

Alameda County Sheriff's Office

Lakeside Plaza, 1401 Lakeside Drive, 12th Floor, Oakland, CA 94612-4305



Gregory J. Ahern, Sheriff

Director of Emergency Services
Coroner - Marshal

REVISED
5/31/11

AGENDA: _____ June 7, 2011

May 24, 2011

Honorable Board of Supervisors
County Administration Building
1221 Oak Street
Oakland, CA 94612

Dear Board Members:

SUBJECT: **APPROVE AN AGREEMENT WITH CYTEL GROUP, LLC**

RECOMMENDATION:

It is respectfully requested that your Honorable Board:

1. Authorize the Sheriff to enter into an agreement with Anne M. Baker, CEO, Cytel Group, LLC, 17200 Foothill Boulevard, Castro Valley, CA 94546 for the development of individual disaster training exercises and/or programs similar to Alameda County's "Urban Shield".
2. Authorize the Sheriff to receive a license fee of \$10,000.00 from Cytel Group, LLC as payment for the first year of their use of the Urban Shield marks and materials; and for each additional year a fee of one percent (1%) of the gross revenues collected by Licensee or its Affiliates for every individual exercise and/or program conducted by Cytel Group, LLC.
3. Authorize the Sheriff to deposit all fees collected from this agreement into the approved "Urban Shield" cash fund (Fund 84624, Org 900000, Account 499990) for the purpose of offsetting costs associated with future Urban Shield exercises.

DISCUSSION/SUMMARY:

On July 31, 2007, the Alameda County Board of Supervisors authorized the Alameda County Sheriff's Office (Agenda Item 48) to accept cash sponsorship funds from individuals and corporations to support the training event Urban Shield. A cash fund was authorized in which to deposit donations and fees used to offset the costs associated with the Urban Shield training event. (The success of this unique event has led to subsequent Urban Shield exercises being held by the Sheriff's Office every year since 2007; planning for the 2011 exercise is ongoing.)

On February 24, 2009, the Alameda County Board of Supervisors authorized the Alameda County Sheriff's Office (Agenda Item 30) to enter into an agreement with BAE Systems, Inc. for the purpose of implementing the Urban Shield exercise program in other states throughout the Nation, as well as internationally. On July 8, 2010 the agreement was terminated by mutual consent as a result of BAE Systems, Inc. inability to meet the material obligations of the agreement due to unforeseen economic conditions.


The Alameda County Sheriff's Office is requesting authorization from your Board to extend the Urban Shield training concept to other areas outside the County of Alameda. The Urban Shield training event, now in its fifth consecutive year, continues to receive national acclaim as one of the most effective and innovative mechanisms for large scale disaster management preparation.

The Cytel Group, Inc., whose focus is supplying first responders with disaster exercise preparation and training, is prepared to deploy the Urban Shield concept to other Tier 1 Super Urban Area Security Initiative (SUASI) regions throughout the Nation, and potentially internationally. In the first year of the agreement, Cytel Group, Inc. will pay a fee of \$10,000.00 to the Alameda County Sheriff's Office for the rights for limited use of the Urban Shield marks and materials, and each year thereafter a fee of 1% of the gross revenues collected by the Cytel Group, Inc. for every individual program conducted. The fees collected from this agreement will be deposited in the approved cash fund to be used to offset costs associated with future Urban Shield exercises.

FINANCING

This request does not increase the net County cost in FY 2011-2012 or in future years.

Respectfully Submitted,


Gregory J. Ahern
Sheriff-Coroner

cc: Susan Muranishi, County Administrator
County Counsel

GJA:RES:res

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is entered into this 1st day of May, 2011, between the County of Alameda, State of California, a legal subdivision of the State of California, through the Alameda County Sheriff's Office ("Licensor"), and Cytel Group, LLC., a California limited liability corporation ("Licensee").

RECITALS:

A. Licensor has developed and over the past five years has provided a tactical skills training program for police and other emergency personnel focused on large-scale natural disasters, terrorist attacks, hostage-taking situations and other emergencies, commonly known as Urban Shield™ (the "Program").

