Human Resource Services

January 10, 2019

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, California 94612-4305

SUBJECT: AWARD A CONTRACT TO SUMTOTAL SYSTEMS LLC FOR LEARNING
            MANAGEMENT SYSTEM, MASTER CONTRACT NO. 901676; AMOUNT:
            $809,160

Dear Board Members:

RECOMMENDATIONS:

A.   Authorize the Purchasing Agent to execute a contract (Master Contract No. 901676;
      Procurement Contract No. 17607) with SumTotal Systems, LLC (Principal: Oren Friedman;
      Location: Nashua, NH) to provide learning management system services to the Alameda
      County Human Resource Agency, Training and Education Center, for a three-year term with
      an approximate date range of 1/31/19 - 1/30/22, in the amount of $809,160;

B.   Approve the use of Human Resources Department Fiscal Management Reward (FMR)
      savings to pay for the one-time project implementation costs of $237,658; and

C.   Authorize the Auditor-Controller's Office to make the budgetary adjustments in the attached
      financial recommendation.

DISCUSSION/SUMMARY:

Alameda County's Human Resources Department is responsible for training and development.
This includes offering employees opportunities to increase their skills, knowledge, and abilities
for career development.   The Training and Education Center (TEC) provides training and
development for approximately 9,500 employees in a variety of roles across more than 20
departments, as well as 3,000 other public sector and non-profit employees.

Currently, Alameda County does not have a Software as a Service (SaaS) "on demand" vendor-
hosted learning management system (LMS) with 100% web-based and 24/7 system accessibility.
The current system is five years old and includes learning management only and one database
among all departments.

The new LMS will provide a Countywide, robust, flexible, agency/department specific system
through a centralized database where the system will recognize various agencies/departments and
their employee roles.   It will include the following features: Learning Management, Career

An Equal Opportunity Employer

Planning and Management, Competency Management, Reporting, and Information Access, and Technical (i.e., user interface, security, workflow, file attachments, dashboards, etc.).

Information Technology Department (ITD) has been very involved throughout the Request for Proposal (RFP) process. They helped to create the vendor assessment, reviewed the technical aspects of the bid, and a representative was on the County Selection Committee panel.

SELECTION CRITERIA/PROCESS:

The TEC has determined that Alameda County does not currently have the resources to develop an LMS.

TEC worked with the General Services Agency (GSA)-Procurement to develop a RFP. The RFP was released on July 26, 2018 to subscribers to GSA Professional Services – Current Contract Opportunities mailing services via E-Gov, including certified Small Local & Emerging Businesses (SLEB). The RFP was posted on the GSA Current Contracting Opportunities website for approximately 47 days. Two networking/bidders conferences were held.

On September 11, 2018, three responses to the RFP were received. All responses were evaluated by the County Selection Committee (CSC). Two vendors were interviewed by CSC. One vendor declined the invitation for the vendor interview. A maximum total of 550 evaluation points were available for this RFP. The total evaluation points include 50 preference points derived from a 5% preference for local vendors and a 5% preference for certified SLEB vendors, for a total of 10%.

SumTotal Systems, LLC, a non-local bidder, was the highest scoring qualified vendor. As a result of limited opportunities for SLEB subcontracting, SLEB requirements have been waived by the Office of Acquisition Policy (OAP), with SLEB Waiver No. 5562 valid through December 31, 2021.

The following is a summary of the evaluation:

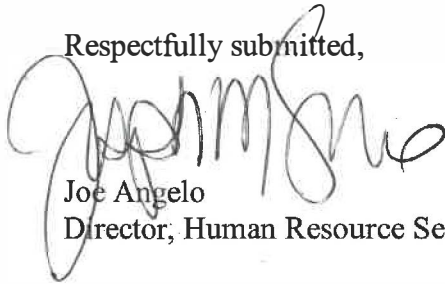| Vendor	Location	Local	SLEB	Evaluation Points
SumTotal Systems, LLC	Nashua, NH	N	N	403
CCTDJ, LLC dba ELEARNINGFORCE Americas	Edgewater, MD	N	N	354
Meridian Knowledge Solutions, LLC	Reston, VA	N	N	251

FINANCING:

Appropriations for this contract will come from a combination of $237,658 Human Resources Services Fiscal Management Rewards savings per the attached financial recommendation, which will cover the one-time project implementation costs, and $571,502 from the continuance of current arrangement with County agencies/departments sharing the annual subscription costs

based on the number of employees in their respective departments. No additional appropriations are required and there is no increase in net County cost.

VISION 2026 GOAL:

The new learning management system meets the 10x goal pathways of **Employment for All** in support of our shared vision of a **Thriving & Resilient Population**.

Respectfully submitted,

Joe Angelo   Willie A. Hopkins, Jr.
Director, Human Resource Services   Director, General Services Agency

Attachment

WAH:EB:th\I:\Board Letters\Purchasing\FY 2018-19\901676 BL LMS.docx

cc: Susan S. Muranishi, County Administrator
        Melissa Wilk, Auditor-Controller
        Donna R. Ziegler, County Counsel

LEARNING MANAGEMENT SYSTEM
RFP No. 901676
January 31, 2019 – January 30, 2021

Vendor	Location	Estimated Dollar Value of Contract Award	Local Participation		SLEB Participation	
			Percentage	Dollar Amount	Percentage	Dollar Amount
SumTotal Systems, LLC	300 Innovative Way, Suite 201 Nashua, NH 03062	$809,160	SLEB Waiver #5562			

FINANCIAL RECOMMENDATION FORM

1 **AGENDA DATE:**   12/4/2018

   BOARD LETTER SUBJECT: APPROVE THE USE OF FISCAL

   MANAGEMENT REWARDS SAVINGS AND AWARD CONTRACT TO SUMTOTAL SYSTEMS,

   LLC FOR LEARNING MANAGEMENT SOFTWARE

   BUDGET YEAR: 2019   **FUND:**   10000

2 The use of Designations, as follows:

NAME OF DESIGNATION	ORG	AMOUNT
Fiscal Management Rewards (FMR)		$237,658.00

3 The increase (decrease) in anticipated revenue, as follows:

Informational

ORG	ACCT	PROG	PROJ/GR	AMOUNT
			ORG TOTAL	$0

Informational

ORG	ACCT	PROG	PROJ/GR	AMOUNT
			ORG TOTAL	$0

GRAND TOTAL ANTICIPATED REVENUE $0

4 The increase (decrease) in appropriations, as follows:

Informational

ORG	ACCT	PROG	PROJ/GR	AMOUNT
180000	610000	00000		$237,658
			ORG TOTAL	$237,658

Informational

ORG	ACCT	PROG	PROJ/GR	AMOUNT
			ORG TOTAL	$0

GRAND TOTAL APPROPRIATION $237,658

COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT

This Agreement, dated as of ___1/29/2019___, is by and between the County of Alameda, hereinafter referred to as the "County" or "Customer", and SumTotal Systems, LLC, hereinafter referred to as the "Contractor" or "SumTotal".

<u>WITNESSETH</u>

Whereas, County desires to obtain learning management system and services including the ability to register for training, track training enrollment and store of training records and materials, which are more fully described in Exhibit A hereto ("Definition of Services"); and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide learning management system and services, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A   Definition of Services
Exhibit A-1   Specific Requirements and Deliverables
Exhibit A-2   Statement of Work
Exhibit A-3   Contractor Security
Exhibit B   Payment Terms
Exhibit B-1   Order Form
Exhibit C   Insurance Requirements
Exhibit D   Debarment and Suspension Certification

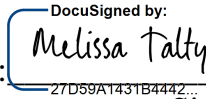The term of this Agreement shall be from January 31, 2019 through January 30, 2022.

The compensation payable to Contractor hereunder shall not exceed Eight Hundred Nine Thousand One Hundred Sixty dollars ($809,160) for the term of this Agreement.

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

COUNTY OF ALAMEDA

By: John Glann
EB371BC6D6094BF...
Signature

Name: John Glann
(Printed)

Title: Purchasing Manager

Date: 1/29/2019

By: Kimberly Gasaway
BB3D9AF6ACCD422...
Signature

Name: Kimberly Gasaway
(Printed)

Title: Chief Deputy, Administrator

Date: 1/29/2019

Approved as to Form:

By: Kathleen Pacheco
52DC00217B8F4BB...
County Counsel Signature

SUMTOTAL SYSTEMS, LLC

By: Melissa Talty
27D59A1431B4442...
Signature
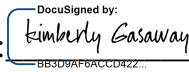
Name: Melissa Talty
(Printed)

Title: Sr. Manager Revenue, Royalties
& Customer Contracts

Date: 1/29/2019

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

GENERAL TERMS AND CONDITIONS

1. INDEPENDENT CONTRACTOR: No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

    Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

    Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

    In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

    Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

    Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two week's notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. INDEMNIFICATION: See Additional Provisions Page.

3. INSURANCE: See Additional Provisions Page.

4. PREVAILING WAGES: Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem

wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

5.	WORKERS' COMPENSATION: Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

6.	CONFORMITY WITH LAW AND SAFETY:

a.	In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.

b.	Accidents: If a death, serious personal injury, or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.

c.	Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

7.	DEBARMENT AND SUSPENSION CERTIFICATION: (Applicable to all agreements funded in part or whole with federal funds and contracts over $25,000).

a.	By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.

b.   By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:

     (1)   Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded by any federal department or agency;

     (2)   Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

8.   PAYMENT: For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.

9.   TRAVEL EXPENSES: Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.

10.   TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.

11.   See Additional Provisions Page.

12.   CONFLICT OF INTEREST; CONFIDENTIALITY: The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

     The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

13.   NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

     Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

~~First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox.~~ Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: ~~When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.~~

Addresses for purpose of giving notice are as follows:

To County:	County of Alameda – Human Resource Services
	125 Twelfth Street, Suite 400
	Oakland, CA 94607
	Attn: Bill Jacox
To Contractor:	SumTotal Systems, LLC a Skillsoft Company
	300 Innovative Way, Suite 201
	Nashua, NH 03062
	Attn: Contract Management Team
With a copy to:	Oren Friedman
	SumTotal Systems, LLC a Skillsoft Company
	300 Innovative Way, Suite 201
	Nashua, NH 03062

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14.   USE OF COUNTY PROPERTY: Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.

15.   EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.

a.   Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.

b.   Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.

c.   Intentionally deleted.

d.   Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.

e.   Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.

f.   The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.

16.   DRUG-FREE WORKPLACE: Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.

17.   AUDITS; ACCESS TO RECORDS: The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other

evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18.   DOCUMENTS AND MATERIALS: Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.

19.   TIME OF ESSENCE: Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

20.   TERMINATION: See Additional Provisions Page

21.   SMALL LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:

Contractor has been approved by County to participate in contract without SLEB participation (SLEB Waiver No. 17607). As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, Contractor may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

a. Contractor must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).

b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.

c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. Contractor shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.

d. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).

e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay contractor for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact OCC via e-mail at ACSLEBcompliance@acgov.org.

22. FIRST SOURCE PROGRAM: For contracts over $100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.

23. CHOICE OF LAW: This Agreement shall be governed by the laws of the State of California.

24. WAIVER: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

25.   ENTIRE AGREEMENT: This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

26.   HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

27.   ADVERTISING OR PUBLICITY: Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.

28.   MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.

29.   Intentionally Deleted.

30.   SUBCONTRACTING/ASSIGNMENT: See Additional Provisions Page.

31.   SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.

32.   SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

33.   PATENT AND COPYRIGHT INDEMNITY: Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit, or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so.

Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.

    a.   If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.

    b.   In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.

    c.   Notwithstanding this Section 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.

34.   OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.

35.   EXTENSION: This agreement may be extended for an additional two (2) additional one-year terms by mutual agreement of the County and the Contractor.

36.   SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

<div align="center">[END OF GENERAL TERMS AND CONDITIONS]</div>

ADDITIONAL PROVISIONS PAGE

I.   Modifications to General Terms and Conditions

A.   Section 1, INDEPENDENT CONTRACTOR, is revised to add the following at the end of the first paragraph:

This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

B.   Section 2, INDEMNIFICATION, is replaced with the following:

2.1 Claims Related to the Service or Service Deliverable. Provided that County complies with the procedures set forth in Section 2.4 and subject to Section 2.2, Contractor will, at Contractor's expense, defend and/or settle any claim, suit or proceeding brought by a third party against the County of Alameda, its Board of Supervisors, or County's officers, directors, employees, agents and affiliates (i) alleging that the Service or a Service Deliverable, as provided by Contractor, infringes any copyright, trademark, trade secret or patent issued as of the date of this Agreement; (ii) alleging that Contractor in the performance of services under this Agreement caused any bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, to such third party; or (iii) arising out of any violation of federal, state or municipal law or regulation by Contractor. In addition, Contractor will pay any judgment awarded against County or any settlement amount agreed to by Contractor and, subject to Section 2.4, any expenses incurred by County.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

2.2 Exclusions. Contractor will have no obligation under Section 2.1 with respect to any claim arising out of or based solely upon County Data used with or incorporated in the Service.

2.3 Injunction. If County's use of the Service or a Service Deliverable is or is likely to be enjoined due to a third party claim of intellectual property infringement, Contractor may, without limiting Contractor's indemnity obligations hereunder, procure the right for County to continue to use the Service or a Service Deliverable or modify the Service or a Service Deliverable in a functionally equivalent manner

so as to avoid such injunction. For subscription Services, if the foregoing options are not available on commercially reasonable terms and conditions, Contractor may immediately terminate the Agreement and refund to County a prorated amount of prepaid fees for the subscription service actually paid by County for the unused portion of the then-current Subscription Term. For Professional Services, if the foregoing options are not available on commercially reasonable terms and conditions as it relates to a Service Deliverable, Contractor will refund to County the fees paid for such Service Deliverable less a credit for use based on straight line depreciation applied on a quarterly basis over five years from the date of initial delivery of the Service Deliverable.

