



PROVIDER NAME:

Truth Initiative Foundation dba Truth Initiative

ADDRESSES FOR NOTICES:

900 G Street, NW, Fourth Floor
Washington, D.C. 20001
Attn: General Counsel

CLIENT NAME: County of Monterey

ADDRESSES FOR NOTICES:

Health Department, Public Health
1441 Schilling Pl, 1st Fl South
Salinas, CA 93901

ATTN NAME: Elaine Narciso

ATTN EMAIL: NarcisoE@countyofmonterey.gov

ADDRESSES FOR INVOICES:

ATTN NAME: Elaine Narciso

ATTN EMAIL: NarcisoE@countyofmonterey.gov

ADDRESSES FOR REPORTING SEAT LICENSES:

ATTN NAME (1): Elaine Narciso

ATTN EMAIL (1): NarcisoE@countyofmonterey.gov

ATTN NAME (2):

ATTN EMAIL (2):

This Agreement (the "Agreement") is made and entered into upon execution (the "Effective Date") by and between Client and Truth Initiative Foundation d/b/a Truth Initiative ("Truth Initiative"). The attached contract terms are incorporated into this Agreement.

CONTRACT DETAILS

CONTRACT START DATE: Upon Execution

CONTRACT TERMS (years): 2

Service Population Size Estimate: 50,000 teens/YA?

☒ County or smaller☐ State☐ National☐ Ultimate Promotion Add-on

☒ Client acknowledges that EX Program Essentials is not a HIPAA-compliant service offering, client is not acting as a HIPAA Covered Entity in its use of EX Program Essentials, and Protected Health Information, as defined under HIPAA, will not be collected or exchanged.

Cost per year: \$50,000**TOTAL COST: \$100,000**TAX EXEMPT: ☐ YES* ☐ NO

*If tax exempt, please provide certificate at contract signing.

AGREED TO AND ACCEPTED BY:

Truth Initiative Foundation dba Truth Initiative

County of Monterey

BY: See Signature Page

BY: See Signature Page

NAME:

NAME:

TITLE:

TITLE:

DATE:

DATE:

Client and Truth Initiative may be referred to herein individually as a "Party" and collectively as the "Parties."

1 Defined Terms. In addition to any other terms defined in this Agreement, the following terms have the following meanings.

- 1.1 Registered User** means an individual person who initiates contact with the EX Program through the Client's designated Opt-in Mechanism(s) as described in Exhibit A.
- 1.2 Confidential Information** means any information that is of value to its owner or is required to be kept confidential by contract or otherwise, and is treated as confidential, that is disclosed by or on behalf of one Party (in such capacity, a "Disclosing Party") or otherwise directly or indirectly obtained from a Disclosing Party. Confidential Information includes but is not limited to the following: trade secrets, proprietary information, technical processes and formulas, the Software (whether in source code, object code, and/or any other form), product designs, any sales, cost, and other unpublished financial information, product and business plans, strategies, projections and marketing data, and the pricing, terms and conditions (but not the existence) of this Agreement. Confidential Information does not include information (i) generally known to the public through no act or omission of recipient; (ii) independently developed by the recipient without use of or reference to the Disclosing Party's Confidential Information; and (iii) obtained by recipient from any third party not owing any confidentiality obligation to the Disclosing Party.
- 1.3 Content** means audio, visual, audiovisual, textual, and interactive works or materials, in any media. For the avoidance of doubt, Content does not include any PII or Software.
- 1.4 Contract Start Date** means the date on which Client's unique opt-in mechanisms become available for use by Service Population and the Contract Term begins.
- 1.5 Client Content** means any Content provided by Client to Truth Initiative for use in the EX Program or for use in the provision of Services.
- 1.6 Deliverables** means any tangible item, including without limitation Content and reports, generated by Truth Initiative for Client in connection with the delivery of the EX Program to or for the benefit of Registered Users. For the avoidance of doubt, the term Content shall not include the Software and/or Modifications thereof.
- 1.7 Error** means a material failure of the Software to perform as described herein.
- 1.8 Error Correction** means any Modification, workaround, or routine intended to correct the practical adverse effect of an Error.
- 1.9 Fees** means the fees payable to Truth Initiative by Client under this Agreement.
- 1.10 Hosted Services** means the services provided using the Software, as more particularly set forth in Section 2 below.

1.11 Intellectual Property Rights means any and all rights existing from time to time in any jurisdiction under copyright law, patent law, trade secret law, confidential information law, trademark law, unfair competition law, or other similar rights.

1.12 Modification means any enhancement, new version, update, Error Correction, derivative work, or other change.

1.13 PII (Personally Identifiable Information) means any information that identifies or can be reasonably used to identify an individual person, including any e-mail address or phone number.