B. Licensor has developed various training manuals and documentation, videos, marketing materials, trade secrets, know-how and other intellectual property related to the Program ("Licensed Materials" as further defined below) and uses the Marks (as defined below) in connection with the Program.

C. Licensee wishes to acquire from, and Licensor wishes to grant to Licensee, an exclusive, sublicenseable, worldwide, perpetual license from Licensor to market, sell, perform and implement the Program and to use, reproduce, publish, sell, and distribute the Licensed Materials and the Marks in connection with the marketing, sale, performance and implementation of the Program.

NOW, THEREFORE, in consideration of the mutual promises and covenants set out below, and intending to be bound thereby, the Parties do hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms have the following meanings:

"Affiliates" means with respect to any Person, any other Person, directly or indirectly controlling, controlled by or under common control with such first Person. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Governmental Body" means any government or quasi-governmental entity or municipality or political or other subdivision thereof, whether federal, state, city, county, local, provincial, foreign or multinational, or any agency, department, board, bureau, branch, commission, authority, official or instrumentality of any of the foregoing.

"Intellectual Property" means (a) all copyrightable works, all United States and foreign copyrights, whether registered or unregistered, and all applications, registrations and renewals thereof, (b) all inventions (whether patentable or unpatentable and whether or not reduced to practice), (c) all proprietary know-how, show how, confidential business information, trade

secrets, techniques, processes, specifications and operations, logistical and technical information, and (d) all copies and tangible embodiments of the foregoing in whatever form or medium.

"Licensed Materials" means all written and unwritten documentation, materials, information and Intellectual Property used or useful in the marketing, promotion, performance and/or implementation of the Program, including training manuals and guides, planning guides, teaching materials, forms, maps, instructions, marketing collateral, videos, sound tracks, policies, procedures, logistics and planning information, data, historical data and reports, vendor lists, sponsor lists, client lists, and related products, materials, techniques and methods developed by or on behalf of Licensor, including, but not limited to, those items described on Exhibit B and including any Licensor Developed Materials and any documentation, materials, information, and Intellectual Property that are developed by Licensor after the date hereof and become Licensed Materials pursuant to Section 6.2; *provided, however*, that Licensed Materials shall not include any Licensee Developed Materials.

"Licensee Developed Materials" means any and all written and unwritten documentation, materials, information and Intellectual Property used or useful in the marketing, promotion, performance and/or implementation of the Program, including derivative works of the Licensed Materials, that have been or hereafter are developed by or on behalf of Licensee or any of its Affiliates.

"Licensor Developed Materials" means (i) modifications, enhancements, updates, improvements or other changes to the Licensed Materials developed by Licensor or its Affiliates and (ii) any and all written and unwritten documentation, information and Intellectual Property used or useful in the marketing, promotion, performance and/or implementation of the Program, including separate modules or derivative works of the Licensed Materials, that are hereafter developed by or on behalf of Licensor.

"Mark" means the trademarks listed on Exhibit A, which may from time to time be amended upon the written agreement of the Parties, together with the goodwill associated therewith.

"Person" means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, governmental or regulatory body or other entity.

2. License Grants and Limitations.

2.1 Grant of License to Licensed Materials. Subject to the terms of this Agreement, including Section 7.3 hereof, Licensor hereby grants to Licensee and each of its Affiliates an exclusive (except as set forth in Section 2.5), perpetual, irrevocable, fully paid-up, sublicenseable, right and license to (i) market, sell, perform and implement the Program (or any program similar to the Program), and (ii) publish, reproduce, market, sell, utilize, translate, modify and prepare derivative works of and distribute the Licensed Materials anywhere in the world; provided that any sublicensing of the foregoing rights, other than to an Affiliate of Licensee, Licensee's customers, clients (including governmental agencies), subcontractors or

consultants or any attendee of the Program, shall be subject to the prior written approval of Licensors, such approval not to be unreasonably withheld.

