

**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:
Chmura Economics & Analytics, LLC
(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 access to CHMURA's proprietary JobsEQ® software, a workforce and economic development management tool that provides on-line access to industry, demographic trends and targeted labor market information.

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 \$ 4,995.00.

3.0 TERM OF AGREEMENT.

3.01 The term of this Agreement is from April 1, 2016 to March 31, 2017, 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 Amendment to County of Monterey Standard Agreement
- Exhibit C Auto Liability Modification
- Exhibit D WIOA General Conditions, Assurances and Certifications

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:
David Spaur, Economic Development Director	Leslie Peterson, Chief Operations Officer
Name and Title	Name and Title
Economic Development Department / WDB 730 La Guardia Street Salinas, CA 93905	Chmura Economics & Analytics, LLC 1309 East Cary Street Richmond, VA 23219
Address	Address
(831) 759-6644	(216) 357-4730
Phone	Phone

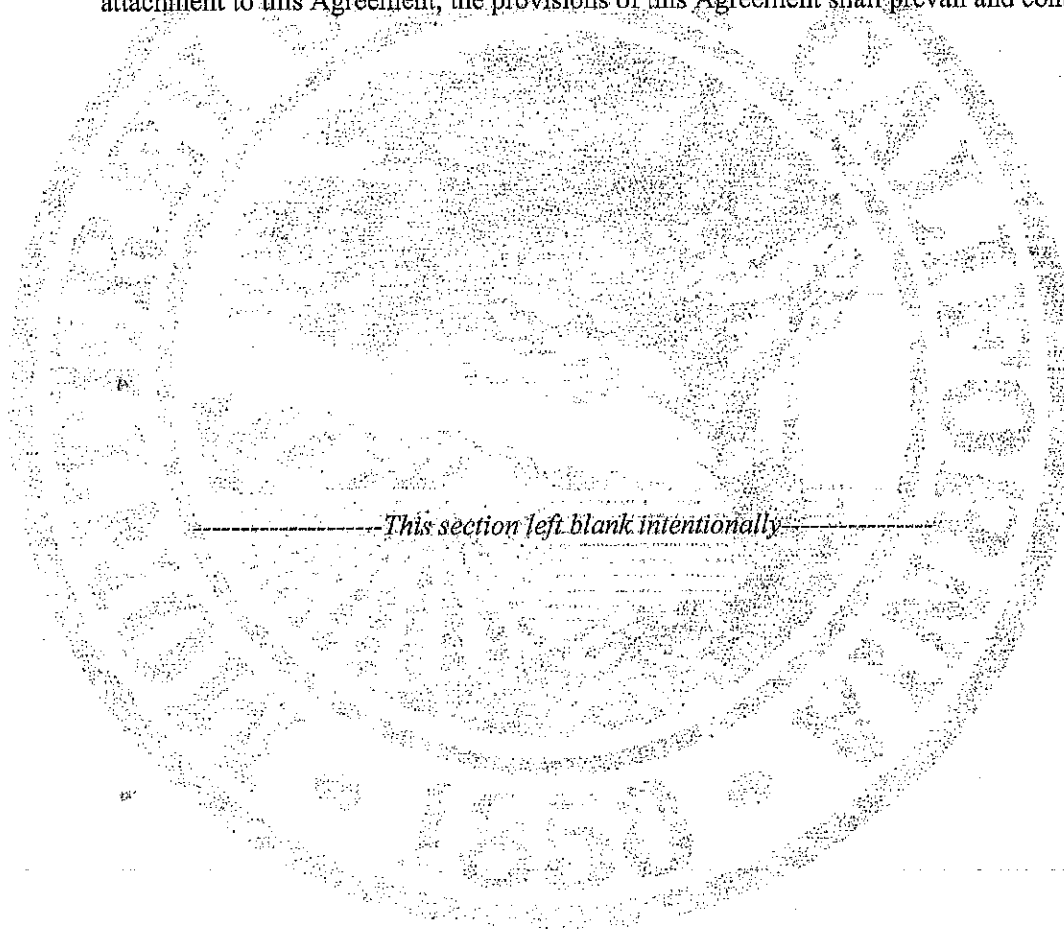
15.0 MISCELLANEOUS PROVISIONS.

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.



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

Chmura Economics & Analytics, LLC
Contractor's Business Name*

Date: _____
By: [Signature]
Department Head (if applicable)

By: [Signature]
(Signature of Chair, President, or Vice-President)*

Date: April 12, 2016

Leslie Peterson, President
Name and Title

Approved as to Form¹
By: [Signature]
County Counsel

Date: 3.23.2016

Date: April 4, 2016

By: [Signature]
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Approved as to Fiscal Provisions²
By: [Signature]
Auditor/Controller

Lauren N. SAVAGE DIRECTOR OF OPERATIONS
Name and Title

Date: [Signature]

Date: 23 March 2016

Approved as to Liability Provisions³
By: _____
Risk Management
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.

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

SCOPE OF SERVICES / PAYMENT PROVISIONS

A. SCOPE OF SERVICES

A.1 Contractor will provide a one (1) year subscription for online access to CHMURA's proprietary JobsEQ® software. This online labor market analysis tool will allow authorized users to obtain answers to comprehensive questions, including "real-time" employment statistics and trends, job forecasts, wages, educational data (projected completions, certifications and degrees), demographics, and firm-specific information that convert data into decision-ready information that can be analyzed over a span of time. This will help to monitor and forecast local and regional economic trends, as well as aid workforce professionals, employers and job seekers to make career, education, and economic development decisions to help promote stable employment and economic growth.

Contractor shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set below:

1. Provide access to JobsEQ® software to four authorized end users specified by the County.
2. Provide access to labor market data encompassing the entire State of California as well as 75 miles around Monterey County at the zip code level.
3. Provide initial training sessions on JobsEQ® software, included as part of Agreement.
4. Provide technical assistance as needed.
5. Provide access to "live chat" services online to communicate with staff on how to navigate program and access features.

B. SOFTWARE MAINTENANCE / SUPPORT

B.1 The one (1) year subscription for online access to CHMURA's proprietary JobsEQ® software entitles County to receive the following support services:

1. Technical Support: Monday-Friday, 8:00am – 5:00pm (PST), excluding weekends, Christmas Eve, New Year's Eve, and all Federal holidays.
2. Access to online-published reports.
3. Access to download data.

B.2 Additional technical support not covered under the yearly software licensing, maintenance, and support costs can be requested in writing by County. Examples of technical support not covered under the standard subscription and maintenance, support services may include, but is not exclusive to, customized reporting, additional training, and consulting services initiated by County. Contractor shall provide written proposal and estimated cost at an hourly rate of \$250. Upon written approval by County, services may commence.

C. PAYMENT PROVISIONS

County shall pay the subscription price in an amount not to exceed \$4,995.00 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Services. Contractor's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

1. The subscription price shall be paid within 30 days from the time the County receives the certified invoice.
2. There shall be no travel reimbursement allowed during this Agreement.
3. The price is based on four authorized user licenses.
4. Invoices shall be mailed to:
Monterey County Workforce Development Board
Attn: Marleen Bush
730 La Guardia Street
Salinas, CA 93905

D. ADDITIONAL PROVISIONS

1. Definitions.

(a) “Affiliate” of an entity means any entity which, directly or indirectly, controls, is controlled by or is under common control with such entity, where control means the ability to direct the affairs of an entity through ownership of voting interest, contract rights or otherwise.

(b) “Chmura Intellectual Property” means: (i) the Chmura Software; (ii) the Chmura JobsEQ[®] Platform; (iii) Data; (iv) the Documentation; (v) all Derivative Works of the foregoing; and (vi) and all patents, copyrights, trade secret rights and other intellectual property rights with respect to the foregoing (i) – (v).

(c) “Chmura JobsEQ[®] Platform” means Chmura’s proprietary, online JobsEQ[®] platform, located at www.JobsEQ.com.

(d) “Chmura Software” means Chmura’s proprietary JobsEQ[®] workforce and economic management software, modeling tools, and all datasets included therein.

(e) “Claim” shall have the meaning set forth in Section 7(a) below.

(f) “Client Indemnitees” shall have the meaning set forth in Section 7(a) below.

(g) “Client User Information” means all data in any format relating to County End Users or County employees or agents.

(h) “Confidential Information” shall have the meaning set forth in Section 9(a) below.

(i) “Data” means the proprietary labor market data available through the Chmura JobsEQ[®] Platform.

(j) “Derivative Work”, as well as “display”, “perform” and “copies,” are as defined in the U.S. Copyright Act, Title 17 of the U.S. Code, as amended.

(k) “Disclosing Party” shall have the meaning set forth in Section 9(a) below.

(l) “Documentation” means any documentation, materials, or other instructions provided to County as a licensed user of the JobsEQ[®] Platform, including without limitation the content of the “Help” feature of the JobsEQ[®] Platform.

