

## **TECHNOLOGY PROFESSIONAL SERVICES ADDENDUM**

This Technology Professional Services Addendum (“Addendum”) is made and entered into effective \_\_\_\_\_, 20\_\_\_\_, by and between the County of Madera (“County”) and \_\_\_\_\_, (“Vendor”).

**NOW, THEREFORE**, the parties agree as follows:

I. **DEFINITIONS**. - Whenever used in this Addendum, the following terms shall have the meanings assigned below. Other capitalized terms used in this Addendum are defined in the context in which they are used or as defined in accompanying Contract Documents.

A. “Agreement” means the document provided by the Vendor that contains terms of service, use, and work that will take place between the parties in return for consideration.

B. “Cover Sheet” means the document provided by the County that incorporates all Contract Documents, which comprises the complete terms of the final contract that will exist between the parties.

C. “Contract Documents” means all documents that are incorporated into the final agreement between the County and the Vendor for the Project including, but not limited to, this Addendum, the Statement of Work, the Agreement, and any price sheets as applicable.

D. “Data” means all information, whether in oral or written (including electronic) form, created by or in any way originating with County and/or a Third Party, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with County and Third Party, encountered in the course of completing the Project.

E. “Data Compromise” means any actual or reasonably suspected unauthorized access to or acquisition of computerized Data that compromises the security, confidentiality, or integrity of the Data, or the ability of County to access the Data. Data Compromise also means a “Breach” as defined under relevant California or federal law for Protected Information, for example, California Civil Code Section 1798.29, California Health and Safety Code Section 1280.15, etc.

F. "Force Majeure" means an event such as an act of God; fire, flood; storm; inclement weather; earthquake; drought; riot; war or insurrection; plant or animal infestation or disease; sudden or severe energy shortage; or other condition of emergency or disaster beyond the control of the Parties which makes performance of obligations under this Addendum impossible or extremely impracticable, such obligations shall be suspended during such time any such condition or conditions exist. If a party's duties are suspended, that party shall resume its obligation at the earliest practical time.

G. "Project" means the task the County requires be completed through the work specified in the Statement of Work

H. "Project Manager" means the individual who shall serve as each party's point of contact with the other party's personnel as provided in this Addendum. The initial Project Managers may be changed by a party at any time upon written notice to the other party.

I. "Punchlist" means the list of items prepared near the end of the Project work not conforming to contract specifications that the Vendor must completed.

J. "Statement of Work" means the Vendor's document that contains the narrative description of the Project's work requirement and includes Vendor's Project-specific activities, deliverables, and timelines.

K. "Third Party" means persons, corporations and entities other than Vendor, County or any of their employees, Vendors or agents.

1. **RETENTION OF VENDOR.** County and Vendor agree that Vendor shall be retained to for the development and deployment of the Project. The Vendor shall be responsible for the overall administration of all work on the Project and for ensuring in a competent and professional manner that the Project is properly completed in accordance with the County's schedule for timely completion of the Project under the Statement of Work as mutually agreed to and attached herein as Exhibit A. The term of this Addendum shall be through final completion of the Project work and all applicable warranty periods, which includes completion of all Project financial transactions (i.e., all progress and final payments, release of retention, change orders and any claims). At such time, if maintenance services are required, the County and Vendor shall enter a Technology Maintenance Agreement which shall dictate the terms of Vendor's maintenance of the technology implemented under this contract.

**2. PAYMENT OF VENDOR.**

A. Vendor shall be compensated according to Vendor's estimate of the total cost of its services as referenced in the Cover Sheet.

**3. DUTIES AND RESPONSIBILITIES OF VENDOR.**

**A. General Duties and Responsibilities.**

1. Vendor will administer all phases of activities to achieve the completion of the Statement of Work and the Project in accordance with the requirements of this Addendum and in accordance with the reasonable care in the circumstances of this Project. All services Vendor performs under this Addendum shall be conducted in a manner consistent with the terms of this Addendum. Vendor shall conduct all such services in conformance to, and compliance with, all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, codes, and ordinances.

