

**COUNTY OF MONTEREY STANDARD AGREEMENT  
(MORE THAN \$100,000)**

This **Agreement** is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:  
NEOGOV \_\_\_\_\_ ,  
(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** Learn (LE) subscription and NEOGOV Training, Implementation and Integrations subscriptions.

**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 shall not exceed the sum of \$ 185,000.00 .

**3.0 TERM OF AGREEMENT.**

- 3.01 The term of this Agreement is from May 1, 2019 to March 31, 2022 , 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**    **Addendum to Standard Agreement**

## 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 in this paragraph. 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, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

## 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 \$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: 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.)*

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:

<b>FOR COUNTY:</b>	<b>FOR CONTRACTOR:</b>
<hr/> Paresh Patel, Applications Division Manager <hr/> Name and Title 1590 Moffett Street Salinas, CA 93901 <hr/> Address <hr/> (831) 759-6930 <hr/> Phone	<hr/> John Closs, Controller <hr/> Name and Title 300 Continental Blvd., Suite 565 El Segundo, CA 90245 <hr/> Address <hr/> (310) 426-6304 <hr/> 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: \_\_\_\_\_

By: \_\_\_\_\_  
Board of Supervisors (if applicable)

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

Approved as to Form<sup>1</sup>

By: \_\_\_\_\_  
County Counsel

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

Approved as to Fiscal Provisions<sup>2</sup>

By: \_\_\_\_\_  
Auditor/Controller

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

Approved as to Liability Provisions<sup>3</sup>

By: \_\_\_\_\_  
Risk Management

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

NEOGOV

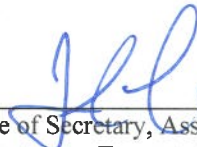
Contractor's Business Name\*

By: \_\_\_\_\_  


(Signature of Chair, President, or Vice-President)\*

Shane Evangelist CEO  
Name and Title

Date: 3/27/19

By: \_\_\_\_\_  
  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)\*

John Cross, Controller  
Name and Title

Date: 3/27/19

County Board of Supervisors' Agreement Number: \_\_\_\_\_, approved on (date): \_\_\_\_\_

\*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.

<sup>1</sup>Approval by County Counsel is required

<sup>2</sup>Approval by Auditor-Controller is required

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

**EXHIBIT A TO COUNTY OF MONTEREY STANDARD AGREEMENT WITH NEOGOV**

**SCOPE OF WORK AND ORDER FORM**

**Customer & Customer Address:**

**Bill To (if different than Customer Address):**

County of Monterey Information Technology Department 1590 Moffett Street Salinas, CA 93901	
<b>Quote Date:</b> 2/8/19	<b>Initial Term:</b> <b><u>3 years from date of contract execution</u></b>
<b>Quote Valid To:</b> 6/30/19	<b>Billing Frequency:</b> Annual

Annual Recurring Fees – Note: Discounted pricing below is provided if Learn is purchased by 6/30/19.

Line	Description <sup>1</sup>	Year 1 Annual Fee	Year 2 Annual Fee	Year 3 Annual Fee <sup>2</sup>
1.	Learn (LE) Subscription for up to 4,500 employees	\$55,000.00	\$60,000.00	\$65,000.00
2.	Integrations Subscription: - Employee API Integration between Learn and Customer's HRIS - Single Sign On - Coming Soon – Flat File Integration of Completed Courses	Waived	Waived	Waived
<b>Sub Total:</b>		<b>\$55,000.00</b>	<b>\$60,000.00</b>	<b>\$65,000.00</b>

Non-Recurring Fees – Note: Discounted pricing below is provided if Learn is purchased by 6/30/19.

Line	Description <sup>1</sup>	Non-Recurring Fees
NEOGOV Services		
3.	Learn (LE) Setup and Implementation	\$7,500.00
	Training	\$3,000.00
		\$5,000.00
		\$2,000.00
4.	Integration Setup and Implementation	Waived
<b>Sub Total:</b>		<b>\$5,000.00</b>
<b>Order Total Due Now:</b>		<b>\$60,000.00</b>

<sup>1</sup>Items designated as Not Applicable, N/A or NA on the Order Form are not included in the Services. Customer may request a quote for these items at their discretion throughout the Term.

<sup>2</sup> The annual recurring Fees for a Renewal Term are subject to increase pursuant to the Agreement.

