

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (this "Agreement") is made and entered into on **April 1, 2021**, between **Trimarc Security, LLC, a Maryland limited liability company** transacting business under the name "Trimarc" ("Consultant") and **County of Monterey** (the "Client"). Each of the Client and Consultant may be hereafter referred to as a "**Party**" or collectively as the "**Parties**".

WHEREAS, Consultant provides certain services to evaluate security controls and the Client desires to obtain the services of Consultant as an independent contractor for the Client, and Consultant desires to provide such services to the Client, all upon the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the premises and the promises herein made, the Parties hereto hereby agree as follows:

CONSULTING SERVICES. The Client hereby engages Consultant as an independent contractor, and not as an employee, to render consulting services to the Client as hereinafter provided and as described in the Statement of Work ("**SOW**") attached hereto and made a part hereof, and Consultant hereby accepts such engagement, for a period commencing on the Effective Date as defined herein and terminating on **June 30, 2021** subject to the terms of Section 4 of this Agreement (the "Consulting Period"). During the Consulting Period, (a) Consultant shall render such consulting services to the Client as described in the SOW and as the Client from time to time reasonably requests, subject to the provisions in Section 1c. relating to changes (the "Services"), and (b) as described in additional SOWs agreed from time to time pursuant to Section 1c.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

**TRIMARC SECURITY,
LLC, dba Trimarc**

CLIENT

DocuSigned by:
Sean Metcalf

By: 7F5DEF0DA20B48D...

Name: Sean Metcalf

Title: Chief Executive Officer

Date: 3/18/2021

By: _____

Name: Eric Chatham

Title: Director of Information Technology

Date: _____

1. **COMPENSATION AND OBLIGATIONS.**

a. COMPENSATION. The Client will compensate Consultant as follows for the Services set forth on Exhibit A and any additional Statements of Work that may be agreed to in writing by both Parties: The contracted Services shall be paid on a time and/or task basis, which will be billed at the end of each month. The Client shall reimburse Consultant for out-of-pocket expenses, including pre-approved travel, lodging, long distance phone charges, delivery services, and the like, reasonably incurred by Consultant in connection with this Agreement. Consultant will obtain prior approval from Client before making any advances or incurring any reimbursable expenses. Consultant will submit evidence of amounts to be reimbursed. Invoices shall be paid within 30 days of date.

b. OBLIGATIONS. Client shall cooperate with Consultant during the performance of the Services. Client shall provide in a timely manner information, access to required Client staff and employees, access to required systems and/or information, and appropriate workspace, all as described in the SOW or as requested by Consultant. Client shall make available to Consultant any Client personnel necessary to perform the Service(s). Any delays in providing information and access may increase the total amount of time required for delivery and may increase the cost of the Services.

c. CHANGES. Additional or unforeseen project costs, such as additional data collection or consulting beyond the initial scope of work, may be incurred during the course of the Services. Client may request changes to the Services. Such changes, as well as changes described in the first sentence, shall be implemented pursuant to a written Change Order signed by both Parties in accordance with its terms, including changes in Compensation and delivery times.

2. CONFIDENTIAL INFORMATION. Consultant acknowledges that the information, observations and data relating to the business of the Client ("Confidential Information") are the property of the Client, and shall use such Confidential Information only for the purposes set forth in this Agreement, and shall not knowingly disclose such Confidential Information to any other person, firm, or

corporation without the prior written consent of the Client, unless and to the extent that the aforementioned Confidential Information was in the public domain at the time of disclosure or can readily be developed from materials in the public domain, becomes generally known to and available for use by the public other than as a result of Consultant's acts or omissions to act, or unless the aforementioned Confidential Information is rightfully obtained by Consultant from sources other than the Client, or is required to be disclosed by law, but subject to the condition that the receiving party promptly give notice to the disclosing party, whereupon the disclosing party will have the right to assert any legal claim that the information is not subject to disclosure, or that its disclosure should be as limited as possible. Consultant will afford the same degree of care in preventing disclosure of Client's Confidential Information as Consultant affords to its own Confidential Information. Client acknowledges that Consultant has Confidential Information (hereinafter described) and agrees that Client shall use such Consultant Confidential Information only consistent with the uses permitted by this Agreement with respect to Client's Confidential Information and give it the same treatment as Consultant gives to Client's Confidential Information.. The Parties agree that the covenants described above regarding Confidential Information shall survive the termination of this Agreement for a period of two (2) years.