(m) “End Users” means those individuals permitted to access the JobsEQ[®] Portal as set forth on Schedule 1.

(n) “License Fees” shall have the meaning set forth on Schedule 1.

(o) “Losses” shall have the meaning set forth in Section 7(a) below.

(p) “Receiving Party” shall have the meaning set forth in Section 9(a) below.

(q) “Term” shall mean the subscription term of this Agreement as set forth on Schedule 1.

2. License Grant and Restrictions on Use.

(a) License. Chmura grants to County, also referred to as “Client,” only for use by Client’s authorized End Users as set forth on Schedule 1, a non-exclusive, non-transferable (except as set forth herein), non-sublicensable, worldwide, license to access the Chmura JobsEQ[®] Platform and to use the Chmura Software solely for Client’s internal business purposes. Unless otherwise set forth on Schedule 1, Client may not publish or disclose to third parties Data

accessed through the Chmura JobsEQ® Platform. Client agrees that it shall include an acknowledgement of Chmura as the source for any Data extracted from the Chmura JobsEQ® Platform in any printed materials containing such Data.

(b) Restrictions on Use. Client agrees that:

(i) Client shall not rent, sell, assign, lease, or sublicense the Chmura JobsEQ® Platform or any Data, nor use the Chmura JobsEQ® Platform in a service bureau, outsourcing or other arrangement to process or analyze data on behalf of any third party.

(ii) Client shall not knowingly access, store, or transmit via the Chmura JobsEQ® Platform any material that:

(A) is unlawful, harmful, or infringing;

(B) facilitates illegal activity; or

(C) causes damage or injury to any person or property.

(iii) Client shall not violate or attempt to violate the security of Chmura's networks, including (A) accessing Data not intended for Client; (B) accessing a server or account which Client is not authorized to access; (C) attempting to scan or test the vulnerability of a system or network or to breach security or authentication measures; or (D) attempting to interfere with the availability or functionality of the Chmura JobsEQ® Platform, including by means of submitting a virus, overloading, flooding, spamming, mail bombing or crashing;

(iv) Notwithstanding any other provision herein or on any Schedule, Client shall not share the Data with any competitors or consultants competing directly with Chmura.

(v) Client shall not decompile, disassemble, reverse engineer or otherwise attempt to derive source code from the Chmura Software or the Chmura JobsEQ® Platform, in whole or in part, nor will Client use any mechanical, electronic, or other method to decompile, disassemble, or identify the source code of the Chmura Software or encourage others to do so;

(vi) Client shall cause each of Client's authorized End Users to comply with the obligations set forth in this Section.

3. Training Services; Uptime.

(a) Training. A formal, web-based initial training session is included in the Licensing Fees. Client may request additional training sessions for the authorized End Users at Chmura's hourly rate as set forth on Schedule 1. Included in the annual License Fees are quarterly specialized training sessions to review new versions of the JobsEQ® Platform and to discuss new and improved functionality thereof. The webinar users will be undisclosed to the participating users and sessions are muted to protect the privacy of all attendees.

(b) Chmura JobsEQ® Platform. The Chmura JobsEQ® Platform will go offline from time to time for maintenance. Chmura will use best efforts to provide notice (e-mail acceptable) of maintenance periods at least 24 hours in advance and to perform maintenance on weekends or after 5 p.m. CST on weekdays; provided, however, that in emergency situations such advance notice may not be possible.

(c) Internet Access. Except for maintenance as provided in subsection (c) above, and subject to the limitations below, the Chmura JobsEQ® Platform shall be available 24 hours per day/7 days per week.

(d) Client understands and agrees that occasional temporary interruptions of Internet service may occur due to acts of God, interruption in service by co-locator or other reasons beyond the reasonable control of Chmura which may interrupt or degrade the content of or delivery of information available from Chmura JobsEQ® Platform from time to time. IN THE EVENT AN INTERRUPTION OF CHMURA'S ABILITY TO PROVIDE ACCESS TO THE CHMURA JOBSEQ® PLATFORM LASTS MORE THAN FIVE (5) BUSINESS DAYS, CLIENT SHALL HAVE THE OPTION TO TERMINATE THIS AGREEMENT AND RECEIVE A PRO-RATA REFUND OF THE ANNUAL FEES PAID BY CLIENT FOR THE TERMINATED PORTION OF THE TERM.

4. Ownership. Client acknowledges and agrees that the Chmura Intellectual Property is owned exclusively by Chmura (including, without limitation, the look and feel, designs, algorithms, databases structures, methodologies, and know-how associated with the Chmura Intellectual Property and all updates, upgrades, improvements, customizations and enhancements to the JobsEQ® Platform) and Client has no ownership rights in any Chmura Intellectual Property except the limited license granted in Section 2 above.

5. Financial Matters and Fees.

(a) Fees. Client agrees to pay the annual License Fees set forth on Schedule 1. Following the initial one-year Term, Chmura may thereafter, upon notice to Client, amend the fee schedule annually, provided however that the License Fees shall not increase in any one year by more than the greater of (i) the percentage increase in the Consumer Price Index (Chained CPI for All Urban Consumers (C-CPI-U)) during the previous calendar year over the calendar year preceding that one or (ii) three percent (3%). Chmura shall provide notice to Client no less than sixty (60) days prior to the end of the then-current subscription Term of any amendment to the fee schedule for the upcoming renewal Term.

(b) Taxes. Client shall pay or reimburse Chmura for all sales and use taxes levied or imposed by reason of the performance by Chmura under this Agreement; excluding, however, income taxes on Chmura's gross income, employment taxes and taxes based on professional licenses or business operations which may be levied against Chmura. Prices shall remain firm for the initial term of the Agreement and thereafter may be adjusted annually as applicable.

(c) Invoicing and Payment. Unless otherwise expressly set forth on Schedule 1, Client shall pay the initial License Fees within thirty (30) days following execution of this Agreement by Client. Invoices for subsequent annual Terms shall be paid by Client within thirty (30) days of the invoice date.

6. Limitations on Warranties and on Liability.

(a) DISCLAIMER OF WARRANTIES. CHMURA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, TO CLIENT OR TO ANY END-USER AS TO THE ACCURACY OR ADEQUACY OF OR OMISSIONS FROM ANY DATA OR AS TO THE ADEQUACY OF RESULTS TO BE OBTAINED BY USING THE JOBSEQ® PLATFORM, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. EXCEPT AS EXPRESSLY SET FORTH HEREIN, CHMURA DOES NOT WARRANT THAT: (i) THE JOBSEQ® PLATFORM WILL BE FREE FROM MINOR DEFECTS OR ERRORS THAT DO NOT MATERIALLY AFFECT ITS PERFORMANCE; (ii) THE JOBSEQ® PLATFORM WILL OPERATE UNINTERRUPTED

OR CAN BE ACCESSED AND USED BY END USERS AT ALL TIMES WITHOUT INTERRUPTION, (iii) THE JOBSEQ[®] PLATFORM IS COMPATIBLE WITH ANY SOFTWARE, SERVICE OR HARDWARE UTILIZED BY CLIENT OR END USERS EXCEPT AS EXPRESSLY APPROVED IN WRITING BY CHMURA; OR (iv) THAT ANY DATA CONTAINED IN THE JOBSEQ[®] PLATFORM, IS SUFFICIENT TO MEET CLIENT'S OR ANY END USER'S BUSINESS, EDUCATIONAL OR TRAINING REQUIREMENTS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT TO THE CONTRARY, THE JOBSEQ[®] PLATFORM, THE CHMURA SOFTWARE AND THE DATA ARE PROVIDED "AS IS" AND WITH ALL FAULTS.

(b) LIMITATION OF LIABILITY. IN NO EVENT SHALL CHMURA BE LIABLE FOR DAMAGES UNDER THIS AGREEMENT EXCEEDING THE ANNUAL LICENSE FEE PAID OR PAYABLE BY CLIENT TO CHMURA UNDER THIS AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS) REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Indemnification.

(a) By Chmura. Chmura shall indemnify, defend and hold harmless Client and its Affiliates and their respective officers, directors, employees, and agents (the "Client Indemnitees") from and against any loss, damages, expenses, and costs (including reasonable attorney's fees and court costs) (collectively, "Losses") suffered or incurred by the Client Indemnitees arising out of any threatened or actual claim, action or proceeding ("Claim") (i) that the Client Indemnitees' use of the Chmura JobsEQ[®] Platform infringes a patent or copyright, or misappropriates a trade secret or otherwise violates the rights of a third party. Chmura shall control the defense of any such Claim and, at its discretion, may enter into a stipulation of discontinuance and settlement thereof; provided that Chmura shall not enter any settlement that requires anything other than the payment of money without Client's prior written approval. Client shall cooperate, at Chmura's expense, with Chmura in any such defense and shall make available to Chmura all those persons, documents and things required by Chmura in the defense of any such Claim. Client may, at its expense, also assist in such defense with counsel of its own choosing.