1. Description of Services.

- (a) Learn (LE). Learn (LE) is designed to provide a seamless experience for organizations to train and develop employees. LE addresses the critical need of organizations to ensure completion of required trainings. By tracking both in-person and online training in one central place, organizations can improve employee performance and safety and reduce risk and liability claims. A subscription to Learn (LE) will including the following:
- Create, schedule, enroll learners in, and track completion of online and in-person, classroom trainings
  - Ability to upload SCORM course content files

- Certificates after course completion
- Learner transcripts & class rosters
- Course catalog with configurable categories for learners to browse
- Centralized dashboard that displays all required and elective trainings (online and in-person) that employees are enrolled in
- Hundreds of ‘off-the-shelf’ online courses
- Learn Setup and Implementation will include the following activities:
  - NEOGOV will work with Customer staff to understand the existing processes, as well as other workforce business practices, where applicable.
  - NEOGOV will establish Customer’s production environment.
  - All NEOGOV products will be implemented off-site.

(b) NEOGOV Training.

- NEOGOV training is available online (web-based, pre-built, content) unless otherwise proposed as included in the Order Form.
- NEOGOV’s pre-built, online training consists of a series of tutorials to introduce the standard features and functions and may be used as reference material by the staff conducting day-to-day activities.

(c) NEOGOV Implementation. The following activities will be conducted as a part of the Services:

- Customer to review the project kick-off tutorial for information on the project timeline, deliverables, and establish project expectations.
- NEOGOV will work with Customer staff to understand the existing processes as well as other workforce business practices where applicable.
- NEOGOV will establish Customer’s production environment.
- All NEOGOV products will be implemented off-site. Customer may integrate NEOGOV solutions with other systems using standard NEOGOV integration tools, export data from Insight Enterprise (IN) using web services and/or flat files to integrate with other systems, but the specifications and scope must be defined prior to agreeing to a timeline or price.
- Following NEOGOV product rollout, NEOGOV and Customer will confirm the rollout was completed successfully and that any production questions are addressed promptly.

(d) NEOGOV Integrations. NEOGOV offers Standard Integrations as well as platform APIs for third party system integration(s). A subscription to Standard Integrations includes the following:

- Conduct project scope, review integration plan, discuss timeline, and set schedule for required meetings
- Annual maintenance by NEOGOV
- Employee import and export
- Department division position import and export
- Note: NEOGOV APIs are to be configured directly by Customer staff using NEOGOV documentation. If required, professional services may be included by NEOGOV to help define and validate scope, business requirements, timelines, and associated costs (if applicable).

e) Scope of Work

Category	Item #	Requirements/Description	Will this be in the solution?
End-User Interface	1	● Product shall be able to accommodate multiple learning styles and shall be intuitive to use.	Yes
		● Product shall allow all users to log-in and log-out an infinite number of times.	Yes
		● Product shall provide a search engine to easily find training and reference materials by keywords, location, dates, or instructors.	Partially
		● Product shall provide users with the ability to pause a training and continue from the same place later.	Yes
		● Product shall provide users with the ability to select closed captioning for any prebuilt training with audio.	Partially

Category	Item #	Requirements/Description	Will this be in the solution?
		<ul style="list-style-type: none"> <li>Product shall have course evaluation and surveying capabilities. (Feedback, peer review, etc.)</li> </ul>	December 2020
Electronic Notifications	2	<ul style="list-style-type: none"> <li>Product shall have the ability to send mass emails or alerts to promote upcoming classes.</li> <li>Product shall notify department's LMS Coordinators and supervisors via automatic email notifications when their department's end-users are enrolled and complete mandatory trainings.</li> <li>Product shall forward automatic email reminders (pre-developed by LMS Coordinators) to end-users and supervisors for mandatory trainings.</li> <li>Product shall notify supervisors and LMS Coordinators via automatic email notifications whenever an end-user needs to complete a mandatory training at least one week prior to deadline.</li> <li>Product shall automatically generate and send a welcome email to new users once their accounts are created, with attached self-guided tutorial instructions.</li> <li>Product shall allow LMS Coordinators to develop and forward automatic email notification to their department's end-users for follow-up assessments and /or reviews at user-defined intervals after trainings.</li> <li>Product shall provide miscellaneous notifications, as determined by LMS Coordinators and supervisors, to employees.</li> </ul>	<p>December 2020</p> <p>Yes</p> <p>Partially</p> <p>Yes</p> <p>Partially</p> <p>December 2020</p> <p>Yes</p>
Reports	3	<ul style="list-style-type: none"> <li>Product shall allow LMS Coordinators to generate individual employee reports filtered by the following parameters: department, position title, supervisor, date, and hours completed within a date range.</li> <li>Product shall allow LMS Coordinators and supervisors to generate reports of training participation by training type, class and section.</li> <li>Product shall allow LMS Coordinators and supervisors to generate reports identifying end-users that have not completed training.</li> <li>Product shall generate downloadable and printable reports (i.e. Excel and PDF).</li> <li>Product shall allow LMS Coordinators and supervisors to generate reports of non-attendance in training by class and section, and by end-users and department.</li> <li>Product shall allow separation of active records from inactive records.</li> <li>Product shall have the ability to "drill down" in reports to see how individual employees answered questions on tests.</li> </ul>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>March 2020</p>
Track Courses/ Transcripts	4	<ul style="list-style-type: none"> <li>Product shall be able to track and manage end-user details.</li> <li>Product shall be able to track and manage LMS calendars.</li> <li>Product shall be able to track and manage testing and surveys.</li> <li>Product shall be able to track and manage class evaluations.</li> <li>Product shall allow end-users to track their training progress.</li> <li>Product shall be able to track employee training completion dates.</li> <li>Product shall allow LMS Coordinators and supervisors to automatically assign and track mandatory courses required of their department's end-users.</li> </ul>	<p>Yes</p> <p>Yes</p> <p>Partially</p> <p>December 2020</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