1.14 Reusable Content means the Truth Initiative Content that both (i) contains no Client Confidential Information and (ii) may be reasonably recast or reused by Truth Initiative in other engagements.

1.15 Services means the services to be provided by Truth Initiative to or for the benefit of Client in accordance with this Agreement, as identified herein and more fully described on the Statement of Services annexed hereto as Exhibit A and incorporated, in full, herein.

1.16 Service Population means the category of individuals to whom the Client promotes 1 or more designated Opt-in Mechanisms (as described in Exhibit A) in order to access the EX Program or individuals in a geographic area targeted for EX Program promotion. The Service Population size is indicated on the cover page of this Agreement.

1.17 Software means any and all software associated with the EX Program, including without limitation the mobile application and any source and/or object code.

1.18 Support means Truth Initiative's support of the Software and Hosted Service as more particularly described in Section 3 below.

1.19 Term is defined in Section 11.1 below.

1.20 Terms of Service means those Terms of Service applicable to the use of the EX Program Essentials, as more fully described in Section 4.1 below.

1.21 Truth Initiative Content means that Content created by Truth Initiative as a part of Services.

1.22 User PII means any PII of any Registered User provided to Truth Initiative or received by Truth Initiative in performing Services or Hosting Services to or for the benefit of Client and/or any Registered User.

2 Hosted Services and Limitations

2.1 Access License. Subject to the terms and conditions of this Agreement and Exhibit A hereto, for the period that this Agreement remains in effect, Truth Initiative grants to Client the non-exclusive, limited, non-assignable, and non-transferable right and license to access via the Internet and/or via mobile device the Content delivery functionality of the EX Program, the Software and the Hosted Services as more fully described in Exhibit A. This

license is restricted to uses targeting Client's Service Population.

2.2 Limitations. The rights and licenses granted under this Agreement are further limited by and conditioned on the requirements set forth below.

- (a) EX Program shall only be accessed or used by Registered Users for the sole purpose of accessing the Content delivery functionality of EX Program, the Software and the Hosted Services, as applicable.
- (b) Client shall not encumber, transfer, rent, donate, assign, lease, or otherwise use the Software or any Truth Initiative Content in any time-sharing or service bureau arrangement.
- (c) Client shall not copy, reproduce, market, sell, distribute, sublicense, manufacture, adapt, create derivative works of, translate, localize, port, reverse engineer or otherwise modify or commercially exploit the Software and/or the Truth Initiative Content.
- (d) No rights to possess copies of the Software and/or the Truth Initiative Content are granted in this Agreement.
- (e) Client shall not promote EX Program within or as a part of any electoral campaigns or lobbying activities.
- (f) Absent advance written permission, EX Program may not be co-branded with the name, logo or other identifying marks associated with any other campaigns or initiatives conducted and/or managed by Client.

2.3 Reservation of Rights. All rights not expressly granted in this Agreement are reserved to Truth Initiative. No rights are granted by implication.

3 Support

3.1 Generally. Truth Initiative will provide telephone and e-mail communication to allow Client's IT personnel to contact Truth Initiative for assistance in resolving problems with the Software.

3.2 Error Corrections and Updates. As a part of Support, Truth Initiative will use commercially reasonable efforts to promptly provide Error Corrections for all verifiable and reproducible Errors in the Software.

4 Additional Terms

4.1 Terms of Service. The Parties also agree that in order to access services provided under this Agreement, Registered Users will be required to agree to and comply with the Terms of Service, set forth at <https://exprogram.com>, as they may be amended or modified by Truth Initiative from time to time. For clarity, the County of Monterey is not a Sponsor for the purposes of the Terms of Service.

4.2 Viruses. Truth Initiative will not knowingly deliver any Software code to Client that contains a Virus. Truth Initiative does not warrant that the code is completely free of Viruses. "Virus" means computer code that is not a normal feature of the code that is designed or intended to have any of the following functions: disrupting, disabling, harming, otherwise substantially impeding the normal operation of, or providing unauthorized access to, the code, a computer system or network, software, or other device. If a Virus is found to have been introduced into Client's computer system or network (collectively, Client's IT Environment) by Truth Initiative, Truth Initiative shall promptly notify Client in writing within 72 hours of discovery and, at no additional charge to Client, shall provide commercially reasonable assistance to Client in reducing the effects of, and mitigating the losses and restoring any deficiencies resulting from, the Virus.

4.3 Cooperation and Access. Any services requested by Client that are not within the scope of the services described herein or in Exhibit A hereto may be subject to an additional charge but only upon written approval from Client. Client is not responsible for any costs associated with additional services provided without its advance written consent.