2.4 Claims Related to County Data. Provided that Contractor complies with the procedures set forth in Section 2.5, County will, at County's expense, defend and/or settle any claim, suit or proceeding brought by a third party against Contractor or Contractor's officers, directors, employees, agents and affiliates and to the extent such claim, suit or proceeding arises out of County Data.

2.5 Procedure. If one Party (the "Indemnitee") receives any notice of a claim or other allegation with respect to which the other Party (the "Indemnitor") has an obligation of indemnity hereunder, then the Indemnitee will, within not more than 60 days of receipt of such notice, give the Indemnitor written notice of such claim or allegation setting forth in reasonable detail the facts and circumstances surrounding the claim. The Indemnitee will not make any payment or incur any costs or expenses with respect to such claim, except as requested by the Indemnitor or as necessary to comply with this procedure. The Indemnitee will not make any admission of liability or take any other action that limits the ability of the Indemnitor to defend the claim. The Indemnitor shall immediately assume the control of the defense or settlement of such claim or allegation, including the selection and employment of counsel, and shall pay all authorized costs and expenses of such defense. The Indemnitee will fully cooperate, at the expense of the Indemnitor, in the defense or settlement of the claim. The Indemnitee shall have the right, at its own expense, to employ separate counsel and participate in the defense or settlement of the claim. An Indemnitor shall not enter into any settlement agreement that obligates or creates any liability of the Indemnitee or provides any admission of liability (past, present or future) or responsibility for the Indemnitee without obtaining the written consent of Indemnitee. The Indemnitor shall have no liability for costs or expenses incurred by the Indemnitee, except to the extent authorized by the Indemnitor, required by law, or pursuant to this procedure. In addition, the Indemnitor shall not be responsible for any additional liabilities caused by any delay in Indemnitee's provision of notice of an indemnifiable claim to Indemnitor.

2.6 Exclusive Remedies. The indemnity and other remedies set forth in this Section shall be the exclusive remedies of the Parties with respect to any claim for which a Party has an obligation of indemnity pursuant to this Section.

C.   Section 3, is replaced with the following:

INSURANCE: Contractor shall at all times during the term of the Agreement with the County maintain in force, at minimum, those insurance coverages as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee for Commercial General Liability (except for Workers' Compensation) if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured

D.   Section 6, CONFORMITY WITH LAW AND SAFETY, subsection b is amended by replacing 'immediately' with 'promptly' in the first sentence.

E.   Section 11, is replaced with the following:

INTELLECTUAL PROPERTY OWNERSHIP:
Contractor alone (and its Suppliers, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Contractor Technology and the Service and County hereby assigns to Contractor any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by County relating to the Service or the Contractor Technology. Contractor may use such submissions as it deems appropriate in its sole discretion. This Agreement is not a sale and does not convey to County any rights of ownership in or related to the Service, the Contractor Technology or the Intellectual Property Rights owned by Contractor and its Suppliers. The Contractor name, the Contractor logo, and the product names associated with the Service are trademarks of Contractor or its Suppliers, and no right or license is granted to use them, except as such names/logos appear via County's authorized use of the Services. County will not accrue any residual rights to the Contractor Technology or Service, including any rights to the Intellectual Property Rights in connection therewith.

F.   Section 12, CONFLICT OF INTEREST; CONFIDENTIALITY, is revised by numbering the first paragraph 12.1, deleting the second paragraph and adding the following:

12.1 Confidentiality. Confidential Information means any non-public, confidential, or proprietary information or data, whether communicated in writing, orally, or by any other method, and whether or not patentable or copyrightable, that is provided by one Party (Discloser) to the other Party

(Recipient) under this Agreement and that is clearly marked as "confidential" or "proprietary" by the Discloser; provided that, if such information or data relates to the Skillsoft Property, then such information and data will be "Confidential Information" whether or not it has been marked as "confidential" or "proprietary" by the Discloser. Without limitation, Contractor's Confidential Information will include the Contractor Products, web site architecture and content, its proprietary technology or computer software in all versions and forms of expression, manuals, notes, Published Documentation, technical information, drawings, diagrams, or specifications. County's Confidential Information will include Customer Data.

12.2 To the extent permitted by applicable law, the Recipient shall: (i) not disclose the Confidential Information to any third party at any time and Recipient shall limit disclosure of Confidential Information within its own organization to its employees or its legal, financial and accounting advisors having a need to know and who have agreed to be bound by the terms of this Agreement. Recipient shall be entitled to disclose Confidential Information solely to the extent necessary to comply with a court order or as otherwise required by law or by a regulatory agency or government body, provided that Recipient shall first give notice to Discloser and make a reasonable effort to obtain a protective order to protect the confidentiality of the information. If such protective order is not obtained, Recipient agrees to disclose only that portion of the Confidential Information which it is legally required to disclose. Recipient shall immediately notify Discloser of any actual or suspected unauthorized disclosure of Confidential Information. Recipient shall not modify, reverse-engineer, decompile, create other works from, or dissemble any software programs contained in the Confidential Information without Discloser's prior written consent.

12.3 The obligations described in Section 12.2 impose no obligation upon Recipient with respect to any Confidential Information which (a) is or becomes a matter of public knowledge through no fault of Recipient; (b) is rightfully received by Recipient from a third party without a duty of confidentiality to, or with the authorization of, Discloser; (c) is disclosed without a duty of confidentiality; or (d) is independently developed by Recipient. The burden of proving any of the above exemptions is on Recipient.

12.4 Upon the written request of Discloser, Recipient shall promptly destroy or return to Discloser, as requested by Discloser and allowed by law, all Confidential Information of Discloser in its possession, together with all records in any manner pertaining to any of Discloser's Confidential Information. Recipient shall also, upon the written request of Discloser, furnish Discloser with a declaration from an officer or upper level manager verifying that all of the foregoing have been destroyed or returned to Discloser.

G.   Section 13, NOTICES, is revised by deleting (1) the option of US Mail and (2) all references to telex and facsimile, including the last two sentences of the Overnight Delivery paragraph.

H.   Section 15, EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS, subsection (c) the word 'vigorously' is deleted.

I.   Section 17, AUDITS; ACCESS TO RECORDS, is revised by deleting the second paragraph and replacing it with the following:

Contractor shall maintain full and adequate records relation to its performance of its obligations pursuant to this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County. Contractor may fulfill this obligation by making such books and records fully available electronically at no cost to County, including payment of any fees/costs to access and/or download the documents electronically. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. County reserves the right to, at its own travel cost, review original records at Contractors location. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

J.   Section 20, TERMINATION is amended by adding the following to the end of the paragraph:

The County has and reserves the right to suspend, terminate, or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor fifteen (15) days prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment. A termination pursuant to this paragraph shall not entitle the County to a refund of any fees previously paid to Contractor, and any invoices issued and for which services have been provided in accordance with this Agreement by the contractor to the County that remain unpaid must still be paid to Contractor.

K.   Section 26, ADVERTISING OR PUBLICITY, is amended by adding the following:

County shall not use the name of Contractor in advertising or publicity releases to the general public or otherwise without securing the prior written consent of

Contractor in each instance. Emails, notifications and other information about the Services provided by County to its user base (those that may be accessing Contractor Services) which use the name of Contractor shall not be considered advertising or publicity.

L.   Section 33, PATENT AND COPYRIGHT INDEMNITY, is amended by deleting the first sentence and replacing it with the following:

Contractor represents that as of the date of execution of this Agreement it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right.

M.   Section 30, SUBCONTRACTING AND ASSIGNMENT, is deleted and replaced with the following:

a.   SUBCONTRACTING. Contractor shall not subcontract, assign (except as otherwise provided in paragraph (b) below), or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.

i.   Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.

ii.   Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.

iii.   Contractor shall take full responsibility for all subcontractor's actions, including all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C.

iv.   Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors

b.   ASSIGNMENT: This Agreement and any rights granted to County hereunder, are non-transferable, non-exclusive, non-assignable, limited and personal to County. Neither party may assign its interest in this Agreement without the other party's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Contractor may transfer and/or assign some or all of this Agreement by operation of law due to a merger or change of control, without prior notice to County or County's consent. For the purposes of this Agreement, "change of control" means consolidation, any sale of all or substantially

all of Contractor's assets or any other transaction in which more than 50% of its voting securities are transferred. Contractor must request a written amendment to the Agreement to name the correct party. County shall not be obligated to make any payments unless and until a written amendment executed by all parties is completed. This Agreement will inure to the benefit of and be binding upon the party's successors and permitted assigns. Unless otherwise specifically agreed to by the non assigning party, no assignment by either party shall relieve the assignor from its obligations pursuant to this Agreement. Any assignment in violation hereof shall be null and void.

II.   Additional Terms and Conditions

1.   Definitions

1.1   **Affiliate** means, with respect to a Party, any entity which directly or indirectly controls, is controlled by, or is under common control with such Party. "Control," for purposes of this definition, means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity.

1.2   **Committed Subscription Service Fee** means the committed fee paid by Customer for the access to the Service during the Subscription Term.

1.3   **Contractor** means Sum Total. "Contractor" and "Sum Total" may be used interchangeably through this Agreement, with no legal effect as to which term is used in any location in the Agreement.

1.4   **Customer** means the County of Alameda. "County" and "Customer" may be used interchangeably through this Agreement, with no legal effect as to which term is used in any location in the Agreement

1.5   **Customer Data** means any data, information, or material provided or submitted to the Service by Customer in the course of using the Service.

1.6   **Customer Equipment** means Customer's computer hardware, software, and network infrastructure used to access the Service.

1.7   **Customer Error Incident** means any Service unavailability related to Customer's applications, Customer Data, or Customer's equipment, or the acts or omissions of any user of the Service.

1.8   **Emergency Maintenance** means downtime of the Service due to the application of urgent patches or fixes, or other urgent maintenance, recommended by SumTotal's vendors, that is performed outside of Scheduled Maintenance. SumTotal will make commercially reasonable efforts to give Customer prior notice of any Emergency Maintenance. Where practical, SumTotal will make commercially reasonable efforts to perform Emergency Maintenance during Customer's off-peak business hours.

1.9   **Force Majeure** has the meaning as set forth in Section 12.2 of this Agreement.

1.10   **Initial Subscription Term** means the period of time set forth in the Order Form attached to this Agreement as Exhibit B-1.

1.11   **Intellectual Property Rights** means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

1.12   **Login** means the username and password assigned by Customer for each User.

1.13   **Malicious Code** means any computer viruses, worms, or any other software that is intended to damage or detrimentally alter a computer system or data.

1.14   **Order Form** means Company's standard order form, as included herein as Exhibit B-1, that (i) specifies the Service applications or modules provided to Customer; (ii) references this Agreement; and (iii) is signed by authorized representatives of the Parties and deemed incorporated into the Agreement.

1.15   **Overage** means the number of Users or Registrations above the Committed Number of Users or Committed Number of Registrations, as applicable, as set forth in the Order Form included herein as Exhibit B-1 and as amended in any subsequent Order Form.

1.16   **Professional Services** means the services provided by Contractor which may be further described through the Statement of Work, Exhibit A-2 (Scope of Services) of this Agreement.

1.17   **Professional Services Fee** means the fee paid by Customer to Company for the additional Professional Services as provided in Exhibit A-1 and A-2.

1.18   **Published Documentation** means the information which SumTotal routinely provides regarding the Software and Service to customers via SumTotal's website. In the event of any conflict between the information provided and this Agreement, the Agreement will control.

1.19   **Recovery Point Objective (RPO)** means the maximum transactional user activity that could be lost should the primary facility be destroyed.

1.20   **Recovery Time Objective (RTO)** means the maximum amount of time to resume access to Customer's environment at SumTotal's alternate data center facility.

1.21   **Registration** means any form of training, (such as, but not limited to, documents, online courses, and/or instructor-led courses) registration event (either self- directed or by a third-party) that does not have a corresponding Registration Cancellation event within the same calendar month. Each training event registered via a combined structure such as a curriculum will be counted as an individual Registration.

1.22   **Registration Cancellation** means the action taken by Customer whereby either (i) the Registration is deleted or (ii) the Registration is replaced.

1.23   **Scheduled Maintenance** means any maintenance performed during SumTotal's standard maintenance windows and any other maintenance of which Customer is given at least forty-eight (48) hours advance notice. As part of the Scheduled Maintenance SumTotal may perform maintenance on some or all of the Service in order to upgrade hardware or software that operates or supports the Service, implement security measures, or address any other issues it deems appropriate for the continued operation of the Service.

1.24   **Service** means the hosted, on-demand, web-based service offered by SumTotal, including the Software Modules, and updates made thereto from time to time and accessible via http://www.sumtotalsystems.com or another designated web site or IP address and as set forth in Exhibit A-1 and A-2.

1.25   **Service Deliverables** means the items to be delivered to Customer in connection with any implementation or Professional Services SumTotal performs pursuant to Exhibit A-1 and A-2, such as consulting reports, on-site training, integration work or modifications to the Software Modules, but does not include the Software Modules.

1.26   **Software** means the object code version of the Company software or Third Party Products, made available through the Service under this Agreement.

1.27   **Software Modules** means the unmodified and fully compiled executable code for the Software identified in the Order Form(s) executed pursuant to this Agreement.

1.28   **Subscription Term(s)** means the period(s) during which a specified number of Users are licensed to use the Service.

1.29   **SumTotal Technology** means all of SumTotal's proprietary technology (including Software Modules, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Customer by SumTotal in providing the Service.

