

ACUMERA MANAGED SERVICES AGREEMENT

This Managed Services Agreement (this “**Agreement**”) dated as of December 10, 2020 (the “**Effective Date**”) is entered into by and between the County of Monterey, a political subdivision of the State of California, located at 168 W. Alisal Street, Salinas, CA 93901 (“**Client**”) and **Acumera, Inc.**, a Delaware corporation, with its principal place of business at 3307 Northland Drive, Suite 170, Austin, Texas 78731 (“**Acumera**”).

WHEREAS, Client desires that Acumera provide an Acumera Merchant Gateway (the “**AMG**”) for its sites (the “**Site**” or “**Sites**”) and that Acumera provide network installation, configuration and management services that connect the AMG to Client’s IT systems and to Acumera’s AcuVigil™ dashboard, the parties now wish to set forth in this Agreement the terms and conditions with respect to the purchase of the AMG and the network configuration and management services related thereto.

NOW THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound, agree as follows:

Section 1. Equipment and Services. Acumera shall provide to Client the equipment and services (the “**Equipment and Services**”) set out in one or more orders (each an “**Order**”) or statements of work (each a “**Statement of Work**”) to be attached hereto and which become a part of this Agreement. Available Equipment and Services and associated prices and service fees are available upon request from Acumera as the Acumera Price List and may be amended and updated by Acumera from time to time. Orders and Statements of Work shall be deemed issued and accepted only if signed by Acumera and Client. This Agreement takes precedence over Orders or Statements of Work for any discrepancy in terms.

Section 2. Acumera’s Responsibilities. Acumera agrees to furnish Equipment and Services in accordance with Orders or Statements of Work placed by the Client, and the terms set forth in this Agreement.

Acumera is a Payment Card Industry (“**PCI**”) compliant service provider and will provide a current Attestation of Compliance (“**AoC**”) upon request. Acumera will make commercially reasonable efforts to maintain compliance and will handle Customer’s cardholder data in a manner consistent with the requirements of the current PCI Data Security Standards (“**DSS**”). Additionally, Acumera will provide certain specified PCI services, as specified on an Order or Statement of Work.

To ensure high availability of Acumera’s managed network services, Acumera will provide 24 x 7 x 365 AcuVigil™ dashboard and trouble ticket system access (except during occasional maintenance windows) and telephone support at 512-687-7401 via Acumera’s Support Center as defined in Acumera’s Tiered Support Policy, available upon request from Acumera. In addition, Acumera will coordinate on-going field service requirements with Client or outside contractors, as specified on an Order or Statement of Work.

Section 3. Client Responsibilities. Client agrees to purchase Equipment and Services by completing and executing an Order or Statement of Work, each sufficient to enable delivery of Equipment and Services. Orders placed will be for specific SKUs with their associated description of

Equipment or Services ordered. Once an Order is placed, Client agrees to pay for the ordered Service for the effective term of the Agreement.

Client is responsible for specifying security policies. Client must provide all information needed to implement specified security policies: (e.g. host communication flows, hostnames/IP addresses, ports(s) and protocol(s)). Four default AMG security policies are available for Client use. Acumera can assist to support security policy creation for additional network engineering time and fees.

Prior to and after installation of Equipment, Client shall coordinate with its Sites to provide:

- Space in the designated Site as is necessary to install, operate and maintain the equipment necessary for Acumera to fulfill its obligations under this Agreement;
- Means for ingress and egress to this space by Acumera or its designated contract installers; and
- Sufficient electrical power and access to power outlets for a Client or Acumera-provided uninterruptible power supply as necessary for Acumera to power its equipment in order to perform its obligations under this Agreement.

Section 4. Fees and Payment Terms.

