

## AVSS/NET SOFTWARE AGREEMENT

This AVSS/NET Software Agreement (hereinafter the "Agreement"), effective the 1st day of January 2014 (hereinafter the "Effective Date"), is made by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California public corporation, (hereinafter the "REGENTS") on behalf of the Institute for Social, Behavioral, and Economic Research at its Santa Barbara campus and THE COUNTY OF MONTEREY ON BEHALF OF THE MONTEREY COUNTY HEALTH DEPARTMENT having a principal place of business at 1270 Natividad Rd., Salinas, CA 93906-3198 (hereinafter the "LICENSEE").

### WITNESSETH

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

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

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

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

#### 1. GRANT OF LICENSE

1.1 The REGENTS grant and the LICENSEE accepts, upon the terms and conditions hereinafter set forth, a nonexclusive and nontransferable license to use the computer program known as AVSS/NET (hereinafter the "PROGRAM").

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

#### 2. PROGRAM CONDITION

2.1 The REGENTS are providing the PROGRAM at the LICENSEE's request on an "as is and with all defects" basis. The LICENSEE agrees to accept the PROGRAM "as is and with all defects."

#### 3. ASSIGNMENT

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

#### 4. DELIVERY OF SOFTWARE

4.1 Upon the Effective Date of this Agreement, the REGENTS agree to make the PROGRAM available to the LICENSEE by means of the Internet.

4.2 The LICENSEE acknowledges and agrees that the REGENTS are not obligated to provide maintenance services, installation services, debugging services, improvements, or support services of any kind and that the REGENTS accept no liability for any damage to the PROGRAM or its backup copies, except as otherwise provided in this Agreement.

## 5. INFRINGEMENT PROTECTION

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

## 6. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

6.1 The REGENTS represent and warrant that the REGENTS own the PROGRAM and that the REGENTS have the right to grant the license provided herein. Except as provided in the foregoing express warranty, the REGENTS make no warranties, either express or implied, as to any matter whatsoever including, but not limited to, the condition of the PROGRAM and warranties of merchantability or fitness for a particular purpose. The LICENSEE acknowledges and agrees that, except as otherwise provided in this Article 6.1, the PROGRAM is provided without warranties of any kind.

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

## 7. TITLE

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

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

## 8. USE RESTRICTIONS

8.1 The LICENSEE agrees that the LICENSEE will protect the PROGRAM from all unauthorized use.

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

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

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

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

## 9. TERM AND TERMINATION

9.1 This Agreement shall become effective on the Effective Date and shall remain in effect for [Eighteen (18) months] from the Effective Date.

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

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

## 10. FEES

10.1 The LICENSEE agrees to pay the REGENTS for the use of the PROGRAM according to the following fee schedule:

- Two Hundred Twenty Five and 00/100 Dollars (\$225.00) for each workstation connected by means of the Internet to the PROGRAM for a total fee of One Thousand Five Hundred Seventy Five and 00/100 Dollars (\$1,575.00). This is for seven workstations for the period of 18 months.

10.2 The fee schedule shall remain in effect as a one-time fee per user device during the initial [Eighteen (18) months] term of this Agreement. The LICENSEE's use of the PROGRAM during each subsequent (1) year [twelve (12) month] term is conditioned on the LICENSEE's payment of the additional applicable fees for that term.

10.3 Any increase in the fees charged under any renewal of this Agreement shall not exceed the per workstation fee charged under this Agreement plus an additional adjustment obtained by multiplying this per workstation fee by the percentage by which the then current Consumer Price Index exceeds the Consumer Price Index on the Effective Date of this Agreement. The Consumer Price Index used to calculate this adjustment will be the latest available published Consumer Price Index on the effective date of the subsequent agreement.

## 11. EFFECT OF TERMINATION

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

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

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

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

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

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

**13. SEVERABILITY**

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

**14. NON-WAIVER**

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

**15. NO THIRD PARTY RIGHTS**

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

**16. NOTICE**

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

To the LICENSEE:           The County of Monterey on behalf of the Monterey County Health Department  
1270 Natividad Rd.  
Salinas, CA 93906-3198

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

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With a copy to:           Contracts and Property  
University of California  
3203 SAASB  
Santa Barbara, CA 93106-2095

**17. HEADINGS AND CONSTRUCTION**

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

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

**18. EQUITABLE RELIEF**

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

**19. ATTORNEYS' FEES**

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

**20. INSURANCE**

20.1 Both parties shall, at their sole cost and expense, carry and maintain for the duration of the Agreement, policies of insurance or self-insurance that will cover claims or injuries to persons or damages to property, which may arise from their activities in connection with this Agreement.

**21. ENTIRE AGREEMENT AND MODIFICATION**

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

21.2 The use of the PROGRAM by the LICENSEE indicates the LICENSEE's acceptance of the terms and conditions of this Agreement.

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

22. SIGNATURES AND COUNTERPARTS

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

22.2 This Agreement may be executed in two (2) counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. If this Agreement is executed in counterparts, no signatory hereto shall be bound by this Agreement until all parties named below have executed a counterpart of this Agreement.

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

THE COUNTY OF MONTEREY ON  
BEHALF OF THE MONTEREY  
COUNTY HEALTH DEPARTMENT

THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Department Approval:

\_\_\_\_\_

Name: Stuart Sweeney


Reviewed as to fiscal provisions



Auditor-Controller  
County of Monterey 5/22/14

Title: Director, Institute for Social, Behavioral, and  
Economic Research

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY  
  
DEPUTY COUNTY COUNSEL  
COUNTY OF MONTEREY