1.30   **Third Party Products** means any products and/or services provided by SumTotal to Customer where SumTotal is a reseller of a third party.

1.31   **Unique Logins Model** means the subscription model whereby Customer has purchased a committed number of unique Users who authenticate into the system one or more times in a calendar month.

1.32   **User** means **any individual with an active account, for whom talent management data, (e.g. learning data, goals, appraisals, succession plans, etc.) or employment, payroll or expense related data exists in the database maintained by SumTotal for the benefit of the Customer. An active account means the account has been accessed or** data in the account has been updated or was inputted during the relevant Subscription Term, and in the case of the Learning Management applications and their related modules, any individual for whom there is a user login account permitting such individual to access and use the Service is considered to constitute an individual with active account. Exceptions:

(A)   For purposes of the Learning Management Applications, data may be retained for persons who are flagged as inactive in the system for historical reporting purposes only and such persons are not counted as Users and are not allowed to login to the system or access any system functionality.

(B)   For purposes of the Talent Management Applications, a person who only accesses the system to provide feedback in a 360 assessment and/or act as an external Job Applicant and does not have any other data stored in the system is not counted as a User.

1.34   **User Model** means the subscription model whereby Customer has purchased a committed number of Users to access the Service during the Subscription Term.

2.   **Service.**

2.1   SumTotal will provide Customer with use of the Service, including a browser interface and login data, in addition to encryption, transmission, access to, and storage of Customer Data. As part of the Service, SumTotal shall provide the Maintenance Services set forth in Exhibit B-1 and Professional Services mutually agreed upon via Exhibit A-1 and A-2. SumTotal may at its sole discretion enhance the Service from time to time, at no cost or expense to Customer, provided any such enhancement will not, in any case, reduce the performance or functionality of the existing Service prior to such enhancement. SumTotal will set up a website for Customer from which Customer can access the Service and will notify Customer of the URL for such SumTotal website. SumTotal will install the Service, and SumTotal will host the Service and any Service Deliverables used in conjunction with the Service. SaaS (defined below) installations will be initiated upon signing. Hosted Subscription installations will be initiated upon Customer's request to do so. An email request sent to SumTotal's project manager assigned to Customer is acceptable to initiate the installation and configuration of Customer's Service.

2.2   If Customer has purchased access to the Service via the Software as a Service ("SaaS") model, as evidenced by the Order Form attached hereto:

(i)   Customer may not customize the Service,

(ii)   SumTotal shall provide installation of any patch, hotfix, or new version releases as part of the Service at no extra charge to Customer. The timing of such installations will be at SumTotal's discretion.

2.3   Intentionally Omitted

2.4   Support of Production Environment versus Non-Production Environment. Any production environment outage is treated as a high priority event for which SumTotal will engage in commercially reasonable recovery efforts to resolve promptly. Non-production environments are supported on a 5 days x 10 hours per day basis (limited to weekdays), and any outage shall be recovered on a commercially reasonable effort basis.

2.5   SumTotal hereby grants Customer a non-exclusive, non-transferable, worldwide right to access and use the Service, subject to the terms and conditions of this Agreement.

Customer may only (a) access the Software Modules as stated in this Agreement; and (b) permit such access by Users. In addition, at Customer's own expense and without SumTotal's assistance, or any charges by SumTotal, Customer may access the Service once every five (5) minutes for purposes of monitoring its availability, performance or functionality, but may not monitor the Service for any other benchmarking exercise, or for the purpose of creating a competing program to offer to the public.

2.6   Each User must have a Login with a unique user identification. SumTotal reserves the right to require Customer to alter any password if SumTotal believes it is no longer secure. Customer shall not permit more than one person to use each Login to access the Service or to otherwise share login accounts, user identifications, or passwords. Customer shall not deactivate a named individual's access to the Service and assign such access to another named individual, except when the named individual is no longer employed by Customer (or, where applicable, a contractor of Customer). Customer is responsible for all access to the Service and activities conducted by individuals accessing the Service using the Logins, including each such individual's compliance with the terms herein.

2.7   Storage Allowance: SumTotal will provide data storage as stated in the initial Order Form. If Customer exceeds the storage allocated in the initial Order Form, Customer will purchase additional Storage for the time period of such overage for such storage. SumTotal reserves the right to delete any excess data stored by Customer in the event that Customer does not purchase the aforesaid additional Storage after 60 days written notice. The storage fees include daily backups and off-site archiving of stored data, as provided in this section 6.2 below. Note that there is no charge for storage used by application executable files, server logs, SQL transaction logs, Temp DB, DSU/TMU files, FTP storage, and backup copies).

2.8   File Transfers. All files transferred between Customer and SumTotal will be encrypted via PGP/GPG in order to be encrypted 'at rest', and transferred via Secure FTP to encrypt in transit.

2.9   Security. SumTotal will maintain the Service at a reputable hosting facility, in the United States, where it is subject to commercially reasonable security precautions to prevent unauthorized access to the Service including Customer Data. Maintenance of Customer Data and procedures relating to such maintenance shall comply with industry standards for the type of information maintained, which in this case includes confidential employee information. However, Customer acknowledges that, notwithstanding such security precautions, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Service and/or Customer Data.

2.10   If Customer subscribes for services using two usage models each group of users must be managed in separate domain hierarchies. E.g., if the User Model and the Registrations Model are both used, Customer must manage all Registration Model Users accessing the Service on a per Registration basis in a separate domain hierarchy from all other Users under the root domain. All Users who are not managed in the separate domain hierarchy for Registration Model Users will be counted as Users under the User Model.

2.11 Customer Audits. SumTotal shall provide Customer with SumTotal's SSAE 16 SOC 2audit certification upon written request by Customer. Customer may conduct an audit of the hosting services, including a data center tour and review of data center policies and procedures, and/or SumTotal's quality system no more often than once in any 12-month period. A fee of $250 per hour will be charged for the labor involved in support of such audits, unless it is required by law or an order of the Court.

2.12 Customer Supplied Scripts. Customer may provide scripts to be executed on Customer Data. However, all Customer-supplied scripts must be first tested and certified by SumTotal.

3. **Restrictions**.

3.1 Customer shall use the Service solely for Customer's business purposes, in compliance with applicable law, and shall not: (i) sublicense, lease, or make the Service available to any unauthorized third party; (ii) send or store infringing, unlawful, defamatory, or libelous material; (iii) send or store any Malicious Code; (iv) access the Service by any means other than the Login, or otherwise attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Service or the data contained therein; (v) modify, copy, or create Derivative Works (Derivative Work means a work of authorship based on one or more pre-existing works, such as a revision, modification, abridgement, condensation, expansion, or any other form in which the pre-existing work may be recast, transformed, or adapted) based on the Service; (vi) reverse engineer the Service; (vii) access the Service for the purpose of building, selling, marketing, or otherwise offering a competitive product or service, or copying its features or user interface; or (viii) remove the copyright, trademark, or any other proprietary rights or notices included within the Service or Service Deliverables, as well as those included on or in the documentation and training materials. All rights not expressly granted to Customer herein are expressly reserved by SumTotal. Customer may not access the Service if Customer is a direct competitor of SumTotal.

4. **Responsibilities.**

4.1 Customer's Responsibilities.

(i) Customer agrees to abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. Customer shall: (i) notify SumTotal immediately of any unauthorized use of any Login or any other known or suspected breach of security; (ii) report to SumTotal immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by Customer to be infringing or unlawful; and (iii) not impersonate another SumTotal customer or provide false identity information to gain access to or use the Service.

(ii) Customer shall be responsible for any costs in connection with establishment and maintenance of Internet connectivity to the Service, including telephone, communications, Internet service provider costs, computer hardware, fees charged

by third parties, insurance, Internet access software, or any other costs incurred by Customer in accessing the Service.

4.2 SumTotal's Responsibilities.

(i) In connection with the Service, SumTotal will provide and maintain all third party software and hardware (such as servers) reasonably necessary to operate the Service.

(ii) SumTotal will provide and maintain vendor supported versions of all necessary hardware and software, telecommunications hardware and software, security software and other software that is reasonably necessary to operate and maintain the Service.

(iii) SumTotal's standard disaster recovery service is included in Customer's service fees. Should a disaster be declared SumTotal will make every reasonable effort to resume access to Customer's environment at SumTotal's alternate data center facility within SumTotal's RTO of 2 weeks. The standard service includes an RPO of 1 day. The Committed Subscription Service Fee will continue to apply while the alternative site is being utilized. There is no recovery testing as part of the standard service. Should service be unavailable for more than three weeks, the parties shall negotiate in good faith a refund proportionate to the time of outage.

5. **Service Availability**.

5.1 Service Availability. SumTotal shall make reasonable efforts to provide production environment service availability of 99.5% measured on a monthly basis ("Service Availability"), not including Scheduled Maintenance, Customer Error Incidents, Emergency Maintenance, and Force Majeure events. For this purpose, and to enable SumTotal to troubleshoot problems as necessary, SumTotal uses an administrator account on each Customer environment. If the Service fails to respond to SumTotal's automated testing, then SumTotal uses manual testing to confirm such failure. Service Availability is calculated as a percentage by dividing the number of minutes the Service is available during the applicable month by the number of total minutes in the month, excluding in all cases the aggregate of the number of minutes the Service is unavailable due to Scheduled Maintenance, Customer Error Incidents, Emergency Maintenance, and Force Majeure events. An interruption in the Service shall not be considered a breach of SumTotal's obligations hereunder if: (i) SumTotal promptly takes all reasonable steps to restore the Service, or (ii) the interruption in Service results from a Force Majeure event.

5.2 If Customer engages in activity that is not a legitimate use of the product, such as security penetration tests, stress tests, spamming activity, or any other activity for which the product is not intended, and such activity affects other SumTotal customers, SumTotal may shut down Customer's service until such activity ceases, with such service interruption not being counted against the above availability measure.

5.3 Remedy for Failure to Achieve Service Availability. At Customer's request, SumTotal will calculate Customer's Service Availability during a given calendar month. In the event that the Service Availability was not met in a given month, then SumTotal will

provide Customer with a credit per the terms set forth in the table below, up to a
maximum of 50% of the fees for any given month; subject to the terms set forth in this
Section. To obtain a credit for SumTotal's failure to meet the Service Availability,
Customer must request such credit in writing no later than the last business day of the
calendar month following the month of the Service unavailability giving rise to
Customer's credit request. In the event of a conflict between the data in Customer's
records and SumTotal's records, the data in SumTotal's records shall prevail. Any
Service credit due hereunder will be applied to your next billing invoice. The Service
credit offered in this Section shall be Customer's sole and exclusive remedy for any
failure of SumTotal to meet the Service Availability. Any unused Service credits shall
expire upon termination of this Agreement. For the avoidance of doubt, if this
Agreement is not renewed, then no refund or credit will be due or owing to Customer.

Service Availability	Credit (Percentage of the fees for a particular month)
98.5% - 99.49%	5%
97.5% - 98.4%	10%
95.5% - 97.4%	15%
93.5% - 95.4%	30%
93.4% or less	50%

6.   **Account Information and Data.**

6.1   SumTotal does not own any Customer Data. Customer, not SumTotal, shall have sole
       responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and
       intellectual property ownership or right to use of all Customer Data, and SumTotal shall
       not be responsible or liable for the deletion, correction, destruction, damage, or loss of
       any data that may result from Customer's actions. SumTotal is not responsible for
       restoring lost data or damage to Customer Data that results from Customer's actions.
       Customer hereby authorize SumTotal to reproduce, distribute, perform, display for
       Customer and otherwise use the Customer Data solely to provide the Service to
       Customer. Customer represents and warrants that: (i) Customer owns or otherwise has
       the right to authorize the use set forth in this section for the Customer Data, and (ii) such
       use of the Customer Data does not violate the privacy rights, publicity rights, copyright
       rights, or other rights of any person or entity. SumTotal has the right (but not the
       obligation) to review any Customer Data and delete any Customer Data that in the sole
       judgment of SumTotal violates this Agreement; is prohibited content; is illegal; violates
       the rights, harms, or threatens the safety of any user or any other person; or creates
       liability for SumTotal, its Suppliers, or any user upon 30 days' written notice specifying
       the alleged default or violation if the default or violation is not remedied within the notice
       period.

6.2   SumTotal will provide backups to the Service as follows: (i) an incremental backup will
       be conducted every day; and (ii) a full backup will be conducted every week. Backups
       are sent off site and stored in an encrypted format as follows: one month for daily

backups and six months for weekly backups. SumTotal will use commercially reasonable efforts to perform restorations to the Service in the event of a service failure.

7.   **Charges and Fees.**

7.1   SumTotal will invoice Customer the Committed Subscription Service Fee(s) annually in advance. Other fees associated with Customer's actual usage (such as overages) will be charged in arrears. Except as set forth herein, all payment obligations are non-cancelable and all amounts paid are nonrefundable. Customer is responsible for paying for all User and/or Registration licenses ordered for the entire Subscription Term, whether or not such User and/or Registration licenses are actively used. Customer shall pay for all amounts due and owing for the Service, including the Committed Subscription Service Fee for each Subscription Term, Overage fees, or any other fee or charge associated with Customer's use of the Service.

7.2   At any time, Customer may add Users and/or Registrations via an executed Order Form or amendment between the Parties. Added Users and/or Registrations will be coterminous with the preexisting Subscription Term (either Initial Subscription Term or renewal term). If Customer adds Users or Registrations, then Customer's Committed Number of Users and/or Committed Number of Registrations, as applicable, shall be increased for the remainder of such Subscription Term in which Customer increases the number of committed Users and/or Registrations and any additional Subscription Terms if Customer renews the Service. Customer will pay for any increase in Users or Registrations at the time of execution of the Order Form or amendment setting forth the additional Users or Registrations. Customer may only reduce the number of Users and Registrations set forth in the Order Form attached to this Agreement as Exhibit B-1, as applicable, at the end of each Subscription Term via an executed Order Form or amendment between the Parties. SumTotal's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on SumTotal's income.