(b) Remedies. If Chmura is required to indemnify the Client Indemnitees pursuant to Section 7(a)(i) above, Chmura shall, at its option, either procure for Client the right to continue using the Chmura JobsEQ[®] Platform or modify the Chmura JobsEQ[®] Platform to permit Client to exercise its rights hereunder. If the foregoing options are not available, Chmura may terminate this Agreement and in such event shall refund to Client the pro rata portion of the License Fee for the remainder of the then-current annual Term. Sections 7 (a) and (b) state Chmura's entire obligations concerning infringement of third party rights.

(c) By Client. Client shall indemnify, defend and hold harmless Chmura and its officers, directors, employees, and agents against any and all Claims and Losses suffered or incurred by Chmura to the extent that they arise out of Client's use of the Chmura JobsEQ[®] Platform in a manner that violates the terms of this Agreement. Chmura shall control the defense of any such Claim and, at its discretion, may enter into a stipulation of discontinuance and settlement thereof; provided that Chmura shall not enter any settlement that requires anything

other than the payment of money without Client's prior written approval. Client shall cooperate, at Client's expense, with Chmura in any such defense and shall make available to Chmura all those persons, documents and things required by Chmura in the defense of any such Claim. Client may, at its expense, also assist in such defense with counsel of its own choosing.

8. Term and Termination.

(a) Term. The initial subscription Term shall be as set forth on Schedule 1 or, if no Term is specified, then one year from the effective date of this Agreement. Thereafter, this Agreement shall automatically renew for successive one (1) year Terms unless Client provides written notice to Chmura of its intention not to renew no less than thirty (30) days prior to the end of the then-current Term. The automatic renewal of this contract is based on written approval of a subsequent contract agreement by and between the Client and Chmura.

(b) Termination for Cause. Either party may terminate this Agreement at any time upon the occurrence of the following:

(i) the voluntary or involuntary dissolution and liquidation of the other party, the filing of a voluntary petition in bankruptcy, the filing of an involuntary petition in bankruptcy by creditors of the other party, which petition is not dismissed within ninety (90) days, or a general assignment by the other party for the benefit of creditors; or

(ii) if the other party has committed a material breach of any of the provisions of this Agreement, and such breach is not cured within thirty (30) days following the breaching party's receipt of notice from the non-breaching party specifying such breach; provided, however, that Chmura may at any time without prior notice terminate a specific End User's access to the Chmura JobsEQ[®] Platform if, in Chmura's sole judgment (A) Client (or any End User) has breached its obligations under Section 2(b), (B) an End User's credentials have been compromised, or (C) any activity by Client or an End User appears to constitute misuse of, or may cause damage to, the Chmura JobsEQ[®] Platform or the Data.

(c) Effect of Termination. Upon the termination of this Agreement pursuant to this Section 8 Chmura shall immediately terminate Client's access to the Chmura JobsEQ[®] Platform and disable all passwords issued to Client and its End Users. In the event of termination of the Agreement for material breach by Chmura, Chmura shall refund to Client the pro-rata portion of the Annual License Fees paid by Client for the remainder of the then-current Term. In the event of termination of the Agreement for material breach by Client, then upon such termination, (A) Chmura shall be entitled to retain all License Fees paid by Client as of the date of termination, and (B) Client shall immediately pay Chmura all remaining License Fees due for the remainder of the then-current term.

9. Confidential Information.

(a) Generally. Each party (the "Receiving Party") will hold the Confidential Information of the other party (the "Disclosing Party") in confidence for the Disclosing Party and, except as may be authorized by the Disclosing Party in writing, the Receiving Party will not use or disclose Confidential Information to any persons except as contemplated hereunder. "Confidential Information" shall include any and all information of the Disclosing Party or its Affiliates which is disclosed hereunder and either identified in writing as "Confidential" or "Proprietary", or which, under the circumstances, ought reasonably to be treated as confidential or proprietary and shall include the Chmura Software and Documentation.

(b) Exceptions. These confidentiality obligations shall not apply: (i) to any information or development which is or subsequently becomes available to the general public other than through a breach of this Agreement by, or fault of, the Receiving Party, or any party to whom it discloses Confidential Information; (ii) to any information or development which the Receiving Party can establish was already known to it before disclosure by the Disclosing Party; (iii) to any information or development which is developed through the independent efforts of the Receiving Party without regard to, reliance upon, use of or reference to any Confidential Information of the Disclosing Party; (iv) to any information or development which the Receiving Party rightfully and lawfully receives from a third party which is not under restriction as to confidentiality or use of such information; or (v) to any disclosure required as a result of the process of law or under applicable law, or pursuant to the order or subpoena of a government agency or court of competent jurisdiction, provided that the Receiving Party immediately notifies the Disclosing Party of the matter, and permits the Disclosing Party to seek a protection order, if it deems it necessary, prior to the release of the Confidential Information.

(c) Survival. The obligations of confidentiality contained herein will survive and continue in full force and effect after the expiration or termination of this Agreement and will bind the parties and their successors and assigns.

(d) Client User Information. Notwithstanding anything herein to the contrary, it is understood that the Client User Information shall be considered Client Confidential Information and shall be treated as Confidential Information by Chmura and at no time shall be distributed to a third party or used by Chmura either before or after termination of this Agreement.

(e) Injunctive Relief. In the event of use or disclosure of any Confidential Information in a manner inconsistent with this Agreement or any other breach of this Section 9, the parties hereto acknowledge that a party or its affiliates, as applicable, may be caused irreparable damage, and that monetary damages alone may not be an adequate remedy for such breach and, in addition to any other relief to which it may be entitled, the injured party shall be entitled to seek, temporary and permanent injunctive relief to restrain any such breach, threatened or actual, without the need to post a bond or similar undertaking.

10. General Provisions.

(a) Independent Contractor. Each party acknowledges and agrees that the other is an independent contractor and shall have no authority to act as an agent of the other, nor shall either party bind or purport to bind the other to any commitment or obligation.

(b) Assignment, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Chmura may assign any payments due or owing under this Agreement. No assignment by Chmura of any payments due or owing under this Agreement shall affect Client's rights or Chmura's obligations hereunder. Neither Client nor Chmura may assign its obligations hereunder, except either party may assign this Agreement in the event of a sale of substantially all of its assets or shares, or may assign this Agreement to its Affiliates, without the prior written consent of the other party.

(c) Notices. All Notices required by this Agreement for either party are to be in writing (which shall not include email unless expressly permitted in the section of this Agreement where notice is required) and shall be forwarded as follows:

(i) If to Chmura:

Ms. Christine Chmura

Chmura Economics & Analytics, LLC
1309 East Cary Street
Richmond, VA 23219

With a copy to:

Janet P. Peyton, Esq.
McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219

If to Client:

David Spaur, Economic Development Director
Economic Development Department / WDB
730 La Guardia Street
Salinas, CA 93905

Changes in address by either party shall be made by written notice to the other party as above provided. Notices required by this Agreement shall be deemed received (A) upon delivery, when delivered in person or by commercially receipted courier, (B) upon the date sent by facsimile, if confirmed by written courier delivery or U.S. Postal Service, or (C) five (5) days after deposit with the U.S. Postal Service by registered or certified mail. Notwithstanding the foregoing, invoices shall be sent to the Client billing contact identified on Schedule 1.

(d) Entire Agreement. This Agreement constitutes the entire understanding between the parties, and supersedes all prior agreements, representations, memoranda, and correspondence concerning the understandings between the parties regarding the subject matter hereof.

(e) Conflicts. In the event of a conflict between this Agreement and a Schedule or the County's standard Agreement, the terms of this Agreement shall govern, except as provided herein or to the extent the Schedule explicitly references this Section and the Section of the Agreement which it is modifying. The terms of this Agreement and each Schedule are to be construed, so far as is reasonably practicable, to be harmonious and consistent.

(f) Governing Law; Venue. This Agreement shall be construed in accordance with and governed by the law of the Commonwealth of Virginia, without regard to its conflict of law and choice of law rules. Each party hereby agrees to submit to jurisdiction of the state or federal courts situated in the Commonwealth of Virginia.

(g) Publicity. Client consents to Chmura's use of Client's name and logo for the sole purpose of acknowledging Client as a user of the Chmura JobsEQ® Platform and Data in marketing materials.

(h) No Waiver. No modification, amendment, or waiver of the terms hereof shall be effective unless in the form of a written instrument signed by or on behalf of Chmura and Client.

(i) Severability. If any provision of this Agreement, or the application thereof, will for any reason and to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement will be interpreted so as best to reasonably effect the intent of the parties. The parties further agree to replace any such invalid or unenforceable provisions with valid and enforceable provisions designed to achieve, to the extent possible, the business purposes and intent of such invalid and unenforceable provisions.

