ATTACHMENT A
PROFESSIONAL SERVICES AGREEMENT

This Agreement dated as of _______________ (the “Effective Date”) is made by and between the Sonoma County Library, a Joint Powers Authority Entity (hereinafter referred to as “Library”) and [INSERT TYPE OF ENTITY], authorized to conduct business in the State of California (hereinafter referred to as “Consultant”), pursuant to the terms and conditions set forth below.

RECITALS

A. Consultant represents that it is a duly qualified [INSERT TYPE OF EXPERTISE], experienced in [INSERT TYPE OF SERVICES TO BE PROVIDED], and related services.

C. In the judgment of the Library, it is necessary and desirable to employ the services of Consultant to provide [INSERT TYPES OF SERVICES TO BE PROVIDED].

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. Scope of Services.

1.1 Consultant’s Specified Services. Consultant shall perform the services described in the attached Exhibit A, which is incorporated herein (hereinafter referred to as the “Scope of Work”), and within the times or by the dates as provided therein. In the event of a conflict between the body of this Agreement and its exhibits, the provisions in the body of this Agreement shall control.

1.2 Cooperation. The parties shall cooperate with each other in the performance of this Agreement.

1.3 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant’s profession. If the Library determines that any of Consultant’s work is not in accordance with such level of competency and standard of care, Library, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with the Library to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.
1.4 **Assigned Personnel.** Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time the Library, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from the Library. Further, any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by the Library to be key personnel whose services were a material inducement to the Library to enter into this Agreement; Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of the Library.

2. **Payment.** For all services and incidental costs required hereunder, Consultant shall be paid in accordance with the rates and terms set forth in Exhibit B, attached hereto and incorporated herein. Consultant shall submit its invoices in arrears on a monthly basis in a form approved by the Library. The invoices shall show or include: (a) the tasks performed; (b) the time in quarter hours devoted to the tasks; (c) the hourly rate or rates of the persons performing the tasks; and (d) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed. In no event shall the total payable under this Agreement exceed $__________________________.

3. **Term of Agreement.** The term of this Agreement shall be from the Effective Date through ______________________, unless terminated earlier in accordance with the provisions of Article 4, below.

4. **Termination.**

4.1 **Termination without Cause.** Notwithstanding any other provision of this Agreement, at any time and without cause, the Library shall have the right, in its sole discretion, to terminate this Agreement by giving five (5) days written notice to Consultant.

4.2 **Termination for Cause.** Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, the Library may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 **Delivery of Work Product and Final Payment Upon Termination.** In the event of termination, Consultant shall deliver all materials and work product created pursuant to this Agreement to the Library within 14 days following the date of termination, and shall submit an invoice showing the services performed, hours worked, and copies of receipts for any reimbursable expenses up to the date of termination.

4.4 **Payment Upon Termination.** Upon termination of this Agreement by the Library, and if services are invoiced at an hourly rate hereunder, Consultant shall
be entitled to receive full payment for all services satisfactorily rendered and expenses incurred hereunder; if services are instead invoiced on a project basis, then Consultant shall be entitled to a pro rata amount of payment for all services satisfactorily rendered to the date of termination and any related expenses, based on the project as a whole. However, if the Library terminates the Agreement for cause pursuant to Section 4.2, then it shall deduct from such payment the amount of damage, if any, sustained by Library by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate. The Library Director has the authority to terminate this Agreement on behalf of the Library.

5. Indemnification. Consultant agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the Library (including its commissioners, officers, agents, and employees) from and against any and all actions, claims, damages, disabilities or expenses that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant’s performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against the Library based upon a claim relating to Consultant’s performance or obligations under this Agreement. This provision shall be interpreted broadly in favor of the Library, and Consultant’s obligations under this provision apply whether or not there is concurrent negligence on the Library’s part, but to the extent required by law, excluding liability due to the Library’s conduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers’ compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit C, which is attached hereto and incorporated herein by reference.

7. Prosecution of Work. The execution of this Agreement shall constitute Consultant’s authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, fire, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Director in a form approved by the Library’s General Counsel. The Library must authorize all other extra or changed work.
Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the Library.

9. **Representations of Consultant.**

9.1 **Standard of Care.** Library has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by the Library shall not operate as a waiver or release. Consultant represents that it is properly licensed in the jurisdiction where the project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed professionals.

