

**SOFTWARE LICENSE AND SUPPORT SERVICES AGREEMENT
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
ASCENDANT STRATEGY MANAGEMENT GROUP, LLC
FOR FISCAL YEARS 2022-2023 THROUGH 2027-2028**

This Agreement, entered into this 30th day of August, 2022, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Ascendant Strategy Management Group, LLC, a Massachusetts limited liability company, hereinafter referred to as "COMPANY," is made upon the following considerations:

WHEREAS, COUNTY, by and through its Department of Health and Human Services ("DHHS"), desires to retain a qualified professional firm to implement, support and maintain a performance management software system that allows DHHS staff to enter, organize, monitor and report on performance management activities within DHHS; and

WHEREAS, such work involves the performance of professional, expert and technical services of a temporary and occasional character; and

WHEREAS, COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof for the temporary period; and

WHEREAS, COMPANY represents that it is adequately trained, skilled, experienced and qualified to perform the services required by COUNTY.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. GRANT OF LICENSE AND DESCRIPTION OF SERVICES:

- A. Grant of License to Use Software. Subject to the terms and conditions of this Agreement, COMPANY hereby grants to COUNTY a non-exclusive, non-transferable and non-sublicensable license to access and use of COMPANY's Web-embed Dashboard service ("Software") by COUNTY staff members for a limited time for the purpose of analyzing COUNTY's performance management tracking. COMPANY will use commercially reasonable efforts to provide COUNTY with access to the Software in accordance with the terms and conditions set forth in Exhibit A – Service Level Terms, which is attached hereto and incorporated herein by reference.
- B. Implementation Services. Subject to the terms and conditions of this Agreement, COMPANY hereby agrees to implement and incorporate the Software into COUNTY's existing performance management system.
- C. Technical Support Services. Subject to the terms and conditions of this Agreement, COMPANY hereby agrees to provide technical support services via telephone and electronic mail Monday through Friday, 5:00 AM – 5:00 PM PST with the exclusion of federal holidays ("Support Hours"). COUNTY may request help during Support Hours by calling 866-568-0590 or any time by emailing support@clearpointstrategy.com. COMPANY will notify COUNTY within one (1) business day upon a change in the support email address. COMPANY will use commercially reasonable efforts to respond within one (1) business day.

2. SCOPE OF LICENSE:

- A. Proprietary Rights. COMPANY shall own and retain all rights, title and interest in and to all of the following:
1. The Software and all improvements, enhancements, modifications, changes, translations, compilations and derivative works related thereto.
 2. Any and all software, applications, inventions or other technology developed in connection with implementation and/or maintenance of the Software.
 3. Any and all intellectual property rights related to Sections 2.A.1 and 2.A.2.
- B. User Registration. As part of the registration process, COUNTY will identify an administrative user name and password for COUNTY's account. COMPANY reserves the right to refuse registration or cancel passwords it deems inappropriate.
- C. License Restrictions. COUNTY will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Software or other documentation or data related to or used to provide access to the Software; modify, translate or create derivative works based on the Software, except to the extent expressly permitted in writing by COMPANY; use the Software for timesharing or services bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.
- D. Compliance with Export Laws. COUNTY shall not export or re-export, either directly or indirectly, the Software or any copies thereof in such a manner as to violate the export laws and regulations of the United States or any other applicable jurisdiction in effect from time to time, including, without limitation, when such export or re-export requires an export license or other governmental approval without first obtaining such license or approval. Without limiting the foregoing, COUNTY shall not permit any third parties to access or use the Software in violation of any United States export embargo, prohibition or restriction.
- E. Monitoring. Although COMPANY has no obligation to monitor COUNTY's use of the Software, COMPANY may do so.
- F. Maintenance of Equipment and Ancillary Services. COUNTY shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Software, including, without limitation, modems, hardware, servers, software, operating systems, networking, and web servers ("Equipment"). COUNTY shall also be responsible for maintaining the security of the Equipment, COUNTY account, passwords, including, but not limited to, administrative and user passwords, files, and for all uses of COUNTY's account or the Equipment with or without COUNTY's knowledge or consent.