(j) Force Majeure. Neither party shall be held responsible for any delay or failure in performance hereunder caused by fires, strikes, embargoes, acts of God, acts of terrorism, or other causes beyond its reasonable control.

(k) Survival. The rights and obligations of Sections 2(b), 6, 7, 8, 9, and 10 together with those other provisions which by their nature should survive, will so survive and continue in full force and effect after any expiration or termination of this Agreement and will bind the parties and their successors and assigns.

(l) Section and Paragraph Headings. Section and paragraph headings are for purposes of identification only and are not to be deemed provisions of this Agreement or in any way to alter the contents of the sections or paragraphs they head.

(m) Jury Trial Waiver. **EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE OR LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF.**

Schedule 1
to
JobsEQ®
Subscription Agreement

Client: Monterey County Workforce Development Board

Term: The Term of this Agreement shall commence on the Effective Date and continue until the first anniversary of such date. Renewal terms shall be as set forth in the Agreement.

Authorized End Users: [LIST # OF END USERS AND NAMES AND EMAIL ADDRESSES]

- 1. Joyce Aldrich (aldrichj@co.monterey.ca.us)
- 2. Marleen Bush (bushml@co.monterey.ca.us)
- 3. Jerry Hernandez (hernandezjl@co.monterey.ca.us)
- 4. To be assign to WDB staff

Client is licensed to access the Chmura JobsEQ® Platform and to disclose Data for (check as applicable):

- Client's internal business purposes only (i.e. share data with Workforce Development Board (WDB) and Board of Supervisors, and subcommittee meetings of the WDB.)
- Sharing Data beyond internal business purposes (i.e. share data amongst regional partners within Monterey County)
- Disclosing Data in public-facing reports
- Feeding Data to a third party as data provider to the third party
- Other

Annual License Fees: \$4,995 payable upon invoice

Client billing contact: Marleen Bush

Chmura Blended Hourly Rate for additional services: \$250/hour

License provides access to the following geographic area: The entire State of California as well as 75 miles around Monterey County at the zip code level

EXHIBIT B

AMENDMENT TO COUNTY OF MONTEREY STANDARD AGREEMENT

The parties agree to modify the terms of the County of Monterey Standard Agreement with the following provisions. As such, this Exhibit B is incorporated into the Agreement.

1. Section 9.04, paragraph titled "Other Requirements" is hereby deleted.
2. Section 10.05, paragraph titled "Royalties and Inventions" is hereby deleted.

EXHIBIT C

AUTO LIABILITY MODIFICATION

Contractor will not be using vehicles for any aspect of this agreement. County and Contractor agree that Contractor's performance under this agreement is limited to software licensing, support, and maintenance work performed either remotely or by phone. In reliance thereon, the automobile liability insurance is not required and the Additional Insured, Primary and Non-contributory endorsement requirement is waived.

EXHIBIT D

GENERAL CONDITIONS, ASSURANCES AND CERTIFICATIONS WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)

The following applies to all programs and/or projects funded under the Workforce Innovation and Opportunity Act (WIOA) conducted by **Chmura Economics & Analytics, LLC**, is hereinafter referred to as "CONTRACTOR". The County of Monterey Board of Supervisors, acting as the Chief Local Elected Official (CLEO) of the Local Workforce Development Area (LWDA), is hereinafter referred to as "County of Monterey", or "Monterey County Workforce Development Board (WDB)".

1. COMPLIANCE

In performance of this agreement, CONTRACTOR will fully comply with:

- a. The provisions of the Workforce Innovation and Opportunity Act (WIOA) of 2014 that supersedes the Workforce Investment Act (WIA) of 1998; the Office of Management and Budget (OMB) Uniform Administrative Requirements, Allowable Costs, Cost Principles, and Audit Requirements for Federal Awards, Final Rule at 2 Code of Federal Regulations (CFR), Chapter I and Chapter II, Part 200, et al (here after referred to as Uniform Guidance 2 CFR Part 200); and the Department of Labor's (DOL) exceptions at 2 CFR Chapter II, Part 2900, et al. (here after referred to as DOL Exceptions 2 CFR Part 2900); and all regulations, legislation, directives, policies, procedures and amendments issued pursuant thereto.
- b. All State legislation and regulations to the extent permitted by Federal law and all policies, directives and/or procedures, which implement the WIOA.
- c. The provisions of Public Law 107-288, Jobs for Veterans Act, as the law applies to DOL job training programs.
- d. CONTRACTOR will ensure diligence in managing programs under this agreement, including performing appropriate monitoring of its activities and taking prompt corrective action against known violations of the WIOA. CONTRACTOR agrees to conform to the provisions of the WIOA and the contract requirements as referenced in Uniform Guidance 2 CFR Part 200, Appendix II and DOL Exceptions 2 CFR Part 2900, Appendix II to Part 200.

2. CERTIFICATIONS / ASSURANCES

Except as otherwise indicated, the following certifications apply to all CONTRACTORS.

- a. **Corporate Registration:** CONTRACTOR, if it is a corporation, certifies it is registered with the Secretary of State of the State of California.
- b. **American's Disabilities Act (ADA):** CONTRACTOR agrees to comply with the American's Disabilities Act (ADA) of 1990, which, prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C.12101 et seq.)
- c. **False Claims Act:** CONTRACTOR, by signing this agreement, agrees to assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets. County of Monterey shall assure that all annual, final fiscal reports, monthly claims, invoices, and vouchers, for the purpose of CONTRACTOR requesting payment under this agreement, must include a certification, signed by an official who is authorized to legally bind CONTRACTOR, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise." (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."
- d. **Authority to Bind Contractor:** CONTRACTOR shall furnish County of Monterey in writing, a list of persons authorized to execute on behalf of CONTRACTOR: agreements, modifications to agreements, invoices or other documents as may be required by County of Monterey. The above list should include signatures of all authorized individuals and be certified by CONTRACTOR's governing body. In the event authority is delegated

to a position (e.g., President, Vice President, Treasurer), rather than to an individual, the list of positions so authorized shall be furnished including signatures of current position holders.

- e. **Sectarian Activities:** CONTRACTOR certifies that this agreement does not provide for the advancement or aid to any religious sect, church or creed, or sectarian purpose nor does it help to support or sustain any school, college, university, hospital or other institution controlled by any religious creed, church, or sectarian denomination whatsoever, as specified by Article XVI, Section 5, of the Constitution, regarding separation of church and state.
- f. **National Labor Relations Board:** CONTRACTOR (if not a public entity), by signing this agreement, does swear under penalty of perjury, that no more than one final unappealable finding of contempt of court by a Federal court has been issued against CONTRACTOR within the immediately preceding two-year period because of CONTRACTOR's failure to comply with an order of a Federal court, which orders CONTRACTOR to comply with an order of the National Labor Relations Board (PCC10296).
- g. **Prior Findings:** CONTRACTOR, by signing this agreement, does swear under penalty of perjury, that it has not failed to satisfy any major condition in a current or previous agreement with the DOL or the State of California and has not failed to satisfy conditions relating to the resolution of a final finding and determination, including repayment of debts.
- h. **Drug-Free Workplace Certification:** By signing this agreement, CONTRACTOR hereby certifies under penalty of perjury under the laws of the State of California that CONTRACTOR will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - (2) Establish a Drug-Free Awareness Program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The person's or organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
 - (3) Every CONTRACTOR employee who works on this agreement will:
 - a. Receive a copy of the CONTRACTOR's drug-free policy statement; and
 - b. Agree to abide by the terms of the CONTRACTOR's statement as a condition of employment on the agreement.
- i. **Child Support Compliance Act:** In accordance with the Child Support Compliance Act, CONTRACTOR recognizes and acknowledges: The importance of child and family support obligations and shall fully comply with the applicable State and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and that to the best of its knowledge CONTRACTOR is fully complying with the earnings assignment orders of all CONTRACTOR's employees and is providing the names of all new CONTRACTOR's employees to the New Employee Registry maintained by the State of California Employment Development Department (EDD).
- j. **Debarment and Suspension Certification:** By signing this agreement, CONTRACTOR hereby certifies under penalty of perjury under the laws of the State of California that CONTRACTOR will comply with regulations implementing Executive Order 12549, Debarment and Suspension, Uniform Guidance 2 CFR Part 200, Appendix I, and that CONTRACTOR, to the best of its knowledge and belief, certifies that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
 - (2) Have not, within a three-year period preceding this agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract. Nor shall CONTRACTOR have, within a three-year period preceding this agreement, been convicted of or had a civil judgment

rendered against it for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.