(a) General

Acumera agrees to invoice and Client agrees to pay Acumera for Equipment and Services as set forth in executed Orders or Statements of Work within 15 days via ACH initiated by Acumera.. The ACH Authorization Agreement for Direct Deposits is attached as Exhibit A. If payment is not received within 60 days of the invoice date, Acumera reserves the right to discontinue Services. Acumera agrees to provide notice prior to cancellation to the following:

Monterey County Administrative Office
Attn: Lavonne Chin
168 W. Alisal St., 3rd Floor
Salinas, CA 93901
chinl@co.monterey.ca.us
831-759-7214

(b) Additional Payment Terms

1. Recurring Services are billed in advance, on or about the 1st of each month.
2. Service billing for newly ordered Sites and Services commences upon Site Order. Partial month Recurring Services charges are billed pro-rata on the next month's invoice.
3. Services will be billed for lab Sites.
4. Equipment, and associated shipping and handling fees may be billed on a weekly basis. Acumera offers flat rate shipping for ground or expedited shipments, and these fees are detailed in the Acumera Price List, updated regularly and available upon request.
5. Services comprising project management may be billed in the week after the project are completed for each Site where project management Services are supplied.
6. Upon written Client request, Acumera may authorize the return for refund of Equipment in unopened, original packaging. Such authorized returns will incur a restocking fee of 20% of the Client's price, prior to refund. Acumera reserves the right to decline such requests based upon such criteria as Equipment age or condition.
7. Equipment and Services may be subject to federal, state, local sales and use taxes, value-added taxes, or governmental surcharges (collectively referred to as "**Sales Taxes**"), which the Client assumes full responsibility to pay. When applicable, the Client agrees to provide tax exemption and direct payment certificates satisfactory to Acumera with any

Order or Statement of Work issued under this agreement. In the absence of satisfactory certificates, Acumera may collect and remit sales taxes on behalf of the Client to certain tax jurisdictions. Client acknowledges its responsibility to timely pay all sales taxes associated with this Agreement, regardless if the sales taxes are or are not included or correctly calculated on invoices. Client agrees to reimburse Acumera for any sales taxes assessed by any tax jurisdiction associated with this Agreement. Acumera will collect and remit sales tax for certain states as specified in the Acumera Price List. The states where Acumera collects and remits sales tax may change from time to time.

Section 5. AMG Warranty and Support. Acumera warrants the AMG unit for a period of two (2) years from the date such Equipment is installed and activated against defects in materials, workmanship and operation. For Equipment support, the Client will call Acumera's Support Center for troubleshooting and potential replacement. If Equipment requires replacement, Acumera will provide a shipping return label to facilitate the return of the original Equipment. If Acumera does not receive original warranted Equipment within 30 days, Acumera reserves the right to bill for the replacement Equipment. The AMG warranty shall not apply to issues or problems resulting from Client negligence, abuse or misuse, or fire, water, acts of God or other catastrophic events. Acumera will pass through third party equipment warranties for third party equipment that Acumera procures and resells to support the Client's network installation.

Section 6. Term and Termination. This Agreement will remain in force for a period of three(3) years from the Effective Date (the "Initial Term"). The parties may re-negotiate pricing following the Initial Term, or as a result of increase in the rate of inflation, or increase in service delivery costs. To terminate Acumera Services at any Site or Sites, Client must open a ticket via the AcuVigil™ dashboard or send an email with Site specifics to cancelsite@acumera.net. A Site or Sites that are terminated may incur a broadband early termination fee and equipment return fees. A Site or Sites that are closed by Client incur no Acumera termination charge. The Client owes Acumera Services fees through the end of the Initial Term or Renewal Term for all other Site terminations. Any notices should be provided to Client or Acumera at their aforementioned address.

Section 7. AcuVigil™ Dashboard. In order to enable Client access and network security, Acumera will create an administrative user account for Client's designated AcuVigil administrator. This administrator will add, change, and delete additional Client user accounts. The AcuVigil dashboard enables continuous monitoring of the Client network and AMGs. Client acknowledges and agrees that the operation of Acumera's Services and network access to each Site is dependent on the Site's broadband providers, sufficient electrical power and installed network cabling. Acumera will keep Client and its designated representatives informed of the status of any outage and Acumera's efforts to resolve these outages where resolution is Acumera's responsibility under an Order or Statement of Work. Client is responsible for support of Client owned and operated Site systems and devices.