2.2 License Grant to the Marks. In furtherance of the license granted in Section 2.1 and subject to the terms of this Agreement, including Section 7.3 hereof, Licensors hereby grants to Licensee and each of its Affiliates an exclusive (except as set forth in Section 2.5), perpetual, irrevocable, fully paid-up, sublicenseable right and license to use the Marks, in connection with the marketing, sale, performance and/or implementation of the Program or any program similar to the Program; provided that any sublicensing of the foregoing rights, other than to an Affiliate of Licensee, Licensee's customers, clients (including governmental agencies), subcontractors or consultants or any attendee of the Program, shall be subject to the prior written approval of Licensors, such approval not to be unreasonably withheld.

2.3 Quality Control of Marks. Licensee's use of the Marks is subject to such commercially reasonable and customary policies as are established by Licensors from time to time and communicated to Licensee. Failure by Licensee to adhere to such standards shall be grounds for Licensors to terminate this Agreement. Licensee shall use the Marks and the Licensed Materials only as authorized in this Agreement and for no other purpose.

2.4 Limitations on Use. Licensee is not authorized use of the Marks for purposes of developing, marketing, or selling electronic games or entertainment products, Further, on all printed and distributed copies of any of the Licensed Materials, the source and copyright status of the material must appear. The following notice shall be used (or such other notice as Licensors may from time to time specify in writing to Licensee) unless Licensors gives written notice to Licensee that no notice should be used:

** Licensed from the Alameda County Sheriff's Office, County of Alameda, State of California. Copyright 2008 Alameda County Sheriff's Office, County of Alameda, State of California. All Rights Reserved.*

2.5 Rights Retained by Licensors. Licensors retains the right, but not the obligation, to perform the Program using the Licensed Materials and the Marks from time to time anywhere in the State of California (the "Licensors Program") commencing with 2011; *provided* that nothing in this Agreement shall obligate Licensors to conduct any Licensors Program or restrict Licensors from conducting any other training program that is not related to or substantially similar to the Program. Licensors shall market the Licensors Program only to law enforcement agencies and other Governmental Bodies that are solely or principally located within the Bay Area Urban Area Security Initiative (Bay UASI) region Northern California..

2.6 Ownership of Marks. Licensee acknowledges and agrees that the Marks are the exclusive property of Licensors, and Licensee now asserts no claim and will assert hereafter no claim to any goodwill, reputation or ownership thereof, by reason of Licensee's licensed use thereof. Licensee agrees that it will not take any action in material derogation of the rights of Licensors in connection with the Marks during the term of this Agreement. Upon any termination

of this Agreement, Licensee shall make no further use of the Marks or any mark similar thereto or of the Licensed Materials.

2.7 Protection of Sensitive Information. Notwithstanding any other provision of this Agreement to the contrary, Licensee agrees to hold any Sensitive Information that comes into its possession, whether embodied in the Licensed Materials or otherwise, in strict confidence and not to disclose it to any third party. Licensee agrees that it will protect the Sensitive Information using the same degree of care it uses to protect its own most sensitive proprietary and confidential information, but in no event with less than a reasonable degree of care. If any Licensed Materials contain any Sensitive Information, Licensee agrees to remove the Sensitive Information therefrom before exercising its license hereunder with respect to such Licensed Materials, including before developing templates or derivative works based on such Licensed Materials. Licensee agrees to give written notice to Licensor immediately in the event of any inadvertent disclosure of the Sensitive Information. “Sensitive Information” means any information, in any format, that (a) is specific to Alameda County and (b) is of a nature that it would be of use or strategic value to an individual or organization seeking to engage in a terrorist attack or other criminal activity in Alameda County.”

3. License Fee. In consideration for the licenses granted hereunder, Licensee agrees to pay Licensor a one time license fee of \$10,000 payable in cash within sixty (60) days of execution of this agreement. Upon mutual agreement of the parties, Licensee may satisfy the fee payment by providing at Licensor’s request \$10,000.00 of equivalent products and/or services to Licensor. In addition, Licensee agrees to annually pay Licensor a fee of one percent (1%) of the gross revenues collected by Licensee or its Affiliates for every individual Program conducted.

4. Licensee Obligations and Covenants.

4.1 Compliance with Law. Licensee shall not use the Licensed Materials or the Marks or conduct the Program in any manner which is in violation of any applicable law.