Category	Item #	Requirements/Description	Will this be in the solution?
		<ul style="list-style-type: none"> <li>• Product shall generate printable, electronic rosters (sign-in sheets) for trainings and allow upload for validation of attendance for group trainings taken outside the system.</li> <li>• Product shall allow end-users to access and print training history, training plans, and certificates.</li> <li>• Product shall allow administrators and end-users to see and print individual transcripts.</li> <li>• Product shall be able to track employee licensure by type and expiration date.</li> <li>• Product shall have the ability to track third-party training, videos, computer-based training, and other self-taught training on the end-users' transcripts.</li> <li>• Product shall allow LMS Coordinators and supervisors to assign and track mandatory trainings by job classification.</li> <li>• Product shall have the ability to track usage by non-County employees (i.e. interns, contractors, and the public) with the use of a unique identifier.</li> <li>• Product shall have the ability to track courses for LMS Coordinators, and supervisors to track training progress by department, EE, and supervisor.</li> <li>• Product shall have the ability to track no-shows, incompletes, and cancellations of training courses.</li> </ul>	<p>Partially</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Partially</p> <p>Yes</p> <p>Yes</p>
eLearning/ Classroom Trainings	5	<ul style="list-style-type: none"> <li>• Employee shall be able to self-register for trainings.</li> <li>• Product shall allow LMS Coordinators to create waitlists for existing trainings to determine demand and training dates.</li> <li>• Product shall allow LMS Coordinators to assign the frequency requirement of a class (i.e. annually, every two years, etc.).</li> <li>• Product shall allow LMS Coordinators and supervisors to add certifications to employee transcripts.</li> <li>• Product shall allow LMS Coordinators and supervisors to add continuing education requirements.</li> <li>• Product shall allow LMS Coordinators to add location information to training listings.</li> <li>• Product shall allow LMS Coordinators to add instructor information to training listings.</li> <li>• Product shall allow LMS Coordinators to create and score tests for classroom and online trainings.</li> <li>• Product shall allow LMS Coordinators to set-up training registration for certain trainings.</li> <li>• Product shall allow LMS Coordinators and supervisors to assign trainings for end-users.</li> <li>• Product shall allow end-users to upload certificates for completion of mandatory trainings.</li> <li>• Product shall allow LMS Coordinators to develop online curriculums. This includes hosting multiple trainings, evaluations, and pre/post exams.</li> <li>• Product shall have the ability to upload policies for compliance and allow end users to attest to the content and to changes to policies.</li> <li>• Product shall allow LMS Coordinators to add online evaluations.</li> </ul>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Partially</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>December 2020</p>

