

## **AMENDMENT TO THE AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND COLU TECHNOOGIES (US) INC.**

This Amendment to Software Platform License Agreement between the County of San Mateo, a political subdivision of the state of California (“County”), and Colu Technologies (US) Inc. (“Contractor”) (together, the “Parties”) dated June 8, 2021 (“Amendment”) is entered into effective \_\_\_\_\_, 2022.

\* \* \*

### **Recitals**

WHEREAS, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

WHEREAS, since its emergence in early 2020, the COVID-19 pandemic has negatively impacted public health and the economy on a global scale, in the country and in San Mateo County; and

WHEREAS, since the outset of the pandemic and continuing through the present, the pandemic has caused public health and economic crises and exacerbated preexisting health disparities; and

WHEREAS, the County has taken extensive steps to prevent and address the spread of the pandemic and to respond to the public health emergency and its negative economic impacts; and

WHEREAS, the County has received funds under the federal American Rescue Plan which can be used among other applications to respond to the public health emergency and its negative economic impacts, including providing assistance to impacted households; and

WHEREAS, stakeholders including the San Mateo County COVID Recovery Initiative Economic Recovery Committee and the County Workforce Development Board have advocated for the launching of a “Shop Local” campaign to incentivize consumers to support the County’s small businesses as they seek to recover from the impacts of the COVID-19 public health emergency; and

WHEREAS, effective June 8, 2021, the County entered into a Software Platform License Agreement with Contractor for the development of a San Mateo County Shop Local application for a five-month term with an option to extend the term for up to six months, for an amount not to exceed \$100,000; and

WHEREAS, on February 2, 2022, the Parties extended the term of the Agreement for an additional six months; and

WHEREAS, the Parties now wish to amend the Agreement to replace Exhibit G (COLU ORDER FORM) in its entirety in order to increase the not-to-exceed amount of the Agreement by \$45,000, from \$100,000 to \$145,000, and extend the term of the Agreement through September 30, 2022, and add Attachment E, entitled “Additional Agreement Provision”, which is required for any agreement entered into by the County funded, or potentially funded, in whole or in part, with American Rescue Plan Act (“ARPA”) or equivalent federal funding.

**Amendment**

**NOW, THEREFORE, the Parties agree to the Amendment as follows:**

1. **Colu Order Form.** Exhibit G to the Agreement, titled "COLU ORDER FORM", is hereby replaced in its entirety with Exhibit G1 as follows:

**Exhibit G1 (rev. May 1, 2022)****COLU ORDER FORM**

This Order Form, together with the attached Software Platform License Agreement (the "**SPSA Agreement**"), form the agreement (the "**Agreement**") that is entered between parties listed in the table below on the Commencement Date for the services described in this Order Form. This Order Form is subject to the terms of the SPSA. Terms not defined in this Order Form will have the meaning given to them in the SPSA. In the event of conflict between this Order Form and the SPSA, this Order Form will prevail.

<p><b>THE CLIENT</b> <b>("County")</b></p>	<p><b>Name of the entity: San Mateo County, California</b></p> <p><b>Tax Identification Number (TIN):</b></p> <p><b>Client Contact</b></p> <p>Name: Peggy Jensen</p> <p>Email: <a href="mailto:pjensen@smcgov.org">pjensen@smcgov.org</a></p> <p>Address: San Mateo County, 400 County Center Redwood City, CA 94063</p>
<p><b>COLU</b></p>	<p>Colu Technologies (US) Inc.</p> <p>Contact:</p> <p>Name: Michael Mazur</p> <p>Email: <a href="mailto:Michael@colu.com">Michael@colu.com</a></p> <p>Telephone: +19173456122Address:</p> <p>Address: 1177 Avenue of the Americas, 5<sup>th</sup> Floor, New York, New York, 10036</p>
<p><b>COMMENCEMENT DATE</b></p>	<p>JUNE 8, 2021</p>

<p><b>TERM AND RENEWAL</b></p>	<p>The term of the Agreement shall be from Commencement Date until the date that is five months after the Commencement Date (the "Trial Period"), unless terminated earlier in accordance with the SPSA Agreement.</p> <p>Provided that the County is not in breach of the Agreement, the County may extend the Trial Period for three (3) months or more, until September 30, 2022.</p>
<p><b>CHARGES</b></p>	<p><u>SPSA Fee:</u> For the Trial Period: \$40,000, provided that the SPSA Fee for the Trial Period shall be increased by \$30,000 for each three (3) month period by which the Trial Period is extended. For the term May 9, 2022 through September 30, 2022, however, the SPSA shall be \$45,000.</p> <p><u>In no event shall the County's total fiscal obligation under the Agreement exceed One Hundred Forty-Five Thousand Dollars and Zero Cents (\$145,000.00).</u></p> <p>Colu may provide additional services as may be agreed upon from time to time, provided that any service for an additional fee shall be subject to an agreement in writing prior to the commencement of such a service.</p> <p>For the avoidance of doubt, modifications and addition of features to the App, which are not provided by Colu as part of the regular Platform updates shall be provided if and as</p>