4.2 Intellectual Property Protection and Enforcement.

(a) Licensee agrees to promptly report to Licensor any infringement or any unauthorized or improper use of the Licensed Materials or the Marks of which it becomes aware. Licensor shall have the sole right, in its discretion, to determine whether and how to prosecute any such infringement. Any such infringement action shall be prosecuted in the name of Licensor. In connection with any such infringement claim, Licensee agrees to provide commercially reasonable cooperation, at Licensor’s expense, in Licensor’s efforts to enforce the Intellectual Property rights in the Licensed Materials and the Marks. Notwithstanding the foregoing, if Licensor does not commence proceedings against an infringer, or otherwise take steps to resolve an infringement within three (3) months of the notification to Licensor of such infringement or at least sixty (60) days prior to the end of such shorter statutory limitations period as may be applicable, then Licensee shall have the right, but not the obligation, with the prior written consent of Licensor, such consent not to be unreasonably withheld, to commence an infringement action against the infringer and to otherwise resolve the infringement in its own name, or if necessary the power to proceed in the name of Licensor, *provided* that (i) Licensee shall not make any admissions or claims that would materially adversely affect Licensor and (ii)

Licensee shall keep Licensor reasonably informed of the status of such dispute. Licensor agrees to provide whatever support or action reasonably required by Licensee to so proceed, at Licensee's cost.

(b) In the event Licensee wishes to utilize the Licensed Materials in any jurisdiction other than the United States, Licensee shall be entitled to notify Licensor and request that Licensor seek to register, maintain and protect the Licensed Materials or the Marks in such jurisdiction, at Licensee's expense and in Licensor's name. Licensor agrees to consider such request in good faith and agrees that its approval shall not be unreasonably withheld or delayed. In the event Licensor approves Licensee's request, Licensor and Licensee agree to cooperate in good faith to take all necessary actions to register, protect and maintain the Licensed Materials or the Marks in such jurisdiction.

5. Licensor Obligations and Covenants.

5.1 Enabling Services.

(a) Description of Services. During the term of this Agreement, Licensor shall provide Licensee with training, information, support and other assistance as Licensee shall reasonably request to enable Licensee to market, sell, provide and implement the Program or any program similar to the Program (the "Enabling Services").

5.2 Support Services and Administrative Fee.

(a) If requested by Licensee, Licensor agrees to be involved in Licensee's deployment of the Program or any program based on the Program, including by providing incidental support to Licensee and by referring inquiries about the Programs conducted by Licensee to Licensee and otherwise promoting the Program in order to attract and retain clients and potential clients for the Programs to be conducted by Licensee (the "Support Services"), it being understood the Support Services are limited and incidental in nature and will not require Licensor to incur substantial costs. In consideration of Licensor's agreement to be involved with the Programs, and upon Licensor's actual and specific performance of the Support Services, Licensee agrees to pay Licensor, not later than sixty (60) days after the end of each calendar quarter, a fee of one percent (1%) of the gross revenues collected by Licensee or its Affiliates directly from the conduct of the Program or any program based on the Program (the "Program Revenues") payable either in cash, or upon mutual agreement of the parties, in products or services to be performed by Licensee on Licensor's behalf (the "Administrative Fee"). The Administrative Fee shall not be less than the actual cost of the support services provided by the Licensor to the Licensee. For the avoidance of doubt, the parties agree that Program Revenues shall not include any revenues realized by Licensee or its Affiliates not directly related to the conduct of the Program (e.g. outside sponsorship, advertising, products, in-kind donations, sales of body armor and related training services to attendees, or other benefits received therein).

(b) Licensor shall have the right, during the term of this Agreement and for a period of one (1) year thereafter, to cause an independent accounting firm to inspect and audit such records of Licensee or its Affiliates necessary to confirm the revenues giving rise to the

Administrative Fee. Any independent accounting firm utilized by Licensor must, if requested by Licensee, execute a confidentiality agreement in form and substance reasonably accepted to Licensee. Any audit will be conducted not more than one (1) time per year, at mutually agreed upon times, upon reasonable prior written notice, and in a manner so as to minimize any disruption of the audited party's normal business activities. In the event of any underpayment of five percent (5%) or more with respect to any calendar quarter, then Licensee shall reimburse Licensor for all reasonable costs associated with the audit.