Category	Item #	Requirements/Description	Will this be in the solution?
		<ul style="list-style-type: none"> <li>Product shall have the ability to offer pre/post-tests for online trainings and allow employees to pass courses if they receive a passing score.</li> <li>Product shall have multiple formats for an on-line course or training unit: video, PowerPoint, PDF of document (such as a policy), interactive modules, checklists.</li> <li>Product shall allow LMS Coordinators to create, modify, and duplicate trainings.</li> <li>Product shall allow LMS Coordinators to develop pre-training and post-training work or assignment for training curriculums.</li> <li>Product shall have the ability to auto-enroll employees based upon job classification.</li> <li>Product shall have the ability for mobile sign-in at live trainings.</li> </ul>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>December 2020</p>
Multi-Level Security Settings	6	<ul style="list-style-type: none"> <li>LMS Coordinators shall have the ability to modify security levels and assign users to appropriate security settings.</li> <li>Employees shall have access limited to their own training records.</li> <li>Supervisors shall be able to look up training records of employees they supervise.</li> <li>Department Heads, Managers, and Human Resources Personnel shall be able to access the training information of their division or department employees.</li> <li>LMS Coordinators shall be able to access to all training records.</li> </ul>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Course Features	7	<ul style="list-style-type: none"> <li>The product shall have a searchable event catalog that can be organized and categorized by LMS Coordinators (i.e. title, keyword, category, delivery type, calendar view).</li> <li>Product shall have virtual classrooms</li> <li>Product shall have the ability to provide video libraries.</li> <li>Product shall have the ability to provide pre-built training libraries.</li> <li>Product shall allow supervisors and employees to develop individual training plans for employees.</li> <li>Product shall allow employees to access and view course information that relates to specific job competencies and view career path learning opportunities.</li> <li>Product shall provide electronic manuals.</li> </ul>	<p>Yes</p> <p>December 2020</p> <p>Partially</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Customer Support	8	<ul style="list-style-type: none"> <li>Vendor shall deliver customer service via phone or email to LMS Coordinators during business hours (Monday-Friday from 7:00 a.m.-6:00pm Pacific Time)</li> <li>Product shall provide a 24/7 on-line video tutorials for employees and LMS Coordinators.</li> <li>Product shall provide formal training to LMS Coordinators during the initial phase of implementation.</li> <li>Product shall provide a "hands-on" learning environment for LMS Coordinators and employees.</li> </ul>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Technical	9	<ul style="list-style-type: none"> <li>Product shall be compliant with all eLearning and Learning Management Systems (LMS) standards (i.e. SCORM, AICC)</li> <li>The product shall be a configurable system capable interfacing with HR-Advantage (CGI). Example of fields includes: EE, EEID, department, unit, supervisor, and job title.</li> </ul>	<p>Partially</p> <p>Yes</p>

Category	Item #	Requirements/Description	Will this be in the solution?
		<ul style="list-style-type: none"> <li>Provision single sign-on for end-users/ ADFS (Active Directory Federation Services)</li> <li>Product shall be browser-based and compatible with the following: Internet Explorer 11, Google Chrome, Mozilla Firefox, Safari.</li> <li>Product shall automatically generate new employee's profile within 24 hrs. of hire.</li> <li>Product shall have an ability to see how individual employees answered questions on tests.</li> <li>Allow users to customize and save views (columns).</li> <li>Product shall allow administrators to automatically switch external and temp. employees into permanent County employee on the system without hindering their training and certification history.</li> </ul>	<p>Yes</p> <p>Partially</p> <p>Yes</p> <p>March 2020</p> <p>December 2019</p> <p>Partially</p>

2. Order Form Terms.

Notwithstanding Paragraph 6.04 of the Agreement, the following Payment Terms apply:

- (a) Payment Terms. Customer will pay all Fees set forth in the Order Form or SOW in accordance with the following: (i) NEOGOV Fees are invoiced annually in advance and NEOGOV may invoice all Fees due under this Agreement in one invoice for each invoice period; (ii) invoices shall be delivered to the stated "Bill To" party on the Order Form (iii) Customer shall pay NEOGOV the applicable fees (collectively, the "**Fees**") within the applicable time periods as follows:
- (A) Customer shall pay all annual recurring Fees (including for any NEOGOV Integrations) for the Initial Term within thirty (30) days of the date of Customer's execution and delivery of this Order Form;
  - (B) Customer shall pay all training Fees within thirty (30) days of the date of Customer's execution and delivery of this this Order Form;
  - (C) Customer shall pay all setup and implementation Fees within thirty (30) days of the date of Customer's execution and delivery of this this Order Form;
  - (D) any other Fees owed by Customer to NEOGOV pursuant to this Agreement shall be paid by Customer within thirty (30) days of Customer's receipt of NEOGOV's invoice therefor;
  - (E) Customer shall pay all annual recurring Fees (including for any NEOGOV Integrations) for any Renewal Term within thirty (30) days of Customer's receipt of NEOGOV's invoice therefor.