	<p>agreed upon by the Parties, and may be subject to additional fees.</p> <p>In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this Agreement.</p>
<p><b>PAYMENT</b></p>	<p><b>SPSA Fee</b> for the Trial Period shall be payable on the Commencement Date. The additional SPSA Fee for any extensions of the Trial Period will be payable on the first day of any extension to the Trial Period. The SPSA Fee for the term May 9, 2022 through September 30, 2022 shall be due upon receipt of an invoice from Colu.</p>
<p><b>SPECIAL TERMS</b></p>	<p><b>During the Trial Period,</b> County commits to sponsor the allocation of stored value rewards to Users (County Points) through the Program, in connection with a campaign or campaigns in its sole discretion, in value of at least \$40,000.</p>

2. **Attachment E.** Attachment E, entitled “Additional Agreement Provisions” and a copy of which is attached to this Amendment, is made part of the Agreement and incorporated into the Agreement by this reference. In the event of a conflict between the terms and conditions of the Agreement and Attachment E, Attachment E shall prevail.
3. **Remaining Terms Unchanged.** Except as otherwise set forth in this Amendment, the remaining terms and conditions of the Agreement are unchanged and shall remain in force and effect.

Signed for an on behalf of **Colu  
Technologies (US) Inc.**

DocuSigned by:  
*Michael Mazur*  
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Name: Michael Mazur  
Title: COO  
Date: 5/13/2022

Signed for and on behalf of **the  
County**

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Name:  
Title:  
Date:

## **Attachment E – Additional Agreement Provisions**

### **A. Termination**

This Agreement may be terminated by Contractor or by the County Manager or his/her designee at any time without a requirement of good cause upon sixty (60) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have ten business days after receipt of such notice to respond and a total of fifteen calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination. Subject to availability of funding, Contractor shall be entitled to receive payment on a prorated basis for work/services actually completed and delivered prior to termination of the Agreement and for which there is no dispute.

### **B. Retention of Records; Right to Monitor and Audit**

(1) Contractor agrees to maintain records and financial documents for five years after termination of the Agreement and agrees to cooperate with the County to provide or make available such records to the US Treasury upon request, and to any authorized oversight body, including but not limited to the Government Accountability Office ("GAO"), US Treasury's Office of Inspector General, and the Pandemic Relief Accountability Committee. Contractor shall be subject to examination and/or audit by County, a Federal agency, and the State of California.

(2) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(3) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

(4) In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(5) Contractor shall cooperate with the County to ensure compliance with the American Rescue Plan Act and its implementing rules, regulations, reporting and recordkeeping requirements, including without limitation cooperation, as requested, in connection with

the County's preparation of Interim Reports, Project and Expenditure Reports and Recovery Plan Performance Reports and any other reports required by the US Treasury.

**C. Merger Clause: Amendments**

The Agreement, including the Exhibits and Attachments attached to the Agreement and incorporated by reference, constitutes the sole Agreement of the parties to the Agreement and correctly states the rights, duties, and obligations of each party as of the Agreement's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of the Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to the Agreement, the provisions of the body of the Agreement shall prevail; provided, however, that, in the event that any term, condition, provision, requirement, or specification set forth in the body of the Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in Attachment E, the provisions of Attachment E shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

**D. Dispute Resolution; Controlling Law; Venue**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California. In the event of breach or other dispute arising out of this Agreement, County reserves the right to pursue all remedies, legal, contractual, administrative or otherwise against Contractor, including the recovery of any sanctions and penalties authorized by law.

**E. Suspension and Debarment**

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) Contractor agrees to comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, throughout the term of this Agreement and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

**F. Procurement of Recovered Materials**

In the performance of this contract, Contractor shall make maximum use of products containing recovered materials that are United States Environmental Protection Agency ("EPA")-designated items unless the product cannot be acquired. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**G. Clean Air Act and Water Pollution Act Compliance**

(1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Act, as amended 33 U.S.C. 1251. et. seq.

(2) Contractor agrees to report each violation to the County understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**H. Compliance with the Contract Work Hours and Safety Standards Act**

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

**I. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)**

Contractors who apply or bid for an award of \$100,000 or more shall file with the County the required certification (see below). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of



Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

The required certification shall state the following (see 44 C.F.R. Appendix A to Part 18):

**CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this

DocuSigned by: \_\_\_\_\_  
 Signature of Contractor's Authorized Official

Michael Mazur COO  
 Name and Title of Contractor's Authorized Official

5/13/2022  
 Date