- (3) Are not presently indicted for, or otherwise criminally or civilly charged by a government entity (Federal, State or local), with commission of any of the offenses enumerated in Section 2 of this Debarment and Suspension Certification.
- (4) Have not, within a three-year period preceding this agreement, had one or more public transactions (Federal, State or local) terminated for cause or default. Where CONTRACTOR is unable to certify to any of the statements in this Debarment and Suspension Certification, it shall attach an explanation to this agreement.

k. **Mandatory Disclosures:** All WIOA and Wagner-Peyser recipients of Federal awards must disclose, as required at 2 CFR 200.113, in a timely manner, in writing to the Federal awarding agency or the County of Monterey, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338 (Remedies for noncompliance), including suspension or debarment.

l. **Lobbying Certification:** By signing this agreement CONTRACTOR hereby assures and certifies to compliance with the lobbying restrictions which are codified in the DOL regulations at Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR 2900, as follows:

- (1) No Federal appropriated funds have been paid, by or on behalf of CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant loan, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress, in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) CONTRACTOR shall require that the language of the lobbying restrictions be included in the award documents for agreement transactions over \$100,000 (per OMB) at all tiers (including agreements, contracts, and subcontracts, under grants, loan, or cooperative agreements), and that all subrecipients shall certify and disclose accordingly.
- (4) This certification is a material representation of fact upon which reliance is placed when this transaction is executed. Submission of the Lobbying Certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

m. **Non-discrimination Clause / Affirmative Action / Equal Employment Opportunity:**

- (1) The conduct of the parties to this agreement will be in accordance with Title VI of the Civil Rights Act of 1964, and the Rules and Regulations promulgated hereunder and the provisions of WIOA Section 188.
 - a. As a condition to the agreement of financial assistance from the DOL under WIOA, CONTRACTOR assures that it will comply fully with the non-discrimination and equal opportunity provisions of the following laws:
 - i. Section 188 of the WIOA, which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIOA financially assisted program or activity;

- ii. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
 - iv. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
 - v. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.
- b. CONTRACTOR also assures that it will comply with Uniform Guidance 2 CFR Part 200, DOL Exceptions 2 CFR Part 2900, and all other regulations implementing the laws listed above. This assurance applies to CONTRACTOR's operation of the WIOA financially assisted program or activity, and to all agreements that CONTRACTOR makes to carry out the WIOA financially assisted program or activity. CONTRACTOR understands that the United States has the right to seek judicial enforcement of this assurance.
- c. This CONTRACTOR shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under the agreement.
- (2) CONTRACTOR will take affirmative action to assure that no individual will be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration or in connection with any services or activities authorized under the WIOA in violation of any applicable nondiscrimination law, including laws prohibiting discrimination on the basis of age, race, sex, color, religion, national origin, disability, political affiliation or belief. All complaints alleging discrimination must be filed and processed according to the procedures in the applicable DOL nondiscrimination regulations.
- (3) CONTRACTOR will assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ). See, generally, 42 U.S.C. 2000(e)–2(e), 29 CFR parts 1604, 1606, 1625. (3)
- (4) CONTRACTOR agrees to conform to non-discrimination and equal opportunity requirements and procedures, including County of Monterey's grievance and complaint procedures in compliance with the WIOA, the Uniform Guidance 2 CFR Part 200, DOL Exceptions 2 CFR Part 2900, Federal regulations and State statutes, regulations and policy. (Reference WDB Policy 2005-10 – Grievance and Complaint Procedures and policy attachments; <http://www.montereycountywib.org/policies/policies/>)
- (5) CONTRACTOR will comply with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, DOL."
- (6) CONTRACTOR shall ensure equal employment opportunity based on objective personnel policies and practices for recruitment, selection, promotion, classification, compensation, performance evaluation, and employee management relations.

n. Indemnification:

- (1) The following provision applies only if CONTRACTOR is a governmental entity: Pursuant to the provision of Section 895.4 of the California Government Code, each party agrees to indemnify and hold the other party harmless from all liability for damage to persons or property arising out of or resulting from acts or omissions of the indemnifying party.
- (2) CONTRACTOR shall indemnify, defend, and hold harmless the County of Monterey, 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 of Monterey. CONTRACTOR's performance includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

- o. **Salary and Bonus Limitations:** In compliance with Public Law 109-234, none of the funds appropriated in Public Law 109-149 or prior Acts under the heading "Employment and Training" that are available for expenditure on or after June 15, 2006, including funds expended pursuant to this agreement, shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109-149. This limitation shall not apply to contractors providing goods and services as defined in Uniform Guidance 2 CFR Part 200 and the DOL Exceptions 2 CFR Part 2900. Where States are recipients of such funds, States may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from subrecipients of such funds, taking into account factors including the relative cost-of-living in the States, the compensation levels for programs involved including DOL Employment and Training Administration programs. See Training and Employment Guidance Letter #05-06 for further clarification at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2262.

The incurrence of costs and receiving reimbursement for these costs under this agreement certifies that CONTRACTOR has read the above special condition and is in compliance.

- p. **Federal Funding Accountability and Transparency Act (FFATA):** As required by FFATA, recipients of Federal awards are required to report sub-award and executive compensation information. By signing this agreement CONTRACTOR hereby assures and certifies to comply with the provisions of FFATA, which includes requirements referenced in Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900.

3. STANDARDS OF CONDUCT

CONTRACTOR hereby assures that in administering this agreement, it shall comply with the standards of conduct hereinafter set out, for maintaining the integrity of the agreement and avoiding any conflict of interest in its administration.

- a. **General Assurance:** Every reasonable course of action will be taken by CONTRACTOR in order to maintain the integrity of the expenditure of public funds and to avoid favoritism and questionable or improper conduct. This agreement will be administered in an impartial manner, free from efforts to gain personal, financial or political gain. CONTRACTOR agrees to conform to the non-discrimination requirements as referenced in WIOA Section 188.
- b. **Conflict of Interest:** An executive or employee of CONTRACTOR, an elected official in the area or a member of the local Monterey County WDB will not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed, in whole or in part, by CONTRACTOR or County of Monterey: supplies, materials, equipment or services purchased with agreement funds will be used solely for purposes allowed under this agreement. No member of the local Monterey County WDB will cast a vote on the provision of services by that member (or any organization, which that member represents) or vote on any matter which would provide direct financial benefit to that member (or immediate family of the member) or any business or organization which the member directly represents. For the purpose of this agreement, a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein has a financial interest in or a tangible personal benefit from a firm considered for a contract, subcontract, or agreement. (Reference 2 CFR Part 200.318(c)(1)(2) – Conflict of Interest) If a non-Federal entity, has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears unable to be impartial in conducting a procurement action involving a related organization. (Reference 2 CFR Part 200.318(c)(2))
- c. **Buy-American:** CONTRACTOR agrees that, as stated in sec. 502 of WIOA, all funds authorized in WIOA and Wagner- Peyser must be expended on only American made equipment and products, as required by the Buy American Act (41 U.S.C. 8301–8305).
- d. **Nepotism:** CONTRACTOR certifies that it shall not hire nor permit the hiring of any person in a position funded under this agreement if a member of the person's immediate family is employed in an administrative capacity. For the purpose of this agreement, the term "immediate family" means spouse (common law or

otherwise), child, mother, father, brother, sister, brother/sister-in-law, son/daughter-in-law, mother/father-in-law, aunt, uncle, niece, nephew, step-parent, step-child, or such other relationship which would give rise to a substantial appearance of impropriety if the person were to be hired by CONTRACTOR. The term “administrative capacity” means persons who have overall administrative responsibility for a program, including but not limited to, selection, hiring, or supervisory responsibilities.

- e. **Procurement:** CONTRACTOR must comply with the County of Monterey procurement policy and procedures which reflect applicable local, State and Federal laws and regulations, and the standards identified in Uniform Guidance 2 CFR Part 200.318 – General Procurement Standards. (Reference WDB Policy 2013-01 – Procurement Standards and policy attachments; <http://www.montereycountywib.org/policies/policies/>)

4. FUNDING

- a. It is mutually understood between the parties that this agreement may have been written before ascertaining the availability of congressional and legislative appropriation of funds. The parties hereby enter into this agreement in advance of confirmation of the availability of funds for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the agreement was executed after that determination was made.
- b. This agreement is valid and enforceable only if (1) sufficient funds are made available by the State Budget Act of the appropriate State fiscal years covered by this agreement for the purposes of this program and; (2) sufficient funds are made available to the State by the United States Government for the fiscal years covered by this agreement for the purposes of the programs described in the scope of services. In addition, this agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress and Legislature or any statute enacted by the Congress and Legislature which may affect the provisions, terms, or funding of this agreement in any manner.
- c. At the expiration of the terms of this agreement or upon termination prior to the expiration of this agreement, funds not obligated for the purpose of this agreement will be immediately remitted to the County of Monterey, and shall no longer be available to CONTRACTOR.
- d. The County of Monterey retains the right to suspend financial assistance, in whole or in part, to protect the integrity of the funds or to ensure proper operation of the program, providing CONTRACTOR is given prompt notice and the opportunity for an informal review of the County of Monterey’s decision. The Director of the Economic Development Department / Monterey County Workforce Development Board or his/her designee will perform this informal review and will issue the final administrative decision within 60 days of receiving the written request for review. Failure on the part of CONTRACTOR to comply with the provisions of this agreement, or with the WIOA or regulations, when such failure involves fraud or misappropriation of funds, may result in immediate withholding of funds.