NEOGOV may, in its sole discretion, increase the Fees for any Renewal Term. NEOGOV shall provide Customer with written notice of any such Fee increase at least sixty (60) days prior to the commencement of such Renewal Term. Upon execution by Customer and NEOGOV, each Order Form and/or SOW is non-cancellable and non-refundable except as provided in this Agreement, and the Term as set forth in the Order Form for NEOGOV subscriptions is a continuous and non-divisible commitment for the full duration of the Term regardless of any invoice schedule.

- (b) Online Services Agreement. This Scope of Work and Order Form is an attachment to and part of the County of Monterey Standard Agreement (the "Agreement") by and between NEOGOV and Customer.
- (c) Effectiveness. Neither Customer nor NEOGOV will be bound by this Order Form and the County of Monterey Standard Agreement until the County of Monterey Standard Agreement and this Order Form have been signed by authorized representatives of both parties.
- (d) Modifications. This Order Form and the County of Monterey Standard Agreement may not be modified or amended except through a written instrument signed by the party to be bound.



IN WITNESS WHEREOF, the parties have caused this Order Form to be executed by their respective duly authorized officers as of the date set forth below.

<b>Customer:</b>	<u>NEOGOVTM: GovernmentJobs.com, Inc.</u>
Signature: _____	Signature: <u>[Signature]</u>
Print Name: _____	Print Name: <u>John Closs</u>
Title: _____	Title: <u>Controller</u>
Date: _____	Date: <u>3/27/19</u>

Exhibit B to County of Monterey Standard Agreement with NeoGov

Addendum

The parties agree that the County of Monterey Standard Agreement between them shall be changed as follows:

Section 3.02 is changed to provide that County will not be entitled to a refund of previously paid license fees in the event it terminates for convenience.

Section 7.01 is changed to add that County will not be entitled to a refund of previously paid license fees in the event it terminates for convenience.

Section 10.05 is removed.

Section 15.06 is changed to remove the following provision: “None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County.”

Section 15.18 is changed to add the following language:

Section 15.18.A Cloud License. “Cloud Services” means the proprietary Contractor web-based products and services that may be set forth on an Order and subsequently made available by Contractor, and associated offline components as described in the Service Specifications made available to County by Contractor in connection with the provision of Cloud Services. Subject to and conditioned on County's and its Authorized Users' compliance with the terms and conditions of this Agreement, Contractor hereby grants to County a limited, non-exclusive, non-transferable, and non-sublicensable license to (a) access and use, and to permit Authorized Users to access and use, the Cloud Services specified in the Order solely for County’s internal purposes; (b) generate, print, copy, upload, download, store and otherwise process all County Data as may result from any access to or use of the Cloud Services; and (c) train Authorized Users in uses of the Cloud Services permitted hereunder. “Authorized Users” means (i) County employees, and (ii) County agents, contractors, consultants, and their respective employees, all of which are pre-approved by Contractor.

Section 15.18.B Delivery and License Term. Contractor delivers the Cloud Services by providing County with online access. When County accesses Contractor Cloud Services, it accepts it for use in accordance with this Agreement. Unless otherwise specified in an applicable Ordering Document, Cloud Service license(s) shall commence on April 1, 2019 and shall remain in effect through March 31, 2022, unless terminated earlier in accordance with this Agreement (the “Initial Term”). Thereafter, Cloud Service license(s) shall automatically renew for successive twelve (12) month terms (each a “Renewal Term” and together with the Initial Term, collectively, the “Term”) unless a party delivers to the other party, at least thirty (30) days prior to the expiration of the Initial Term or the applicable Renewal Term, written notice of such party’s intention to not renew this Agreement, or unless terminated earlier in accordance with this Agreement. Contractor shall provide County access to the Cloud Services within 14 days following April 1, 2019 unless otherwise agreed.

Section 15.18.C Content License. Should County purchase access to Cloud Services containing audio-visual content (“Licensed Content”), Contractor grants to County a non-exclusive, non-transferable, and non-sublicensable license, during the applicable Term, for Authorized Users to access and view the Licensed Content. County shall not permit the Licensed Content to be, or appear to be, reproduced, performed, displayed, or distributed on, as part of or in connection with any website or other online area other than the Contractor Cloud Service. County shall not edit, alter, modify, combine with other content, or create any derivative works of the Licensed Content.