4.4 Compliance with Laws. Each Party hereto shall comply at its own expense with all applicable laws and regulations relating to its performance under this Agreement.

5 Data Security and User PII

5.1 Truth Initiative warrants that (i) it will be solely responsible for providing terms and conditions and as part of EX Program enrollment as well as any required privacy notices to Registered Users (ii) Client will not receive any User PII that Truth Initiative receives in the performance of this Agreement. Client shall be responsible for referencing or including a link to Truth Initiative's privacy notices, when applicable, in any public announcement or media campaign made in connection with this Agreement.

5.2 Truth Initiative will (i) protect the confidentiality, security and integrity of the Hosted Services; and (ii) protect against accidental, unauthorized or unlawful access, use, or disclosure of User PII. Truth Initiative will not use any User PII except in the course of performance of the Services and Support hereunder.

6 Fees and Taxes

6.1 Fees. This Agreement covers the provision of Services and annual fees specified on the cover page to this Agreement. Within sixty (60) days of the Effective Date, Client shall pay the Annual Fee in full for the licenses and Services set forth herein. If this is a multi-year agreement, Client shall pay the Annual Fee for each subsequent year by the anniversary date of the Effective Date of this Agreement.

6.2 Taxes. Client agrees to pay all applicable personal property, sales, use, value added, goods and services, and other taxes (excluding taxes based upon Truth Initiative's net income) and license and registration fees, and other assessments or charges levied or imposed by any governmental body or agency as a result of the execution or performance of the Agreement. Any amount due from Client under this Section shall be paid directly by Client, where appropriate, or shall be reimbursed to upon payment thereof by Truth Initiative. In the event Client or the transactions contemplated by the Agreement are exempt from the foregoing taxes, fees, assessments or charges, Client agrees to provide Truth Initiative, upon written request, evidence of such tax-exempt status, proper exemption certificates or other documentation acceptable to Truth Initiative.

7 Proprietary Rights

7.1 Ownership

- (a) Truth Initiative. Truth Initiative retains sole and exclusive ownership of the Confidential Information of Truth Initiative, Software, and all Intellectual Property Rights of Truth Initiative in, to, or embodied in or associated with the Software, Deliverables, Services, Hosting Services, Truth Initiative Content and Support, and all copies and Modifications thereof. Client shall not take any action inconsistent with such title and ownership
- (b) Client. Client retains sole and exclusive ownership of Client's Confidential Information, and Truth Initiative shall not take any action inconsistent with such title and ownership.
- (c) Cobranding. Client hereby grants Truth Initiative non-exclusive, royalty-free, revocable, worldwide, license during the Term to copy, reproduce, distribute, and otherwise use Client's trademarks, service marks, trade names, logos, symbols or brand names provided to Truth Initiative (collectively, the "Client Marks") solely for the purpose of providing the EX Program materials described in Exhibit A subject to Client's prior written approval in each instance. Nothing in preceding sentence shall convey any proprietary or other right, title or ownership interests in the Client Marks, or any goodwill associated therewith. Truth Initiative's use of the Client Marks shall inure solely to the benefit Client.
- (d) Modifications. Any suggestions, feedback or proposed Modifications to the Software or the Truth Initiative Content that are provided by Client to Truth Initiative may be freely used by Truth Initiative without limitation, and any such Modification resulting from such suggestions or proposed Modifications shall be exclusively owned by Truth Initiative. Client hereby grants, and shall grant, to Truth Initiative a perpetual, non-exclusive, worldwide, royalty-free right to use such

suggestions, feedback and proposed Modifications at the sole discretion of Truth Initiative.

- (e) Promotional Materials. For the period that this Agreement remains in effect, Truth Initiative hereby grants to Client a limited, non-exclusive, royalty-free right and license to use such Truth Initiative trademarks and trade names as Truth Initiative may authorize in writing (collectively, the "Truth Initiative Marks") solely for Client's promotional activities as described more fully in Exhibit A hereto; provided, however, that, all permitted uses of the Truth Initiative Marks by or on behalf of Client shall be subject to Truth Initiative's prior written approval in each instance, which shall not be unreasonably withheld, delayed or conditioned. Client acknowledges that all rights in and to the Truth Initiative Marks, and all artwork, trademarks, and service marks and goodwill associated therewith (to the extent they do not embody any Client trademarks or trade names) shall be owned and controlled exclusively by Truth Initiative. Client shall execute and deliver all documents requested by Truth Initiative which evidence Truth Initiative's rights in and to the Truth Initiative Marks, and Client hereby assigns to Truth Initiative all rights it may acquire in and to the Truth Initiative Marks. Client will cause to appear on all materials containing the Truth Initiative Marks such legends, markings and notices as Truth Initiative may reasonably request in writing in order to preserve and protect Truth Initiative's rights in and to the Truth Initiative Marks. The licenses granted herein to Client shall expire upon the earlier of: (1) the expiration of the Term of this Agreement; or (2) the effective date of any termination of this Agreement.
- (f) Further Assurances. Each Party shall take such actions as may be reasonably requested by the other to evidence the transfer of ownership of or license to Intellectual Property Rights described in this Agreement, including but not limited to, the making of further written assignments or the filing of registrations, applications, or instruments, in a form reasonably requested by the other.