5. FISCAL ACCOUNTABILITY

- a. CONTRACTOR shall establish and maintain a sound financial management system, based upon generally accepted accounting principles. An integral part of the required financial management system is a system of internal accounting controls that will provide reasonable assurance that WIOA assets are safeguarded against loss from unauthorized use or disposition, and that accounting transactions affecting WIOA fund accountability are properly charged and recorded by administrative and program cost categories to permit the preparation of accurate and supportable financial reports.
- b. CONTRACTOR will comply with controls, record keeping and fund accounting procedure requirements of WIOA, Federal and State regulations, and directives to ensure the proper accounting for program funds paid to CONTRACTOR by the County of Monterey through a cost reimbursement process.
- c. This agreement provides for the reimbursement of allowable costs that are identified and approved in the agreement budget, and incurred in the operation of the programs specified in the scope of services. Back-up documentation is required by CONTRACTOR to justify reimbursement payments made under this agreement.
- d. All expenditures must be reported on an accrual basis of accounting.
- e. No cost shall be allowed under this agreement which is not specifically identified in CONTRACTOR’s approved budget. CONTRACTOR shall not transfer funds between cost categories or adjust designated “total budget” line items without prior written approval by authorized WDB staff (applicable to cost reimbursement

contracts only). Invoices for reimbursement submitted by CONTRACTOR that include designated total line item expenditures above the total budget for that designated line item will not be paid until the cost overrun is reconciled. All limitations on expenditures specified in Federal and State fiscal requirements shall apply to this agreement.

- f. CONTRACTOR shall not charge nor receive compensation under this agreement for any services or expenses unless said services or expenses are directly and exclusively related to the purpose of this agreement. In addition, payment may not be received by CONTRACTOR from any other source for said services or expenses. Moreover, funds shall not be allowed for cost incurred before or after the effective dates of this agreement. CONTRACTOR shall not use WIOA funds as security or payment for obligations or as loans for activities of other funded programs.
- g. CONTRACTOR'S personnel whose time is charged to the budget under this agreement shall be paid on a pro-rata basis commensurate with the percentage of time devoted to the programs specified in the scope of services. Personnel costs including salary shall be reasonable. Employees of CONTRACTOR shall be compensated using WIOA funds under this agreement only for work performed under the terms of this agreement.
- h. County of Monterey shall not pay, and CONTRACTOR shall not request, payment for any accrued employee fringe benefits (including vacation and sick time), which were not accrued by CONTRACTOR's employees during the term of this agreement.
- i. In accordance with the requirements at 2 CFR 200.400(g), CONTRACTOR may not earn or keep any profit resulting from WIOA funds paid under this agreement, or other federal financial assistance.
- j. CONTRACTOR shall make available to the County of Monterey, upon request, a complete and detailed record or cost allocation of any expenses that are, in whole or in part, supported with program funds. This detailed account shall include percentages and total contributions from both WIOA and non-WIOA sources. Shared expenses may include, but are not necessarily limited to the following: staff salaries, facilities, equipment, etc.
- k. Travel expenses when permitted should be made at the agency rate per mile, but the rate cannot exceed the amount allowed by the County of Monterey. (Reference Monterey County travel expense reimbursement policy, located online at: http://www.co.monterey.ca.us/auditor/pdfs/county_travel_business_expense_policy_12-5-12.pdf)

6. PAYMENT OF AUTHORIZED EXPENDITURES

- a. Subject to receipt of funds from the State, County of Monterey agrees to reimburse CONTRACTOR for expenditures authorized in the agreement budget. Financial reports and invoices are due to the fiscal unit of the Monterey County Economic Development Department/Workforce Development Board by the 15th working day of each month and shall include all obligations, expenditures and accruals incurred during the previous month, unless otherwise specified by the County of Monterey. Late submission of financial reports and invoices are subject to withholding of payment due to non-compliance with CONTRACTOR'S agreement to submit timely and accurate reports and invoices. The WDB's Fiscal Unit shall pay the certified invoice within 30 days of receiving the certified invoice. Financial information reported on claims must be directly linked to records maintained by CONTRACTOR which support actual delivery of services as outlined in the existing agreement between CONTRACTOR and the County of Monterey. The County of Monterey shall be the sole judge of what constitutes adequate supporting documentation.
- b. CONTRACTOR shall be paid in accordance with the agreement and budget, not to exceed the maximum amount specified. Any cost incurred by CONTRACTOR over and above the maximum amount obligated by the agreement and budget shall be at the sole risk and expense of CONTRACTOR.

7. PERFORMANCE ACCOUNTABILITY

- a. CONTRACTOR, commencing as of the date of execution of this agreement by both parties, shall perform all the functions set forth in the agreement scope of services. Adequate performance under this agreement is essential and CONTRACTOR shall measure its performance results against goals and performance standards provided by this agreement. Measured performance below goals standards will constitute noncompliance with the terms of this agreement.

8. AMENDMENTS

This agreement may be unilaterally modified by the County of Monterey, under the following circumstances:

- a. There is a decrease in Federal or State funding levels.
- b. Funds awarded to CONTRACTOR have not been expended in accordance with the budget included in the approved CONTRACTOR'S plan. This will occur if, after consultation with CONTRACTOR, the County of Monterey has determined, in a manner consistent with State and Federal law, regulations and policies, that funds will not be spent in a timely manner.
- c. There is a change in State and Federal law or regulation requiring a change in the provisions of this agreement.
- d. An amendment is required to change CONTRACTOR'S name as listed on this agreement. Upon receipt of legal documentation of the name change, the County of Monterey will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

Except as provided above, the agreement may be amended only in writing by the mutual agreement of both parties.

9. REPORTING

- a. CONTRACTOR will compile and submit reports of activities, performance and expenditures by the specified dates prescribed by the County of Monterey. All expenditure reports must be submitted upon the accrual basis of accounting. Failure to adhere to the reporting requirements of this agreement will result in funds not being paid.
- b. CONTRACTOR shall submit to County of Monterey all required reports on a timely basis as delineated by County of Monterey. CONTRACTOR shall submit written monthly status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken or other reports determined to be necessary by the County of Monterey. These reports are due to the WDB staff, as requested in writing. CONTRACTOR also shall submit on a timely basis all required agreement supplemental documents.

10. RECORDS MAINTENANCE & RETENTION

- a. CONTRACTOR will retain all records pertinent to this agreement for a period of three (3) years from the date of final payment of this agreement. If, at the end of three (3) years, there is litigation or an audit involving those records, CONTRACTOR will retain the records until the resolution of such litigation or audit. (Refer to Uniform Guidance, Subpart D, Part 200.333-200.337.)
- b. The County of Monterey, State of California, and/or the U.S. DOL, or their designee (refer to Uniform Guidance, Subpart F, Part 200.500-200.521) will have access to and right to examine, monitor and audit all records, documents, conditions and activities related to programs funded by this agreement. For purposes of this section, "access to" means that CONTRACTOR shall at all times maintain within the State of California a complete set of records and documents related to programs funded by this agreement. CONTRACTOR shall comply with this requirement regardless of whether it ceases to operate or maintain a presence within the State of California before the expiration of the agreement. CONTRACTOR'S performance under the terms and conditions herein specified will be subject to an evaluation by the County of Monterey of the adequacy of the services performed, timeliness of response and a general impression of the competency of CONTRACTOR'S organization and its staff.
- c. Portable Document Format (PDF), electronic, machine readable information or paper documentation is allowed for the purpose of records maintenance and retention, as long as there are appropriate and reasonable internal controls in place to safeguard against any inappropriate alteration of records. (Reference Uniform Guidance 2 CFR 200.335 – Methods for Collection, Transmission and Storage of Information)

11. AUDITS

- a. CONTRACTOR will maintain and make available to auditors, at all levels, accounting and program records including supporting source documentation and cooperate with all auditors. CONTRACTOR must follow the

audit requirements (single audit or program-specific audit requirement) of Uniform Guidance 2 CFR, Part 200 and DOL Exceptions 2 CFR Part 2900.

- b. Auditors performing monitoring or audits of CONTRACTOR will immediately report to the County of Monterey any incidents of fraud, abuse or other criminal activity in relation to this agreement, the WIOA or its regulations.