7.3   In addition to any other rights granted to SumTotal herein, SumTotal reserves the right to suspend or terminate this Agreement and Customer's access to the Service if Customer's account becomes delinquent (falls into arrears by sixty (60) days or more past invoice due date). Suspension does not relieve Customer's liability under the Agreement.

7.4   SumTotal shall have the right to verify the number of Users and/or Registrations under this Agreement at the end of each month. At the end of each quarter following the Effective Date, if there are usage Overages during the previous quarter, SumTotal will submit a quarterly usage report to Customer summarizing the number of Users or Registrations, as applicable, on the Software during the previous quarterly period ("Usage Report"). Along with the Usage Report, SumTotal shall submit to Customer an invoice for any Overage owed to SumTotal based upon the Usage Report. For Workforce Management, Expense, or Payroll/HR OnDemand, such overages shall be calculated and invoiced monthly. Once an Overage is detected, SumTotal may increase the total number of Users with access to the Service to include those Users added via the Overage, in which case the new total number of Users (the "Adjusted User Number") shall form the

basis for the number of authorized Users with access to the Service for all remaining Payment Periods in the then current Subscription Term, as well as any renewal terms thereafter, unless otherwise mutually agreed upon in writing between the Parties. Customer will pay SumTotal for all Users added via such an Overage adjustment.

8.   **Term and Termination.**

8.1   If either Party commits a material breach of this Agreement, and such breach is not cured within thirty (30) days after receipt of written notice by the other Party, such Party shall be in default, and the other Party may terminate this Agreement. Failure to make timely payments is a material breach of this Agreement only after written notice (in addition to any invoices) pursuant to the notice provision of the General Terms and Conditions and given 60 days to cure. In the event of a termination of this Agreement for breach, the Parties reserve all rights and remedies available to them under applicable law or equity. In addition, the event of an uncured breach or default by SumTotal, SumTotal shall promptly refund, on a prorated basis calculated using the effective date of termination, any fees for the Service which Customer has pre-paid but not used. In the event of a default by Customer under this section, Customer shall pay for all amounts due and owing for the Service, through the termination date.

8.2   The sections herein titled "Customer's Responsibilities", "Term and Termination", "Intellectual Property Ownership", "Limitation of Liability", "Indemnification", "Confidential Information", and "Miscellaneous", inclusive, shall survive any termination of this Agreement. Upon any termination due to a breach of this Agreement, Customer must immediately cease any further use of the Service and destroy any copies of associated Software Modules within Customer's possession and control. Upon termination of the Agreement (except due to SumTotal's breach of the Agreement as set forth in the paragraph above), SumTotal shall retain all amounts paid by Customer under the Agreement, including all fees and expenses rendered to SumTotal by Customer in anticipation of services hereunder. Any obligation of Customer's which accrued prior to termination, including any payment due and fees owed but not yet paid, shall survive the termination of this Agreement.

8.3   Return of Customer Data. In the event this Agreement is terminated or expires, SumTotal will upon request provide an electronic copy of customer course content via FTP at no charge. Customer can also obtain the content of many database tables using the data extract inherent in the application's reporting tool, however if Customer requires additional tables they may 1) request within 30 days of termination or expiration that SumTotal make available to Customer via FTP a full export of all tables containing customer data for a fee of $2200, 2) request custom extracts of specific data be provided, with the fee based on the complexity of the customer requirements, and pursuant to a Professional Services engagement. SumTotal will not provide extracts of Customer data unless all amounts due and owing for the Service, including Committed Subscription Service Fees for each Subscription Term, Setup Services Fees, Professional Services Fees, Overage fees, or any other fee or charge associated with Customer's use of the Service, have been paid by Customer. After such 30-day period, SumTotal shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control. SumTotal will not provide extracts of Customer data unless all amounts due

and owing for the Service, including Committed Subscription Service Fees for each Subscription Term, Setup Services Fees, Professional Services Fees, Overage fees, or any other fee or charge associated with Customer's use of the Service, have been paid by Customer.

8.4   Effect of Bankruptcy. In the event that Customer becomes the subject of any voluntary or involuntary bankruptcy proceeding, liquidation, dissolution, receivership or attachment or make a general assignment for the benefit of creditors, amounts that have been paid to SumTotal are hereby deemed earned upon receipt and are SumTotal's sole property, irrespective of whether goods or services, have been delivered and may be applied, in whole or in part, in satisfaction of any obligations owed by Customer to SumTotal under this Agreement or any other agreement between Customer and SumTotal.

9.   **Representations and Warranties.**

9.1   Representations and Warranties. Each Party represents and warrants that it has the legal power and authority to enter into this Agreement.

9.2   Limited Warranty on Service. SumTotal represents and warrants, for the term of the applicable Order Form that the Service shall materially perform as represented in this Agreement, and SumTotal's Published Documentation describing the Service. Except as otherwise contained in this Agreement, Customer's exclusive remedy for a breach of this warranty is the correction of any material reproducible impairment to the features and functionality in the Service so that it materially conforms to this warranty. If SumTotal determines that is unable to correct the Service after using commercially reasonable efforts to do so, then, except as otherwise provided for in this Agreement, SumTotal's sole and exclusive obligation shall be to refund a prorated amount of the Committed Subscription Service Fee which has been actually paid for such Service; provided that Customer discontinues all use of the Service and certifies that it has done so. Except as set forth in this Agreement, no other fees shall be refunded to Customer under this Agreement.

9.3   Limited Warranty on Service Deliverables. For a period of 90 days following the delivery of a Service Deliverable ("Service Deliverable Warranty Period"), SumTotal warrants that the Service Deliverable, as provided by SumTotal, will in all material respects conform to and perform in accordance with the mutually-agreed specifications. Customer must report any breach of the foregoing warranty to SumTotal in writing within the Service Deliverables Warranty Period. Customer's exclusive remedy for a breach of this warranty is the correction of any material reproducible nonconformity in the Service Deliverable so that it conforms to this warranty. If SumTotal determines that SumTotal is unable to correct the Service Deliverable after using commercially reasonable efforts to do so, then SumTotal's sole and exclusive obligation shall be to refund the fees actually paid for such Service Deliverable provided that Customer discontinues all use of the Service Deliverable and certifies that Customer has done so and has destroyed all copies in Customer's control.

10.   **Disclaimer of Warranties.**

EXCEPT AS PROVIDED IN THIS AGREEMENT OR AS OTHERWISE
PROHIBITED BY LAW, CUSTOMER UNDERSTANDS AND AGREES THAT THE
SERVICE AND CONTENT ARE PROVIDED "AS IS" AND SUMTOTAL, ITS
AFFILIATES, SUPPLIERS, LICENSORS, AND RESELLERS EXPRESSLY
DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED,
STATUTORY OR OTHERWISE, INCLUDING, ANY WARRANTY OF
MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-
INFRINGEMENT. SUMTOTAL, ITS AFFILIATES, SUPPLIERS, LICENSORS, AND
RESELLERS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY
THAT (i) THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR
ERROR-FREE OR (ii) THE SERVICE OR THE SERVER(S) THAT MAKE THE
SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL
COMPONENTS. SUMTOTAL CANNOT AND DOES NOT GUARANTY THE
PRIVACY, SECURITY, OR AUTHENTICITY OF ANY INFORMATION
TRANSMITTED OVER OR STORED IN ANY SYSTEM CONNECTED TO THE
INTERNET. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF
IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED
WARRANTY MAY LAST. CUSTOMER MAY HAVE OTHER RIGHTS WHICH
VARY FROM JURISDICTION TO JURISDICTION.

11.   **Limitation of Liability.**

IN NO EVENT SHALL A PARTY'S AGGREGATE CUMULATIVE LIABILITY
ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN
CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED
$3,000,000.

IN NO EVENT SHALL A PARTY BE LIABLE FOR INDIRECT, INCIDENTAL,
SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING
DAMAGES FOR LOSS OF PROFITS OR REVENUE, BUSINESS INTERRUPTION,
HOWEVER ARISING, EVEN IF SUMTOTAL HAS BEEN ADVISED OF THE
POSSIBILITY OF SUCH DAMAGES.

NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS OF LIABILITY SET
FORTH ABOVE SHALL NOT APPLY TO (I) THE PARTIES' RESPECTIVE
INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT; (II) ANY
DAMAGES ARISING OUT OF OR IN CONNECTION WITH MISAPPROPRIATION
OR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS; OR (III) ANY
DAMAGES ARISING OUT OF OR IN CONNECTION WITH A PARTY'S GROSS
NEGLIGENCE OR WILLFUL MISCONDUCT.

12.   **Miscellaneous.**

12.1   Miscellaneous. All terms, conditions, or provisions which may appear as pre-printed
        language or otherwise be inserted within any purchase order or other document of
        Customer's shall be of no force and effect notwithstanding the acceptance of such
        purchase order after the date of this Agreement.   Without limiting the generality of the
        foregoing, Customer agrees that Section 11 ("Limitation of Liability") will remain in

effect even if Section 10 ("Disclaimer of Warranties") is found to be unenforceable in whole or in part.   Wherever the term "including" is used, it shall mean "including, but not limited to".

12.2   Force Majeure. Neither Party shall be liable for failure to perform or for delay in performance hereunder due to causes beyond its reasonable control (each a "Force Majeure" event), including acts of God, fires, floods, earthquakes, accidents, Internet service interruptions or slowdowns, vandalism or "hacker" attacks, strikes, acts of war, acts of terrorism, riot, embargoes, fuel crises, acts of civil or military authorities, or intervention by governmental authority, provided that such Party gives prompt written notice thereof to the other Party. Any failure occasioned by the foregoing shall be remedied as soon as reasonably possible.

12.3   Injunctive Relief. The Parties each acknowledge that the breach or threatened breach of this Agreement could give rise to irreparable injury to the non-breaching Party which would be inadequately compensated in money damages. Accordingly, the non-breaching Party may seek a restraining order and/or an injunction prohibiting such breach in addition to any other legal remedies which may be available. The Parties agree that the non-breaching Party will not be required to post a bond in seeking injunctive relief under this Agreement.

12.4   Export Control and Economic Sanctions. The Parties will comply with all applicable international, federal, state, and local laws and regulations in connection with its downloading and use of the SumTotal Property and in performing its obligations hereunder, including all U.S. export and re-export control laws and regulations, and the U.S. economic sanctions, including the Export Administration Regulations ("EAR") administered by the U.S. Department of Commerce, the laws and regulations administered by the U.S. Department of the Treasury's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") administered by the U.S. Department of State, and not cause SumTotal to violate the same. Without limiting the foregoing, Customer covenants that Customer shall not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from SumTotal under this Agreement to or for use in or by any country (such as Cuba, Iran, North Korea, Sudan, or Syria), entity, or person subject to restrictions under the laws or regulations of any jurisdiction, including the United States, without providing advance notification to SumTotal and obtaining prior authorization from the relevant government authorities as required by those laws and regulations. Prior to any such export event, Customer and SumTotal shall execute a written agreement to govern the use, control, and transfer of the applicable software and data. Each Party hereby indemnifies and holds harmless, to the fullest extent permitted by law, the other and its officers, directors, employees, agents, and affiliates from and against any fines, penalties, judgments, settlements, and reasonable documented costs, including attorney's fees, that may arise as a result of any breach of this provision by the breaching Party or its agents, officers, directors, or employees.

12.5   Audit. Customer agrees to maintain accurate and detailed records of the number of Users who have been given access to the Service. SumTotal shall have the right to verify the number of Users with access to the Service under this Agreement. Customer agrees that

SumTotal shall have the right during the Term, and for sixty days thereafter to audit Customer's records for compliance with this Agreement at any time during Customer's normal business hours upon reasonable notice.

III.   PROFESSIONAL SERVICES

These terms set forth the additional terms and conditions under which SumTotal will provide professional services provided pursuant to this Agreement.

1.   Performance of Services.

(a)   Statements of Work. Each professional services project SumTotal undertakes shall be described in statements of work (each a "Statement of Work") setting forth the agreed upon the scope of the Statement of Work, Service Deliverables, estimated or actual pricing and any special payment terms and, if applicable, project schedule, Service Deliverables, and estimated delivery dates and contained in the Agreement, or an Amendment to this Agreement..

(b)   Delivery and Cooperation. Customer acknowledges that Customer's cooperation is essential to the timely performance of SumTotal's services. Customer will, to the extent required in connection with the performance of SumTotal's services: (i) provide SumTotal with any necessary Customer materials; (ii) provide SumTotal with any necessary access to Customer's personnel, facilities or data; (iii) cause the appropriate personnel to cooperate with SumTotal as required for SumTotal to provide SumTotal's services, including responding promptly to questions or issues; and (iv) make all payments when due. Customer's delay or failure to do so may delay the estimated delivery schedules set forth in the Statement of Work. If Customer fails to do any of the foregoing, both Parties will cooperate in good faith to develop a revised written delivery schedule and written Statement of Work or change order signed by both Parties with new pricing.

(c)   Intentionally Omitted.

(d)   Qualified Personnel. SumTotal will provide all services in accordance with current industry standards and practices using qualified personnel with the necessary skills, qualifications and experience to provide the Service Deliverables in accordance with this Agreement. All personnel providing services will be SumTotal's employees acting within the scope of their employment and under obligation to assign all rights in the Service Deliverables to SumTotal, or will be independent contractors under written obligation to assign all such rights to SumTotal.