7.2 Indemnification

- (a) Truth Initiative shall indemnify, defend, and hold harmless Client and its officers, directors, employees and Registered Users (collectively, "Client Indemnified Parties") against any third-party claim that the Software infringes any Intellectual Property Rights of any third party. If any Software becomes, or in Truth Initiative's opinion is likely to become, the subject of a claim of infringement, Truth Initiative may, at its sole option, (i) obtain for Client the right to continue using the Software; (ii) replace or modify the affected Software so that it becomes non-infringing while providing substantially equivalent functionality; or (iii) if such remedies are not available on commercially reasonable terms as determined by Truth Initiative, terminate the license for the affected portion of the

Software and refund a *pro rata* portion of the Fees for the affected portion of the Software. Notwithstanding any other terms in this Section, Truth Initiative shall have no liability for infringement claims and Client shall defend, indemnify, and hold harmless Truth Initiative if the alleged infringement is based on or arises from (w) combination or use of the Software with hardware, software, or other materials not provided by Truth Initiative, (x) the modification of the Software by anyone other than Truth Initiative or at Truth Initiative's direction, (y) the use of the Software not in accordance with this Agreement, or (z) the use of other than the then most current version of the Software if the use of the most current version of the Software would have eliminated the infringement. THE FOREGOING STATES TRUTH INITIATIVE'S ENTIRE LIABILITY AND CLIENT'S EXCLUSIVE REMEDY FOR ANY CLAIM OF INFRINGEMENT.

- (b) In addition, Truth Initiative shall indemnify, defend, and hold harmless the Client Indemnified Parties against any third-party claim arising from Truth Initiative's or Truth Initiative's subcontractors' (if any) gross negligence or intentional tortious misconduct.
- (c) Client shall indemnify, defend, and hold harmless Truth Initiative and its directors, officers, employees, and agents (collectively, "Truth Initiative Indemnified Parties") against (i) any damages or harm resulting from the gross negligence or unauthorized use of the Hosted Services or Software by Client or any Registered Users; and (ii) any third party claim involving or alleging facts that, if proven, would result in Client's violation of the Terms of Service.
- (d) The indemnifications provided in this Section 7.2 are conditioned on (i) the Party to be indemnified ("Indemnified Party") giving the Party to provide the indemnification ("Indemnifying Party") prompt written notice of such claim; (ii) the Indemnified Party providing its full cooperation in the defense of such claim, if requested by the Indemnifying Party; and (iii) the Indemnified Party granting the Indemnifying Party the sole authority to defend or settle the claim. The Indemnified Party may engage legal counsel to monitor, but not control, any such claim at the Indemnified Party's sole cost and expense.

7.3 Confidentiality. By virtue of this Agreement, the Parties may be exposed to or provided with certain Confidential Information of the other Party. Each Party will protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that each such Party uses to protect its own Confidential Information, but in no event less than a reasonable degree of care. Except as required by law, neither Party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of

this Agreement and as may be required to report to its and its affiliates' Board of Directors and/or legal and financial advisors. Except as otherwise expressly set forth in this Agreement, neither Party will disclose to third parties the other's Confidential Information without prior written consent of the other Party. The responsibilities under this Section 7.3 shall continue during the Term and for two years thereafter for Confidential Information that is not a trade secret under law and for trade secrets shall continue for so long as such Confidential Information remains a trade secret.

7.4 Injunctive Relief. The Parties agree that if Sections 2, 4.1, 5, or 7.3 are breached, the nonbreaching Party may suffer irreparable harm and significant damages, not fully compensable by money damages alone. Accordingly, the nonbreaching Party, in addition to any other legal or equitable remedies, shall be entitled to seek an injunction or similar equitable relief against such breach or threatened breach.

7.5 Data Usage. Truth Initiative will never sell user data. Truth Initiative shall have the right to compile, distribute and/or publish scientific materials that include aggregated or de-identified data for the purposes of advancing knowledge about nicotine dependence treatment. Truth Initiative may also use Registered User data to promote the Provider's Services to the Client's Service Population, for business operations, and for product improvement or analysis of Service benefits to clients or Registered Users.

