

**COUNTY OF MONTEREY STANDARD AGREEMENT
(NOT TO EXCEED \$100,000)**

This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:
The Corporate Executive Board Company (CEB)
(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION.

1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide yearly subscription to Information Technology (IT) analysis and access to the latest in industry standard practice documentation and technical training as needed by County IT staff.

2.0 PAYMENT PROVISIONS.

2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement is not to exceed the sum of \$ 48,000.

3.0 TERM OF AGREEMENT.

3.01 The term of this Agreement is from August 26, 2017 to August 25, 2019, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services/Payment Provisions

Exhibit B Justification for Automobile Liability Waiver

Addendum No. 1

5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS.

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of

CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

- 8.01 Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

9.0 INSURANCE REQUIREMENTS.

9.01 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 Contracts/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.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 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.

(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 approval.)

Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 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: any proposed modifications to these 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.)

9.04 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.

Commercial general liability and automobile liability policies shall **provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds** with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that **such insurance is primary** insurance to any insurance or self-insurance maintained by the County and that the insurance of **the Additional Insureds shall not be called upon to contribute** to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

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 at all times 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.

10.0 RECORDS AND CONFIDENTIALITY.

10.01 **Confidentiality.** CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by

CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

- 12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall

be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR.

13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES.

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
<u>Michael Gross, IT Divison Manager - Enterprise Operations</u>	<u>The Corporate Executive Board Company (CEB)</u>
Name and Title	Name and Title
1590 Moffett Street	
Salinas, CA 93905	
Address	Address
831-759-6941	
Phone	Phone

15.0 MISCELLANEOUS PROVISIONS.

15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.

15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

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

COUNTY OF MONTEREY

CONTRACTOR

By: _____
Contracts/Purchasing Officer

Date: _____

By: _____
Department Head (if applicable)

Date: _____

Approved as to Form¹

By: _____
County Counsel

Date: _____

Approved as to Fiscal Provisions²

By: _____
Auditor/Controller

Date: _____

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

The Corporate Executive Board Company (CEB)
Contractor's Business Name*

By: Kurt Reisenberg
(Signature of Chair, President, or Vice-President)*

KURT REISENBERG, CCO
Name and Title

Date: July 6, 2017

By: Craig Safian
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Craig Safian, CFO
Name and Title

Date: July 6, 2017

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this 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.

¹Approval by County Counsel is required

²Approval by Auditor/Controller is required

³Approval by Risk Management is required only if changes are made in sections 7 or 8

EXHIBIT-A

**To Agreement by and between
Monterey County, through its Information Technology Department, hereinafter referred
to as "COUNTY"**

AND

**The Corporate Executive Board Company (CEB), hereinafter referred to as
"CONTRACTOR"**

Scope of Services / Payment Provisions

I. SCOPE OF SERVICES

- a. This Scope of Work is between the County of Monterey (COUNTY) and The Corporate Executive Board Company (CONTRACTOR) for a subscription to CEB IT Leadership Counsel for Midsized Companies. These services include consulting and access to CONTRACTOR resources to be utilized for the following departmental functions of the County of Monterey Information Technology Department (ITD):
 - Service management
 - Service catalogue effort
 - Formalizing the Project Management Office structure
 - Infrastructure maturity
 - IT team training options
 - Strategic planning
 - IT budgeting
 - Staff benchmarking
 - Technology road-mapping

- b. The subscription purchased by COUNTY entitles the COUNTY access to all CONTRACTOR resources within the categories specified in Section I. c below, on an as-needed basis, and also entitles the COUNTY designee to submit inquiries to CONTRACTOR regarding IT related matters.

- c. The services provided by CONTRACTOR shall include, but are not limited to:
 1. Dedicated Account Manager
 2. Research and Insight
 3. Peer Benchmarks
 4. Access to the Senior-most only Forums for one (1) USER from COUNTY
 5. Decision and Diagnostic tools
 6. Advisory support
 7. Proven "Best Practices"

The Corporate Executive Board Company Agreement
Term: August 26, 2017 – August 25, 2019
NTE: \$48,000

II. COMPENSATION/ PAYMENT

- a. The yearly subscription cost will be at the discounted rate of \$24,000 per year invoiced on an annual basis.
- b. CONTRACTOR shall submit to COUNTY the invoice for year one of the subscription on August 26, 2017 and for year two on August 26, 2018 in accordance with Section 6.04 in this Agreement.
- c. There shall be no travel reimbursement allowed during this Agreement.
- d. CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in excess of those charged any other client for the same services performed by the same individuals.
- e. **DISALLOWED COSTS:** CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

EXHIBIT-B

**To Agreement by and between
Monterey County, through its Information Technology Department, hereinafter referred
to as "COUNTY"**

AND

**The Corporate Executive Board Company (CEB), hereinafter referred to as
"CONTRACTOR"**

JUSTIFICATION FOR AUTOMOBILE LIABILITY WAIVER

CONTRACTOR does not provide on-site services and will not be utilizing an automobile for the performance of the services specified in the Scope of Services, therefore, Commercial Automobile Liability Insurance is not needed for the performance of this Agreement.