3. TERM:

This Agreement shall begin on September 21, 2022 and shall remain in full force and effect until September 20, 2027 unless sooner terminated as provided herein.

4. TERMINATION:

- A. Termination for Cause. COUNTY may, in its sole discretion, immediately terminate this

Agreement, if COMPANY fails to adequately perform the services required hereunder, fails to comply with the terms or conditions set forth herein, or violates any local, state or federal law, regulation or standard applicable to its performance hereunder.

- B. Termination without Cause. COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice which states the effective date of the termination.
- C. Termination due to Insufficient Funding. COUNTY's obligations under this Agreement are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated. COUNTY shall provide COMPANY seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.
- D. Compensation upon Termination. In the event this Agreement is terminated for cause, COMPANY shall be entitled to compensation for uncompensated license and service fees through and including the effective date of the termination. However, this provision shall not limit or reduce any damages owed to COUNTY due to a breach of this Agreement by COMPANY.

5. COMPENSATION:

- A. Maximum Amount Payable. The maximum amount payable by COUNTY for any and all services provided, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement is Sixty Nine Thousand Dollars (\$69,000.00). In no event shall the maximum amount paid under this Agreement exceed Thirteen Thousand Eight Hundred Dollars (\$13,800.00) for each twelve month period. In the event that the maximum amount payable for a specified fiscal year is not reached, the remaining balance thereof will be added to the maximum amount payable for the following fiscal year. COMPANY agrees to provide all licenses and perform all services required by this Agreement for an amount not to exceed such maximum dollar amount. However, if local, state or federal funding or allowance rates are reduced or eliminated, COUNTY may, by amendment, reduce the maximum amount payable for the licenses and services provided hereunder, or terminate this Agreement as provided herein.
- B. Schedule of Rates. The specific rates and costs applicable to this Agreement are set forth in Exhibit B – Schedule of Rates, which is attached hereto and incorporated herein by reference.
- C. Additional Licenses and Services. Any additional licenses and/or services not otherwise set forth herein shall not be provided by COMPANY, or compensated by COUNTY, without written authorization by COUNTY. All unauthorized costs and expenses incurred above the maximum payable amount set forth herein shall be the responsibility of COMPANY. COMPANY shall notify COUNTY, in writing, at least six (6) weeks prior to the date upon which COMPANY estimates that the maximum payable amount will be reached.
- D. Taxes. COUNTY shall be responsible for the payment of any and all taxes associated with the licenses and services provided pursuant to the terms and conditions of this Agreement other than federal taxes based on COMPANY's net income.

6. PAYMENT:

COMPANY shall submit to COUNTY monthly invoices substantiating the costs and expenses incurred pursuant to the terms and conditions of this Agreement within thirty (30) days after the end of each month. COMPANY shall submit a final invoice for

payment within thirty (30) days following the expiration or termination date of this Agreement. Invoices shall be prepared using a format that is substantially similar to the format set forth in Exhibit C – Sample Invoice Form, which is attached hereto and incorporated herein by reference as if set forth in full. Payment for any and all costs and expenses incurred pursuant to the terms and conditions of this Agreement shall be made within thirty (30) days after the receipt of approved invoices. Any and all invoices submitted pursuant to the terms and conditions of this Agreement shall be sent to COUNTY at the following address:

COUNTY: Humboldt County DHHS – Public Health
Attention: Financial Services
507 F Street
Eureka, California, 95501

7. NOTICES:

Any and all notices required to be given pursuant to the terms of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County Public Health
Attention: Lara Weiss, Office of Performance Improvement & Accreditation
529 I Street
Eureka, California 95501

COMPANY: Ascendant Strategy Management Group
Attention: Ted K Jackson, Managing Partner
75 Arlington Street, Fifth Floor
Boston, Massachusetts 02116

8. REPORTS:

COMPANY agrees to provide COUNTY with any and all reports that may be required by any local, state and/or federal agencies for compliance with this Agreement. COMPANY shall submit one (1) electronic copy of any and all reports required hereunder in a format that complies with the Americans with Disabilities Act and any other applicable accessibility laws, regulations and standards. Any and all reports required hereunder shall be submitted in accordance with any and all applicable timeframes using the format required by the State of California as appropriate.