8 Warranties

8.1 Warranty. Truth Initiative warrants that Hosted Services will work consistent with the functionality of Truth Initiative's publicly available EX Program tobacco and nicotine cessation platform. Client shall promptly notify Truth Initiative in writing if the Hosted Services fail to perform in accordance with this warranty. Truth Initiative shall, after receipt of Client's notice, remedy and re-perform the applicable Hosted Services within a reasonable time. If Truth Initiative is unable to remedy and re-perform the services as warranted, Truth Initiative shall refund such portion of the fees paid hereunder that are attributable to the non-conforming Hosted Services. In addition, throughout the Term, Truth Initiative covenants that all Services and Support will be performed by qualified personnel in a good and workmanlike manner, and consistent with generally accepted industry standards.

8.2 Sole Remedy. The remedies set forth in Section 8.1 above constitute Truth Initiative's sole and entire liability and Client's exclusive remedies with respect to such warranty. Truth Initiative shall not be obligated to correct any breach of the above warranty if Client has not notified Truth Initiative of the specific existence and nature of such breach promptly during the applicable warranty period. Without limiting the foregoing, Truth Initiative does not warrant and is not responsible for (i) any third-party

products not provided by Truth Initiative, or (ii) services not provided solely by Truth Initiative, its agents and subcontractors (if any).

8.3 Disclaimer. EXCEPT AS SET FORTH IN THIS SECTION 8, NEITHER TRUTH INITIATIVE NOR ITS VENDORS, SUBCONTRACTORS, LICENSORS AND SUPPLIERS MAKES ANY EXPRESS OR IMPLIED WARRANTY, REPRESENTATION, CONDITION, OR AGREEMENT WITH RESPECT TO THE SOFTWARE, SUPPORT, SERVICES OR HOSTING SERVICES. TRUTH INITIATIVE AND ITS VENDORS, SUBCONTRACTORS, LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM AND EXCLUDE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM USAGE, CONDUCT, OR COURSE OF TRADE. TRUTH INITIATIVE DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

9 Limitation of Liability, Remedy

9.1 Limitation of Remedy. EXCEPT AS PROHIBITED BY LAW OR FOR CLAIMS ARISING UNDER SECTION 7.3 ABOVE, TRUTH INITIATIVE AND ITS VENDORS, SUBCONTRACTORS, LICENSORS AND SUPPLIERS SHALL NOT BE LIABLE TO CLIENT, ANY REGISTERED USERS, OR ANY OTHER THIRD PARTIES, FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES OR LIABILITIES FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR BY WAY OF INDEMNITY OR OTHERWISE, INCLUDING A BREACH THEREOF OR INCLUDING DAMAGES OR LIABILITIES FOR LOST PROFIT, LOST REVENUE, LOSS OF USE, LOSS OF GOODWILL, LOSS OF REPUTATION, LOSS OF DATA, COSTS OF RECREATING LOST DATA, THE COST OF ANY SUBSTITUTE EQUIPMENT, PROGRAM, OR DATA, OR CLAIMS BY ANY THIRD PARTY REGARDLESS OF WHETHER THE POSSIBILITY OF SUCH DAMAGES OR LIABILITIES HAVE BEEN COMMUNICATED TO TRUTH INITIATIVE AND REGARDLESS OF WHETHER TRUTH INITIATIVE HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES OR LIABILITIES.

9.2 Limitation of Liability. EXCEPT AS PROHIBITED BY LAW OR FOR CLAIMS ARISING UNDER SECTIONS 7.2 OR 7.3 ABOVE, THE CUMULATIVE, AGGREGATE LIABILITY OF TRUTH INITIATIVE AND ITS VENDORS, SUBCONTRACTORS, LICENSORS AND SUPPLIERS (INCLUDING ATTORNEYS FEES AWARDED UNDER THIS AGREEMENT) TO CLIENT, ANY **REGISTERED** USERS, AND ANY OTHER THIRD PARTIES FOR ALL CLAIMS, LIABILITIES AND DAMAGES ARISING OUT

OF OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, **SHALL NOT EXCEED THE FEES PAID BY CLIENT TO TRUTH INITIATIVE HEREUNDER.** NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THIS AGREEMENT SHALL NOT LIMIT THE LIABILITY OF EITHER PARTY FOR REAL OR PERSONAL PROPERTY DAMAGE OR PERSONAL INJURY, INCLUDING DEATH, ARISING FROM THE NEGLIGENCE OF ITS EMPLOYEES ACTING IN THE COURSE OF THEIR EMPLOYMENT. THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS SET OUT IN THIS AGREEMENT HAVE BEEN FREELY NEGOTIATED AND THAT TRUTH INITIATIVE WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT SUCH LIMITATIONS.