Section 15.18.D Program Documentation. Program Documentation shall mean all user guides, training and implementation material, and Service descriptions provided by Contractor to County in connection with the Services provided under this Agreement. Contractor hereby grants to County a non-exclusive, non-sublicensable, non-transferable license to use the Program Documentation during the Term solely for County's internal business purposes in connection with its use of the Services provided under this Agreement.

Section 15.18.E Training Materials. Primary training of Contractor Services is conducted by self-review of online materials. Contractor’s pre-built, online training, consists of a series of tutorials to introduce the standard features and functions (the “Training Materials”). The Training Materials may be used as reference material by County Personnel conducting day-to-day activities.

Section 15.18.F Implementation. For Services requiring implementation, Contractor implementation supplements the Training Materials and is conducted off-site, unless otherwise agreed in the Ordering Document. Contractor personnel will provide dedicated consultation on best practices for setting up the Services, answer County questions during the implementation period, and ensure Personnel grasp the system.

Section 15.18.G Modifications, Updates, and Upgrades. Contractor may in its sole discretion, periodically modify, Update, and Upgrade the features, components and functionality of the Services during the Term. “Update” means any update, bug fix, patch or correction of the Services or underlying Contractor software that Contractor makes generally available to its customers of the same module, excluding Upgrades. Updates are automatic and available upon County’s next login to the Services following an Update at no additional cost to County. “Upgrade” means any update of the Services or underlying Contractor software such as platform updates, and major product enhancements and/or new features that Contractor makes commercially available. Contractor shall have no obligation to provide Upgrades to customers and retains the right to offer Upgrades free of cost or on a per customer basis at additional cost. Contractor shall have no liability for, or any obligations to, investments in, or modifications to County’s hardware, systems or other software which may be necessary to use or access the Services due to a modification, Update, or Upgrade of the Services.

Section 15.18.H Contractor Intellectual Property. Contractor shall exclusively own all right, title and interest in and to all pre-existing and future intellectual property developed or delivered by Contractor including all Services, products, systems, software (including any source code or object code) or Service Specifications related thereto, Updates or Upgrades, trademarks, service marks, logos and other distinctive brand features of Contractor and all proprietary rights embodied therein

(collectively, the “Contractor Intellectual Property”). This Agreement does not convey or transfer title or ownership of the Contractor Intellectual Property to County or any of its users. All rights not expressly granted herein are reserved by Contractor. Other than recommendation use or as required by law, all use of Contractor Trademarks must be pre-approved by Contractor prior to use. Trademarks shall include any word, name, symbol, color, designation or device or any combination thereof that functions as a source identifier, including any trademark, trade dress, service mark, trade name, logo, design mark or domain name, whether or not registered.

Section 15.18.I No Other Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS WARRANTY SECTION, THE SERVICES ARE PROVIDED ON AN “AS IS” BASIS, AND CUSTOMER’S USE OF THE SERVICES IS AT ITS OWN RISK. Contractor DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. Contractor DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.

Section 15.18.J. Disclaimer of Actions Caused by and/or Under the Control of Third Parties. Contractor DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE Contractor SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER’S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH Contractor WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, Contractor CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, Contractor DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

Section 15.18.K Waiver. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY OTHER PERSON OR ENTITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CUSTOMER’S USE OR, OR INABILITY TO USE, THE SERVICES, UNDER ANY CIRCUMSTANCE, CAUSE OF ACTION OR THEORY OF LIABILITY, OR DUE TO ANY EVENT WHATSOEVER, FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, LOSS OF USE, LOSS OF GOODWILL OR BUSINESS STOPPAGE, EVEN IF A PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

Section 15.18.L Limitation. WITHOUT LIMITATION OF THE ABOVE, EXCEPT FOR DAMAGES ARISING OUT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR

ANY OTHER LIABILITY WHICH CANNOT BE LAWFULLY EXCLUDED OR LIMITED, THE TOTAL LIABILITY OF EITHER PARTY FOR ANY AND ALL CLAIMS AGAINST THE OTHER PARTY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY Contractor FROM CUSTOMER DURING THE RELEVANT YEAR OF THIS AGREEMENT DURING WHICH THE CAUSE OF ACTION AROSE. THE FOREGOING LIMITATION OF LIABILITY IS CUMULATIVE WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THE PARTIES OF THE RISKS (KNOWN AND UNKNOWN) THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT AND HAS BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.