2.   Services Payment Terms.

Customer will pay SumTotal for all undisputed services provided under a Statement of Work. Customer will pay SumTotal for time and materials projects pursuant to the terms of this Agreement, including pricing. SumTotal will invoice Customer on a time and materials basis at the end of each month at the billing rates set forth in the Statements of Work for work performed

on each Statement of Work during the previous month. Such invoices will include a summary of all time expended for each personnel classification providing services during the month. Fixed fees shall be due upon execution unless otherwise stated in the relevant Statement of Work, except that fixed training fees, if any, shall be due upon completion.

3.   Termination of Projects.

Customer may terminate any Statement of Work for any reason upon 10 days prior written notice to SumTotal. If any particular Statement of Work is terminated for any reason other than an uncured breach by SumTotal, after receiving 10 days prior written notice from Customer, then SumTotal shall deliver the work completed on the Service Deliverables then in process and a detailed invoice and be paid for all services performed through effective date of termination based on the actual time expended for time and materials projects. If the Parties agree upon a fixed price for Professional Services in a Statement of Work, in the event of termination SumTotal shall be entitled for prorated remuneration of the Professional Services actually provided. Such proration shall be calculated based upon actual effort expended by SumTotal through the date the termination became effective, but in no case shall exceed the original agreed-upon fixed price or the amount that would have been charged had the Professional Services been invoiced on a time and materials basis, excluding any exceeding or additional claims. Customer will not be entitled to any refund of amounts previously paid under a Statement of Work if Customer elects such early termination.

4.   Changes to Service Deliverables.

(a)   <u>Changes to Project Scope</u>. Customer may request changes to the scope of a Statement of Work. Any changes to the scope of a Statement of Work shall result in a change order to such Statement of Work or a new Statement of Work. Any scope changes shall be made pursuant to the terms set forth in a Statement of Work, to be mutually agreed upon by the Parties. Substantive changes to the Statement of Work must be completed by an Amendment to this Agreement.

(b)   <u>Changes to Non-functional Elements</u>. County acknowledges that certain non-functional or aesthetic elements of the Services Deliverables such as screen displays and user interface design can vary greatly without impact on the functional or performance specifications. Contractor will incorporate any nonfunctional or aesthetic elements specified in the Agreement into the Service Deliverables, and will work together with County in the design of such nonfunctional or aesthetic elements. If County wants to change the nonfunctional or aesthetic elements of any Service Deliverable which meets the functional and performance specifications and otherwise complies with the Agreement but will be an additional cost, a written amendment to the Agreement may be necessary.

IV.   CUSTOMER MAINTENANCE

These terms set forth the additional terms and conditions under which SumTotal will provide customer maintenance services in connection with the Software licensed to Customer pursuant to this Agreement.

Customer Maintenance Contact Information:

SumTotal Systems Maintenance Web Site: **www.sumtotalsystems.com/support** (Note: Follow the instructions for submitting a technical issue or question to SumTotal Systems.).

The contact information in the URL above and the information, policies, and procedures posted therein are current as of the date of this Agreement. SumTotal reserves the right to change its contact information, and the information, policies, and procedures posted on the URL from time to time upon notice to the Designated Contacts.

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1.   **Additional Definitions.**

(a)   "Designated Contacts" means the individuals designated by Customer and agreed to by SumTotal who are authorized to contact SumTotal's customer maintenance staff and who will coordinate all of Customer's Error submissions and maintenance requests.

(b)   "Error" shall mean a reproducible defect in the Software when operated on a Supported Environment, which causes the Software not to operate substantially in accordance with SumTotal's Published Documentation.

(c)   "Error Correction" means a modification or patch that brings the Software into substantial conformance with SumTotal's Published Documentation, or a procedure, routine or other information that enables Customer to avoid the practical adverse effect of an Error.

(d)   "Instance" shall mean one or more SumTotal web application servers.

(e)   "Maintenance Release" means an update to an existing version of the Software containing Error Corrections or minor functionality enhancements. A Maintenance Release is designated as a numbered service pack for the current version, with no change in the version number.

(f)   "New Version Release" means a new version of the Software containing new features or enhancements to functionality. A New Version Release is designated by an increase in the version number. e.g. from 2.5 to 2.6 or 3.0. "New Version Release" only includes releases of the Software in a language included in this Agreement

 (g) "Primary Instance" means an Instance in Customer's production environment containing Customer's live learning, talent, payroll, attendance or expense records

 (h) "Secondary Instance" means an Instance in Customer's testing environment used for testing or staging of Customer's data.

 (i) "Supported Environment" means a hardware, operating system and database platform meeting the minimum system configuration requirements for the proper use and operation of the Software as set forth in SumTotal's Published Documentation.

 (j) "Maintenance Term" means any period during which Customer is entitled to receive maintenance hereunder, including any renewals or extensions thereof.

2. Maintenance Services.

 (a) <u>Standard Maintenance Provided</u>. During each Maintenance Term, SumTotal will provide the following maintenance, subject to the procedures and limitations described herein: (i) clarifying and assisting in the operation of the features and functions of the Software; (ii) clarifying SumTotal's Published Documentation; (iii) assisting in identifying and verifying the causes of suspected Errors; and (iv) Error Corrections. Such maintenance will be provided for the Primary Instance and Secondary Instance. During each Maintenance Term, Customer will have access to SumTotal's online Learning Portal located at http://www.sumtotalsystems.com/support. The Learning Portal provides the Customer with access to online learning, knowledge documentation, and tools that enable Customer to enhance Customer's knowledge of the Software and use the mobile and social learning features. SumTotal provides support on a worldwide basis; therefore, Customer Data may be accessed by SumTotal employees outside of the United States. Notwithstanding the foregoing, the limitations as set forth in section 12.4 shall also apply to access to Customer Data.

 (b) <u>Self Help Maintenance Resources</u>. Customer agrees that the users of the Software will first attempt to answer any questions or resolve any issues with respect to the operation of the Software by using the following self-help resources: (i) the Help function of the Software, (ii) SumTotal's Published Documentation, (iii) SumTotal's knowledge documentation, and/or (iv) available tools located on SumTotal's Community Portal or Support Web Portal.

 (c) <u>Contacting Customer Maintenance</u>. If Customer is unable to resolve an issue or question with respect to the Software using the self-help resources described above, the Designated Contacts may contact a customer maintenance representative to receive maintenance using one of the methods described below. SumTotal will provide maintenance only in English and only to the

Designated Contacts. Any communication between the Designated Contacts and a customer maintenance representative must be in English. SumTotal will not provide maintenance to end users of the Software or to any person other than the Designated Contacts.

(i) <u>Telephone Hot Line</u>. SumTotal will provide telephone maintenance to the Designated Contacts as outlined at the following URL - http://www.sumtotalsystems.com/online-support/, excluding SumTotal Systems holidays (the "Support Hours"). SumTotal will provide Customer with a list of SumTotal Systems holidays and any reduced maintenance hours on those holidays upon request. SumTotal will provide Support during California business hours (8AM – 5PM), subject to change as defined in the preceding URL.

(ii) Support <u>Web Portal.</u> . SumTotal will use commercially reasonable efforts to provide an acknowledgement to submissions and support request sent via the Support Web Portal located at https://community.sumtotalsystems.com/support based on Table 1 below during standard business hours after SumTotal receives the inquiry.

(d) <u>Error Correction</u>. When Customer reports an Error to SumTotal, Customer should include a detailed description of the Error and the severity level determined in accordance with subsection (e) below. When SumTotal receives notice of an Error, SumTotal will assign a problem tracking number to be included in all correspondence between Customer and SumTotal related to the Error and after SumTotal's e-mail acknowledgement described in subsection (c)(ii) above SumTotal will provide a response in accordance with the severity levels and response times identified in subsection (e). Thereafter, SumTotal will use commercially reasonable efforts to provide an Error Correction. The Error Correction may require that Customer install the latest Maintenance Release for the supported version of the Software on which Customer reported the Error. An Error Correction may require multiple contacts and off-line research. The Error Correction, when completed, may be provided in the form of a Software patch consisting of sufficient programming and operating instructions to implement the Error Correction, which will be provided to Customer via email, download or other electronic means or deployed directly by SumTotal for any subscription Service.

(e) <u>Response Times</u>. SumTotal's response to an Error depends on the severity of the Error and the level of maintenance purchased by Customer as determined by Table 1. For each level of severity, SumTotal customer maintenance representatives will use commercially reasonable efforts to respond, during the Support Hours, within the times set forth in Table 1. Response time is the time from SumTotal's receipt of notice of the Error until SumTotal contacts the Designated Contact reporting the Error to begin resolution efforts, not the time to deliver an Error Correction. SumTotal will respond to an Error which arises in the Primary Instance at all severity levels set forth in Table 1. If an Error

arises in the Secondary Instance, SumTotal will only respond according to the Severity 3 level response time, as set forth in Table 1.

(f)   Additional Services with Premier Maintenance for the Primary Instance and Secondary Instance. If the Agreement is amended and Customer purchases Premier Maintenance, SumTotal will provide Customer with the following additional services for the Primary Instance and Secondary Instance: (i) two (2) additional Designated Contacts totaling four (4) Designated Contacts (ii) a Support Point of Contact responsible for proactively managing Customer's maintenance issues during the Maintenance Hours; (iii) monthly usage reports detailing maintenance activity; (iv) review of relevant error corrections delivered to SumTotal's customer base; and (v) response times as noted in Table 1. Optional participation in meetings at Customer's location on a mutually agreed date (travel and expenses not included)

(g)   Exclusions from Maintenance Program. SumTotal is not responsible or liable for causes external to the Software, including: (i) Customer's failure to incorporate Maintenance Releases or New Version Releases; (ii) installation of the Software or any New Version Releases not in accordance with the documentation provided with the Software or New Version Releases; (iii) Customer's use of the Software with any software or hardware other than the Supported Environment; (iv) problems resulting from use of the Software in a manner not permitted pursuant to Customer's license; (v) modifications, alterations, or additions to the Software by Parties other than SumTotal (including, modifications, alterations, or additions to the Software made by Customer); or (vi) damage from any source other than SumTotal including water, humidity, fire, power surges, computer viruses, and accidents ("Excluded Services"). Any maintenance or services required to fix the Excluded Services must be preapproved in writing by Customer and may require a written amendment to the Agreement and/or other mutually agreed upon documentation.

3.   **Customer's Responsibilities.**

(a)   Supported Environment and Operations. Customer is responsible for undertaking the proper supervision, control and management of Customer's use of the Software including, but not limited to: (i) providing, maintaining and assuring proper configuration of the Supported Environment; (ii) following industry standard procedures for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of hardware or software error or malfunction; and (iii) maintaining a procedure external to the Software for reconstruction of lost or altered files, data and programs.

(b)   Assistance in Providing Maintenance. Customer will provide reasonable assistance to SumTotal in determining and resolving Errors reported by Customer. Error determination activities may include performing network traces, capturing error messages, collecting configuration information and other

similar activities to allow SumTotal to reproduce the Error. Resolution activities may include access to Customer's personnel and/or remote access to the Supported Environment. Customer agrees to allow SumTotal to use remote access tools, with the participation and under the supervision of a Designated Contact, to access the Software in the Supported Environment and modify its configuration as part of its Error determination and resolution activities. SumTotal may not be able to provide Customer with an Error Correction without such remote access. Customer is responsible for performing activities to implement Error Corrections SumTotal provides and for responding in a timely manner to requests for information by SumTotal. Error Corrections may include changing, installing or reinstalling new or existing versions of web browser software or new components, or modifying processes. Any information Customer provides SumTotal in connection with the maintenance process that Customer designates as confidential will be used only to resolve reported Errors, will not be disclosed to anyone other than SumTotal personnel involved in resolving the Error. As part of SumTotal's Error resolution process, information Customer provides to SumTotal may be made available to SumTotal's employees in foreign countries, unless Customer notifies SumTotal otherwise in writing when providing SumTotal with such information.

(c)   Designation of Maintenance Contacts. Customer will designate up to two (2) individuals as the Designated Contacts for receiving maintenance hereunder and notify customer maintenance of the Designated Contacts. Customer may change the Designated Contacts by notifying customer maintenance, but may not have more than the above number of Designated Contacts at one time, unless otherwise agreed upon. Each Designated Contact may not be changed more than once in a 30-day period. All Designated Contacts must complete SumTotal's standard Designated Support Contact training to be certified by SumTotal in basic product knowledge prior to becoming a Designated Contact hereunder.

(d)   Training. Customer is responsible for arranging the proper training of the Designated Contacts and all other appropriate personnel in the operation and use of the Software and the Supported Environment, which is provided by SumTotal through the customer portal at no charge to Customer. Validation of completion of SumTotal DSC Training and/or new version release training is required to enable access to SumTotal Maintenance services.

4.   New Releases of the Software.

The designation of a Software release as a Maintenance Release or a New Version Release will be made by SumTotal at SumTotal's reasonable discretion. Any New Version Release or Maintenance Release is part of the Software and subject to the terms and conditions of this Agreement. New Version Releases will not occur more than once every six (6) weeks.

(a)   For Software purchased as a subscription Service via the SaaS model:

(i)   Installation of New Version and Maintenance Releases. SumTotal will install any New Version Release or Maintenance Release made generally available during the Maintenance Period with no additional Service or Software fees. SumTotal will install any New Version Release or Maintenance Release at SumTotal's discretion and on SumTotal's timeline with prior Customer notification.

(ii)   Support of Prior Releases. Prior Version Releases are not supported via the SaaS model and SumTotal will ensure that Customer is on the most current New Release Version and Maintenance Release as set forth in B4(a)(i).

