



MASTER SERVICES AGREEMENT

By and between

California Travel and Tourism Commission

dba Visit California

and

CONTRACTOR

July 1, 2018 – June 30, 2019

MASTER SERVICES AGREEMENT

THIS Master Services Agreement (the "**Agreement**") is by and between the California Travel and Tourism Commission dba Visit California ("**Visit California**"), a California Nonprofit Mutual Benefit Corporation, and **CONTRACTOR**, an independent contractor, ("**Contractor**").

Section 1. **AGREEMENT TO PERFORM SERVICES.**

- A. Contractor agrees to provide certain services (the "**Services**") to Visit California for specific projects that are mutually agreed upon from time to time (the "**Projects**" or, individually, a "**Project**") between Visit California and Contractor. Each Project will be set forth on a separate "**Work Statement**" substantially in the form attached hereto as **Exhibit 1**. Each Work Statement shall, as applicable, contain: (i) a description of the Project and the Services to be performed by Contractor; (ii) the tasks to be completed by Visit California and any third parties; (iii) a description of the deliverables to be produced by Contractor; (iv) the schedule for completion of each deliverable or stage of a Project; (v) the fees to be paid to Contractor for such Services and a payment schedule, and (vi) such additional information as the parties may wish to include.
- B. Each Work Statement, when executed by an authorized representative of both parties, shall constitute a separate agreement and, except for provisions herein that such Work Statement expressly excludes or modifies, the Work Statement shall incorporate therein all of the terms and conditions of this Agreement. Each Executed Work Statement shall be attached as **Exhibit 1** to this Agreement when executed by both parties. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any Work Statement, the terms and conditions of such Work Statement shall govern with regard to the Specific Project or Services that are the subject of the Work Statement.
- C. During the course of Contractor's performance of any Project, Contractor or Visit California may request changes in the Services. Contractor shall incorporate any such changes provided that both parties execute an addendum to the Work Statement setting forth the amended scope of work, program specifications, delivery dates and the impact on the compensation to be paid to Contractor. If the parties are unable to agree on a change order setting forth the specified information, then the parties shall complete the Project according to the original Work Statement. NO ALTERNATIONS OR CHANGES SHALL BE AUTHORIZED WITHOUT THE WRITTEN APPROVAL OF VISIT CALIFORNIA IN ITS SOLE DISCRETION. If Contractor makes any changes in the Services described on any Work Statement or performs any work or services not described in a Work Statement, without written authorization from Visit California, Contractor will not be paid for the changed or additional work or services.

Section 2. **COMMENCEMENT AND EXPIRATION DATES**

- A. The term of this Agreement shall be from **July 1, 2018 through June 30, 2019.**

- B. Visit California reserves the right to cancel this Agreement prior to the expiration date pursuant to Section 8.

Section 3. **CONTRACT AMOUNT**

- A. Visit California will pay Contractor the fees, according to the project budget ("**Project Budget**"), set forth in the applicable Work Statement for the performance of the Services described therein. If invoicing and payment are tied to milestone payments, a payment schedule shall be included in the Work Statement. Unless otherwise provided in the Work Statement, the Contractor agrees to perform the Services required under any Work Statement for a total amount not to exceed the amount set forth on the Project Budget. Set forth in the Work Statement.
- B. The amount to be paid the Contractor under each Project Budget shall be compensation for all the Contractor's costs and expenses pursuant to the applicable Work Statement, including, but not limited to, labor, employee fringe benefits, operating expenses, overhead, employer taxes and insurance, subcontracting services, out-of-pocket expenses for travel and subsistence, and taxes due on equipment.
- C. Notwithstanding the foregoing, if the payment of out of pocket or other expenses is authorized by a Work Statement, the Project Budget shall additionally include the amount of all authorized out of pocket and other expenses.
- D. Contractor is not authorized to enter into any contracts in the name of, or on behalf of, or otherwise bind Visit California, including subcontracts with vendors providing services in connection with Services under any Work Statement. Any contract entered into by Contractor is on its own account for purposes of fulfilling its obligations under this Agreement. Contractor shall be solely responsible for all payment and other obligations under any such contracts. Only contracts, agreements and amendments executed by the President of Visit California have the authority to bind Visit California.