10 Dispute Resolution

10.1 All disputes of every kind and nature between Client and Truth Initiative arising out of or in connection with this Agreement, including the construction, validity, interpretation, enforceability, or breach of this Agreement, shall be addressed first in an informal dispute process by the Parties' respective management. If an informal dispute process is unsuccessful in resolving a dispute, the dispute shall be submitted to binding arbitration pursuant to the then existing Commercial Arbitration Rules of the American Arbitration Association ("Rules"). Unless otherwise mutually agreed, the arbitration shall be conducted with a single arbitrator, selected in accordance with the Rules. Each Party shall bear its own costs of arbitration. The arbitrator shall be fluent in the English language and have experience in commercial contract and intellectual property laws. Arbitration hearings shall be conducted in the County of Monterey, California and the award rendered by the arbitrator shall be final and binding on all parties to the proceeding. Judgment on any award may be entered by either Party in any court of competent jurisdiction. Subject to Section 12.4 below, nothing contained herein shall be deemed to give the arbitrator any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

10.2 Client and Truth Initiative agree that the provisions hereof shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or other country's court or before any administrative tribunal with respect to any controversy or dispute arising under this Agreement and which is arbitrable as herein set forth. Notwithstanding the foregoing, either Party may seek injunctive relief in any court of law or equity having jurisdiction to assert, protect or enforce its rights in: (i) any Intellectual Property Rights, including any rights it has in patents, copyrights, trademarks, or trade secrets; (ii) the license limitations in Section 2 above; or (iii) Confidential Information as described in this Agreement.

11 Term and Termination

11.1 Term and Renewals. This Agreement shall remain in full force and effect for the entirety of the Contract Term (as set forth on page 1 of this Agreement), unless earlier terminated in accordance with this Section 11 or Section 6.1 above. Registered Users who have enrolled within the term of this Agreement may continue to use the program after the contract period has ended, but no new subscribers will be permitted to enroll after the contract expires. Following the initial Contract Term, unless this Agreement is otherwise terminated, this Agreement shall automatically renew for successive periods, each equivalent in duration to the Contract Term (each, a "Renewal Period") under the same Contract Selections unless either Party notifies the other in writing, not less than 30 days prior to the end of the initial term or any Renewal Period, of its intent not to renew the Agreement for the upcoming Renewal Period (a "Non-Renewal Notice"). In the event of a Non-Renewal Notice, the Agreement shall expire at the end of the initial Contract Term or Renewal Period in which such notice is received by Provider.

11.2 Termination. Notwithstanding anything in this Agreement to the contrary, this Agreement may be terminated in advance by a Party only if:

- (a) the other Party materially breaches a provision of this Agreement and fails to cure such breach within 30 days of the receipt of written notice of such breach; or
- (b) any assignment is made by the other Party for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other Party's property, or if the other Party files a voluntary petition under federal or other country's bankruptcy or similar laws or similar state statutes or such a petition is filed against the other Party and is not dismissed within 60 days.

11.3 Effects of Termination. Upon termination of this Agreement for any reason, all rights and obligations of the Parties hereunder and all licenses and Services shall cease, except as follows:

- (a) Client's liability for any Fees due to Truth Initiative that accrued prior to the termination date shall not be extinguished by termination, and such amounts shall be immediately due and payable.
- (b) Client shall, at its sole cost and expense, deliver to Truth Initiative all tangible items and embodiments, and permanently destroy all electronic and other embodiments not able to be so delivered, of the (i) Software; and (ii) all Truth Initiative Confidential Information in the possession or under the control of Client.
- (c) Truth Initiative shall return to Client, or permanently destroy all electronic and other embodiments not able to be so delivered, all Client Confidential

Information in the possession or under the control of Truth Initiative.

- (d) The provisions of Sections 2.2(b-f) 5, 6 for accrued but unpaid Fees and/or taxes, 7, 8.3, 9, 10, and 12 shall survive any termination of this Agreement.

12 General Provisions

12.1 Governing Law. This Agreement shall be construed, performed, and enforced in accordance with, and governed by, the internal laws of the State of California, without giving effect to the principles of conflicts of laws. Subject to Section 10 above, the exclusive jurisdiction for any dispute hereunder will be the local and federal courts of County of Monterey, California.

12.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof. No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing signed by both Parties, and then such waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.