The Corporate Executive Board Company Agreement
Term: August 26, 2017 – August 25, 2019
NTE: \$48,000

ADDENDUM NO. 1
TO AGREEMENT BY AND BETWEEN
THE CORPORATE EXECUTIVE BOARD COMPANY (CEB)
AND
MONTEREY COUNTY, THROUGH ITS INFORMATION TECHNOLOGY
DEPARTMENT
FOR SUBSCRIPTION SERVICES

This Addendum No. 1 amends, modifies, and supplements the County of Monterey Agreement for Services (hereinafter "Agreement") by and between The Corporate Executive Board Company (CEB) (hereinafter "CONTRACTOR") and the County of Monterey, through its Information Technology Department, (hereinafter "COUNTY"). This Addendum #1 has the full force and effect as if set forth within the Terms. To the extent that any of the terms or conditions contained in this Addendum #1 may contradict or conflict with any of the terms and conditions of the Agreement, it is expressly understood and agreed that the terms and conditions of this Addendum #1 shall take precedence and supersede the attached Agreement.

NOW, THEREFORE, COUNTY and CONTRACTOR agree that the Agreement terms and conditions shall be amended, modified, and supplemented as follows:

I. Section 8.0, "Indemnification", shall be deleted in its entirety and replaced with the following:

8.01 COUNTY and CONTRACTOR (each, the "Indemnifying Party") agree to indemnify and defend the other party, its officers, directors, and employees (each, an "Indemnified Party"), from and against any and all loss, damage, and expense, including reasonable legal fees and expenses ("Losses"), incurred by the Indemnified Party as a result of any third party claim, demand, action or proceeding ("Claim"), directly and proximately arising from or by reason of any actual or alleged infringement of any Intellectual Property Rights arising out of any Contractor Property or County Property supplied to the Indemnified Party by the Indemnifying Party. This indemnification obligation is provisional on the Indemnified Party: (i) providing the Indemnifying Party prompt written notice of any Claim, or upon reasonable suspicion of a Claim, (ii) cooperating with the Indemnifying Party's reasonable request for information or other assistance, (iii) granting control of the defense and settlement of the Claim to the Indemnifying party, and (iv) not settling or making any offer to settle the Claim or make any admission of guilt or fault without first obtaining the Indemnifying Party's prior written approval."

8.02 To the extent that CONTRACTOR or Affiliate is the Indemnifying Party under Section 8.01, such provision shall not apply to (i) COUNTY's misuse

of Contractor Property provided by CONTRACTOR or its Affiliates, (ii) COUNTY's use of Contractor Property in combination with any product or information not provided by CONTRACTOR its Affiliates, or (iii) COUNTY's utilization of Contractor Property in a manner not contemplated by the Agreement, in each case, whether or not with CONTRACTOR's or its Affiliates' consent. The provision of this Section shall also apply to COUNTY's Affiliates.

8.03 This Section shall constitute a party's sole and exclusive remedy at law in connection with any Claim brought against such party by a third party alleging actual or alleged infringement of any Intellectual Property Rights.

II. Section 10.01, "Confidentiality" is hereby amended to add the following paragraph at the end of the Section:

CONTRACTOR acknowledges that as part of the public approval process of this agreement by the County Board of Supervisors, this agreement will be made accessible to the public for its review. CONTRACTOR further acknowledges that COUNTY must comply with the California Public Records Act and other laws requiring transparency in government; accordingly, CONTRACTOR acknowledges that, on request, this agreement and documents pertaining to its performance may be subject to disclosure upon request by a member of the public. COUNTY and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. COUNTY shall promptly transmit to CONTRACTOR any and all requests for disclosure of records or information related to this agreement, to enable CONTRACTOR to identify such records or information that it considers confidential or proprietary. If CONTRACTOR identifies records or information related to this agreement that it views as confidential or proprietary, CONTRACTOR will ask COUNTY to withhold such information from the requesting member of the public. If COUNTY agrees with CONTRACTOR that the information it identifies is not subject to disclosure under applicable laws, including the California Public Records Act, it will withhold the information so identified. COUNTY shall not use and confidential information gained by COUNTY in performance of this Agreement except for the sole purpose of carrying out COUNTY's obligations under this Agreement.