(iii) Customizations and/or Modifications. Customizations and/or Modifications are not permitted or supported if the Service has been purchased via the SaaS model.

Table 1
Severity Level, Response, and Resolution Times

Severity Level	Severity Level Description	ST Response
P-0	Complete Production Outage •Production site is inaccessible and cannot be used	SumTotal will work on the outage until the production site is accessible.
P-1	Production environment does not function •No workaround is available •Critical and significant number of users are affected; and •There is a critical business impact	SumTotal will triage and work on the issue as a critical priority and work towards providing a workaround solution, a hot fix or schedule the fix for a roll up patch dependent on the impact and nature of the issue.
P-2	Production environment is operational •A workaround is available •Significant number of users are affected; and •There is a major business impact	SumTotal will triage and work on the issue and work towards providing a workaround solution or schedule the fix for a roll up patch, maintenance pack or service pack, dependent on the impact and nature of the issue.
P-3	Environment is operational •Minor application issue; or •Cosmetic issue; or •Documentation questions; or •Product feedback or enhancement requests	SumTotal will identify a potential future delivery date in a future release.

Response and Resolution Times:

Standard		Premier (optional)		Resolution	
Severity Level	Initial Response	Severity Level	Initial Response	Severity Level	Target Resolution
P-0	1 hour	P-0	1 hour	P-0	90% of cases in 4 Business Hours
P-1	4 hours	P-1	1 hour	P-1	85% of cases in 8 Business Days
P-2	8 hours	P-2	4 hours	P-2	80% of cases in 14 Business Days
P-3	2 days	P-3	8 hours	P-3	N/A

"Resolution Time" is defined as the time between the issue (problem and symptoms) being reported (with complete details) via the creation of a ticket and the time that the customer has been advised that their issue has been resolved or a resolution is provided via the case tracking system. It does not include the time that the customer utilizes to deploy or validate any provided fix unless the provided solution did not resolve the issue."

EXHIBIT A

DEFINITION OF SERVICES

1. Contractor shall provide learning management system and services with the Specific Requirements and Deliverables set on this Exhibit A, consisting of the following:

    Exhibit A-1 Specific Requirements and Deliverables

    a. This Exhibit A has been drafted to include the requirements contained in the Request for Proposal No. 901676, including any addenda, specifically including Exhibit D and E of the RFP, the proposal response of Contractor (Response), and additional services that the County obtained through negotiations, if any.   For purposes of interpreting this Agreement, the exhibits, RFP, and the response may all be considered.

    b. The RFP and Response may be relied upon to interpret this Contract and shall be applied in such a manner so that the obligations of the Contractor are to provide the County with the broadest scope of services for the best value.

2. Contractor project team will consist of the following Key Personnel and subcontractors, as applicable during the contract term:

NAME:	TITLE:	CONTACT INFORMATION:
Sarah Schor	VP Public Sector, Executive Sponsor	Sarah.schor@sumtotalsystems.com 312-623-9526
Lisa Roche	Practice Director, Professional Services	Lisa.Roche@sumtotalsystems.com 442-287-7710
Will Goodwin	Lead Consultant (Technical)	William.Goodwin@sumtotalsystems.com 503-581-6735
David Courtney	Sr. Engagement Manager	David.Courtney@sumtotalsystems.com 352-316-1122
Renee Moffa	Senior Solution Specialist	Renee.Moffa@sumtotalsystems.com 404-274-7343
Oren Friedman	Public Sector Manager	Oren.friedman@sumtotalsystems.com 604-353-9761
Amanda Wellborne	Customer Success Manager	Amanda.wellbourne@sumtotalsystems.com 701-319-9817

Contractor agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of County, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to County an individual with greater or equal qualifications as a replacement subject to County's approval, which approval shall not be unreasonably withheld.

3.   The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.

EXHIBIT A-1

SPECIFIC REQUIREMENTS AND DELIVERABLES

Contractor shall provide and maintain services at no less than the levels set forth in response to each of the following items.

1.   General requirements:

a.   System Overview: Contractor shall provide a Learning Management System ('LMS' or 'System') to County for data management for career development, skill development, and the sharing of knowledge through an integrated registration and tracking system for instructor-led training as well as online learning and development, and informal learning. Contractor shall provide this through a simple single software solution (one database).

b.   System and Services: Contractor shall provide, implement, host, train, support and maintain a cloud-based LMS. Contractor shall provide Software as a Service (SaaS) as part of the System in the "on demand" Contractor hosted basis with 100% web-based and 24/7 system accessibility.

c.   Access: The System shall be accessible by all users, including system administrators, without the need for any additional software installation.

d.   Hardware Software and Maintenance: Contractor's System shall be multi-tenant, multi-user, on demand application providing SaaS delivery. County shall have no hardware requirements, no software maintenance and no network administration obligations. Nothing shall be installed on the County site or servers. All equipment and services shall be fully managed by Contractor.

e.   Upgrades: Contractor shall provide all upgrades, including regulatory updates, at no additional cost.

f.   Data Protection: Contractor shall implement administrative, physical and technical safeguards to protect County data that are no less rigorous than accepted industry practices. At County's request, Contractor shall submit for review, a data protection plan including the manner in which County data is collected, accessed, used, stored, processed, disposed of and disclosed that complies with applicable data protection and privacy laws. The data protection plan may be added as an Exhibit to this Agreement by an Amendment signed by the Alameda County Purchasing Agent, after review and approval as to form by County Counsel.

g.   Access to Security Logs and Reports: Contractor shall provide reports to the County including latency statistics, user access, user access IP address, user access history and security logs for all County files.

h.   Domains: Contractor shall create and provide:

   (1)   A Countywide domain;

   (2)   Domains for each County of Alameda agency and department;

   (3)   Domains for use within agencies and departments; and

   (4)   Domains for other affiliated organizations and workflows; the System shall be capable of expansion and configured by Contractor to support the following potential groups in a multi-entity environment:

      (a)   Alameda County Fire Department

      (b)   Cities in Alameda County

      (c)   Affiliated County organizations, including nonprofits and community based organizations.

   (5)   Contractor shall provide unlimited domains with varying configuration, workflow, branding and reporting specific to that domain. Domains shall have unlimited workflows, reporting business requirements and County desired features. The system shall recognize the various agencies/departments and their employee roles. The County shall define its own organizational classifications and hierarchical structures within the system through. This shall govern the user interface (e.g., branding, navigation, look & feel), functionality, workflows, processes, and content. Domains shall have the ability to be organized both laterally and hierarchically with multiple levels.

i.   Uniformity across the Platform: Turning on a new module or some functionality within a module shall be a simple process and easy for end users to navigate the newly added functionality. The County shall have the ability to allow access to any parts of the system to all end users, or to just specific audiences.

j.   Compatibility: The System shall be compatible and capable of integrating with internal County systems, including but not limited to ALCOLINK / HRIS. The System shall have interoperability with other vendors including Application Program Interfaces (API) and Web services. The System shall be able to utilize third party (non-Contractor) services and integrations ("Compatibility") such as virtual classroom, payment gateway (Cybersource), Contractor shall provide Compatibility at no cost to County for commonly used and accessed third party services, for example but not limitation YouTube, Peace Officer Standards and Trainings (POST) and PeopleSoft programs.

k.   Accessibility: The System shall be available and accessible to individuals with disabilities. SumTotal 18.3 (incorporating Employee/Manager components of the SumTotal Learning Management, Talent Acquisition and Talent Management suites) conforms to Section 508/WCAG 2.0 accessibility standards, with exceptions as stated in its VPAT.

l.   Data: Contractor shall provide a System with large enough data storage to receive all transferred data and to add data during the full term of the contract and all renewals. The County may purchase additional storage if needed, as described on the Order Form (Exhibit B-1).

   Contractor shall load historical data provided by County into the System as described and scoped in Statement of Work (Exhibit A-2). Contractor shall provide the County with tools required to manage data imports, and shall train County personnel.

m.   Minimum Features: The System shall include the following functions and features, including those described in more detail in this Agreement:

   (1)   Learning Management

   (2)   Competency Management

   (3)   Certification and Continuing Education Credits/Units Management

   (4)   Social Collaboration and Informal Learning Management

   (5)   Career Planning, Development, and Advancement Management

   (6)   Extended Enterprise

   (7)   Reporting, Dashboards, and Analytics

n.   Additional Features: Contractors shall provide the following:

   (1)   E-learning Content

   (2)   SumTotal Talent, which includes:

      (a)   Performance Management

      (b)   Succession/Workforce Planning and Management. Note: SumTotal Succession Planning implementation is not currently in scope for this Agreement, however, may be added by Amendment at a later time, including pricing.

(c)   Compensation Management. Note: SumTotal Compensation Management implementation is not currently in scope for this Agreement, however, may be added by Amendment at a later time, including pricing.

(3)   The Agreement may be amended to include the following services, any such amendment will include additional pricing for the services:

Additional Sum Total modules, unified with SumTotal Learn and Talent, which includes:

(a)   SumTotal Onboarding

(b)   SumTotal Talent Acquisition

(c)   SumTotal Workforce Management (Time and Attendance and Scheduling)

2.   System Requirements:

a.   Unified Database and Architecture: System architecture and configuration including learning domains, dynamic audiences, workflow, enterprise search, content authoring, upload, and management. The System shall provide the following:

(1)   Learning Domains: Each domain must have the ability to have its own business rules, workflow, training content, and multiple user roles and configuration. Additionally, each domain must be able to provide a different branding look and feel (e.g., add logo, define screens, lists, user options) at no additional charge.

(2)   Configuration: Each domain shall have the ability to configure the interface design (i.e. functionality, navigation) by organizational hierarchy, domains, roles, and talent pools. The system shall allow the creation of custom fields which are leveraged through workflows and reporting. System configuration by the County shall not the need of technical knowledge and proficiency.

(3)   Dynamic audiences: Each domain shall have the ability for features and content/data access to be enabled or disabled for specific user groups and includes embedded security so users are granted special privileges and others are not. Ability to automate the assigning of learning activities by role or audience.

(4)   System Administrators: Contractor shall allow the assignment of unlimited County Wide System Administrators and unlimited Domain Administrators.

(5)   Workflow: Each domain shall support the tailoring of workflow approvals by organization, audience and learning activity, (different approval workflows –

multiple, single, indirect, etc.). There shall be at least two levels of online registration approvals and the ability to incorporate approvals based on cost of learning event (training).

(6)   Enterprise search: A comprehensive search feature allowing users to search the course catalog using dynamic criteria based on key words, title, delivery format, and other tagged identifiers. The ability to search by date, credits, and continuing education hours. An intelligent suggestion and adjustment of search criteria based on user profile/activity and/or domain.

(7)   Data import and management: Domain administrators shall have the ability to perform data imports and merge duplicate profiles as necessary. Additional data storage, as required may be purchased by the County per terms of the Agreement.

(8)   Content authoring, upload, and management: Each domain shall have the ability to upload and launch third party authored SCORM, AICC, or HTML5 content. The ability to launch and track external links such as Viemo, YouTube or TED Talks or uploaded content such as PowerPoint Presentations or Prezi. The ability to support launching e-learning content directly from an email or website site link.

(9)   Integration: The System shall support third-party content integration.

b.   User Experience: The System shall have a modern user interface with easy and intuitive navigation. The System shall allow for deep linking from an email or website to apply, approve, or launch a learning event. The System shall have the ability for a user to view and register for a learning event from a calendar.

(1)   Learner experience: The System shall allow users to do each of the following:

(a)   View personal upcoming trainings, training requirements including hours and progress towards completion, and other deadlines in order of due date;

(b)   View and edit a personalized learning plan;

(c)   Add or request to add "ad-hoc" external, or informal learning events through self-service including the ability to load attachments for verification; and

(d)   View and print their own training transcript and certificates (includes completion date, exam scores, certification credits, etc.) in real time.

(2)   Manager experience: Immediate supervisors and their managers shall have the ability to:

(a)   View dashboard of all team members and drill down to view profile information, transcripts, certifications, training requirements and progress towards completion, and other individual user information and learning activities of their team members;

(b)   Create and run reports and receive automated emails of team's member status of required learning;

(c)   View, approve, and assign required or recommend trainings to their team members individually or as a group; and

(d)   Complete evaluations/assessments related to their team members' training outcomes.

(3)   Instructor experience: The System shall allow each instructor to easily perform each of the following tasks:

(a)   Register learners for learning activities they are teaching and have access to view the enrolled learners profile details (i.e. job title, organization, superior, etc.) including previous training history;

(b)   View and receive email notifications of class details including the number of enrollments, date/time/location, resources assigned, etc.;

(c)   Print out sign-in sheets, manage their roster of learners, add grading, and completion information, upload and download supporting resources (i.e. instructor materials, job aids, etc.);

(d)   Communicate with learners by sending prescribed or custom generated emails to alert class of pre and post work via email;

(e)   View any on-line evaluation their learners have completed in a summary and detailed format; and

(f)   Post answers to questions associated with a learning event.

(4)   Administrator experience: The System shall allow Administrators to easily:

(a)   Create, find, view, or update user information, including one-stop common object management, a universal change manager, a reassign manager tool, and unified password management.

(b) Enter and update course properties, perform classroom management, track and view completion/test results for all learning events, and manually force completion/record learning for all learners in their domain.

(c) Can create repeatable sessions based off a standard course template and the ability to assign multiple courses to multiple users and groups simultaneously is required.

(d) Perform user, manager, and instructor management tasks for their domain.

(e) Upload/import learning history via batch import template.

(5) Mobile Learning/Mobile User Experience: The System shall:

(a) Support responsive design enabling mobile devices as a standard and support Security Assertion Markup Language (SAML), web browser single sign-on (SSO); and

(b) Search, register, approve, and launch learning.