Section 4. **PAYMENT AND EXPENDITURE PROVISIONS**

- A. The Contractor shall submit, in arrears, not more than once a month, an invoice to Visit California for costs incurred pursuant to each Work Statement. All invoices must be submitted within 90 days of the work incurred, with supporting documentation evidencing the costs incurred and in sufficient detail to specifically identify all expense components set forth on the applicable Project Budget. Invoices submitted later than 90 days after the work is incurred will not be paid. Invoices submitted without appropriate documentation will be rejected and will not be processed. Invoices shall be submitted for each Work Statement only for work authorized pursuant to such Work Statement, shall be consistent with the applicable Project Budget, and shall be subject to the applicable Project Budget limitation as described in Section 3 above.
- B. Each invoice shall be submitted to Visit California, Attn: **Accounts Payable**, via email to accountspayable@visitcalifornia.com. The Program Manager

should also be sent a copy of the invoice. Submitting an invoice only to the Program Manager may result in non-payment or delayed payment.

- C. Visit California shall make payment as promptly as fiscal procedures permit, upon receipt of the invoice, subject to approval of the Contract Manager, and contingent upon satisfactory completion of the terms of the applicable Work Statement.
- D. Visit California shall only pay out of pocket and other expenses if authorized pursuant to a Work Statement and the applicable Project Budget. All out of pocket travel expenses shall adhere to the CTC Travel Allowances and Reimbursement Policy incorporated and attached hereto by this reference. Visit California reserves the right to revise the Travel and Allowances Reimbursement Policy at any time. All invoices for expense reimbursement must be submitted with supporting documentation evidencing the costs incurred and in sufficient detail to allow Visit California to verify the validity of the expenses. In no event shall the Contractor request reimbursement from Visit California for obligations entered into or for costs incurred prior to the commencement date, or after the expiration or cancellation of this Agreement, as outlined in Section 8.
- E. Notwithstanding the foregoing, Visit California will make no payment under this Agreement until Visit California has received a signed copy of this Agreement and the applicable Statement of Work from Contractor

Section 5. **RECORD ESTABLISHMENT, ACCESS AND RETENTION**

- A. The Contractor agrees that Visit California or its agent shall have the right to review, obtain, and copy all records pertaining to performance of all Services performed under this Agreement. The Contractor agrees to provide Visit California or its agent with any relevant information and reasonable access upon request. The Contractor further agrees to maintain such records for a period of three (3) years following final payment under this Agreement and further agrees to keep such records separate from those of other activities unrelated to this Agreement.
- B. Upon inspection, the Contractor shall promptly implement any corrective measures recommended by Visit California or its representatives regarding the requirements of this Section.

Section 6. **ACCOUNTING AND AUDITING REQUIREMENTS**

- A. The Contractor is required to adhere to generally accepted accounting principles ("**GAAP**") and practices, consistently applied, that is capable of identifying all eligible and ineligible expenses consistent with each Work Statement and Project Budget.
- B. Visit California shall have the right to audit Contractor's financial records at any time, upon a reasonable notice. Should an audit by Visit California result in disallowance of funds previously disbursed to the Contractor, the Contractor shall reimburse all disallowed funds to Visit California within sixty (60) calendar days following the demand for reimbursement by Visit California.

Section 7. **COMMUNICATION**

- A. **PROGRAM MANAGER/ CTC CONTACT in BOLD** or an individual designated in writing by Visit California, shall be the Project Manager for this Agreement. This person shall have overall responsibility to administer, evaluate and follow-up the work of the Contractor during the term of this Agreement.
- B. All official communication and invoices from the Contractor to Visit California, shall be directed to the attention of **PROGRAM MANAGER/ CTC CONTACT in BOLD**, or other designated individual of Visit California, at the following address and phone/fax numbers:

California Travel and Tourism Commission
dba Visit California
555 Capitol Mall, Suite 1100
Sacramento, CA 95814
Phone: 916 – 444-4429 FAX 916 – 444-0410
E-mail: **PROGRAM MANAGER/ CTC CONTACT E-MAIL**

All official communications and payments from Visit California to the Contractor shall be directed to the attention of **CONTRACTOR CONTACT in BOLD**, or other designated individual of the Contractor, at the following address and phone/fax numbers:

CONTRACTOR NAME
ADDRESS
PHONE
E-MAIL

Section 8. **CANCELLATION PROVISIONS**

- A. This Agreement or any Work Statement hereunder may be canceled at any time by either party in writing with thirty (30) calendar days' advance notice. If canceled:
 - 1. the Contractor shall provide to Visit California, at Visit California's discretion, all work performed through the date of cancellation within thirty (30) calendar days of the cancellation date; and
 - 2. final payment shall be made to the Contractor only for the performance and costs authorized up to the date of cancellation upon receipt of the final invoice(s).
- B. Notwithstanding Section 8 (A), Visit California may cancel this Agreement verbally in whole or in part and later follow-up with written confirmation, giving the Contractor less than thirty (30) calendar days' advance notice if:
 - 1. full funding is not available for all of the Services outlined in any Work Statement; or,

2. material defaults in either the Contractor's performance, or compliance with the terms of this Agreement occur and continue without timely correction or cannot be corrected. "Material default in performance "means the material failure to comply with the material terms and/or requirements of this Agreement. If the Contractor materially defaults in performance, Visit California may proceed with the Services in any manner deemed proper by Visit California. The cost to Visit California for completion of the Services shall be deducted from any sum due to the Contractor under the applicable Work Statement, and the balance, if any, shall be paid to the Contractor upon demand.
- C. Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is delayed, interrupted or prevented by any occurrence not occasioned by the conduct of either party, whether the occurrence is an act of God or public enemy, or whether that occurrence is caused by war, riot, storm, earthquake or other natural forces, or by the acts of anyone not a party to this agreement, or is otherwise beyond the control of the parties to this agreement, for whatever period of time after the occurrence is reasonably necessary to remedy the effects of the occurrence.

Section 9. **COPYRIGHT AND OWNERSHIP OF MATERIALS**

- A. The term "**Work**", as used in this Section, means all writings and printed matter including the medium by which it is recorded or reproduced, photographs, art work, pictorial reproductions, drawings or other graphic representations and works of a similar nature, sound recordings, films, tapes, original computer programs (including executable computer programs and supporting data in any form) and any other materials or products conceptualized, developed and/or delivered in the course of or under any Work Statement governed by this Agreement. The "Work" does not include those materials licensed pursuant to Paragraph C of this Section.
- B. Ownership and Approval: In connection with any and all copyrightable Work developed or created by the Contractor or its employees or subcontractors in the course of performing and creating the Work, it is understood and agreed that such Work shall be produced as work made for hire when the Work is within the scope of the definition of a work made for hire in the United States Copyright Act. As such, the copyrights in such Work shall belong to Visit California and no further action shall be necessary to perfect Visit California's rights in them. Any original Work by the Contractor shall be approved by California Tourism prior to distribution or dissemination. In addition, the Contractor shall place or cause to be placed the following legend on all Work, inserting the year of the Work's creation in the blank space:

*"Copyright @ 201-, by the California Travel and Tourism Commission dba
Visit California.
All rights reserved."*

- C. Licenses: For work(s) requiring the use of copyrighted materials, the Contractor shall furnish Visit California with the names and addresses of all copyright holder(s) or their agent(s), if any, and the terms of any license(s) or usage granted, at the time of delivery of the Work. Additionally, if required by Visit California, Contractor shall submit a legal opinion to the effect that the anticipated use will not violate any copyright laws, regulations or other legal requirements in the jurisdictions where the copyrighted materials will be used. No licensed materials shall be used without prior written permission of Visit California.
- D. Assignment: If for any reason, Visit California is not deemed to be the owner of the copyright and copyright interest in the Work, then the Contractor hereby assigns all such rights to Visit California, and the Contractor shall cause or require its personnel and subcontractors to assign to the Contractor or Visit California, at the time of creation of the Work, all such rights they may have in the Work, all without any requirement for further consideration. The Contractor shall take such further actions, and shall cause or require its personnel or subcontractors to take such further actions, including the execution and delivery of instruments of conveyance, as may be appropriate to give full and proper effect to such assignments.

Section 10. **WARRANTIES AND INDEMNIFICATION**

- A. Warranties: The Contractor represents and warrants that:
 - 1. it is free to enter into and fully perform this Agreement and each Work Statement entered into hereunder;
 - 2. it has secured or will secure all rights and licenses necessary for the production of the Services and the Work;
 - 3. neither the Services nor Work nor any of the materials contained therein, nor the exercise by either party of the rights granted in this Agreement, shall infringe upon or violate the rights or interests of any person or entity;
 - 4. neither the Services nor Work nor any part of it shall:
 - a. violate the right of privacy of,
 - b. constitute a libel or slander against; or,
 - c. infringe upon the copyright, literary, dramatic, statutory or common law rights of any person, firm or corporation; and,
 - 5. 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 Visit California in this Agreement.