3. **PROPERTY RIGHTS.**

a. General. As described in the SOW, Consultant will assess the security of the Client's Active Directory environment. Consultant uses proprietary tools, including the assessment report template and script(s)/program(s). With access to Client's system, the script creates data files which Consultant uses to complete its security assessment report template ("**Report**"). The Report will be delivered to Client. In the course of doing its on-site work, Consultant may make modifications or updates to its tools, template, script, and programs. The Report will be based on and will include Client's data and Consultant's script, template and other tools and programs. The script, the template, and any other tools and programs used by Consultant, together with any changes to any thereof, whether before, during, or after, the assessment and the consulting period, are

proprietary and confidential information of Consultant, subject to the confidentiality provisions of this Agreement. Consultant also has teaching and training materials ("**Training Materials**") which are copyrighted, some or all of which may be delivered to Client. As described below, and subject to full payment by Client, Consultant grants to Client a non-revocable perpetual license to use the Report for Client's internal use only.

b. Title to Certain Tangible Property All tangible materials (whether original or duplicates) including, without limitation, equipment purchase agreements, file or data base materials in whatever form, books, manuals, sales literature, equipment price lists, Client's training materials, client record cards, client files, correspondence, documents, contracts, orders, messages, memoranda, notes, agreements, invoices, receipts, lists, software listings or printouts, all programmer generated materials including any materials cataloged on the Client's storage medium, documentation of tests conducted by Consultant, specifications, models, computer programs, and records of any kind in the possession or control of Consultant which in any way relate or pertain to Client's business (including, if applicable, the business of the parent or subsidiaries or affiliates of Client) whether furnished to Consultant by Client or prepared, compiled or acquired by Consultant during its consulting relationship with Client, shall be the sole property of Client. Notwithstanding the generality of the foregoing, the term "tangible materials" as described in the preceding sentence does not and shall not include (i) Consultant's Training Materials, some or all of which may be copyrighted by Consultant, provided however, if applicable, that Training Materials used by Consultant and distributed to Client's employees who participate in any training provided by Consultant may be retained by Client and Client's employees, and (ii) to the extent contained in the Report or other materials delivered to Client, the Technical Elements hereinafter defined and Consultant's script, programs, tools, security assessment report template, any updates, modifications, or improvements Consultant makes to its script, programs, tools, and template, or any offensive or defensive techniques Consultant creates, develops, acquires, or conceives during the course of its work for Client. At any time upon request of Client, and in any event promptly

upon termination of this Agreement, Consultant shall deliver to Client all such tangible property as are the sole property of Client.

c. Title to Certain Intangible Property.

Unless otherwise specifically agreed to in an SOW, the work to be delivered to Client under any SOW ("Deliverables") may include data, modules, components, designs, utilities, subsets, objects, program listings, tools, models, methodologies, programs, templates, scripts, systems, analysis frameworks, leading or best practices, and specifications owned or developed by Consultant prior to, independently from, or during the assessment activities under, this Agreement ("Technical Elements"). The Technical Elements are and shall be owned by Consultant and Consultant retains all rights thereto. All such Technical Elements shall be Intellectual Property of Consultant and shall be Consultant's Confidential Information subject to the provisions and restrictions set forth in Section 2 above. Subject to full payment, Consultant hereby grants Client a perpetual, worldwide, non-transferable, royalty-free license in the Technical Elements as are integrated into any Deliverables solely for the internal management purposes of Client with respect to the system(s) which were the subject of the assessment. For the avoidance of doubt, Client will not own or have any rights in the Technical Elements, except by virtue of this license.

4. EFFECTIVENESS AND TERMINATION.

This Agreement shall terminate immediately and automatically upon the earlier of: (i) thirty (30) days prior written notice from either party, (ii) the expiration of the Consulting Period, or (iii) written notice from either party to the other that this Agreement is being terminated for "cause" (as defined herein). "Cause" shall mean that the Consultant or the Client has committed an act of gross misconduct, gross insubordination, embezzlement, fraud, misappropriation of funds or trade secrets, or any felony or any material violation of state or federal law or that either party has committed a material breach of this Agreement. In any case, upon termination: (x) for cause based on conduct of Consultant, no additional consideration will be due or payable to Consultant and for cause based on conduct of the Client, Consultant shall be paid for all work done and shall be entitled to be paid the balance of Consultant's fee for Services; or as

provided in Section (i) of the first sentence of this Section, Consultant shall be paid for all work done to the date of such termination, and (y) this Agreement shall cease to have any force or effect, except that in all events, Sections 2 (with respect to Confidential Information), 3 (with respect to Proprietary Information), 5 (with respect to warranties and damages) and 7 (with respect to further actions by the Parties) shall survive.