(6) Intelligence Analytics: The System shall have the ability for an Administrator to:

(a) Automatically assign learning based on user, user affiliations to organizations/groups/audience rules, or fields in the user profile;

(b) Automate learning recommendations; and

(c) Conduct user-generated ranking and rating of learning content.

c. Learning Management: The System shall have individual (1) use development planning, tracking mandated training and connecting to online learning resources (2) Course and resource management, catalog, curriculum certifications, learning plans, class scheduling, enrollment and registration and (3) Blended learning, surveys, assessments, and virtual classroom training. Contractor shall provide a format such that in one click County can setup or start training directly from the System. The System integration shall allow Administrators to add instructors, create and manage sessions, and track attendance. The System shall provide all users and Administrators one place to setup and launch web based virtual trainings and meetings, using applications such as Skype for Business.

(1) Course Management: Courses shall:

(a) Be viewable or restricted across multiple groups, audiences, and domains;

(b) Be defined as required/mandatory or optional to individuals and groups;

(c)   Have variable pricing for different audiences;

(d)   Have blended learning activities and the ability to roll them up into a single course;

(e)   Have robust course equivalency functionality that includes partial, one to one, and one to many;

(f)   Associate prerequisites including concurrent enrollment, course versioning, competencies and skills, materials, and other resources;

(g)   Define type of continuing education credits or hours and associate to a course; and

(h)   Administrators shall have the ability to:

    (i)   Copy, upload, and download course descriptions, objectives, agenda, lesson plans, handouts, and notes; and

    (ii)   Rename existing fields to align with organization terminology and create and search additional unlimited custom fields to course properties as needed.

(2)   Catalog Management: The System shall:

(a)   Segregate access to catalogs based on domains, groups, or user attributes;

(b)   Configure catalog structures based on learning approach (e.g. competencies, course, topic, skills, organizations);

(c)   Support unlimited catalog hierarchies and categories;

(d)   Select business rules for how users shall access the catalog content and enroll in or launch learning events;

(e)   Search and filter course catalog by course attributes; and

(f)   Deep link catalog course descriptions and other information.

(3)   Curriculum, Certifications, and Learning Plans: The System shall provide the following capabilities:

(a)   Group and track learning activities (instructor led training (ILT), online training (OLT), informal training, on-the-job activities, social networking components, or external training) to satisfy requirements;

(b)   Support multiple certification paths and learning plans that match terminology and workflows for different licenses, certifications, designations, CEU, organizational unit, job position, etc.;

(c)   Calculate sum of number of hours or course credits of a category of learning activities over a specified period of time (e.g. 40 hours of Social Worker learning activities completed between 7/1/2016-6/30/17);

(d)   Track external certifications. Support "nesting" of certifications. That is, one certification can contain other certifications;

(e)   Manage both required and elective training for learner or group of learners. Establish equivalent and non-sequenced learning activities;

(f)   Automatically review learning history and revert to "Incomplete" or decertification if a new content is added or existing content expired. Re-training on the same course as needed;

(g)   Set absolute or relative due dates and support grace periods;

(h)   Automatically renew on periodic basis (i.e. for annual certification), and set expiration rule; and

(i)   Set auto-reminder email for assigned students / instructors / managers / administrators of upcoming or missed deadline for entire learning plan and specific elements only.

(4)   Class Scheduling and Management: The System shall provide the following tools for class management:

(a)   Create class templates and unlimited custom class properties fields or rename fields to align with organization terminology;

(b)   Restrict classes by prerequisite or by organization, audience, group, and vary cost accordingly;

(c)   Schedule class from curriculum, certification, learning paths, or program series;

(d)   Upload and store documents (rosters, handouts, etc.) and associate with class; and

(e)   Make changes to class scheduling and automatically notifies enrollees of changes.

(5)   Enrollment and Registration: The System shall provide the following capabilities:

(a)   Search and enroll into classes from a calendar;

(b)   Deep linking to learning event registration;

(c)   Define prescriptive rules to build complex automated assignment criteria based on user, organization, job title, roles, manager, and other criteria;

(d)   Limit registration by class attribute to domains, departments, audiences, or groups;

(e)   Allow priority registration to specific groups of learners by previous completed enrollments, curriculum, certifications, programs, or by any field in learner profile;

(f)   Batch import enrollments through batch templates without being the system administrator;

(g)   Register for one class and automatically enroll learner into multiple sessions. Register for curriculum and/or certification and automatically enroll learners into classes;

(h)   Search for learner by any learner field in the system and register individually or by group, copy, or move learners into a class or series of classes;

(i)   Activate waitlist management and allow automatic or administrator override capabilities and cancellations including setting a waitlist deadline and allowing managers to grant pre-approval should a waitlist position open; and

(j)   Support expiring learning activities and integrate with web services to create registrations from external systems.

(6)   External Learning: The System shall:

(a)   Support approval for learning that is taken externally rather than through the learning catalog;

(b)   Launch third party web-based sites;

(c)   Record training completed (internal, external, and online);

(d)   Add external training information in profile such as CEUs, college credit courses, GED attainment and certifications and informal internal training (i.e. seminars, on-the-job training);

(e)   Track results from third-party online training activities; and

(f)   Support SkillSoft's Open Learning Services Architecture (OLSA).

(7)   Custom Forms: Custom forms shall allow the end user to have the ability for self-entry, populate fields and to extract graphical reports for continuing education and external training. The System shall:

(a)   Create custom forms and have learners, managers, or other designated users complete the form online;

(b)   Associate custom forms to learners or groups; and

(c)   Incorporate custom forms and fields as part of the workflow and not just PDF attachments.

(8)   Interactive Organization Charting: The System shall provide the following:

(a)   Search and view organizational and reporting structures with ability to drill down into various levels of granular employee details.

(9)   User Profile: The System shall:

(a)   Have no less than 200 custom Learner profile properties and fields or rename fields to align with organization terminology;

(b)   Manage user roles and be able to have varying restrictions on each role (roles include learners, instructor, manager, etc.) including the ability to update profile information and restrict attribute updates;

(c)   Store more than one (alternate) email address; and

(d)   Merge duplicate profiles.

(10) Resource Management: The System shall provide the following:

    (a) Manage resources such as books, instructors, equipment, etc. including the tracking and displaying of resource availability via a calendar, utilization, costs;

    (b) Associate resources and quantities of inventory to a class and deduct from inventory upon registration or completion;

    (c) Maintain links to documents of classroom layout, evacuation plans, maps, images and associate with classroom, without the documents being directly attached to a class. Permissioned users can also create a community to upload and maintain documents associated with a class; and

    (d) Determine qualified instructors for specific courses and subjects.

(11) Transcripts: View and print: The System shall provide the following:

    (a) Entire learning history or transcript instantly in real time, without waiting for the data to refresh.

    (b) Varying transcript and certificate designs generated by each learning event, certificate program, etc. and domain specific.

(12) Blended Learning: The System shall provide the following:

    (a) Create both simple and complex blended learning programs and activities that have flexible registration and completion rules;

    (b) Mix a series of components in different delivery formats (i.e., pretest, instructor-led course, virtual, etc.) and combine them into a single course with sequencing; and

    (c) Link blended learning paths to a competency model or a collection of ad hoc tasks.

(13) Learning Notifications: The System shall provide the following:

    (a) Customize e-mail templates by learning domain, organization, and enrollment statuses;

    (b) Craft and send custom email notifications to group of users (i.e. individuals who completed another class);

(c)   Send email auto reminder notifications before and after a learning event on any frequency;

(d)   Create email notifications for process management and updates to multiple users (e.g. cc, bcc, etc.);

(e)   Send mobile push notifications to users who have the SumTotal mobile app on their IOS or Android device;

(f)   Support deep linking to course content via email;

(g)   Be compatible with Microsoft Exchange/Outlook; and

(h)   Support email notifications regarding all steps of the waitlist process.

(14)   Survey and Assessments: The System shall provide the following:

(a)   Enable a survey/test/assessment with multiple assessment formats (e.g. true/false, multiple choice, fill in the blank, drag-and-drop, and matching);

(b)   Link tests and surveys to all learning activities (e.g. curriculum, certifications, course, session, blogs, wikis, virtual classroom);

(c)   Import test questions and answers either locally or from a 3rd party vendor, directly into bank that can be reused and associated to learning event and user in detail and summary;

(d)   Support the design and setting of specifications by survey/test (e.g. how many times a test can be taken, timed tests, save and return, duration for retaking the test if failed.) and unique course evaluations (Levels 1,2,3) set at predefined intervals (e.g. upon completion, 30, 60, 90 days) to multiple users (e.g. learner, manager, instructor) or sampling of the course participants;

(e)   Link tests and quizzes to learning activities either as prework, post work, prerequisites or embedded within a curriculum or certification that is required for completion;

(f)   Create dynamic prescriptive pre-assessment that can adapt course content and learning plans based on gap analysis and allows user to view detailed results of their test performance;

(g)   Auto-grade tests;

(h) Include graphics, animations, audio, video or HTML in test questions if they are included in a SCORM course. The stand-alone assessments tool does not currently support this capability; and

(i) Support integration of test scores generated through virtual classroom events, to the extent that such data are made available by the 3rd party system, and using the training migration capabilities of SumTotal Learn.

(15) Virtual Classroom/Training: The System shall provide the following:

(a) Easily launch, track and report virtual application events and recordings (e.g. Skype for Business, WebEx, Adobe Connect, GoToMeeting) including viewing from mobile devices and launching via deep links from external email; and

(b) Support ecommerce and tracking of costs.

(16) Badges: The System shall:

(a) Generate badges for course, skill, and competency completion; and

(b) Display badges in a user friendly format.

(17) Learning content: Ability to track and launch online content libraries compatible with industry standards: AICC, SCORM 1.2, SCORM 2004, and HTML5.

(a) Ability for integration of 3rd party content libraries, either housed in the LTMS or integrated with the provider's servers or through APIs;

(b) Ability for administrators easily uploads self-designed e-learning content developed with common, standards-based authoring tools (e.g. Captivate, Camtasia, Articulate Storyline, Lectora, Toolbook);

(c) Ability to view and replace SCORM/AICC files in previously published e-learning content;

(d) Ability to support efficient course creation workflows for uploaded e-learning content (e.g. assign subjects, curriculum, audiences, prerequisites, competencies, completion dates, expiration date);

(e) Ability to track non-SCORM/AICC content as learning activities (e.g. Expert Q&A, podcasts, blogs, documents, wikis); and

(f) Ability to support version control and rollback.

(18)   Competency Management: The System shall provide the capacity to hold competencies from internal or external sources that shall align with job requirements and learning programs. It shall be integrated with identified competencies for workforce, career development, and succession planning. The System shall provide the County the ability to:

    (a)   Maintain a unified competency library that can be used to feed learning, career, performance, succession, and workforce planning processes;

    (b)   Partition or create sub-libraries by domain and organization. Ability to share competencies across domains;

    (c)   Import competency, skill, and behavior dictionaries as well as job descriptions, families, and definitions;

    (d)   Supports the creation of a taxonomy that defines individual competencies with a name, description, proficiency scale, and behavioral descriptors or indicators;

    (e)   Categorize and configure competencies to be rated at the behavior level to roll up to an overall competency proficiency. Ability for multiple proficiency scales;

    (f)   Linkage to certification requirements and auto updating of certifications based on competency changes;

    (g)   Match competencies, skills, job level, and job role to learning activities (courses, curricula, workshops, webinars, etc.);

    (h)   Support and modify 3rd party competency library integration;

(19)   Competency Assessment: Ability for:

    (a)   Overall rating based on single and multi-rater competency assessments that are weighed;

    (b)   Employees to complete a self-assessment at any time and monitor competency attainment that is updated in real-time as learning activities are completed;

    (c)   Managers to assess an employee's existing skills through multiple assessment options including observation with ability to edit ratings. Learners to have the ability to fulfill competency through informal learning; and

(d)   Auto generate recommended and required learning to specific competencies, so that individuals with a competency gap receive guidance as to how to close this gap.

(20)   Competency Reporting: The System shall provide the following:

(a)   Measure and monitor of organizational strengths and capabilities, skill gaps and managerial bench strength based on competency reporting;

(b)   View competency assessment data in a graphical dashboard format, customize and produce a PDF-based report for end users and managers;

(c)   Report based on all competency structures (job families, core values, leadership, career path, job function) across organizational hierarchies, talent pools and other groupings; and

(d)   Report on competencies across any talent management process that utilizes and integrates competencies.

(21)   Talent Integration: The System shall provide the following:

(a)   Generate an individualized development plan resulting from a competency assessment and link competencies to predefined development activities, such as deployed through career paths;

(b)   Assign competencies to curricula paths within job functions, positions, roles or families;

(c)   Integrate competencies with both job and talent profiles; In addition, this may be added by Amendment at a later time, including pricing.

(d)   Integrate competencies with identification of qualified candidates based on skills and competencies, recruitment workflows and interview forms; and

(e)   Integrate competency assessment data with succession and workforce planning workflows (Development plans, talent reviews, etc.).

(22)   Career Planning, Development and Advancement Management.

(a)   User Job Profile: The System shall provide the following:

(i)　Have self-service access for user to create and update a personal profile which can serve as an "internal resume" that includes the following:
- Ability to upload a picture;
- Display current job role with a brief description;
- Previous job history (employer, dates, etc.);
- Certifications, licenses with expiration details;
- Education history (institutions, area of study, degrees, courses, seminars, etc.);
- Community and volunteer activities;
- Professional associations;
- Language proficiency;
- Relocation preferences;
- Special skills;
- Awards;
- Social profiles such as LinkedIn; and
- Area to populate custom fields as needed in a format that is easy to update and report on.