12.3 Waiver. The waiver by either Party of a breach or a default of any provision of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor, except as otherwise expressly provided otherwise in this Agreement, shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such Party.

12.4 Severability. If any provision of this Agreement is invalid or unenforceable, that provision shall be construed, limited, modified, or severed to the extent necessary to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain in full force and effect.

12.5 Assignment. The Client may not assign this Agreement and the rights and obligations hereunder, without the prior written consent of Truth Initiative. In the case of any permitted assignment or transfer of or under this Agreement, this Agreement or the relevant provisions shall be binding upon, and inure to the benefit of, the successors, trustees, and assigns of the Parties hereto. Any attempt at assignment without such consent shall be null and void and of no force and effect.

12.6 Force Majeure. In the event that either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the Party invoking this provision, the affected Party's performance shall be extended for the period of delay or inability to perform due to such occurrence, and provided further that the other Party may terminate this Agreement if such condition

continues for a period of 90 days after which this provision shall apply to payment obligations.

12.7 Publicity. Neither Party will issue any press release or other voluntary public communication regarding this Agreement or the relationship described by this Agreement without giving the other Party an opportunity to review and comment upon such communication and obtaining the written consent of the other Party.

12.8 No Agency; Independent Contractors. Nothing contained in this Agreement shall be deemed to constitute either Party as the agent or representative of the other Party, or both parties as joint venturers or partners for any purpose.

12.9 Notices. Any notice or communication from one Party to the other shall be in writing and either personally delivered or sent via nationally recognized overnight service, certified mail, postage prepaid and return receipt requested or via email, addressed to the other Party as specified in the first paragraph of this Agreement or at such other address as such Party may from time to time designate in a notice to the other Party

12.10 Authority. The Parties and each individual executing this Agreement on behalf of the Parties hereto represent and warrant that such individual is duly authorized to execute and deliver this Agreement on behalf of his or her Party.

EXHIBITS FOLLOW

EXHIBIT A

EX Program Essentials Statement of Services

EX Program Essentials provides **Registered Users** ages 13 and older with access to the following proven treatment components:

1. Website with a robust suite of interactive cessation tools focused on building skills for quitting;
2. Delivery of individually-tailored web content developed in collaboration with Mayo Clinic;
3. Access to peer and expert support throughout the quitting journey via the longest-running online community for tobacco cessation;
4. Individually tailored email campaigns to support a user's quitting journey;
5. An interactive text message program individually tailored to each user based on their tobacco product use, quit date, program engagement patterns, and other factors; and
6. New features or optimized versions of current features as developed through our ongoing product optimization processes.

EX Program Essentials provides **Clients** with the following services:

1. Opt-in Mechanisms: One (1) unique opt-in keyword for Client's service population to enroll via text message in English will be provided; one (1) unique opt-in keyword for Client's service population to enroll via text message in Spanish may be provided upon written request. At Client's written request, a web-based enrollment widget or QR code may also be provided. Client is responsible for implementation of any web-based enrollment widgets provided by Truth Initiative.
2. Dedicated client success manager: Upon full execution of the Agreement, Truth Initiative will assign a dedicated client success manager to Client.
3. Ongoing client support:
 - Counties and smaller Service Population size:
 - i. 3 Implementation calls with a Client Success Manager
 - ii. Annual Data Review with a Client Success Manager
 - iii. Biannual webinars and newsletters from CS team
 - State and National Service Population size:
 - i. Weekly implementation series of Zoom calls with CS team member until Client is fully implemented
 - ii. Quarterly Data Review with a Client Success Manager
 - iii. Biannual webinars and newsletters from CS team
 - Clients who purchase Ultimate Promotion Add-on:
 - i. Weekly implementation series of Zoom calls with CS team member until Client is fully implemented
 - ii. Quarterly Data Review with a Client Success Manager
 - iii. Biannual webinars and newsletters from CS team
 - iv. "EX Program" Enrollment Media Campaign creative design
 - v. "EX Program" Enrollment Media Campaign Project Management, Media Planning, Development and Execution
4. Configured communications (initial activation campaign): Truth Initiative will develop a set of digital promotional materials for Client to include images, text and print templates. Subject to the licenses set forth in the Agreement, Client may, at its discretion, utilize such Truth Initiative-provided materials for promotional use only. Any and all promotional materials that include Provider's materials shall be subject to Truth Initiative's prior written approval. Client Success Managers will ensure that activation materials for launch are configured with clients' logos and Opt-in Mechanisms. Client will also have access to a kit of standard, non-cobranding Promotional Materials. Client will be responsible for printing and distribution of print or digital promotional materials to their Service Population unless Ultimate Promotion Package is selected, and may purchase from Truth Initiative Print Shop. Requests for materials in different sizes than provided will be accommodated when possible.
5. Ongoing promotional support:

- Clients with State or National Service Population will receive updated digital, print-ready promotional assets on a cadence determined by Truth Initiative.
 - Ultimate Promotion Add-on: For an additional media fee, Truth Initiative will run a multimedia campaign promoting EX Program to Client's Service Population. Exact pricing and projected enrollment volume is available upon request.
6. Web-based real-time dashboards: Truth Initiative will provide Client with one (1) seat license per year for Truth Initiative's reporting application. Additional seat licenses may be obtained at a charge of \$125 per license per year. Client access to reporting will commence once Client has reached ten (10) enrolled Registered Users and will capture data retroactive to the go-live date. Seat licenses will provide access to the following:
- Aggregate, population insights about participant uptake, engagement, and quit outcomes on all participants ages 13 and up who enroll through Client's opt-in mechanisms.
 - Aggregate location insights about enrollments powered by Truth Initiative-run media campaigns (if any) that fall within the zip code(s) covered by Client. Not available to Clients with a national Service Population.
 - Engagement data: includes aggregate engagement information to track how and how frequently members are engaging with the program.
 - Abstinence data: includes response rates to abstinence questions and quit rates at two (2) time frames within the program.

Truth Initiative Contact Information

The Truth Initiative point of contact is Kelly Graham, available by email at kgraham@truthinitiative.org and by phone at (202) 454-5562.

**Exhibit B:
Insurance Requirements**

Evidence of Coverage: Prior to commencement of this Agreement, the Contractor shall provide a “Certificate of Insurance” certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County’s Contract/Purchasing Department, unless otherwise directed. The Contractor shall not receive a “Notice to Proceed” with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

Qualifying Insurers: All coverages, except surety, shall be issued by companies which hold a current policy holder’s applicable and financial size category rating of not less than A- VII, according to the current A.M. Best’s Rating Guide or a company of equal financial stability that is approved by the County’s Purchasing Agent.

Insurance Coverage Requirements: Without limiting CONTRACTOR’S duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance: including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate.
(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County)

Auto Liability Coverage: must include motor vehicles, including scheduled, nonowned, and hired vehicles, used in providing services under this Agreement, with a combined single limit or Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers’ Compensation Insurance: if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer’s Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.
(Note: any proposed modifications to these workers’ compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance: if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a “claims-made” basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: Professional liability insurance coverage is required if the contractor is providing a professional service regulated by the state. Examples of service providers regulated by the state are insurance agents, professional architects and engineers, doctors, certified public accountants, lawyers, etc. However, other professional Contractors, such as computer or software designers, technology services, and services providers such as claims administrators, should also have professional liability. If in doubt, consult with your risk or contract manager.)

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor.

Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Additional Insured Status:

The County of Monterey, its officers, officials, employees, and volunteers are to be covered as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage shall be provided in the form of an endorsement to the CONTRACTOR'S insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

Primary Coverage:

For any claims related to this contract, the CONTRACTOR'S insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Waiver of Subrogation:

CONTRACTOR hereby grants to County a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the County by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer. Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The

CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect. CONTRACTOR shall always during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

By: _____
Contracts/Purchasing Officer

Date: _____

By:  _____
Department Head (if applicable)


Date: 4/25/2025 | 4:27 PM PDT

Approved as to Form
County Counsel
Susan K. Blicht, Acting County Counsel

By:  _____
County Counsel

Date: 3/25/2025 | 2:58 PM PDT

Approved as to Fiscal Provisions

By:  _____
Auditor/Controller

Date: 3/26/2025 | 7:09 AM PDT


Approved as to Liability Provisions
Office of the County Counsel-Risk Management

By: _____
David Bolton, Risk Manager

Date: _____

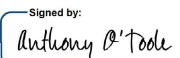
CONTRACTOR

Truth Initiative
Contractor/Business Name*

By:  _____
(Signature of Chair, President, or Vice President)

Kathy Crosby, President
Name and Title

Date: 3/24/2025 | 2:12 PM PDT

By:  _____
(Signature of Secretary, Asst. Secretary, CFO, Treasurer, or Asst. Treasurer)

Anthony O'Toole, CFO
Name and Title

Date: 3/25/2025 | 8:40 AM PDT

County Board of Supervisors' Agreement No A-17273 approved on April 22, 2025

***INSTRUCTIONS:** If CONTRACTOR is a corporation, including non-profits corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute the Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

¹Approval by County Counsel is required

²Approval by Auditor-Controller is required

³Approval by Risk Management is necessary only if changes are made in paragraphs 8 or 9