Section 8. Ownership, Access, License, Intellectual Property. Acumera and Client agree that Client will purchase and own the AMG device at the Sites, subject in all respects to Acumera's intellectual property rights specified below, and that Acumera is operating and managing the AMG as a service to Client. Acumera and Client further agree that Acumera may have and maintain connections to the Client network and AMG as necessary to fulfill its obligations under this Agreement. Acumera shall make commercially reasonable efforts to maintain the AMG and upgrade its software so that use of the AMG remains competitive as compared to substantially similar equipment generally available in the marketplace. Client shall provide Acumera access to the Sites as is necessary to perform its maintenance and upgrade services.

All intellectual property rights, including copyrights, patents, patent disclosures and inventions

(whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product and other materials that are delivered to Client under this Agreement or prepared by or on behalf of Acumera for the benefit of Client under this Agreement, or any subsequent Statement of Work agreed to by Acumera and Client that does not create a work for hire (collectively, the "**Deliverables**") shall be owned by Acumera. In addition, as between Acumera and Client, Client shall own the AMG hardware and Acumera shall own any and all Intellectual Property Rights in the AMG software. Acumera hereby grants Client a license to use all provided AMG software Intellectual Property Rights on a non-exclusive, worldwide, non-transferable (except as permitted in this Agreement), non-sublicenseable, royalty-free and perpetual basis to the extent necessary to enable Client to make reasonable use of the Deliverables during the term of this Agreement, as long as the fees payable under this Agreement that relate to Acumera's Equipment and Services are current.

Section 9. Acumera shall defend, indemnify, and hold harmless Client and its officers, directors, employees, agents and Affiliates from and against any claim, action, liability, loss, damage, cost, or expense, including, without limitation, attorneys' fees, experts' fees and court costs, arising out of any claim by a third party that Client's authorized use of the Software and/or Services infringes that third party's intellectual property rights. Client shall: (i) give Acumera prompt written notice of such claim; and (ii) allow Acumera to control, and fully cooperate with Acumera (at Acumera's sole expense) in, the defense and all related negotiations. Acumera shall not enter into any stipulated judgment or settlement that purports to bind Client without Client's express written authorization, which shall not be unreasonably withheld or delayed.

Section 10: EXPRESS DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH HEREIN, ACUMERA MAKES NO WARRANTIES WHATSOEVER, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE EQUIPMENT, SOFTWARE AND SERVICES. ACUMERA SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ACUMERA DOES NOT WARRANT THAT THE USE AND OPERATION OF ITS EQUIPMENT OR NETWORK SERVICES DO NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES. HOWEVER, TO THE BEST OF ACUMERA'S KNOWLEDGE, THE USE AND OPERATION OF ITS EQUIPMENT OR NETWORK SERVICES AS PROVIDED DO NOT INFRINGE ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES AND NO CLAIM OF INFRINGEMENT HAS BEEN MADE OR THREATENED AGAINST ACUMERA.

Section 10. LIMITATION OF LIABILITY. THE WARRANTIES SET FORTH IN THIS SECTION ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY ACUMERA. EXCEPT FOR DAMAGES ARISING FROM GROSS NEGLIGENCE AND WILLFUL MISCONDUCT (THE "CARVEOUTS"), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY STATEMENT OR WORK (INCLUDING LOSS OF PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), HOWEVER IT ARISES, WHETHER FOR BREACH OF THIS AGREEMENT OR ANY STATEMENT OR WORK, INCLUDING BREACH OF WARRANTY, OR IN TORT. EXCEPT FOR THE CARVEOUTS, THE AGGREGATED LIABILITY OF EACH PARTY SHALL IN NO EVENT EXCEED THE FEES THAT WERE PAID OR WHICH ARE PAYABLE TO ACUMERA DURING THE TWELVE (12) MONTHS PRECEDING THE DATE THE INITIAL CLAIM WAS

ASSERTED.