III. Notwithstanding anything to the contrary in Sections 10.05 or 15.17, the following license applies:

During the Term of the Agreement, CONTRACTOR grants COUNTY a non-exclusive, royalty-free, worldwide, revocable (for non-payment of fees or breach), non-transferable and non-assignable license to access, use, reproduce and distribute the Programs, Services and/or Materials solely for County's internal business purposes.

Neither COUNTY nor any individual user may license, sell, transfer, assign to, display or otherwise make available (by sharing passwords or by any other means) the Programs, Products, Services and/or Materials to any third party (including (i) a COUNTY service provider, independent contractor, consultant or subcontractor, or any (iii) other COUNTY

division or County Affiliates to which the license has not been extended under the Letter of Agreement) without CONTRACTOR's written permission, and any attempted sublicense, sale, transfer or assignment shall be void.

IV. Section 15.06, Assignment and Subcontracting, shall be deleted in its entirety and replaced with the following:

Assignment and Subcontracting: Neither party will assign or otherwise transfer its rights or responsibilities under the Agreement to any third party without the other party's prior written consent, except that CONTRACTOR may assign or otherwise transfer its rights and obligations to any CONTRACTOR Affiliate provided that CONTRACTOR will remain at all times responsible to COUNTY for CONTRACTOR's obligations under the Agreement. Where CONTRACTOR subcontracts any of its obligations under this Agreement, it will contractually require the subcontractor to comply with confidentiality obligations at least as restrictive as those contained hereunder, and all applicable data protection laws. For the purposes of performing its obligations under this Agreement, CONTRACTOR may use its Affiliates, and, in such event, such Affiliates shall not be considered subcontractors.

V. Section 15.17, titled, "Trade Sanctions", shall be added as follows:

CONTRACTOR's products and services are subject to US sanctions laws and may not be sold or licensed to any party listed on the Specially Designated Nationals List maintained by the U.S. Department of the Treasury ("Restricted Party") or in US sanctioned countries (currently Cuba, Iran, North Korea, Sudan, and Syria) (The most up-to-date lists can be found at (<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>))

COUNTY agrees not to use, transfer, or provide access to the products and services (i) to any Restricted Party or (ii) in (or for the benefit of individuals or entities from) such US sanctioned countries. COUNTY confirms that it is not directly or indirectly owned by, controlled by, owning or controlling or named as a Restricted Party. CONTRACTOR and its Affiliates may not do business with a Restricted Party under US law (the most up-to-date list can be found at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> and <http://www.bis.doc.gov/index.php/the-denied-persons-list>). Any breach of this Section is a material breach of this Agreement for which no cure period shall apply.

VI. Section 15.18, titled "Data Protection" shall be added as follows:

15.18.1 Compliance. Both parties shall at all times comply with all applicable laws and regulations in relation to the collection, processing, use, and storage of Personal Data. For the purpose of this agreement, "Personal Data" shall be defined as employee email addresses provided by COUNTY to CONTRACTOR to create logon credentials for access to the Programs, Products, and/or Services.

15.18.2 Data Transfer. COUNTY agrees that CONTRACTOR or its Affiliates may transfer Personal Data outside the European Economic Area ("EEA") to the facilities of CONTRACTOR or CONTRACTOR Affiliates in order to provide COUNTY with Programs, Products or Services. This may include

processing Personal Data in counties in which data protection laws do not provide the same level of protection as those within the EEA. In such cases, CONTRACTOR and its Affiliates will take appropriate steps to protect Personal Data in accordance with these Terms and all applicable data protection laws. CONTRACTOR and each of its Affiliates have entered into an Intragroup Agreement (which includes the EU Model Contract Clauses (“Model Clauses”)) for the processing of personal information outside of the EU. At COUNTY’s request, CONTRACTOR (and its appropriate Affiliates) will also enter into the Model Clauses for transferring Personal Data outside the EU.

15.18.3 Data Processing. COUNTY is the Data Controller of Personal Data. “Data Controller” means a person/entity who determines the purposes for which and the manner in which any Personal data is, or is to be, processed (collected, used, amended, retained, destroyed, etc.). CONTRACTOR or its Affiliates shall act as the Data Processor with respect to the Personal Data. “Data Processor” means a person/entity (other than an employee of the Data Controller) that processes Personal Data on behalf of the Data Controller. As the Data Processor, CONTRACTOR shall: (i) process Personal Data in accordance with COUNTY’s reasonable instructions or otherwise as permitted under these Terms and (ii) implement appropriate administrative, technical, and physical security controls to protect Personal Data from unauthorized access, use, or disclosure, unauthorized modification, or unlawful destruction or accidental loss. CONTRACTOR or its Affiliates shall cooperate with any COUNTY request for Personal Data provided by or through COUNTY to CONTRACTOR or its Affiliates, as applicable, provided that such request does not violate Section 3.2.