- B. Indemnity:

The Contractor shall indemnify, defend and hold harmless Visit California and its officers, agents and employees from and against any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material persons, laborers and any other person, firm or corporation furnishing or

supplying work, services, equipment, materials or supplies in connection with the performance of all Work Statements under this Agreement, and from and against any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of any Work Statement under this Agreement, or which any of them may sustain because of the use of the Work and any other materials furnished by the Contractor under any Work Statement under this Agreement, or because of the breach of any of the representations or warranties made in this Agreement. The Contractor agrees to incorporate the foregoing indemnity provisions in any consultant or subcontract agreement and to have Visit California added as a named indemnitee.

Section 11. **STATE TRADEMARKS AND SERVICE MARKS**

- A. Certain copyrighted material, trademarks and service marks in collateral material are the exclusive property of Visit California or State of California, and may not be used alone or in combination with other words, phrases, logos or marks, without advance written permission of that party. Contractor shall obtain the written approval from Visit California for any advertising or promotional materials developed by Contractor, including the right to use copyrighted material, trademarks or service marks, prior to any distribution. Any copyrighted material, trademarks or service marks shall be set apart from other text as required by Visit California and all trademarks and service marks shall bear the statutory trademark/service mark notice.
- B. Any State trademarks or service marks may require special approval and review of all preprinting proofs. Contractor shall assign exclusive use of printed materials, including protected material, developed for Visit California pursuant to this Agreement to Visit California without further cost or expense.

Section 12. **INCORPORATION OF PROPOSAL OR BID**

- A. The Contractor's proposal or bid delineating a scope of work and deadlines is expressly incorporated by reference into the applicable Work Statement. In the event of conflict or inconsistency between the terms of the Work Statement and the Contractor's proposal or bid, the Work Statement shall be controlling.

Section 13. **POLITICAL REFORM ACT COMPLIANCE.**

Contractor understands and acknowledges that Visit California is subject to the terms and requirements of the Political Reform Act of 1974, Title 9, commencing with Section 81000 of the California Government Code, and the rules and regulations which implement and interpret the act, each as amended from time to time (collectively, the "**PRA**"). Contractor further understands and acknowledges that Contractor may be subject to requirements of the PRA as a result of the contractual relationship with Visit California pursuant to the Agreement, including, without limitation, the requirement that certain designated employees make economic interest filings with the State of California as a "consultant" pursuant to Visit California's Conflict of Interest Code. Based on a review

of the authority and duties of the employees of Contractor providing services to Visit California, Visit California shall make a determination of the employees constituting consultants, and the level of economic interest disclosure required of such employees. This determination is subject to modification as the employees working on Visit California's account and/or their duties change. Contractor agrees to comply with the requirements of the PRA, to cause its employees to make all required filings when and as due, and that the determination of Visit California as to the parties constituting a "consultant" and the required filings shall be final and determinative.

Section 14. **INSURANCE REQUIREMENTS**

A. Required Coverage

During the terms of this Agreement, Contractor will procure and maintain insurance against claims for injuries to persons or damages to property. Contractor's insurance will have limits no less than:

1. General Liability: \$2,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury, personal injury and property damage.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease. (If applicable).
4. Worker's Compensation Insurance: With coverage and limits as required by law. (If applicable).

B. Other Insurance Provisions

Visit California shall be covered as an insured party under the policies. General liability coverage can be provided in the form of an endorsement to Contractor's insurance policy naming Visit California as an insured party. Contractor's insurance coverage will be primary insurance as respects Visit California, its officers and employees. Any insurance or self-insurance maintained by Visit California, its officers, or employees will be excess of Contractor's insurance. All insurance coverage required to be carried hereunder shall be carried with insurance companies rated in the then-most current Best's Insurance Guide (or any successor thereto) as having a general policyholder rating of A- or better and a financial rating of "VIII" or better. Contractor's insurance shall not be subject to cancellation without thirty (30) days prior written notice to Visit California. Contractor will require and verify that all subcontractors maintain insurance subject to all of the requirements stated herein. Contractor shall provide Visit California with current insurance certificates evidencing the required insurance coverage. Visit California reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