Section 11. Confidentiality. The parties agree that the functions and operations of the Client network and operations and Acumera's network and services, facts regarding the equipment and materials related thereto, the manner of operation thereof, and the terms of this Agreement, all constitute the proprietary and confidential information of each party. The parties further agree that no public announcement of this agreement or any activity performed under this agreement may be made other than by mutual written consent. Acumera may use the Client's logo in marketing materials, subject to the Client's brand guidelines.

Section 12. Conflict Resolution. In the event of a dispute, claim or controversy, whether arising under this Agreement or otherwise, the parties herein agree to meet and confer to resolve such dispute, claim or controversy. In the event the parties cannot resolve their dispute, the parties agree to attend a non-binding mediation before a mutually agreed upon mediator. Notwithstanding the provisions of this Section 12, either party may seek an injunction or other equitable remedies from a court of competent jurisdiction to enforce its intellectual property and confidentiality rights under this Agreement.

Section 13. GENERAL PROVISIONS.

(c) Amendment; Modification of Terms. This Agreement may not be amended or modified, except in a writing signed by an authorized representative of each of Client and Acumera.

(d) Force Majeure. Nonperformance by either party shall be excused to the extent that performance is prevented or delayed by any cause reasonably beyond the control of the non-performing party, including, but not limited to, fire, flood, war, embargo, strike, riot or the intervention of any governmental authority.

(e) Headings and References. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs, exhibits and schedules shall refer to the appropriate section, paragraph, exhibit or schedule in or to this Agreement, all of which are incorporated herein by this reference.

(f) Severability. If a court of final jurisdiction shall declare any of the provisions of this Agreement void, such provisions shall be severable and independent from the other provisions of this Agreement, and the validity of the other provisions and of the entire agreement shall not be affected thereby.

(g) No Waiver. The waiver by either party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach of this Agreement or any right or remedy available as a result of such breach.

(h) Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, either party, with thirty (30) days' prior written notice to the other party and without the other party's consent, may assign this Agreement to a subsidiary or affiliated company or in connection with a merger or sale of substantially all of the assigning party's assets or stock.

(i) Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one. Any signature delivered by facsimile shall be treated for all purposes as an original.

(j) Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties' respective successors and assigns.

(k) Governing Law. The relationship of the parties and all claims arising out of or related to that relationship, including, but not limited to, the construction and interpretation of any written agreements, including this Agreement, shall be governed by the laws of the State of California without regard to conflicts of law principles.

(l) Entire Agreement. This Agreement, including and together with any related Orders and Statements of Work, and all exhibits hereto constitute the entire agreement between the parties and any representation, promise or condition, whether written or oral, not incorporated herein shall not be binding upon either party. This Agreement supersedes all previous agreements between the parties with respect to the express subject matters dealt with herein.

Agreed to this 10th day of December, 2020.

COMPANY NAME: COUNTY OF MONTEREY

ACUMERA, INC.

By: _____

By: _____

Print Name: Michael R. Derr

Bill Morrow, Chief Executive Officer

Title: Contracts & Purchasing Officer

By: _____

Address for Notices:

Address for Notices:

Contact: Lavonne Chin

Legal

Company: Monterey County Administrative Office

Acumera, Inc.

Street Address: 168 W. Alisal St., 3rd Floor

3307 Northland Drive, Suite 170

City, State, Zip: Salinas, CA 93901

Austin, TX 78731

To set up billing relationship, please provide:

Billing Contact Name: Lavonne Chin

Billing Contact Email: chinl@co.monterey.ca.us

Billing Contact Telephone: 831-759-7214