15.18.4 Third Parties. CONTRACTOR or its Affiliates may disclose Personal data to Third Parties (as defined below) in the following limited circumstances: (i) if CONTRACTOR or its applicable Affiliate buy or sells any business assets, (ii) if CONTRACTOR or any Affiliate contracts with Third Parties to perform or provide certain services on behalf of CONTRACTOR or one of its Affiliates, or (iii) if CONTRACTOR or any Affiliate is under a duty to disclose or share Personal Data to comply with any legal obligation. CONTRACTOR or its applicable Affiliate shall contractually require any buyer of CONTRACTOR’s or its Affiliate’s assets that include Personal data or any Third Party performing services on CONTRACTOR’s or its Affiliate’s behalf to provide the same level of protection for Personal Data required in these Terms and under any applicable data protection laws. For purposes of this Section, “Third Party” means any person or entity other than COUNTY, CONTRACTOR or a Contractor Affiliate, the Data Controller or Data Processor or other person.

15.18.5 Subcontracting. Where CONTRACTOR subcontracts any of its obligations under these Terms or any Letter of Agreement, it will contractually require

the subcontractor to comply with confidentiality obligations at least as restrictive as those contained hereunder, and all applicable data protection laws. Where required by applicable law, CONTRACTOR will enter into standard contractual clauses with other Contractor Affiliates or subcontractor for the transfer of Personal Data to processors located outside the EEA and/or entered into or put in place any other document and safeguard required by a relevant Data Protection Authority. For the purposes of performing its obligations under the Letter of Agreement and these Terms, CONTRACTOR may use its Affiliates, and, in such event, such Affiliates shall not be considered subcontractors.

VII. Section 15.19, titled “Limitations of Liability” shall be added as follows:

- 15.19.1** Neither party shall be liable for any of the following losses or damages (whether or not foreseen, direct, indirect, foreseeable, known or otherwise): (i) loss of profits (whether actual or anticipated), (ii) loss of revenue, (iii) loss of contracts, (iv) loss of anticipated savings, (v) loss of business, (vi) loss of opportunity, (vii) loss of goodwill, or (viii) any indirect, special or consequential loss or damage. Notwithstanding the foregoing, nothing shall limit CONTRACTOR’s or its Affiliates’ or their respective licensors’ rights to damages arising from any infringement or misappropriation of CONTRACTOR IPR regardless of whether such infringement or misappropriation arises in connection with this Addendum or the Agreement.
- 15.19.2** CONTRACTOR’s aggregate liability arising out of or in connection with the performance or contemplated performance under this Addendum or the Agreement (whether for tort (including negligence), breach of contract, breach of statutory duty or otherwise) shall in no event exceed two times the price paid or payable by COUNTY to or its Affiliates within the 12 month period immediately before the date of the event giving rise to COUNTY’s claim.
- 15.19.3** Nothing contained in this Addendum or the Agreement shall exclude or limit either party’s liability for (i) death or personal injury caused by its or its Affiliate’s negligence, (ii) fraud or fraudulent misrepresentation, or (iii) any other matter for which it would be prohibited by applicable law to limit or exclude or attempt to limit or exclude liability. In all such cases, a party’s liability shall be limited to the greatest extent permitted by applicable law.

VIII. Section 16.0, titled “Definitions” shall be added as follows:

Notwithstanding anything to the contrary in the Agreement, the following definitions apply to This Addendum and are incorporated by this reference into the Agreement:

- 16.01** “Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control”

means the power, directly or indirectly, to direct or affirmatively cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

- 16.02 “Material” means any and all documents, information, virtual learning content, research, training manuals, technical reports, report formats, research data, selection, assessment and survey content (including survey or test content and scoring protocols), websites, and/or any other materials provided by Consultant or its Affiliates as part of a Program, Product or Service. CONTRACTOR and its Affiliates reserve the right to update, replace, delete or modify Materials from time to time in their direction.
- 16.03 “Personal Data” means employee email addresses provided by COUNTY to CONTRACTOR to create logon credentials for access to the Programs, Products, and/or Services.
- 16.04 “Product” means the CONTRACTOR or CONTRACTOR Affiliate products included in the Agreement.
- 16.05 “Program” means the combination of Products and Services provided as a predefined offering under the Agreement.
- 16.06 “Service” means the services described in the Agreement.