Section 15. **Non-Discrimination:**

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

Section 16. **Dispute Resolution**

A. DISPUTES UNDER \$250,000. The parties agree that any action, claim, controversy or dispute by, between or among the parties, that arise out of or relate to or based upon this Agreement with an amount in dispute or claiming damages in an amount under \$250,000, shall be resolved through binding arbitration ("**Arbitration Proceeding**") in accordance with the Federal Arbitration Act (9 U.S.C. sections 1-16). Parties interpreting this Section shall follow the federal court rulings which provide, without limitation, that the Federal Arbitration Act (a) is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding substantive or procedural state policies to the contrary, (b) requires that federal and state courts rigorously enforce agreements to arbitrate, and (c) requires that the scope of arbitrable issues be resolved in favor of arbitration. A neutral arbitrator selected by the parties, or if the parties cannot agree, by the American Arbitration Association, shall conduct the arbitration at the arbitrator's office closest to Sacramento, California. The arbitrator shall conduct the arbitration according to the American Arbitration Association Commercial Arbitration Rules or such other procedures as may be agreed upon by the Parties. The parties agree to (i) join into the arbitration proceeding hereunder or (ii) join any other arbitration proceeding of a dispute arising out, relating to, or based upon this Agreement, being conducted by, persons or entities related to the dispute that may be necessary to completely resolve the dispute. The arbitration shall determine all rights and obligations relating to, arising out of or based upon this Agreement. The arbitrator's award shall be final, binding and enforceable in the absence of fraud. The arbitrator shall have the authority, power and right to award damages and provide for other remedies as are available at law or in equity in accordance with the laws of California. The arbitrator shall equitably allocate payment of the costs and attorneys' fees of the parties in light of the arbitrator's evaluation of the relative merits or lack thereof of the respective claims of the parties. THE PARTIES HEREBY AGREE TO ARBITRATION AND WAIVE THEIR RIGHTS TO A JURY TRIAL IN ACCORDANCE WITH APPLICABLE STATE LAW AND THE FEDERAL ARBITRATION LAW.

B. JUDICIAL REFERENCE. Any controversy, dispute or claim between the parties relating to this Agreement or any other document, instrument or transaction

between the parties with an amount in dispute or claiming damages at or over \$250,000 (each, a "Claim"), will be resolved by a reference proceeding in California pursuant to Sections 638 et seq. of the California Code of Civil Procedure, or their successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to reference. Venue for the reference will be the Superior Court in Sacramento County California (the "Court"). The following matters shall not be subject to reference: (i) exercise of self-help remedies (including without limitation set-off) and (ii) temporary, provisional or ancillary remedies (including without limitation temporary restraining orders or preliminary injunctions). The exercise of, or opposition to, any of the above does not waive the right to a reference hereunder. The referee shall be selected by agreement of Contractor and Visit California. If Contractor and Visit California do not agree, upon request of any party a referee shall be selected by the Presiding Judge of the Court. The referee shall determine all issues in accordance with existing case law and statutory law of the State of California, including without limitation the rules of evidence applicable to proceedings at law. The referee is empowered to enter equitable and legal relief, and rule on any motion which would be authorized in a court proceeding, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision, and pursuant to CCP §644 the referee's decision shall be entered by the Court as a judgment or order in the same manner as if tried by the Court. The final judgment or order from any decision or order entered by the referee shall be fully appealable as provided by law. Contractor and Visit California reserve the right to findings of fact, conclusions of law, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial if granted, will be a reference hereunder. AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, CONTRACTOR AND VISIT CALIFORNIA AGREE THAT ALL CLAIMS RESOLVED UNDER THIS REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT A JURY.

Section 17. **Visit California Legal Status**

Visit California has informed Contractor and Contractor acknowledges that Visit California is a California non-profit mutual benefit corporation authorized and governed by the California Tourism Marketing Act, (California Government Code §§ 13995 et seq) (the "Act"). Pursuant to the Act the composition of the Commission is prescribed, and Visit California is subject to various requirements which otherwise apply to public entities in California, including, without limitation, the PRA as referenced above in Section 13, the California Public Records Act (California Government Code §§6250 et seq), and the Bagley-Keen Open Meeting Act (California Government Code §§11120 et seq). Notwithstanding the foregoing, Visit California is not subject to the requirements of the California Public Contract Code or the California Administrative Procedure Act (California Government Code §§11340 et seq).