12. DISALLOWED COSTS

- a. Except to the extent that the State determines it will assume liability, CONTRACTOR will be liable for and will repay the County of Monterey, any amounts expended under this agreement found not to be in compliance with the WIOA including, but not limited to, disallowed costs. Such repayment will be from funds (Non-Federal), other than those received under the WIOA. Payment of any disallowed costs must be made within 30 days of notification of the disallowed costs, unless otherwise specified by County of Monterey.
- b. CONTRACTOR shall be notified of all final determinations made by the County of Monterey regarding audit reports, independent monitoring reports, and WDB administrative findings by a final determination letter.
- c. If CONTRACTOR fails to refund any disallowed cost within 30 days, County of Monterey may, at its sole discretion, terminate any and all agreements with CONTRACTOR effective immediately thereon.

13. PROPERTY

- a. All property, whether finished or unfinished documents, data, studies and reports prepared or purchased by CONTRACTOR under this agreement, will be disposed of in accordance with the direction of the County of Monterey. In addition, any tools and/or equipment furnished to CONTRACTOR by the County of Monterey and/or purchased by CONTRACTOR with funds pursuant to this agreement, will be limited to the use within the activities outlined in this agreement and will remain the property of the DOL and/or the County of Monterey. Upon termination of this agreement, CONTRACTOR will immediately return such tools and/or equipment to the County of Monterey or dispose of them as prescribed by the County of Monterey.
- b. All non-expendable property acquired with program funds provided, in whole or in part, under this agreement shall become property of the County of Monterey at the time of acquisition and shall be returned to the County of Monterey upon termination of the agreement and completion of the program or at such time as the County makes a request for such property. Non-expendable property is defined as property which will not be consumed or lose its identity during the agreement term, has a unit value in excess of \$1,000 at the time of purchase, and is expected to have a useful life of one year or more.
- c. CONTRACTOR shall obtain advance written approval of County of Monterey for purchase of any non-expendable equipment having a unit purchase price of \$1,000 or more, and use expectancy in excess of one year.
- d. Property records for non-expendable property shall be accurately maintained by CONTRACTOR and shall reflect the following:
 - (1) a description of the property;
 - (2) acquisition date and costs;
 - (3) supplier; and
 - (4) a percentage of the cost of the property purchased with funds from this agreement.
- e. CONTRACTOR shall insure that adequate safeguards are provided to prevent loss, damage or theft of the property. In the case of all suspected thefts and if there is any possibility of a criminal cause of the loss or damage, CONTRACTOR shall report the loss, damage, or theft to the police, unless the possible crime occurred in another jurisdiction, in which case CONTRACTOR shall report it to the law enforcement authorities with that jurisdiction and CONTRACTOR shall provide a copy of the law enforcement report to the WDB.

14. INTELLECTUAL PROPERTY PROVISIONS

- a. **Federal Funding:** In any agreement funded, in whole or in part, by the Federal government, County of Monterey may acquire and maintain the Intellectual Property rights, title, and ownership, which result directly or indirectly from the agreement, except as provided in 37 CFR Par 401.14. However, pursuant to Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900, the Federal government shall have a royalty-free, non-exclusive, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of

such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

b. Ownership:

- (1) Except where County of Monterey has agreed in a signed writing to accept a license, County of Monterey shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by CONTRACTOR or County of Monterey and which result directly or indirectly from this agreement.
- (2) For the purpose of this agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copy rights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will, any data or information maintained, collected or stored in the ordinary course of business by the County of Monterey, and all other legal rights protecting intangible proprietary information as may exist now and/or hereafter come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other State, country or jurisdiction.
 - a) For the purpose of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos, computer software and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purpose of producing those final products. "Works" does not include articles submitted to peer review or reference journals or independent research projects.
- (3) In the performance of this agreement, CONTRACTOR may exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this agreement. In addition, under this agreement, CONTRACTOR may access and utilize certain of County of Monterey Intellectual Property in existence prior to the effective date of this agreement. Except as otherwise set forth herein, CONTRACTOR shall not use any of County of Monterey's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of the County of Monterey. Except as otherwise set forth herein, neither CONTRACTOR nor County of Monterey shall give any ownership interest in or rights to its Intellectual Property to the other party. If, during the term of this agreement, CONTRACTOR accesses any third-party Intellectual Property that is licensed to County of Monterey, CONTRACTOR agrees to abide by all license and confidentiality restrictions applicable to County of Monterey in the third-party's license agreement.
- (4) CONTRACTOR agrees to cooperate with County of Monterey in establishing or maintaining the County of Monterey's exclusive rights in the Intellectual Property, and in assuring County of Monterey's sole rights against third parties with respect to the Intellectual Property. If CONTRACTOR enters into any agreements or subcontracts with other parties in order to perform this agreement, CONTRACTOR shall require the terms of the agreement(s) to include all Intellectual Property provisions of paragraph twenty-one (21). Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CONTRACTOR all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, CONTRACTOR, or County of Monterey, and which result directly or indirectly from this agreement or any subcontract.
- (5) Pursuant to paragraph twenty-one (21) (b) (4) of the Intellectual Property Provisions, the requirement for the County of Monterey to include all Intellectual Property Provisions of this paragraph in all agreements and subcontracts it enters into with other parties does not apply to agreements or subcontracts that are for customized and on-the-job training as authorized under 20 CFR 663.700-730.
- (6) CONTRACTOR further agrees to assist and cooperate with County of Monterey in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts

reasonably necessary to acquire, transfer, maintain, and enforce the County of Monterey's Intellectual Property rights and interests.

c. Retained Rights / License Rights:

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by CONTRACTOR or County of Monterey and which result directly or indirectly from this agreement, CONTRACTOR shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this agreement. CONTRACTOR hereby grants to County of Monterey, without additional compensation, a permanent, non-exclusive, royalty-free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose of CONTRACTOR'S Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this agreement, unless CONTRACTOR assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent CONTRACTOR from using any ideas, concepts, know-how, methodology or techniques related to its performance under this agreement, provided that CONTRACTOR user does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of County of Monterey or third-party, or result in a breach or default of any Intellectual Property provisions of paragraph twenty-one (21) or result in a breach of any provisions of law relating to confidentiality.

d. Copyright:

- (1) CONTRACTOR agrees that for purposes of copyright law, all works, as defined in Intellectual Property, paragraph twenty-one (21) (b) Ownership (2) (a), of authorship made by or on behalf of CONTRACTOR in connection with CONTRACTOR's performance of this agreement shall be deemed "works made for hire". CONTRACTOR further agrees that the work of each person utilized by CONTRACTOR in connection with the performance of this agreement will be a "work made for hire"; whether that person is an employee of CONTRACTOR or that person has entered into an agreement with CONTRACTOR to perform the work. CONTRACTOR shall enter into a written agreement with any such person that: (i) all work performed for CONTRACTOR shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all rights, title, and interest to the County of Monterey to any work product made, conceived, derived from or reduced to practice by CONTRACTOR or County of Monterey and which result directly or indirectly from this agreement. (Refer to Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900.)
- (2) All materials, including, but not limited to, computer software, visual works or text, reproduced or distributed pursuant to this agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by CONTRACTOR or County of Monterey and which result directly or indirectly from this agreement may not be reproduced or disseminated without prior written permission from the County of Monterey.

e. Patent Rights: With respect to inventions (refer to Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900), made by CONTRACTOR in the performance of this agreement, which did not result from research and development specifically included in CONTRACTOR's agreement scope of services, CONTRACTOR hereby grants to County of Monterey a license as described under paragraph twenty-one (21) (c) for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within CONTRACTOR's agreement scope of services, then CONTRACTOR agrees to assign to County of Monterey, without additional compensation, all its rights, title and interest in and to such inventions and to assist the County of Monterey in securing United States and foreign patents with respect thereto.

f. Third-Party Intellectual Property: Except as provided herein, CONTRACTOR agrees that its performance of this agreement shall not be dependent upon or include any Intellectual Property of CONTRACTOR or third-party without first: (i) obtaining County of Monterey's prior written approval; and (ii) granting to or obtaining for County of Monterey, without additional compensation, a license, as described in paragraph twenty-one (21) (c), for any of CONTRACTOR or third-party's Intellectual Property in existence prior to the effective date of this agreement. If such a license upon these terms is unattainable, and the County of Monterey determines that the Intellectual Property should be included in or is required for CONTRACTOR's performance of this agreement, CONTRACTOR shall obtain a license under terms acceptable to the County of Monterey.

g. Warranties:

(1) CONTRACTOR represents and warrants that:

- a) It has secured and will secure all rights and licenses necessary for its performance of this agreement.
- b) Neither CONTRACTOR's performance of this agreement, nor the exercise by either party of the rights granted in this agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by CONTRACTOR or County of Monterey and which result directly or indirectly from this agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any State, the United States, or any foreign country. There are currently no actual or threatened claims by any such third-party based on an alleged violation of any such right by CONTRACTOR.
- c) Neither CONTRACTOR's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
- d) It has secured and will secure all rights and licensees necessary for Intellectual Property including, but not limited to, consents, waivers, or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites locations, property or props that may be used or shown.
- e) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to County of Monterey in this agreement.
- f) It has appropriate systems and controls in place to ensure that State and Federal funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way CONTRACTOR's performance of this agreement.