9.2 **Status of Consultant.** The parties intend for Consultant to perform services under this Agreement as an independent contractor, and further agree that: (a) Consultant is free from the control and direction of the Library in performing services under this Agreement; (b) the services to be performed under this Agreement are outside the usual course of the Library’s business; and (c) Consultant is customarily engaged in an independently-established business of the same nature as the services to be performed for the Library under this Agreement. In the event the Library exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 **Taxes.** Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold the Library harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case the Library is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish the Library with proof of payment of taxes on these earnings.

9.4 **Records Maintenance.** Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to the Library for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.
9.5 Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed or engaged as a subcontractor. In addition, if requested to do so by the Library, Consultant shall complete and file, and shall require any other person doing work under this Agreement to complete and file, a Form 700 “Statement of Economic Interest” with the Library disclosing Consultant's or such other person's financial interests.

9.6 Nondiscrimination. Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.7 Assignment of Rights. Consultant assigns to Library all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the data and reports now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to Library in this Agreement, and to refrain from taking any action which would impair those rights. Consultant’s responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as Library may direct, and refraining from disclosing any versions of the data and reports to any third party without first obtaining written permission of Library. Consultant shall not use or permit another to use the data and reports in connection with this or any other project without first obtaining written permission of Library.

9.8 Ownership and Disclosure of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant or Consultant’s subcontractors, consultants, and other agents in connection with this Agreement, shall be the property of the Library. The Library shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to the Library all such documents, which have not already been provided to the Library in such form or format, as the Library deems appropriate. Such documents shall be and will remain the property of the Library without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of the Library.
10. **Demand for Assurance.** Each party to this Agreement undertakes the obligation that the other’s expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. “Commercially reasonable” includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party’s right to demand adequate assurance of future performance. Nothing in this Article 10 limits the Library’s right to terminate this Agreement pursuant to Article 4.

11. **Assignment and Delegation.** Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. **Method and Place of Giving Notice, Submitting Bills and Making Payments.** All notices, bills, and payments (“notices”) shall be made in writing and may be given by personal delivery, U.S. Mail, or courier service (such as Federal Express). Notices sent by mail, delivery or courier shall be addressed as follows:

FOR LIBRARY:

Library Director
Sonoma County Library
6135 State Farm Drive
Rohnert Park, CA 94928

FOR CONSULTANT:

When so addressed, notices shall be deemed given upon deposit in the U.S. Mail, or express mail service, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery. Any changes to the names and addresses for notice purposes shall be provided in writing.
13. **Miscellaneous Provisions**

13.1. **Merger.** This Agreement is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to California Code of Civil Procedure § 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.2. **No Waiver of Breach.** The waiver by the parties of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise, or any subsequent breach or promises contained in this Agreement.

13.3. **No Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.4. **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and the Library acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and the Library acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.5. **Applicable Law and Forum.** This Agreement shall be construed and interpreted according to California Law, and any action or proceeding to enforce this Contract or for the breach thereof shall be brought or tried in the County of Sonoma.

13.6. **Counterparts.** This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement that shall be binding on all of the parties, notwithstanding that all of the parties are not signatory to the original or same counterpart.

13.7. **Time of Essence.** Time is and shall be of the essence of this Agreement and every provision hereof.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

CONSULTANT:

Dated: _____________, 2019

By: __________________________

[Insert name and title]

LIBRARY:

Dated: _____________, 2019

By: __________________________

Ann Hammond
Director
Sonoma County Library

APPROVED AS TO FORM FOR LIBRARY:

By: __________________________

Anne L. Keck
Keck Law Offices
General Counsel
EXHIBIT A

Scope of Work

[Insert]
EXHIBIT B

Payment Terms

[Insert]
EXHIBIT C

Insurance Requirements

With respect to performance of work under this Agreement, Consultant shall maintain
insurance as described below unless such insurance has been expressly waived by the
Library through a Waiver of Insurance Requirements. Any requirement for insurance to
be maintained after completion of the work shall survive this Agreement.