5.3 Exclusive Partner Relationship. Licensor hereby grants Licensee the exclusive right to be Licensor's presenting partner for each Licensor Program, commencing with the 2011 Licensor Program, it being understood that the Parties are not partners together in any legal entity. Licensor agrees not to enter into any other formal relationship with any other entity other than annual sponsorship commitments related to Bay UASI.

5.4 Use of the Marks in a Domain Name for a Website. Licensee shall be entitled to use the "Urban Shield" mark as part of a domain name for its own website. Licensee and Licensor each agree to provide on its website that refers to the Program or the Licensor Program, as applicable, a conspicuous link to the other party's website that refers to the Program or the Licensor Program, as applicable; provided that nothing in this Agreement shall obligate either party to maintain any such website. Licensor agrees to allow Licensee to post its corporate symbol and website link in a conspicuous location on the urbanshield.org website. Licensor and Licensee agree to work together to address any consumer confusion that arises out of the existence of two websites with similar domain names or arising out of each party's respective use of the Marks or the Licensed Materials. Upon mutual agreement of the parties, a single website may be created in the future to host all Urban Shield exercise information and materials.

6. Intellectual Property and Ownership of Improvements.

6.1 Reservation of Rights. All rights not specifically granted herein to Licensee are expressly reserved for Licensor. Licensee acknowledges the Licensed Materials and the Marks were developed by Licensor and are proprietary to Licensor. Licensee agrees that it does not acquire any ownership or other proprietary interest in any of the Licensed Materials or the Marks.

6.2 Licensor Developed Materials. Licensor shall own all Intellectual Property rights in and to any Licensor Developed Materials. Licensor agrees that all Licensor Developed Materials shall be deemed to be included in the definition of Licensed Materials. Licensor further agrees to promptly notify Licensee of the development of such Licensor Developed Materials and to promptly deliver an electronic or paper copy of such Licensor Developed Materials to Licensee; provided that Licensor makes no representation or warranty with respect to Licensor Developed Materials developed after the date hereof, all of which will be supplied on an "as-is" basis.

6.3 Licensee Developed Materials. Licensee shall have no obligation to notify Licensor that it or its Affiliates has developed a Licensee Developed Materials and Licensor shall

have no rights to use any Licensee Developed Materials. Licensor agrees that it shall not assert any claim of ownership to any of the Licensee Developed Materials.

6.4 No Implied Licenses. Except as expressly set forth in this Agreement, nothing herein shall be deemed to grant to a party, by implication, estoppel or otherwise, and neither party shall acquire any right, interest or license in or to any Intellectual Property of the other party or its Affiliates.

7. Effectiveness of Agreement; Term and Termination.

7.1 Effectiveness. Licensor shall have no obligation under this Agreement unless and until it is approved by the Alameda County Board of Supervisors ("Board"). If this Agreement is not so approved by the Board within sixty (60) days after the execution date hereof, Licensor shall immediately return the License Fee to Licensee and this Agreement shall be deemed terminated and of no force and effect.

7.2 Term. Subject to Section 7.1 and to termination in accordance with Section 7.3, the licenses granted by this Agreement shall commence on the date first set forth above and shall continue in perpetuity.

7.3 Termination.

(a) Licensor shall have the right to terminate this Agreement and the licenses granted hereunder by providing written notice of such termination to Licensee in the event that Licensee breaches a material obligation of this Agreement, and fails to cure such breach within thirty (30) days after the date of notice of such breach. In addition, Licensor shall have the right to terminate this Agreement and the licenses granted hereunder upon notice to Licensee if Licensee becomes the subject of a bankruptcy or other insolvency proceeding (*provided that* such proceeding is not dismissed within sixty (60) days of filing), if a trustee or receiver of Licensee's property is appointed for all or a substantial part of Licensee's assets, or if Licensee makes a general assignment in favor of all or substantially all of its creditors.