9. RECORD RETENTION AND INSPECTION:

A. Maintenance and Preservation of Records. COMPANY agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the licenses and services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the licenses and services provided pursuant to the terms and conditions of this Agreement.

B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records,

documents, conditions and activities of COMPANY, and its subcontractors, related to the licenses and services provided hereunder, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after final payment under this Agreement. COMPANY hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by COUNTY and any duly authorized local, state and/or federal agencies. COMPANY further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY and any duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement.

- C. Audit Costs. In the event of an audit exception or exceptions related to the licenses and services provided pursuant to the terms and conditions of this Agreement, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because COMPANY's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

10. MONITORING:

COMPANY agrees that COUNTY has the right to monitor all activities related to this Agreement, including, without limitation, the right to review and monitor COMPANY's records, policies, procedures and overall business operations, at any time, in order to ensure compliance with the terms and conditions of this Agreement. COMPANY shall cooperate with a corrective action plan, if deficiencies in COMPANY's records, policies, procedures or business operations are identified by COUNTY. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of COMPANY's performance hereunder.

11. CONFIDENTIAL INFORMATION:

- A. Use and Disclosure of Proprietary Information. In the performance of this Agreement, each party may receive information of the other party that is not generally known to the public, including, but not limited to, trade secrets, know-how, inventions, techniques, algorithms programs, documentation and data which may be designated as being confidential, or which under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, "Proprietary Information"). Each party shall use and disclose only the minimum amount of Proprietary Information necessary to accomplish the intended purpose of this Agreement. Each party further agrees to protect all Proprietary Information in accordance with any and all applicable local, state and federal laws, regulations, policies and standards.
- B. Use and Disclosure of Personally Identifiable Information. In the performance of this Agreement, COMPANY may receive personally identifiable information that is confidential under local, state or federal law. COMPANY hereby agrees to protect all personally identifiable information in accordance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, but not limited to: California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act ("CMIA"); the United States Health Information Technology for Economic and Clinical Health Act ("HITECH Act"); the United States Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any current and future implementing regulations promulgated thereunder, including, without limitation, the Federal

Privacy Regulations contained in Title 45 of the Code of Federal Regulations (“C.F.R.”) Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.

- C. Continuing Compliance with Confidentiality Laws. The parties acknowledge that local, state and federal laws, regulations and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of any applicable local, state and federal laws, regulations or standards.

12. NON-DISCRIMINATION COMPLIANCE:

- A. Nondiscriminatory Delivery of Social Services. In connection with the execution of this Agreement, COMPANY, and its subcontractors, shall not unlawfully discriminate in the administration of public assistance and social services programs. COMPANY hereby assures that no person shall be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving local, state or federal financial assistance because of: race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any and all applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. COUNTY reserves the right to monitor the services provided hereunder in order to ensure compliance with the requirements of this provision.
- B. Professional Services and Employment. In connection with the execution of this Agreement, COMPANY, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.
- C. Compliance with Anti-Discrimination Laws. COMPANY further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, et seq.; California Government Code Sections 4450, et seq.; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations, all as may be amended from time to time. The applicable

regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Chapter 5, 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.

13. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this Agreement, COMPANY certifies that it is not a Nuclear Weapons Contractor, in that COMPANY is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components, as defined by the Nuclear Free Humboldt County Ordinance. COMPANY agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if COMPANY subsequently becomes a Nuclear Weapons Contractor.