2. Staffing. Vendor shall provide sufficient staffing to timely perform its duties and responsibilities under this Addendum. All of Vendor's personnel shall be qualified to perform the services they provide for the Project. If it is decided, by either the County or the Vendor that the project is complicated enough to warrant additional oversight, the Project shall include provisions for Project Manager(s). The parties will assign one or more managers to coordinate the Project using their best judgment to determine the need for these managers as necessary. County may, upon fifteen (15) days written notice, cause Vendor to remove a person from the Project if he/she has failed to perform to County's satisfaction.

3. Subcontractors. Vendor shall disclose to County all of Vendor's subcontractors that are performing services related to the Project. Vendor shall insure that any subcontractors performing services shall be held to the same requirements of this Addendum.

4. Obligation to Perform. The Vendor shall perform all tasks as directed by the County to complete the Project per the Statement of Work. The Vendor acknowledges that its priority is to ensure completion of the Project on time and for the Compensation amount specified in the Statement of Work.

**C. Configuration Phase.**

1. Contract Administration. The Vendor shall provide administrative, management, and related services as required to coordinate work of the Vendor with the activities and responsibilities of the Vendor and the County. Vendor shall be responsible for administration of the Contract as set forth herein, and for managing the Vendor and its work to optimize efficiency and minimize conflict and

interference between Vendor and, if applicable, County's own forces and subcontractors. Vendor shall meet with County on an as-needed basis and at the County's request.

4. Schedule. If the Vendor's work does not progress according to the schedule or does not progress in a manner that will allow the Vendor to meet the completion deadline in the Contract Documents, then Vendor shall immediately provide a recovery plan in writing to the County for its consideration upon written request of the County. If the Project is not completed within the timeline given to the County for Project completion, the County will receive liquidated damages in the amount of .01% of the total contract amount per day and will be credited against the first bill the County receives from Vendor except in the instance where delay due to Force Majeure.

5. Trivial Variations in the Work. This Addendum authorizes trivial variations in the work from the requirements of the Contract Documents that (a) do not involve an adjustment in the Contract price or the Contract time, and (b) are consistent with the overall intent of the Contract Documents. Any change required not falling under the above conditions, will require an amendment to this Addendum. If the Vendor believes that the County is requesting performance of work not included in this Addendum, the Vendor shall follow the procedures in Subsection 11, but the Vendor may not cease or reduce performance of its services for that reason.

6. Quality Review and Inspections. The County shall retain the right to monitor the quality and progress of system implementation. When it is the opinion of the County that the Vendor's means, methods, techniques, sequences or procedures of system implementation will likely lead to a portion of the Vendor's work not conforming to the Statement of Work, then the County shall immediately so notify the Vendor in writing. The notice shall also state that the County will reserve all rights to demand correction of any resulting non-conforming work or to pursue other relief; however, the notice shall not direct Vendor as to what means, methods, techniques, sequences or procedures Vendor should use to meet the requirements of the Statement of Work, nor shall the County ever provide such direction to the Vendor during the Project. Except for trivial variations in the work from the requirements of the Contract Documents that do not involve an adjustment in the Contract price or the Contract time and which are consistent with the overall intent of the Contract Documents, the Vendor is not authorized to, and shall not, change, revoke, alter, enlarge, relax or release any requirements of the Statement of Work or approve or accept any portion of the work not conforming to the requirements of the Statement of Work. The Vendor shall use all available means and undertake good-faith efforts to secure performance in accordance with the Statement of Work.

7. Punchlist. Upon notice from the Vendor that the Vendor believes its work is complete, the Vendor and the County, shall prepare a Punchlist. The Vendor shall diligently pursue the Vendor to complete its Punchlist work as quickly as possible, using all available powers and rights under the Contract Documents. If the Vendor's Punchlist is not completed within the timeline given to the County for Project completion, the County will receive liquidated damages in the amount of .01% of the

total contract amount per day and will be credited against the first bill the County receives from Vendor except in the instance where delay due to Force Majeure.