(b) Licensee shall have the right, upon written notice to Licensor, to terminate this Agreement (i) in the event of a material breach by Licensor of the warranties set forth in Sections 8.1(d), (e) or (f), (ii) if an assertion or claim by a third party that Licensee's use of the Licensed Materials infringes, violates or otherwise misappropriates the Intellectual Property rights of such third party is made, or in Licensee's reasonable opinion is likely to be made, and it would be commercially impracticable to modify the Licensed Materials to eliminate the basis for the claim or assertion, or (iii) if an assertion or claim by a third party that Licensee's use of the Marks infringes, violates or otherwise misappropriates the Intellectual Property rights of such third party is made, or in Licensee's reasonable opinion is likely to be made, and the continued conduct of the Program under a different mark would be commercially impracticable. In the event of termination of this Agreement by Licensee pursuant to this Section 7.3(b) within the first sixty (60) months of this Agreement, Licensor shall, within thirty (30) days of receipt of written notice of such termination, refund an amount equal to the License Fee multiplied by a fraction, the numerator of which shall be sixty (60) minus the number of months between the date of this Agreement and the date of the notice of termination and the denominator of which

shall be sixty (60). The parties agree that the refund of the License Fee by Licensor to Licensee is an agreed liquidated damages amount and not a penalty.

(c) In the event of a termination of this Agreement pursuant to either Section 7.3(a) or (b), all rights granted to Licensee hereunder with respect to the Licensed Materials and the Marks shall revert back to Licensor, and Licensee shall cease all use thereof. Except as set forth in the last sentence of Section 7.3(b), termination of this Agreement shall be without prejudice to any rights of either party at law or in equity.

8. Representations and Warranties.

8.1 Licensor Representations and Warranties. Licensor warrants to Licensee that:

(a) It has all necessary right, power, and authority to enter into this Agreement, to grant all the rights conferred under the Agreement and to carry out the transactions contemplated by this Agreement.

(b) The execution and delivery of this Agreement by Licensor, the performance of Licensor of its obligations under this Agreement and the consummation by Licensor of this Agreement, have been or will be, pursuant to Section 7.1, duly authorized by all necessary proceedings on the part of Licensor, and no other proceeding on the part of Licensor is necessary to authorize this Agreement and the transactions contemplated hereby.

(c) This Agreement has been duly executed by Licensor and, assuming the due authorization, execution and delivery of this Agreement by Licensee and the approval referred to in Section 7.1, constitutes a valid and binding obligation of Licensor, enforceable against Licensor in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

(d) It is the sole and exclusive owner of the Licensed Materials and the Marks, free and clear of all claims, demands, liens and encumbrances and it owns sufficient rights to be able to grant the licenses contemplated by this Agreement, free and clear of all claims, demands, liens or encumbrances; provided that Licensor makes no representations or warranties whatsoever with respect to rights in the Marks outside the United States.

(e) The rights granted herein are free and clear of any claims, demands, liens or encumbrances that would impair or restrict their use by Licensee as agreed herein; provided that Licensor makes no representations or warranties whatsoever with respect to rights in the Marks outside the United States.

(f) None of the Licensed Materials or the Marks infringe, misappropriate or violate the Intellectual Property rights of any third party; provided that Licensor makes no representations or warranties with respect to rights in the Marks outside the United States. Licensor has not received any notice or claim asserting that any such infringement, misappropriation or violation has occurred or is occurring, nor, to the knowledge of Licensor is there any reasonable basis for such a claim. To the knowledge of Licensor, no Person is infringing upon, misappropriating or violating Licensor's Intellectual Property rights in the Licensed Materials or the Marks.

(g) There is no action, suit, investigation, proceeding, arbitration, hearing, assessment with respect to fines or penalties, or other litigation (whether civil, criminal, administrative or investigative) pending, or to Licensor's knowledge, threatened against Licensor with respect to this Agreement or the transactions contemplated hereby, or the Licensed Materials or the Marks.

