. Such prohibitions shall not apply to disclosure by the Licensee to its employees and consultants to the extent that such disclosure is reasonably necessary to the Licensee's use of the Program.

8.4 The Licensee agrees to take appropriate action with respect to its employees and consultants, by agreement or otherwise, to satisfy its obligations under this Agreement with respect to the use, protection, and security of the Program.

8.5 The Licensee acknowledges and agrees that the rights and privileges granted to the Licensee are each and all expressly conditioned upon the faithful performance by the Licensee of every requirement herein contained, and that each of such conditions and requirements are specific license restrictions.

## **9. TERM AND TERMINATION**

9.1 This Agreement shall become effective on the Effective Date and shall terminate on June 30<sup>th</sup>, 2018. This Agreement may be renewed annually thereafter if agreed upon in writing, and signed by both parties.

9.2 Either party may terminate this Agreement upon sixty (60) days' written notice to the other.

9.3 If the Licensee fails to comply with any of the terms or conditions of this Agreement, the University may terminate this Agreement immediately upon notice to Licensee.

## **10. FEES**

10.1 The Licensee agrees to pay the University for the use of the Program according to the following fee schedule:

- One Hundred Fifty and 00/100 Dollars (\$150.00) for each workstation connected by means of the Internet to the Program for a total fee of One Thousand Fifty and 00/100 Dollars (\$1,050.00).

## **11. EFFECT OF TERMINATION**

11.1 Upon the termination of this Agreement, and on or before the effective date thereof, the Licensee agrees to discontinue all use of the licensed Program.

11.2 In the event that this Agreement is terminated pursuant to Article 9, and the Licensee has not yet paid the University for services that the University has provided, the Licensee shall pay the University for such services. The payment due from the Licensee will equal the sum obtained by multiplying the percentage of the then current term of this Agreement that has elapsed on the effective date of termination by the total dollar amount set forth in Article 10.1 of this Agreement and then subtracting from this total any amount that the Licensee has paid the University for said services. The Licensee shall remit such payment to the University within thirty (30) calendar days of the effective date of termination.

11.3 In the event that this Agreement is terminated pursuant to Article 9, and the Licensee has paid the University for services that the University has not yet provided, the University shall refund such payments. The refund due from the University will equal the sum obtained by multiplying the percentage of the then current term of this Agreement still remaining on the effective date of termination by the total dollar amount set forth in Article 10.1 of this Agreement. The University shall be required to refund this sum only to the extent that the University has actually received payment from the Licensee for services that the University has not yet provided. The University shall remit such payment to the Licensee within thirty (30) calendar days of the effective date of termination.

## **12. GOVERNING LAW, JURISDICTION, AND FORUM**

12.1 This Agreement shall be governed by and interpreted in accordance with the laws of the State of California as applied to contracts made and performed in California but excluding any laws that might direct the application of the laws of any other jurisdiction.

12.2 Each party hereby consents to the jurisdiction of the courts in the state of California for the purpose of all actions arising under or in connection with this Agreement and each party hereby agrees that the courts of the state of California will be the exclusive forum for all such actions.

## **13. SEVERABILITY**

13.1 Should any provision of this Agreement be held unenforceable or in conflict with the laws of any jurisdiction, the validity of the remaining provisions shall not be affected by such a holding.

## **14. NON-WAIVER**

14.1 Waiver or non-enforcement by either party of a term or condition of this Agreement shall not constitute a waiver or non-enforcement of any other term or condition or of any subsequent breach of the same or similar term or condition.

**15. NO THIRD PARTY RIGHTS**

15.1 Nothing in this Agreement is intended to make any person or entity who is not a signatory to this Agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

**16. NOTICE**

16.1 Any notice required by or made pursuant to this Agreement shall be deemed to have been properly received when delivered in person or when mailed by registered first class mail to the addresses given below.

To the Licensee: Monterey County Health Department  
1270 Natividad Road  
Salinas, CA 93906-3198

To the University: ISBER – AVSS Project  
University of California  
Santa Barbara, CA 93106-2150

With a copy to: Procurement Services, 3203 SAASB  
University of California  
Santa Barbara, CA 93106-1150

**17. HEADINGS AND CONSTRUCTION**

17.1 The headings herein are for reference purposes only and shall not constitute a part hereof or be deemed to limit or expand the scope of any provision or be used to interpret the construction of this Agreement.

17.2 The parties acknowledge and agree that the terms of this Agreement shall not be construed against one party by reason of the rule of construction that a document is to be construed against the drafting party.

**18. EQUITABLE RELIEF**

18.1 The Licensee acknowledges that money damages alone are inadequate to compensate the University for a breach by the Licensee of this Agreement. Therefore, in the event of a breach or anticipated breach of any provision of this Agreement by the Licensee, the University may, in addition to all other remedies, obtain injunctive relief prohibiting the breach or compelling specific performance.

**19. ATTORNEYS' FEES**

19.1 In any action brought by a party to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs including the reasonable value of any services provided to the prevailing party by in-house counsel.

**20. ENTIRE AGREEMENT AND MODIFICATION**

20.1 This Agreement constitutes the entire agreement between the parties regarding the rights granted hereunder. No oral understanding or agreement not incorporated herein will be binding on either party. In the event of any conflict between this Agreement and any other writings, forms, purchase orders, or documents, the terms and conditions set forth in this Agreement shall supersede and control.

20.2 The use of the Program by the Licensee indicates the Licensee's acceptance of the terms and conditions of this Agreement.

20.3 The parties acknowledge and agree that this Agreement, and the terms and conditions set forth herein, may not be altered, changed, waived, or otherwise amended except as agreed upon in a writing signed by each party's authorized signatory.

**21. SIGNATURES AND COUNTERPARTS**

21.1 The signatories to this Agreement warrant and certify that they are authorized representatives of their respective organizations and that they hold the position and authority necessary to execute this Agreement.

21.2 This Agreement may be executed in any number of counterparts which, when taken together, shall constitute one and the same instrument. If this Agreement is executed in counterparts, no signatory hereto shall be bound by this Agreement until all parties named below have executed a counterpart of this Agreement. Executed counterparts of this Agreement may be delivered by PDF email or electronic facsimile transmission, and shall have the same legal effect as an "ink-signed" original.

**[Signature page follows]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates given below.

**MONTEREY COUNTY**

\_\_\_\_\_  
Date  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE REGENTS OF THE  
UNIVERSITY OF CALIFORNIA**

\_\_\_\_\_  
Date  
Calli Price  
Procurement Services Manager  
Business & Financial Services

Department Approval:

\_\_\_\_\_  
Date  
Stuart Sweeney  
Director, Institute for Social, Behavioral, and  
Economic Research

APPROVED AS TO FORM  
*Gay Orella*  
DEPUTY COUNTY COUNCIL  
COUNTY OF MONTEREY

Reviewed as to fiscal provisions  
*[Signature]*  
\_\_\_\_\_  
Auditor-Controller  
County of Monterey  
1-12-17