8. Final Completion and Final Payment. When the Vendor has completed the Punchlist, the Vendor shall notify the County in writing and shall recommend that the County accept the Contract work as fully complete. The County shall indicate acceptance by written approval. If parties have entered into a maintenance agreement in connection with this Addendum, it is hereby incorporated by reference as Exhibit B and is effective on the date this Addendum is completed or as indicated in Exhibit B.

#### **D. County Data.**

1. Data Privacy. Performance of services under this contract may entail the disclosure to Vendor of protected or confidential data. Vendor shall use private information only for the specific purpose of fulfilling its obligations under this contract. Vendor may not disclose information to or share any information with any other party or for any other purpose without the prior written consent of the. By way of illustration and not of limitation, Vendor will not use such information for Vendor's own benefit or engage in "data mining" of County Data or communications, whether through automated or human means, except as necessary to fulfill its specific obligations under this Addendum. The provisions of this section will be applicable to any subcontractor agents to whom Vendor may release information in order to perform services under this contract.

2. Data Security. All facilities and other resources used to store and/or process Data will employ reasonable and appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Vendor's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved. Vendor shall uninstall any required software or network connections from their devices upon the completion of the work.

Vendor will use industry-standard and up-to-date security tools and technologies such as anti-virus protections, advanced threat protection, and intrusion detection methods in providing services under this Addendum. Any Vendor computers or workstations used to connect to County network are to be fully patched for the most current security vulnerabilities. Vendor will update its tools and technologies during the course of the Addendum as industry standards change and updated tools and technologies become available. Vendor shall be responsible for any damage done to County network caused by a breach of the Vendor's network caused by Vendor's negligent violation of this Addendum.

Vendor will ensure that its employees, subcontractors and agents who perform work under this Addendum receive appropriate instruction as to how to protect data consistent with the provisions of this Addendum. Vendor will perform background checks on all personnel who have potential to access Data. Background checks will be

performed in accordance with the Fair Credit Reporting Act and will, at a minimum, include Social Security Number validation and trace or foreign equivalent, seven (7) year felony and misdemeanor criminal records of federal, state, or local courts, Office of Foreign Assets Control List (OFAC), Bureau of Industry and Security List (BIS) and Office of Defense Trade Controls Debarred Persons List (DDTC).

3. Security Incident Response. Upon becoming aware of any Data Compromise, Vendor will: (1) promptly notify County of the Data Compromise; (2) investigate the and provide County with detailed information about the Data Compromise; (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Data Compromise; (4) take prompt and appropriate corrective action aimed at preventing the reoccurrence of a similar Data Compromise in the future; and (5) hold County harmless from any costs associated with a Data Compromise attributable to the actions or inactions of Vendor.

4. COUNTY DUTIES AND RESPONSIBILITIES. During the term of this Addendum, the County shall:

A. Designate a Project Manager to act on the County's behalf with respect to the Project. The County, or such authorized representative, shall examine Project components submitted by the Vendor and shall render decisions promptly to avoid unreasonable delay in the progress of the Project;

B. Advise promptly of any fault or defect in the Project, or nonconformance with the Contract Documents, that the County observes.

5. TERMINATION.

A. County may terminate this contract for any reason, by giving Vendor thirty (30) days written notice of termination. County may also issue a written notice of termination of this contract for cause based on the Vendor's breach of this Addendum if (i) County provides written notice of intent to terminate in ten (10) days with explanation of the breaches and the cure necessary, and (ii) Vendor does not cure, or offer a reasonable plan to cure, the default within five (5) calendar days of issuance of the written notice of intent to terminate.

B. In the event of termination by County, the Vendor shall be compensated pursuant to subsection 2, above, for all services satisfactorily performed through the termination date.