8.2 Licensee Representation and Warranties. Licensee warrants to Licensor that:

(a) It has all necessary right, power, and authority to enter into this Agreement, to grant all the rights conferred under the Agreement and to carry out the transactions contemplated by this Agreement.

(b) The execution and delivery of this Agreement by Licensee, the performance of Licensee of its obligations under this Agreement and the consummation by Licensee of this Agreement, have been duly authorized by all necessary proceedings on the part of Licensee, and no other proceeding on the part of Licensee is necessary to authorize this Agreement and the transactions contemplated hereby.

(c) This Agreement has been duly executed by Licensee and, assuming the due authorization, execution and delivery of this Agreement by Licensor, constitutes a valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

9. Limitation of Liability. With the exception of Licensee's payment obligations under this Agreement, each party's liability, whether in contract, tort, otherwise, arising out of or in connection with this Agreement, the Licensed Materials or the Marks shall not exceed the amount of the License Fee. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR TORT DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE LICENSED MATERIALS OR THE MARKS OR THE PROVISION OF THE PROGRAM OR ANY SIMILAR TRAINING PROGRAM, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS ON LIABILITY AND ON DAMAGES CONTAINED IN THIS SECTION 9 SHALL NOT APPLY TO THE OBLIGATIONS OF LICENSEE UNDER SECTION 10.

10. Licensee's Indemnification Obligations.

10.1 Licensee Indemnity.

(a) Subject to Section 10.1(b), Licensee shall defend, indemnify, and hold Licensor, and its successors, assigns, employees and agents (collectively, the "Indemnitees") harmless from and against any and all claims, loss, damage, judgments, penalties, fines, costs, charges or expenses (including reasonable attorneys' fees and disbursements) suffered or incurred by any Indemnitee, directly or indirectly arising from or based upon (i) the conduct by Licensee or its Affiliates or sublicensees of the Program or any similar program, (ii) Licensor's

breach of this Agreement, or (iii) gross negligence or willful misconduct by or of Licensee or its subcontractors, employees or agents.

(b) Licensee shall have no obligation to indemnify any Indemnitee pursuant to Section 10.1(a) or otherwise with respect to any claim directly or indirectly arising from or based upon (i) the conduct by Licensor or any of its subcontractors, employees or agents of any Licensor Program; (ii) any claim that the use of the Licensed Materials or the Marks infringes, violates or misappropriates the Intellectual Property rights of any third party; (iii) any acts or omissions of Licensor or any of its subcontractors, employees or agents, including in the performance of the Training Services or the Support Services or while otherwise participating in or attending the Program or any similar program; (iv) Licensee's breach of this Agreement; (v) gross negligence or willful misconduct by or of Licensor or its subcontractors, employees or agents; or (vi) the manner or method in which Licensor has developed the Licensed Materials.

10.2 Indemnification Procedures. Licensor shall give Licensee written notice of any such claim promptly following its receipt thereof. Licensee shall have the opportunity to undertake and to control the defense and settlement thereof through competent and experienced counsel selected by Licensee. Licensor will cooperate with Licensee in the investigation, defense and settlement of any such claim and shall have the right to participate in (but not to control) any such defense through counsel of its own choice, but at Licensor's own expense. If Licensee fails to undertake the defense of any such claim, it will be responsible for reimbursing Licensor for any reasonable expenses incurred by Licensor, including but not limited to reasonable attorneys', accountants', and other experts' fees and expenses in the investigation, defense and settlement of such claim and in enforcing its rights pursuant to this Section 10, in addition to any damages and penalties ultimately awarded against Licensor.

11. Miscellaneous.

11.1 Independent Relationship. This Agreement shall not be construed to constitute a partnership or joint venture between the parties. Licensee shall not have the authority to bind Licensor in any manner unless specifically approved in writing by Licensor. Licensor and Licensee shall be deemed independent contractors in all respects.

11.2 Entire Agreement. This Agreement is complete and embraces the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. Any previous understandings, agreements, or representations, written or oral, are superseded. This Agreement may be modified or waived only by a separate writing signed by both Parties expressly so modifying or waiving this Agreement.