14. DRUG-FREE WORKPLACE CERTIFICATION:

By executing this Agreement, COMPANY certifies that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, et seq.) and will provide a drug-free workplace by doing all of the following:

- A. Drug-Free Policy Statement. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.
- B. Drug-Free Awareness Program. Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about the following:
 1. The dangers of drug abuse in the workplace;
 2. COMPANY's policy of maintaining a drug-free workplace;
 3. Any available counseling, rehabilitation and employee assistance programs; and
 4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides services pursuant to the terms and conditions of this Agreement will:
 1. Receive a copy of COMPANY's Drug-Free Policy Statement; and
 2. Agree to abide by COMPANY's Drug-Free Policy as a condition of employment.
- D. Effect of Noncompliance. Failure to comply with the above-referenced requirements may result in termination of this Agreement and/or ineligibility for award of future contracts.

15. INDEMNIFICATION:

- A. General Indemnification. Each party hereto shall hold harmless, defend and indemnify the other party and its agents, officers, officials, employees and volunteers from and against any and all

claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party or its agents, officers, officials, employees or volunteers.

- B. Third Party Software Indemnification. COMPANY shall hold harmless, defend and indemnify COUNTY from liability to third parties resulting from infringement by the Software of any United States patent or any copyright or misappropriation of any trade secret, provided COMPANY is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement. If any portion of the Software becomes, or in COMPANY'S opinion is likely to become, the subject of a suit or claim of infringement of Intellectual Property Rights, COMPANY will at its option and expense: (a) obtain the right for COUNTY to Use the Software; (b) replace or modify the Software so that it is no longer subject to a suit or claim; or, if it is commercially impractical to accomplish (a) or (b); or (c) terminate the License for the Software to the extent it is subject to a suit or claim. If COMPANY terminates the License for the Software under this Section: (i) COUNTY will cease to Use the Software; and (ii) COMPANY will pay COUNTY, as COUNTY's sole and exclusive remedy (other than indemnification by COMPANY for third party claims of Patent or Copyright infringement) an amount equal to the License Fees paid in the prior 12 months under this Agreement for the Software subject to a suit or claim.

COMPANY will have no liability to COUNTY under this Section to the extent that any suit or claim of infringement is based solely upon: (i) the use of the Software in combination, operation, or Use with any software or product not furnished, approved or recommended by COMPANY; (ii) The use of the Software in a modified state not authorized by COMPANY; or (iii) Use of the Software in a manner other than for which it was intended, if infringement would have been avoided if such unintended use had not occurred.

- C. Comparative Liability. Notwithstanding anything to the contrary, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each party will bear their own costs and attorney's fees.
- D. Effect of Insurance. Acceptance of the insurance required by this Agreement shall not relieve COMPANY from liability under this provision. This provision shall apply to all claims for damages related to the licenses and services performed by COMPANY pursuant to the terms and conditions of this Agreement regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided by COMPANY hereunder.

16. INSURANCE REQUIREMENTS:

This Agreement shall not be executed by COUNTY, and COMPANY is not entitled to any rights hereunder, unless certificates of insurance, or other proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

- A. General Insurance Requirements. Without limiting COMPANY's indemnification obligations provided for herein, COMPANY shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the entire period of this Agreement, and any extended term thereof,

the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of COMPANY and its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one (1) incident, including, but not limited to, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.
2. As stated in Exhibit A – Scope of Services, CONTRACTOR will not drive an automobile in the performance of the services provided pursuant to the terms and conditions of this Agreement. If CONTRACTOR's responsibilities are changed in such a way that driving will be required during the performance of the services set forth herein, CONTRACTOR shall take out and maintain Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles, and be at least as broad as Insurance Service Offices Form Code 1 (any auto).
3. Workers' Compensation Insurance, as required by the Labor Code of the State of California, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY, its agents, officers, officials, employees and volunteers.
4. Professional Liability Insurance – Error and Omission Coverage including coverage in an amount no less than Two Million Dollars (\$2,000,000.00) for each occurrence (Two Million Dollars (\$2,000,000.00) general aggregate). Said insurance shall be maintained for the statutory period during which COMPANY may be exposed to liability. COMPANY shall require that such coverage be incorporated into its professional services agreements with any other entities.

B. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, COMPANY. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:
 - a. Includes contractual liability.
 - b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to as "XCU Hazards."
 - c. Is the primary insurance with regard to COUNTY.

- d. Does not contain a pro-rata, excess only and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insureds clause.
2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice provisions set forth herein. It is further understood that COMPANY shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.
 3. The inclusion of more than one (1) insured shall not operate to impair the rights of one (1) insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one (1) insured shall not operate to increase the limits of the insurer's liability.
 4. For claims related to this Agreement, COMPANY's insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to COMPANY's insurance and will not be used to contribute therewith.
 5. Any failure to comply with the provisions of this Agreement shall not affect coverage provided to COUNTY, its agents, officers, officials, employees and volunteers.
 6. COMPANY shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager or County Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If COMPANY does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and COMPANY agrees to pay the cost thereof. COUNTY is also hereby authorized with the discretion to deduct the cost of said insurance from the monies owed to COMPANY under this Agreement.
 7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and COMPANY shall be required to purchase additional coverage to meet the above-referenced aggregate limits.
- C. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms of this Agreement shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

COMPANY: Ascendant Strategy Management Group
Attention: Ted K Jackson, Managing Partner
75 Arlington Street, Fifth Floor
Boston, Massachusetts 02116

17. WARRANTIES:

- A. Express Warranties: COMPANY warrants that it has, and will have at all times while this Agreement is in effect, the unrestricted right and full authority to license the ClearPoint Strategy Software to COUNTY in accordance with the terms hereof, and shall perform the Services using commercially reasonable efforts to maintain the ClearPoint Strategy Software in a manner which minimizes errors and interruptions in service and shall perform the implementation and technical support services required hereunder in a professional and competent manner.
- B. Other than as expressly set forth above in Subsection A, COMPANY does not make any express or implied warranties, conditions, or representations to COUNTY, any of its affiliates, or any other party with respect to the applications, services, or any products, documentation, or any other services, or works of authorship provided hereunder or otherwise regarding this agreement, any implied warranty or condition of merchantability, noninfringement, or fitness for a particular purpose, with respect to the software and related materials, are expressly excluded and disclaimed.
- C. No Warranty for ClearPoint Strategy Software; Limitation of Liability: COMPANY makes no warranty that access to the COMPANY system and to the software will be uninterrupted or error free. COMPANY does not and cannot control the flow of data over telecommunications facilities, including the internet. Such flow depends in large part on performance of the internet services provided or controlled by third parties and both the inaction and action of such third parties, as well as other issues inherent in the use of the internet, can limit, impair, delay or disrupt client's connections to the internet or to the COMPANY system. Additionally, network performance can be affected by denial-of-service attacks, client's physical location, or internet access point (such as a local DSL/cable modem). Therefore, in no event shall COMPANY be liable for any damages to client or others resulting from or related to such events.
- D. No Warranty for System Security via the Internet; Limitation of Liability: COMPANY makes no warranty that access to the system via the internet will be completely secure. COMPANY will take commercially reasonable precautions to ensure the security of the COMPANY system and to restrict access to COUNTY data thereon; however, both parties acknowledge that access restrictions, by their nature, are capable of bypass and therefore the data may be accessed by unauthorized persons capable of overcoming such access restrictions. Accordingly, the parties agree that unless the unauthorized access to data was caused by the sole negligence of COMPANY, COMPANY shall not be liable for damages to COUNTY or others. Should the negligence of COMPANY be found to be the direct and proximate cause of the unauthorized access, COMPANY shall be liable for damages to COUNTY or others.