5. WARRANTY CONSEQUENTIAL DAMAGES AND INDEMNIFICATION.

a. Consultant warrants that Services performed by or delivered through Consultant shall be in accordance with the generally accepted standards of the profession at the time of performance and shall conform to the provisions of this Agreement. Neither party shall be responsible to the other for lost revenues, lost profits, cost of capital, claims of customers, or other special, indirect, consequential, or punitive damages, however caused and under any theory of liability, even if such Party has been advised of the possibility of such damages in advance, and all such damages are expressly disclaimed. In no event shall Consultant's liability arising out of or in connection with this Agreement exceed the amounts paid or owing by Client to Consultant for the Services hereunder and Client and Consultant agree that such remedy is fair and adequate.

b. Each Party hereunder agrees to indemnify and hold the other Party, its subsidiaries, affiliates or assignees, and their managers, members, partners, directors, officers, employees and agents, harmless from any and all claims, damages, losses, liabilities, expenses and costs (including, but not limited to, court costs and reasonable attorneys' fees) arising out of or in connection with a claim by a third party that the indemnified Party's authorized use of the indemnifying Party's intellectual property that was provided for use under this Agreement or the SOW violated the third party's intellectual property rights. The indemnified Party shall (a) notify the indemnifying Party in writing of such claim, (b) permit the indemnifying Party to defend or settle the claim, provided no such settlement shall be agreed to unless it releases the indemnified Party of all liability and fault, and (c) provide the indemnifying Party with reasonable information and assistance, at the indemnifying Party's expense.

6. BINDING NATURE AND ASSIGNMENT.

This Agreement shall be binding on each of the Parties and its respective successors and permitted assigns. Except as otherwise provided in this Section 6, neither party may assign this Agreement in whole or in part to any third party without the prior written consent of the other, and any attempt to do so will be void. Notwithstanding the foregoing, the Client may assign its rights and obligations under this Agreement without the approval of Consultant to (i) a third party that acquires all or substantially all of the assets of the Client, (ii) any subsidiary or affiliate of the Client, or (iii) a successor in a merger or acquisition of the Client; provided, however, that Client furnishes Consultant written notice in advance of any such transaction, and that in no event shall such assignment relieve the Client of any of its obligations under this Agreement.

7. SUBMISSION TO JURISDICTION; GOVERNING LAW; ATTORNEY'S FEES.

a. Except for the right of Consultant to bring suit on an open account for fees and monies due Consultant, any dispute arising under the Agreement will be resolved through a mediation/arbitration approach.

b. In the event a dispute arises under this Agreement, the Parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in **Washington, D.C.**, upon either party giving notice to the other. If it proves impossible to arrive at a mutually satisfactory solution through mediation within sixty (60) days after notice to mediate has been given, the Parties agree to submit the dispute to a mutually agreed-upon arbitrator in Washington, D.C., administered by the American Arbitration Association in accordance with Commercial Arbitration Rules then in effect. The arbitrator shall not have had any relationship to or business dealings with Client or Consultant and shall have substantial experience in resolving complex commercial contract disputes involving information technology. If the Parties cannot agree on a single arbitrator, an arbitrator without any conflict of interest shall be selected by the American Arbitration Association. The arbitrator will allow only such discovery as is appropriate, consistent with the purposes of arbitration in accomplishing fair, speedy and cost-effective resolution of disputes.