Section 18. **GENERAL PROVISIONS**

- A. Any amendment to this Agreement, including without limitation an amendment to increase a Project Budget or modify a Work Statement, must be in writing and signed by both parties.

- B. No provision of this Agreement or any Work Statement shall be deemed waived by either party, unless such waiver is in writing and is signed by the party against whom it is sought to be enforced.
- C. The Contractor, subcontractor(s), and the agents and employees of the Contractor, in the performance of this Agreement and any Work Statement, shall act in an independent capacity and not as officers, employees or agents of Visit California.
- D. Neither Visit California nor the Contractor shall assign this Agreement or any Work Statement in whole or in part.
- E. Time is of the essence in this Agreement and each Work Statement hereunder.
- F. Except as otherwise stated herein, the terms of this Agreement and each Work Statement constitute the entire agreement between and among the Parties hereto. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement or a Work Statement are of no force and effect.
- G. No action or want of action on the part of any party hereto at any time to exercise any rights or remedies conferred upon it under this Agreement or any Work Statement shall be, or shall be asserted to be, a waiver on the part of any such party of any of its rights or remedies hereunder.
- H. All exhibits to which reference is made are deemed incorporated in this Agreement or any Work Statement whether or not actually attached.
- I. This Agreement and each Work Statement shall be governed by the laws of the State of California.
- J. In the event of any dispute between the parties hereto involving the covenants or conditions contained in this Agreement or any Work Statement or arising out of the subject matter of this Agreement or any Work Statement, the prevailing party shall be entitled to recover reasonable expenses, attorneys' fees and costs.

Section 19. **GDPR TERMS**

IT IS AGREED as follows:

- A. GENERAL
 - i. Capitalised terms used but not defined in this Amendment shall have the meaning given to them in the Agreement.
 - ii. In consideration of the performance of each party's obligations set out in this Amendment and the Agreement, the parties agree that

the Agreement be supplemented by adding the following clause 2 (the **GDPR Data Processor Obligations**).

- iii. The GDPR Data Processor Obligations shall become effective on 25 May 2018.

B. **GDPR DATA PROCESSOR OBLIGATIONS**

- i. Definitions

Binding Corporate Rules has the meaning given to that term in the GDPR;

Claim means any actual, threatened or potential civil, criminal, administrative, regulatory, arbitral or investigative demand, allegation, action, suit, investigation, prosecution, proceeding or claim;

Controller has the meaning given to that term in the GDPR;

Counterparty means [**Counterparty**] or its affiliate that is party to the Agreement;

Data Protection Laws means (a) the GDPR; (b) the PECR; and (c) all other applicable laws concerning the Processing of data relating to an identified or identifiable living person;

Data Subject has the meaning given to that term in the GDPR;

GDPR means Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

International Organization has the meaning given to that term in the GDPR;

Losses means any damages, fines, penalties and administrative monetary penalties, deficiencies, losses, liabilities (including settlements and judgments), costs and expenses (including interest, court costs, reasonable fees and expenses of lawyers, accountants and other experts and professionals or other reasonable fees and expenses of any Claim);

PECR means: (i) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) unless and until repealed; and (ii) thereafter, any applicable law that replaces SI 2003/2426;

Personal Data means any information relating to an identified or identifiable living person provided by or on behalf of **Visit California** Entity in connection with the Agreement;

Personal Data Breach has the meaning given to that term in the GDPR;

Processing has the meaning given to that term in the GDPR and **Process** shall be construed accordingly;

Processor has the meaning given to that term in the GDPR;

Visit California means **the Visit California Organization** or its affiliate that is party to the Agreement;

Services means the services Counterparty provides to Visit California under the Agreement, which may include the provision of access to or use of software; and

Third Country has the meaning given to that term in the GDPR.

ii. General terms

- (i) To the extent that Counterparty Processes Personal Data in the course of providing the Services, each party acknowledges that, for the purpose of the Data Protection Laws, **Visit California** Entity is the Controller of the Personal Data and Counterparty is the Processor.
- (ii) Counterparty shall implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of the GDPR and ensure the protection of the rights of the Data Subject. [Article 28(1) GDPR]
- (iii) Processing by Counterparty shall be governed by the Agreement under any law of the European Union or any member state of the European Union, which is binding on Counterparty with regard to **Visit California** Entity. The subject-matter and duration of the Processing, the nature and purpose of the Processing, the types of Personal Data, the categories of Data Subjects and the obligations and rights of **Visit California** Entity are set forth in the Agreement (as amended by the parties from time to time). [Article 28(3) GDPR]
- (iv) Counterparty shall:

- (A) only Process Personal Data in accordance with the documented instructions of **Visit California** Entity (including to the extent necessary to provide the Services and to comply with its obligations under the Agreement). Counterparty is instructed by **Visit California** Entity to Process Personal Data for the purposes of performing its obligations under the Agreement; [Article 28(3)(a) GDPR]
- (B) inform **Visit California** Entity if, in Counterparty's opinion, any of **Visit California** Entity's instructions would breach Data Protection Laws or another European Union or member state law to which it is subject; and [Article 28(3)(h) GDPR]
- (C) assist **Visit California** Entity with undertaking an assessment of the impact of Processing Personal Data, and with any consultations with a supervisory authority, if and to the extent an assessment or consultation is required to be carried out under Data Protection Laws. [Articles 28(3)(f), 35 and 36 GDPR]
- (D) Assume the role of Controller for any and all personal data that the Counterparty collects and or processes which is not personal data collected by and processed on behalf of Visit California.

Data Subject Rights [Article 28(3)(e) and Chapter III GDPR]

Counterparty shall:

- (v) implement appropriate technical and organisational measures for the fulfilment of **Visit California** Entity's obligation to respond to requests by Data Subjects to exercise their rights of access, rectification or erasure, to restrict or object to Processing of Personal Data, or to data portability; and
- (vi) if a Data Subject makes a written request to Counterparty to exercise any of the rights referred to in clause B.ii(v), forward the request to **Visit California** Entity promptly and, upon **Visit California** Entity's reasonable written request, provide **Visit California** Entity with all co-operation and assistance reasonably requested by **Visit California** Entity in relation to that request to enable **Visit California** Entity to respond to that request in compliance with applicable deadlines and information requirements.

B. **Security measures [Articles 28(3)(c) & (f), 32 and 33 GDPR]**

Counterparty shall:

- i. taking into account the state of the art, the costs of implementation and the nature, scope, context and purpose of Processing, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including the risk of unauthorised or unlawful Processing of Personal Data, and of accidental or unlawful loss, alteration, unauthorised disclosure or destruction of, or damage to, Personal Data; and
- ii. notify **Visit California** Entity without undue delay after becoming aware of a Personal Data Breach, and upon **Visit California** Entity's reasonable written request, provide **Visit California** Entity with all co-operation and assistance reasonably requested by **Visit California** Entity to enable **Visit California** Entity to notify the Personal Data Breach to the relevant supervisory authority and relevant Data Subject(s) (as applicable).

C. **Sharing of personal data [Articles 28(2), 28(3)(b)(d), 28(4) and 32(4) GDPR]**

Counterparty shall:

- i. not engage another Processor without prior written authorisation of **Visit California** Entity. **Visit California** Entity agrees that the subcontractors engaged by Counterparty to Process Personal Data in connection with the Agreement as at the date of this Amendment may continue to Process such Personal Data. Without prejudice to the Counterparty's other obligations under the Agreement in relation to the addition, replacement or removal of subcontractors, Counterparty shall provide **Visit California** Entity with notice of any intended addition or replacement of such subcontractors, and comply with any request by **Visit California** Entity to refrain from such addition or replacement;
- ii. before disclosing Personal Data to any other Processor, enter into a contract with that Processor under which the Processor agrees to comply with obligations equivalent to those set out in these GDPR Data Processing Obligations;
- iii. before disclosing Personal Data to any of its employees, subcontractors and other representatives, or those of any of its other Processors, ensure that those persons are bound to hold the information in confidence to at least the same standard as required

under the Agreement (as amended by this Amendment) (whether under a written agreement or otherwise); **[Article 28(3)(b) GDPR]**

- iv. before disclosing Personal Data to any of its employees and representatives, or those of any of its other Processors, ensure that those persons have undergone appropriate training in data protection and the care and handling of Personal Data;

D. Transfers of personal data [Article 28(3)(a) GDPR]

Counterparty shall:

- i. not transfer Personal Data to, or Process Personal Data in, any Third Country or International Organization without the prior written consent of **Visit California** Entity (which consent may be conditional upon the Processor in such Third Country or International Organization (**Importing Entity**) entering into an agreement containing similar terms to these GDPR Data Processing Obligations with **Visit California** Entity) unless (and for so long as):
 - (i) there has been a European Commission finding of adequacy pursuant to Article 25(6) of Directive 95/46/EC or, after 24 May 2018, Article 45 of the GDPR in respect of that Third Country or International Organization;
 - (ii) the transfer is to the United States to an Importing Entity that is a certified member of the EU-US Privacy Shield, a framework for transatlantic data transfers between the European Union and the United States;
 - (iii) the Importing Entity is an affiliate of Counterparty and governed by an approved set of Binding Corporate Rules; or
 - (iv) **Visit California** Entity and the Importing Entity are party to a contract in relation to the export of Personal Data incorporating standard contractual clauses in the form adopted by the European Commission under Decision 2010/87/EU or an equivalent data transfer agreement meeting the requirements of Data Protection Laws.
- ii. Where any mechanism for cross-border transfers of Personal Data is found by a supervisory authority, court of competent jurisdiction or other governmental authority to be an invalid means of complying with the restrictions on transferring Personal Data to a Third Country or International Organization as set out in Data Protection Laws, the parties shall act in good faith to agree the implementation of an alternative solution to enable **Visit California** Entity to comply with the provisions of Data Protection Laws in respect of any such transfer.

E. **Compliance [Article 28(3)(h) GDPR]**

Counterparty shall:

- i. promptly notify **Visit California** Entity if it receives any complaint, notice or communication which relates directly or indirectly to the Processing of Personal Data, or to either party's compliance with Data Protection Laws, and shall fully co-operate and assist **Visit California** Entity in relation to any such complaint, notice, communication or non-compliance; and
- ii. without prejudice to **Visit California**'s general rights to audit (if any) under the Agreement, upon **Visit California**'s reasonable written request, provide all information necessary to demonstrate compliance with these GDPR Data Processing Obligations, and allow **Visit California** or an auditor appointed by **Visit California** to carry out audits, including inspections of facilities, equipment, documents and electronic data, relating to the Processing of Personal Data by Counterparty or any other Processor engaged by Counterparty, to verify compliance with these GDPR Data Processing Obligations.

F. **Termination/expiry [Article 28(3)(g) GDPR]**

- i. Unless expressly stated otherwise in the Agreement, upon termination of the Agreement, Counterparty shall, and shall procure that each other Processor engaged by Counterparty shall, immediately cease to use the Personal Data and shall, at **Visit California**'s option, return the Personal Data to **Visit California** or to a Processor nominated by **Visit California** or delete the Personal Data and all copies and extracts of the Personal Data unless required to retain a copy in accordance with any law of the European Union or any member state of the European Union.
- ii. On expiry or termination of the Agreement (however arising) these GDPR Data Processing Obligations shall survive and continue in full force and effect.

G. **Liability and Indemnity**

Notwithstanding any other provision of the Agreement, Counterparty will be liable to **Visit California** Entity for all Losses incurred or suffered by **Visit California** Entity and will, at its sole expense, defend **Visit California** Entity against any Claim by any third party, in each case to the extent arising out of Counterparty's breach of these GDPR Data Processor Obligations.

H. **MISCELLANEOUS PROVISIONS**

- i. This Amendment may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this Amendment by executing a counterpart.
- ii. If there is any conflict or inconsistency between the GDPR Data Processor Obligations and the other terms of the Agreement, these GDPR Data Processor Obligations will govern. Except for changes made by this Amendment, the Agreement remains unchanged and in full force and effect and the original effective date (or equivalent) as defined in the Agreement shall remain the same.
- iii. This Amendment and any non-contractual obligations arising out of or in connection with it are governed by English law. The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Amendment and the parties submit to the exclusive jurisdiction of the English courts.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have hereby executed this Agreement as of the day and year first above written.

CONTRACTOR NAME
CONTRACTOR TITLE
CONTRACTOR BUSINESS

Caroline Beteta,
President & Chief Executive Officer
Matthew Sabbatini,
Chief Operating Officer
Visit California

Date_____

Date_____

Commissioner Noreen Martin
Chief Fiscal Officer
Visit California

Date_____