18. RELATIONSHIP OF PARTIES:

It is understood that this Agreement is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that COMPANY shall not be entitled to any benefits to which COUNTY employees are entitled, including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation. COMPANY shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

19. COMPLIANCE WITH APPLICABLE LAWS AND LICENSURE REQUIREMENTS:

- A. General Legal Requirements. COMPANY agrees to comply with any and all local, state and federal laws, regulations, policies and procedures applicable to the licenses and services provided pursuant to the terms and conditions of this Agreement.
- B. Licensure Requirements. COMPANY agrees to comply with any and all applicable local, state and federal licensure and certification requirements.
- C. Accessibility Requirements. COMPANY agrees to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 1135 and any current and future implementing regulations, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.
- D. Conflict of Interest Requirements. COMPANY agrees to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, COUNTY's Conflict of Interest Code, all as may be amended from time to time

20. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and federal restrictions, limitations, or conditions that may affect the provisions, terms or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

21. REFERENCE TO LAWS, REGULATIONS, AND STANDARDS:

In the event any law, regulation, policy or procedure referred to in this Agreement is amended during the term hereof, the parties agree to comply with the amended provision as of the effective date of such amendment.

22. PROTOCOLS:

Both parties agree that the inclusion of additional protocols may be required to make this Agreement specific. All such protocols shall be negotiated, determined, and agreed upon by both parties hereto

23. SEVERABILITY:

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

24. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to

obtain supplies, technical support or professional services.

25. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

26. WAIVER OF DEFAULT:

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement or any default which may then exist on the part of COMPANY. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to any breach or default. COUNTY shall have the right to demand repayment of, and COMPANY shall promptly refund, any funds disbursed to COMPANY which in the judgment of COUNTY were not expended in accordance with the terms of this Agreement.

27. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

28. AMENDMENT:

This Agreement may be amended at any time during the term of this Agreement upon the mutual consent of both parties. No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

29. STANDARD OF PRACTICE:

COMPANY warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. COMPANY's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

30. TITLE TO INFORMATION AND DOCUMENTS:

It is understood that any and all documents, information and reports concerning the subject matter of this Agreement prepared and/or submitted by COMPANY OR shall become the property of COUNTY. However, COMPANY may retain copies of such documents, information and reports for its records. In the event this Agreement is terminated, for any reason whatsoever, COMPANY shall promptly turn over all such documents, information and reports to COUNTY without exception or reservation.

31. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

32. ADVERTISING AND MEDIA RELEASE:

All informational material related to this Agreement shall receive approval from COUNTY prior to being used as advertising or released to the media, including, but not limited to, television, radio, newspapers and internet. COMPANY shall inform COUNTY of all requests for interviews by the media related to this Agreement before such interviews take place; and COUNTY shall be entitled to have a representative present at such interviews. All notices required by this provision shall be given to the Humboldt County Administrative Officer or a designee thereof.

33. SUBCONTRACTS:

COMPANY shall obtain prior written approval from COUNTY before subcontracting any of the services to be provided hereunder. Any and all subcontracts shall be subject to all applicable terms and conditions of this Agreement, including, without limitation, the licensing, certification and confidentiality requirements set forth herein. COMPANY shall remain legally responsible for the performance of all terms and conditions of this Agreement, including work performed by third parties under subcontracts, whether approved by COUNTY or not.

34. ATTORNEYS' FEES:

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees, including the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

35. SURVIVAL OF PRIVISIONS:

The duties and obligations of the parties set forth in Section 4(D) – Compensation Upon Termination, Section 9 – Record Retention and Inspection, Section 11 – Confidential Information and Section 15 – Indemnification shall survive the expiration or termination of this Agreement.

36. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this Agreement, the terms and conditions set forth herein shall have priority.

37. INTERPRETATION:

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

38. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections and paragraphs set forth herein are inserted for convenience

only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

39. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

40. ENTIRE AGREEMENT:

This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Agreement are hereby ratified.

41. COUNTERPART EXECUTION:

This Agreement, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This Agreement, and any amendments hereto, may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this Agreement, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement and any amendments hereto.

42. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the first date written above.