6. HOLD HARMLESS/INDEMNIFICATION. Vendor shall indemnify, defend and hold harmless the County, its Board of Supervisors, officers, agents, and employees from any and all claims, damages, losses, liability, causes of action and demands, including reasonable attorney's fees and costs, incurred in connection with or

in any manner arising out of Vendor's performance of, or failure to perform, any duties under this Addendum or the law, including but not limited to breaches of the applicable standard of care.

County shall indemnify, defend and hold harmless Vendor, its officers, agents, and employees from any and all claims, damages, losses, liability, causes of action and demands, including reasonable attorney's fees and costs, incurred in connection with or in any manner arising out of County's performance of, or failure to perform, any duties under this contract or the law, including but not limited to breaches of the applicable standard of care.

7. **INSURANCE.** The Vendor's comprehensive general and automobile liability insurance with coverage at least as broad as:

A. Errors and Omissions Liability Insurance: Errors and Omissions Liability coverage not less than one million (\$1,000,000) per occurrence and two million (\$2,000,000) in the aggregate.

B. General Liability Insurance: General Liability coverage not less than one million (\$1,000,000) per occurrence and two million (\$2,000,000) in the aggregate.

C. Workers' Compensation insurance as required by the State of California.

D. Cyber Liability with limits no less than \$2,000,000 per occurrence and \$2,000,000 policy aggregate.

Each policy of insurance above shall operate as primary insurance. The County, its Board of Supervisors, employees and agents shall be named as additional insureds under the policies. A copy of the policies shall be provided before any work is commenced under this Addendum. Policies shall not be canceled or reduced in coverage without thirty (30) days prior written notice to County.

8. **PAYROLL AND WORKER'S COMPENSATION RESPONSIBILITIES.** Vendor will be liable and solely responsible for paying all required taxes and workers' compensation and other obligations, including, but not limited to, federal and state income taxes and social security taxes. Vendor agrees to indemnify, defend and hold the County harmless from any liability which Vendor may incur to the Federal or State governments as a consequence of this Addendum. All payments to the Vendor shall be reported to the Internal Revenue Service.

9. **SUCCESSORS AND ASSIGNS.** The County and the Vendor, respectively, bind themselves, their successors, assigns, and representatives to the other party to this Addendum, and to the partners, successors, assigns, and legal representatives

of such other party with respect to all terms of this Addendum. Neither County nor the Vendor shall assign or transfer any interest in this Addendum without the written consent of the other.

**10. SEVERABILITY.** If any provision of this Addendum shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Addendum.

**11. AMENDMENTS.** This Addendum cannot be changed or supplemented orally and may be modified or superseded only by written instrument executed by all parties. If either Party requires a change to the Statement of Work to complete the Project, the requesting party must submit a written notice to the receiving party requesting an amendment of the contract between the Parties.

**12. COUNTERPARTS.** This Addendum may be executed in one or more counterparts, each of which will be deemed an original hereof and all of which, when taken together, will be deemed to constitute one and the same Addendum. Signatures transmitted by facsimile or other electronic means will be deemed originals.

**13. INTERPRETATION.** The language of all parts of this Addendum shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.

**14. NOTICES.** All payments and any notices or communications under this Addendum shall be in writing and shall be deemed to be duly given if served personally on the party to whom it is directed or shall be deemed served forty-eight (48) hours after the same has been deposited in the United States Mail, certified or registered mail, return receipt requested, or overnight mail, postage prepaid, and addressed as indicated in the Cover Sheet for the agreement.

**15. GOVERNING LAW.** This Addendum shall be governed and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under, or with respect to, this Addendum shall be brought solely in the Superior Court of County of Madera subject to transfer of venue under applicable State law, provided that nothing in this Addendum shall constitute a waiver of immunity to suit by the County.

**16. WORK RECORDS.** All documents generated by Vendor shall be deemed to the sole and exclusive property of County.