The Library reserves the right to review any and all of the required insurance policies
and/or endorsements, but has no obligation to do so. Failure to demand evidence of full
compliance with the insurance requirements set forth in this Agreement (or failure to
identify any insurance deficiency) shall not relieve Consultant from, nor be construed or
demed a waiver of, its obligation to maintain the required insurance at all times during
the performance of this Agreement.

1. Workers Compensation and Employers Liability Insurance
   a. Required if Consultant has employees as defined by the Labor Code of the State
      of California.
   b. Workers Compensation insurance with statutory limits as required by the Labor
      Code of the State of California.
   c. Employers Liability with minimum limits of $1,000,000 per Accident; $1,000,000
      Disease per employee; $1,000,000 Disease per policy.
   d. Required Evidence of Insurance: Certificate of Insurance.

   If Consultant currently has no employees as defined by the Labor Code of the State of
   California, Consultant agrees to obtain the above-specified Workers Compensation
   and Employers Liability insurance should employees be engaged during the term of
   this Agreement or any extensions of the term.

2. General Liability Insurance
   a. Commercial General Liability Insurance on a standard occurrence form, no less
      broad than Insurance Services Office (ISO) form CG 00 01.
   b. Minimum Limits: $1,000,000 per Occurrence; $2,000,000 General Aggregate;
      $2,000,000 Products/Completed Operations Aggregate. The required limits may
      be provided by a combination of General Liability Insurance and Commercial
      Excess or Commercial Umbrella Liability Insurance. If Consultant maintains
      higher limits than the specified minimum limits, the Library requires and shall be
      entitled to coverage for the higher limits maintained by Consultant.
   c. Any deductible or self-insured retention shall be shown on the Certificate of
      Insurance. If the deductible or self-insured retention exceeds $25,000 it must be
      approved in advance by the Library. Consultant is responsible for any deductible
      or self-insured retention and shall fund it upon the Library’s written request,
      regardless of whether Consultant has a claim against the insurance or is named as
      a party in any action involving the Library.
d. The Sonoma County Library shall be endorsed as an additional insured for liability arising out of operations by or on behalf of the Consultant in the performance of this Agreement.

e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.

f. The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the “f” definition of insured contract in ISO form CG 00 01, or equivalent).

g. The policy shall cover inter-insured suits between the additional insureds and Consultant and include a “separation of insureds” or “severability” clause which treats each insured separately.

h. Required Evidence of Insurance:
   i. Copy of the additional insured endorsement or policy language granting additional insured status; and
   ii. Certificate of Insurance.

3. Automobile Liability Insurance
   a. Minimum Limit: $1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
   b. Insurance shall cover all owned autos. If Consultant currently owns no autos, Consultant agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
   c. Insurance shall cover hired and non-owned autos.
   d. Required Evidence of Insurance: Certificate of Insurance.

4. Professional Liability/Errors and Omissions Insurance
   a. Minimum Limits: $1,000,000 per claim or per occurrence; $1,000,000 annual aggregate.
   b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds $25,000 it must be approved in advance by the Library.
   c. If Consultant’s services include: (1) programming, customization, or maintenance of software; or (2) access to individuals’ private, personally identifiable information, the insurance shall cover:
      i. Breach of privacy; breach of data; programming errors, failure of work to meet contracted standards, and unauthorized access; and
      ii. Claims against Consultant arising from the negligence of Consultant, Consultant’s employees and Consultant’s subcontractors.
   d. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
   e. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement
insurance with a retroactive date no later than the commencement of the work under this Agreement.
f. **Required Evidence of Insurance**: Certificate of Insurance specifying the limits and the claims-made retroactive date.

**Standards for Insurance Companies**
Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

**Documentation**
a. The Certificate of Insurance must include the following reference:

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_________________________________[INSERT PROJECT NAME].
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b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with the Library for the entire term of this Agreement and any additional periods if specified in Sections 1–4 above.
c. The name and address for Additional Insured endorsements and Certificates of Insurance are:

Director  
Sonoma County Library  
6135 State Farm Drive  
Rohnert Park, CA 94928

d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
e. Consultant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

**Policy Obligations**
Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

**Material Breach**
If Consultant fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. The Library, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, the Library may purchase the required insurance, and without further notice to Consultant, the Library may deduct from sums due to Consultant any premium costs advanced by the Library for such insurance. These remedies shall be in addition to any other remedies available to the Library.