TWO SIGNATURES ARE REQUIRED FOR LLCs:
(1) MANAGING PARTNER; AND
(2) DIRECTOR LEVEL POSITION

ASCENDANT STRATEGY MANAGEMENT GROUP, LLC:

By:  Date: 8/5/2022

Name: Ted K Jackson

Title: Managing Partner

By:  Date: 8/5/2022

Digitally signed by Dylan Miyake
DN: cn=Dylan Miyake, o=ClearPoint Strategy,
ou, email=dmiyake@clearpointstrategy.com,
c=US
Date: 2022.08.05 15:13:24 -04'00'

Name: Dylan Miyake

Title: Managing Partner

COUNTY OF HUMBOLDT:

By:  Date: 8/30/22

Virginia Bass, Chair
Humboldt County Board of Supervisors

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: Phillips, Amanda Date: _____

Digitally signed by Phillips, Amanda
Date: 2022.08.08 11:10:56 -07'00'

Risk Management

LIST OF EXHIBITS:

- Exhibit A – Statement of Work
- Exhibit B – Schedule of Rates

EXHIBIT A
Statement of Work and Budget
Ascendant Strategy Management Group
Fiscal Year 2022-23 through Fiscal Year 2027-28

Implementation

COMPANY shall partner with COUNTY to implement a Performance Management System (“PMS”) and support COUNTY with project management, training and ongoing support throughout their performance management journey. The ClearPoint Customer Support team will continue to support the COUNTY throughout their entire use of ClearPoint.

Project Implementation Plan

The COMPANY will provide a software tool, ClearPoint, and training services to COUNTY to enable COUNTY to track and manage their performance. COMPANY will help COUNTY with any customizations needed for language and structure of their strategy. The COMPANY will also assist COUNTY creating a plan for helping users to easily update information in the strategic plan going forward.

Continuous Support:

The COMPANY will provide support to the COUNTY team throughout COUNTY’s use of ClearPoint. Please see **Exhibit B – Schedule of Rates** for detailed descriptions of COMPANY’s continuous support.

Scorecard Maintenance

COUNTY is responsible for creating and maintaining its scorecards, including categories, objectives, measures, initiatives, and action items. COUNTY is also responsible for metadata on these elements including information such as descriptions, owner, data source, dates, and any custom fields.

Restrictions:

COMPANY shall not drive an automobile in the performance of the services provided pursuant to the terms and conditions of this Agreement. If COMPANY’s responsibilities are changed in such a way that driving will be required during the performance of the services required hereunder, COMPANY shall take out and maintain Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage prior to the commencement of any such driving. Such insurance shall include coverage of all owned, hired and non-owned vehicles, and be at least as broad as Insurance Service Offices Form Code 1 (any auto).

**EXHIBIT B
SCHEDULE OF RATES**

Ascendant Strategy Management Group
Fiscal Year 2022-2023 through Fiscal Year 2027-2028

The **ClearPoint Professional Package** includes the following services, as more fully detailed below:

- Fifteen (15) “Editor/Administrator” users
- Twenty-five (25) view-only users
- One (1) Premium Support Contact
- Onboarding – Implementation and Data Transfer (Completed first year)

Deliverable	Description	Annual Cost
ClearPoint SaaS Software User Licenses – Base Annual Rate	15 “Editor/Administrator” Licensed Users 25 view-only users, and 10 update-only users.	\$13,800.00
Premium Support	1 named contact included	\$0.00
Total annual cost not to exceed:		\$13,800.00
Maximum payable cost for the duration of this contract:		\$69,000.00

User Licenses

COUNTY shall be immediately entitled to ten (15) full “Editor/Administrator” users (users that can add, edit, and update information in ClearPoint). Also included are ten (10) “update-only” users, and twenty-five (25) view-only “Browser” users.

Support

All authorized COUNTY users will be entitled to email and online forum support with a 24-hour response time. “Premium Support” also allows one (1) named contact to request and receive four (4) hour priority email and telephone support services from a qualified ClearPoint Engineer throughout the year. This user may also receive live in-app messaging and video screen-sharing. COUNTY shall determine and provide COMPANY with the name of the one (1) named contact who is authorized by COUNTY to request four (4) hour priority support services.