The arbitrator will reference the rules of evidence of the Federal Rules of Civil Procedure then in effect in setting the scope of discovery, except that no requests for admissions will be permitted and interrogatories will be limited to identifying (a) persons with knowledge of relevant facts and (b) expert witnesses and their opinions and the bases therefor. Either party or its representatives or witnesses may attend the mediation or arbitration remotely. Judgment upon the award rendered by the arbitrator shall be final and may be entered in any court having jurisdiction. Costs of arbitration, including attorney fees, will be allocated by the arbitrator.

c. This Agreement shall be construed according to the laws of the state of California without regard to its conflict of laws provisions or any other provision of Delaware law that would require or permit the application of the substantive law of any other jurisdiction to govern this Agreement.

d. In connection with any legal action to enforce the arbitration provisions of this Agreement or an arbitration award, the prevailing party in such action (as determined by a court having competent jurisdiction) shall be entitled to collect from the other Party or Parties the reasonable attorneys' fees, costs and related disbursements incurred by such prevailing party in such action.

e. The Parties acknowledge that any breach of Sections 2 or 3 may cause irreparable harm to the disclosing party, for which damages would not be an adequate remedy, and therefore, the disclosing party will be entitled to seek injunctive relief with respect thereto in addition to any other remedies. Notwithstanding any provision herein to the contrary, each Party shall have the right to seek preliminary injunctive relief for a material breach of Sections 2 or 3 hereof pending a final decision by the arbitrator(s), provided that a permanent injunction and damages shall only be awarded by the arbitrator(s).

f. For all purposes of this Agreement, the Parties consent to exclusive jurisdiction in the United States District Court for the District of Delaware or if the required jurisdictional amount is not satisfied, in the Superior Court of the State of Delaware sitting in Wilmington, Delaware. The Parties hereby waive all objections to such jurisdiction and

venue, including any objection on the basis of forum non conveniens.

8. **SEVERABILITY**. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction or under any statute, regulation, ordinance, executive agreement or other rule of law, such provision shall be deleted or modified, at the election of the Parties, but only to the extent necessary to comply with such ruling, statute, regulation, ordinance, agreement or rule, and the remaining provisions of this Agreement shall remain in full force and effect.

9. **NOTICES**. Any notice, request, demand or other communication given under this Agreement shall be in writing and shall be deemed sufficiently given:

a. As a signed, scanned and emailed document, effective one day after the date emailed to the address and person designated in Section 9b, provided such notice is confirmed by one of the methods specified in Section 9b.

b. If the sender so elects, effective three (3) days following the date deposited in the United States Mail, certified with return receipt requested, postage prepaid, or one day after being delivered to a nationally recognized overnight courier, in each case addressed to the person at the address, as follows:

To Consultant:

Trimarc Security, LLC
1775 I St NW
Suite #1150
Washington, DC 20006
Attn: Mr. Sean Metcalf
Phone: [\(202\) 587-2735](tel:2025872735)
[Email: legalnotice@trimarcsecurity.com](mailto:legalnotice@trimarcsecurity.com)

To Client:

County of Monterey, Information Technology
Department
Finance Division
1590 Moffett Street
Salinas, CA 93905
Phone : 831 759-6900
Email :
193FiscalAdministration@co.monterey.ca.us

c. Either party may advise the other of any changes in address or designation of person to receive such notice as provided above.

10. **CAPTIONS; INTERPRETATION.** The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The terms of this Agreement are the product of negotiation between the Parties and are not to be construed as being drafted solely by one party, and no presumption is to arise therefrom in favor of either party.

11. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to constitute one and the same instrument.

12. **NO THIRD-PARTY BENEFICIARIES; INDEPENDENT CONTRACTOR.** This Agreement is entered into solely between, and may only be enforced by, the Parties hereto. This Agreement shall not be deemed to create any rights in any third parties, including any employees, agents, independent contractors, or subcontractors of either Client or Consultant, or to create any obligations of a party to any

third parties. The Parties are independent contractors, and this Agreement will not be construed as constituting either Party as partner, joint venturer or fiduciary of the other, and neither Consultant nor Client will have any authority to bind or act on behalf of the other.

13. **ENTIRE AGREEMENT; NON-WAIVER.** This Agreement sets forth the entire understanding of the Parties hereto and constitutes the entire Agreement between the Parties with respect to the matters contained herein, and supersedes all prior oral or written representations, proposals, correspondence, discussions, negotiations and agreements. No change, modification, waiver, agreement or understanding, oral or written, in any way purporting to waive or modify the terms hereof shall be binding on either party hereto unless contained in a written document expressly described as an amendment to, waiver of or extension of this Agreement and unless such document is duly executed by both Parties. A waiver by either party of any breach or failure to enforce any term or condition of this Agreement shall not in any way affect, limit or waive such party's right at any time to enforce strict compliance with that or any other term or condition of this Agreement.

EXHIBIT A

Statement of Work