11.3 Severability. If a term or condition of this Agreement is found by a court or administrative agency to be invalid, illegal or otherwise unenforceable, any such invalid, illegal, or unenforceable term or provision shall not affect any other term or provision of this Agreement and the parties agree to negotiate in good faith to draft a new agreement that comports with the original intent of the parties.

11.4 Governing Law; Attorneys Fees; Injunctive Relief; Interest. This Agreement shall be governed by and construed under and in accordance with the laws of the State of

California applicable to agreements made and to be performed entirely within such State, without regard to the conflicts of law principles that would require the application of any other law. In the event of any litigation between the parties arising out of this Agreement, the prevailing party shall be awarded its reasonable attorneys fees and costs of suit. Each of the parties acknowledges that a violation of its covenants and agreements contained herein would cause irreparable injury to the other and that each party shall be entitled, in addition to any other rights or remedies it may have at law or in equity, to seek an injunction enjoining the other from taking or continuing to take action which would violate any of such covenants. All late payments under this Agreement shall bear interest at the rate of eight percent (5%) per annum or the highest rate permitted by applicable law, whichever is lower.

11.5 Survival. The parties' obligations under Section 10 and all accrued payment obligations of Licensee hereunder shall survive termination of this Agreement.

11.6 Assignment. This Agreement is not assignable by Licensee without the consent of Licensor, such consent not to be unreasonably withheld, delayed or conditioned; *provided* that Licensee may, without the consent of Licensor, assign this Agreement to any of its Affiliates or to a purchaser of substantially all of Licensee's assets or business, or to its corporate successor as a result of any merger, spin-off, consolidation or similar corporate reorganization; and *provided further* that Licensee notifies Licensor within 30 days of assignment of this Agreement.

11.7 Notices. Any notices under this Agreement shall be in writing and shall be deemed properly given to a party when (a) delivered by hand or by a nationally recognized overnight courier service (costs prepaid) or (b) sent by registered or certified mail, postage prepaid, return receipt requested, in each case to the following:

To Licensor:

Alameda County Sheriff's Office
1401 Lakeside Drive, 12th Floor
Oakland, CA 94612
Attention: Sheriff Gregory J. Ahern

To Licensee:

Cytel Group, Inc.
17200 Foothill Boulevard
Castro Valley, CA 94546

11.8 Counterparts. This Agreement may be executed in counterparts (including facsimile copies), each of which, when so executed, constitutes one original and all of which, when taken together, constitute one and the same Agreement.

11.9 Interpretation. The headings contained in this Agreement or in any Exhibit hereto, are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the context requires, any pronouns used herein shall

include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice-versa. Whenever the words “include,” “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation.” The word “day” means calendar day. Except when the context otherwise requires, references to Sections or Exhibits contained herein refer to Sections or Exhibits of this Agreement. All Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit, but not otherwise defined therein, shall have the meaning as defined in this Agreement.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first set forth above in counterparts by their duly authorized representatives.

**COUNTY OF ALAMEDA, STATE OF CALIFORNIA,
a legal subdivision of the State of California, through
the Alameda County Sheriff's Office**

By: _____

Name: _____

Title: _____

Date: _____

CYTEL GROUP, INC.

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form

RICHARD R. KARLSSON, Interim County Counsel

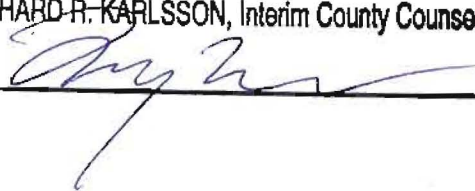
By  _____

EXHIBIT A

List of Licensed Trademarks, Service Marks, Logos and Domain Names

The following trademarks, service marks, logos and domain names are hereby made the subject of this Agreement:

- “Urban Shield”, U.S. App. No. 77/471,002
- “Urban Shield Black & White Logo”, U.S. App. No. 77/471,026

EXHIBIT B

Description of the Licensed Materials

The following is a description of the Licensed Materials, which are the subject of this Agreement:

[INSERT DESCRIPTION OF THE LICENSED MATERIALS.]