(2) COUNTY OF MONTEREY MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE NOW EXISTING OR SUBSEQUENTLY ISSUED.

h. Intellectual Property Indemnity:

(1) CONTRACTOR shall indemnify, defend and hold harmless County of Monterey and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorneys fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim action, or proceeding, commenced or threatened) to which any of the indemnitees may be subject, whether or not CONTRACTOR is a party to any pending or threatened litigations, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of CONTRACTOR pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of County of Monterey's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by CONTRACTOR or County of Monterey and which result directly or indirectly from this agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that was issued after the effective date of this agreement. County of Monterey reserves the right to participate in and/or control, at CONTRACTOR's expense, any such infringement action brought against County of Monterey.

- (2) Should any Intellectual Property licensed by CONTRACTOR to County of Monterey under this agreement become the subject of an Intellectual Property infringement claim, CONTRACTOR will exercise its authority reasonably and in good faith to preserve County of Monterey's right to use the licensed Intellectual Property in accordance with this agreement at no expense to County of Monterey. County of Monterey shall have the right to monitor and appear through its own counsel (at CONTRACTOR's expense) in any such claim or action. In the defense or settlement of the claim, CONTRACTOR may obtain the right for County of Monterey to continue using the licensed Intellectual Property or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, County of Monterey may be entitled to a refund of all monies paid under this agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3) CONTRACTOR agrees that damages alone would be inadequate to compensate County of Monterey for breach of any term of these Intellectual Property provisions of paragraph twenty-one (21) by CONTRACTOR. CONTRACTOR acknowledges County of Monterey would suffer irreparable harm in the event of such breach and agrees County of Monterey shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

- i. **Survival:** The provisions set forth herein shall survive any termination or expiration of this agreement or any project schedule.

15. CONFIDENTIALITY REQUIREMENTS

The County of Monterey and CONTRACTOR will exchange various kinds of information pursuant to this agreement. That information will include data, applications, program files, and databases. These data and information are confidential when they define an individual or an employing unit. Confidential information requires special precautions to protect it from unauthorized use, access, disclosure, modification, and destruction. The sources of information may include, but are not limited to, the County of Monterey, State of California EDD, California Department of Social Services, California Department of Education, California Department of Corrections and Rehabilitation, County Welfare Department(s), County IV-D Directors Office of Child Support, Office of the District Attorney, California Department of Mental Health, California Office of Community Colleges and Department of Alcohol and Drug Programs.

The County of Monterey and CONTRACTOR agree that:

- a. Each party must recognize and safeguard personally identifiable information (PII) and information designated as sensitive in accordance with Uniform Guidance 2 CFR 200.303 – Safeguarding Personally Identifiable Information. CONTRACTOR must take reasonable measures to safeguard protected PII, as well as any information that the County of Monterey designates as sensitive. Both CONTRACTOR and County of Monterey must meet the requirements in Training and Employment Guidance letter (TEGL) 39-11, Guidance on the Handling and Protection of Personally Identifiable Information, located at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7872.
- b. Each party shall keep all information that is exchanged between them in the strictest confidence and make sure information available to their respective employees is only on a “need-to-know” basis.
- c. Each party shall provide security sufficient to ensure protection of confidential information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect this information from reasonable unanticipated threats to the security or confidentiality of the information.
- d. CONTRACTOR agrees that information obtained under this agreement will not be reproduced, published, sold or released in original or in any other form for any purpose other than those specifically identified in this agreement.
 - (1) Aggregate Summaries: All reports and/or publications developed by CONTRACTOR based on data obtained under this agreement shall contain confidential data in aggregated or statistical summary form only. “Aggregated” refers to a data output that does not allow identification of an individual or employer unit.
 - (2) Publication: Prior to publication, CONTRACTOR shall carefully analyze aggregated data outputs to ensure the identity of individuals and/or employer units cannot be inferred pursuant to Unemployment

Insurance Code Section 1094(c). Personal identifiers must be removed. Geographic identifiers should be specified only in large areas and as needed, and variables should be recorded in order to protect confidentiality.

- (3) Minimum Data Cell Size: The minimum data cell size or derivation thereof shall be three participants for any data table released to outside parties or to the public.
- e. Each party agrees that no disaggregate data, indentifying individuals or employers, shall be released to outside parties or the public.
 - f. CONTRACTOR shall notify the County of Monterey of any actual or attempted information security incidents, within 24 hours of initial detection, by telephone at (831)759-6644 or (831)796-6434. Information security incidents include, but are not limited to, any event (intentional or unintentional), that causes the loss, damage, or destruction, or unauthorized access, use, modification, or disclosure of information assets. CONTRACTOR shall cooperate with the County of Monterey in any investigation of security incidents. The system or device affected by an information security incident and containing confidential data obtained in the administration of this program shall be immediately removed from operation upon confidential data exposure or a known security breach. It shall remain removed from operation until correction and mitigation measures are applied. If CONTRACTOR learns of a breach in the security of the system which contains confidential data obtained under this agreement, then CONTRACTOR must provide notification to individuals pursuant to Civil Code Section 1798.82.
 - g. CONTRACTOR shall provide for the management and control of physical access to information assets (including personal computer systems, computer terminals, mobile computing devices, and various electronic storage media) used in performance of this agreement. This shall include, but is not limited to, security measures to physically protect data, systems, and workstations from unauthorized access and malicious activity; the prevention, detection, and suppression of fires; and the prevention, detection, and minimization of water damage.
 - h. At no time will confidential data obtained pursuant to this agreement be placed on a mobile computing device or on any form of removable electronic storage media of any kind unless the data are fully encrypted.
 - i. Each party shall provide its employees with access to confidential information with written instructions fully disclosing and explaining the penalties for unauthorized use or disclosure of confidential information found in Section 1798.55 of the Civil Code, Section 502 of the Penal Code, Section 2111 of the Unemployment Insurance Code, Section 10850 of the Welfare and Institutions Code and other applicable local, State and Federal laws.
 - j. Each party shall (where it is appropriate) store and process information in electronic format, in such a way that unauthorized persons cannot reasonably retrieve the information by means of a computer.
 - k. Each party shall promptly return to the other party confidential information when its use ends, or destroy the confidential information utilizing an approved method of destroying confidential information: shredding, burning, or certified or witnessed destruction. Magnetic media are to be degaussed or returned to the other party.
 - l. If the County of Monterey or CONTRACTOR enters into an agreement with a third-party to provide WIOA services, the County of Monterey and CONTRACTOR agree to include these data and security and confidentiality requirements in the agreement with that third-party. In no event, shall said information be disclosed to any individual outside of that third-party's authorized staff, subcontractor(s), service providers, or employees.
 - m. CONTRACTOR shall ensure that it and all subcontractors comply with the Intellectual Property requirements of this agreement, the confidentiality requirements of this agreement and any other terms of this agreement that may be applicable. In addition, the following requirements must be adhered to by CONTRACTOR and its subcontractors:
 - (1) All client information submitted over the Internet to CONTRACTOR and/or subcontractor(s) databases must be protected, at a minimum, by 128-bit Secure Socket Layer (SSL) encryption. Client's social security numbers must be stored in a separate database within CONTRACTOR and/or subcontractor(s) network of servers, and protected by a firewall and a secondary database server firewall or AES1 data

encryption. If a CONTRACTOR and/or subcontractor(s) obtain confidential information, the agreement between CONTRACTOR and its subcontractor(s) must specifically state the purpose for the data collection and the term of records retention must be stated, and directly related, to the purpose and use of the information. In accordance with Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900, social security numbers and other client specific information shall not be retained for more than three years after a client completes services. CONTRACTOR and/or subcontractor(s) should extend this period, only if any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the three-year retention period. In this case, the records should be maintained until completion of the action and resolution of all issues arising from it, or until the close of the three-year retention period, whichever is later.

- (2) Client information (personal information that identifies a client such as name and social security number) and/or demographic information of a client (such as wage history, address, and previous employment) shall not be used as a basis for commercial solicitation during the time the client or agency is using CONTRACTOR and/or subcontractor(s) services. Client information and/or demographic information shall not be used for any purposes other than those specific program purposes set forth in CONTRACTOR and subcontractor(s) agreement scope of services.
- n. Each party shall designate an employee who shall be responsible for overall security and confidentiality of its data and information systems and each party shall notify the other of any changes in that designation.