(ii)　Import personal profile data from recruitment application or from other documents such as a resume.

(iii)　Self-identify one or many career interests as part of user profile, open or time bound. Ability to share career development activities with manager or have the option to keep it private.

(iv)　Embed career exploration tools that guide employees to possible next career steps and required competency proficiencies based on job role requirements and other criteria.

(v)　View various career paths, descriptions and requirements (including detailed competency requirements) for each career interest/career step.

(b)　Candidate Development: The System shall provide the following:

(i)　Users and managers can create a detailed career plan with competency requirements and recommended learning, experiential, or mentoring opportunities;

(ii)　Competency/skill gap analysis provided to user or manager based on current and possible future roles and lay out logical "next step" career paths for specific jobs/positions and individuals; and

(23)   Social Collaboration and Informal Learning. Contractor shall provide the ability for users to interact and share information with common learning goals and have social learning and collaboration. The System shall have the ability for:

(a)   Learners to interact and share information with common learning goals, work together on a learning activities through communities based on their role in the organization and group hierarchies, domains, communities, skill sets, etc.;

(b)   System to allow students to provide feedback, ideas to a group, and polls/surveys associated with a course;

(c)   Tracking of social networking components (e.g. Expert Q&A activity, blog entry, a learner's network vs. providing access point only);

(d)   Learners to be automatically assigned to communities;

(e)   Threaded comments, forums, capture informal conversations and ad-hoc questions, suggesting ideas, user uploading/submission of files, and embedding/linking to external content;

(f)   Requesting/establishing connections to other learners, user comments/reviews for content, applied ratings/rankings; and

(g)   Provide post-level moderation capabilities.

(24)   Extended Enterprise. (Including non-profit organizations and cities.) The System shall have the ability to expand as needed by County including:

(a)   End user sign-up/account management with varying required fields identified by domain and audiences; and

(b)   Ability to view a visual catalog with guest access, browse/searching learning catalog which features categories and courses.

(25)   E-commerce. The System shall:

(a)   Support e-commerce security protocols and receive payments for training & other services, e.g., credit card, invoices, apply vouchers, fund transfers, purchase orders, etc.;

(b)   Create and configure many storefronts with variable pricing based on domain, audience, custom groups, and differentiated catalogs. Track transactions by user or cost center;

(c)   Support promotions including discounts, vouchers, coupons, and pre-paid bulk purchases. Support refunds and drop charges for individuals and organizations, and associates an expiration date; and

(d)   Generate e-commerce reports, data export, and custom e-mails automation.

(26)   Reporting and Analytics. Contractor shall provide regular reporting to County, including the ability for Administrators to create reports and queries to report and analyze data, including standard, custom reports, and dashboards. This shall include, but not be limited to the following report structures:

(a)   Inclusive Reporting Platform:

(i)   Export any data field from reports across all deployed modules;

(ii)   Administrator access to use comprehensive out-of-the-box report and any advanced reporting functionality;

(iii)   Allow users to easily create Tabular, Cross-Tabular, and Graphical reports and have the ability to configure dashboards;

(iv)   Make comprehensive schedule management to support automated delivery via email; and

(v)   Provide a dictionary of all the fields in the database.

(b)   General Reporting Functionality: Real-time reporting and out-of-the-box reporting includes the ability to:

(i)   Have standard reporting options for common learning data requirements (e.g. completions, curriculum, activity type, status, hours), learner transcripts, including test results;

(ii)   Report on all learning activities (i.e. ILT, e-learning, external, certifications) and talent data based on organizational hierarchy, talent pools, roles, career paths, etc.;

(iii)   Display of analytics data in a graphical dashboard (bar and pie charts) format available to multiple users based on access rights;

(iv)   Export and print reports in common output formats (i.e. MS Excel, MS Word, PDF);

(v)   Provide manager-focused reporting (i.e., progress toward team development plans, team/individual-training histories, and certifications/completions) and managers to view learning data for all direct reports and downstream employees;

(vi)   Create custom reports or have an intuitive systems-based ad-hoc/custom reporting tool;

(vii)   Save reports, schedule on a frequency, and send via e-mail to other individuals;

(viii)   Sort a report by fields (i.e. alphabetically or chronological.); and

(ix)   Calculate learning data (e.g. percentage, count).

    (c)   Specific Reporting/Analytic Functionality:

(i)   Support reporting of curricula completion percentages, certifications, license and CEU credits, learning costs by resource utilization (e.g. Instructor costs, room, materials, course), trends in employee requests for training, learning plan progress across groups;

(ii)   Reporting based on all competency structures (job families, core values, leadership, career path, job function) across organizational hierarchies, talent pools and other groupings.

3.   E-learning Content. The System shall provide:

a.   Interactive, with options for multi-media (audio and/or video versions);

b.   Content that has variety, interaction, practical tips, scenarios, is robust and engaging;

c.   Able to be launched and tracked in a Learning Management System (LMS) and recorded in employee transcripts within the LMS;

d.   Easy to retrieve and navigate courses;

e.   Easy search ability to find content;

f.   SCORM/AICC/HTML5/TIN CAN compliant.

g.   Includes closed caption options and ADA 508 compliant.

h.   Ability to bookmark sections within the course, save courses to a Learning Plan, and assign deadlines.

4.   Courseware: General Topics. The System shall provide courseware including the following topics:

a.   Business Strategy and Operations
b.   Finance, Human Resources, and Administration
c.   Management and Leadership
d.   Professional Effectiveness
e.   Project Effectiveness
f.   Customer Service
g.   Verbal and Written Communication
h.   Software Development
i.   Operating Systems and Server Technology
j.   Internet and Network Technologies
k.   Enterprise Database Systems
l.   Web Design
m.   Enterprise Resource Planning Systems
n.   Desktop Computer Skills
o.   Digital Transformation (The Digital Transformation Collection is a separate Collection and was not priced in the quote.)

5.   Courseware & video scenarios/ Compliance topics: The following six courses (each with a specified user count) shall be provided at no additional costs:

a.   Workplace/Sexual Harassment Prevention (meets CA State mandate/AB1825/AB2053) -- for Supervisors

b.   Workplace/Sexual Harassment Prevention -- for Employees (meets CA State mandate)

c.   Ethics

d.   HIPAA – Privacy Rule for Covered Entities

e.   HIPAA – Security Rule for Covered Entities

f.   Ergonomics – Cal/OSHA

The following courses may be added, however, are subject to additional charges to County:

a.   Diversity & Inclusion

b.   Computer Security Awareness

    c.   Cal OSHA

        (1)   Back Safety and Injury Prevention
        (2)   Bloodborne Pathogens
        (3)   Computer Ergonomics
        (4)   Electrical Safety
        (5)   Emergencies and Disasters
        (6)   Fall Protection
        (7)   Fire Safety
        (8)   Forklift Safety
        (9)   Hand and Power Tool Safety
        (10)   Hazard Communication
        (11)   Hazardous Material Handing and Storage
        (12)   Hearing Conservation
        (13)   Heat and Cold Stress
        (14)   Indoor Hoisting and Rigging
        (15)   Industrial Ergonomics
        (16)   Laboratory Safety
        (17)   Ladder Safety
        (18)   Lockout/Tagout
        (19)   Machine Guarding
        (20)   Personal Protective Equipment
        (21)   Respiratory Protection
        (22)   Safety Principals
        (23)   Slips, Trips, and Falls
        (24)   Spill Response and Control
        (25)   Welding

    d.   Other topics to be determined, e.g., misconduct, conflict of interest, etc.

6.   Certifications/Continuing Education Credits

It is preferred for courses to satisfy credit hours for industry certification exams such as SHRM, HRCI, PMP, Six Sigma, etc. It is also desired for courses to satisfy continuing education hours for a variety of professionals including MCLE, SHRM, HRCI, POST, STC, BSN, NASBA, etc.

7.   Executive Summaries, books, and resources including audio books are preferred.

8.   Performance Management. The System shall have the ability to:

    (1)   Have a Competency Library;

    (2)   Define organizational goals, vision, and/or mission statements, core values and link them to a specific individual;

(3)   Tools available to help departmental/organizational management communicate and assign shared objectives to the team as a whole or to specific individuals;

(4)   Views are available to help departmental/organizational management monitor progress toward these key objectives;

(5)   Individuals and managers have "line-of-sight" that shows how other goals and objectives are directly or indirectly aligned to these objectives;

(6)   Enable cross-functional teams to align their goals to a single initiative, or a set of initiative-based goals;

(7)   Goals can be suggested by individual team members and created and assigned by managers;

(8)   Allow managers to automatically cascade goals to specific individuals or to all of their direct reports;

(9)   Enable the alignment of goals outside of official reporting relationships;

(10)   Goals be grouped or categorized into categories;

(11)   Dashboards for individual team members, managers, and administrators to monitor and track status all of their goals and progress with milestones;

(12)   Goals be linked to developmental activities, such as competency requirements, courses, certifications, etc.;

(13)   Goals include a direct link to launch or register for recommended learning that shall help them achieve the goal;

(14)   Allow administrators and managers to assign shared goals to large groups in bulk, based on job/role/position, organizational affiliation, location, or other criteria;

(15)   Support employees, managers, and other raters to provide a rating and comments for each individual goal or competency on the review;

(16)   Automatically saves the review forms (e.g., in the event a rater has to jump onto another task before completing the evaluation form);

(17)   Allow employees and/or managers to nominate additional raters to provide feedback;

(18)   Have raters accept or reject their nomination to rate/provide feedback on the individual;

(19)   Support objectives-based evaluations;

(20)   Support competency-based evaluations;

(21)   Easily allow both employees and raters to goal details such as progress logs, performance journal notes, status logs, completion information, and previous comments during the review;

(22)   Access competency details such as behavioral descriptors, proficiency levels, previous assessments, etc. to raters during the review;

(23)   Allow managers to view details from succession plan or high-potential programs during the rating process. For example, the manager can see if the individual they are rating is in a critical position;

(24)   Provide raters access to standard word processing features when writing feedback and comments, such as the ability to change fonts and colors, and use bullets, italics, or underlining;

(25)   Provide grammar and spell checking for the raters and managers;

(26)   Provide the ability to take the review offline for completion, and then upload it to the system later;

(27)   Provide system-generated reminder notifications to ensure reviews are submitted on time. For example, system sends reminder emails associated with steps in the workflow process (e.g., reminder to all managers of an upcoming deadline; follow-up emails up the hierarchy if deadlines are missed);

(28)   Provide ability to restrict employee access to the 'official' review until it is approved by all necessary parties;

(29)   Provide ability for either a manager or HR representative to transfer a review-in-progress to another manager;

(30)   Have a process that "kicks off" a performance review for an employee by notifying the direct manager and creating a "working document" to be completed;

(31)   Have a workflow process that automatically routes the review for approval to the individual's second level of management, after it is "finalized" by the individual's immediate supervisor;

(32)   Provide in-process support for calibration processes and meetings, such as displaying preliminary scores in a 9-box grid and highlighting where score adjustments might be needed;

(33)   Store feedback, rebuttals, and other information as part of the review;

(34)   Support various types of reviews such as annual, quarterly, mid-year, and anniversary;

(35)   Support custom review cycles;

(36)   Provides ability to use different formats (forms/templates) of performance reviews in different situations (e.g. "interim" review, "annual" review, "review result of job change");

(37)   Weight different types of raters when calculating final score;

(38)   Support 360-degree evaluations;

(39)   Support different types of raters be weighted, and certain raters be asked to provide ratings only as an input to an overall review owner;

(40)   Support cascading goals from organization level to the individual;

(41)   Provide tools and prompts to assist managers in creating SMART goals;

(42)   Allow employees and supervisors to create individual development plans and capture plan activities during and outside the review cycle;

(43)   Supports electronic signatures in a Performance Appraisal form;

(44)   Allow individual competency or job competency requirements;

(45)   Allow different forms assigned in bulk to certain jobs, employee groups, or geographies;

(46)   Capture overall comments on the performance review that are not tied to a specific objective or competency;

(47)   Flag for "Improvement Needed" rating which would automatically assign a Performance Improvement Plan template to the manager – may require additional scoping (and cost) for implementation;

(48)   General:

   (1)   Track probationary reviews;

(2)   Support use of multiple rating scales;

(3)   Support situations such as a manager's absence, or situations where an employee has a dotted-line relationship to a specific manager;

(4)   Store supporting documents/emails/notes;

(5)   Preferred: Provide language check feature to avoid the use of insensitive or offensive terms;

9.   Data & Security Requirements: Ownership and Protections of Data.

a.   County Data: All data, including all County transaction data and eDocuments, including data provided from or uploaded into the Contractor software by the County as part of the Services, is County Data. As between the Parties, the County retains all rights, title and interest in and to all County Data, and all County Data shall be County's Confidential Information. For purposes of this Agreement County Data may include Data provided from, by or for the County and other entities that shall be using the Services through this Contract, as it may be amended.

b.   Data Security: Contractor shall at all times during the Term and while it has or maintains any County Data, provide and maintain up-to-date security with respect to (a) the Services, (b) the Contractor's Website, (c) Contractor's physical facilities, and (d) Contractor's networks, to prevent unauthorized access or "hacking" of Contractor's and County's systems and data. Contractor shall provide security for its networks and all internet connections consistent with best practices observed by well-managed Software as a Service (SaaS) and "on demand" web based hosted services working in the financial services industry, and shall promptly install all patches, fixes, upgrades, updates and new versions of, any security software it employs. Contractor shall maintain appropriate safeguards to restrict access to County's Data and the LMS to those employees, agents or service providers of Contractor who need the information to carry out the purposes as set forth in this Agreement. For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., "firewalls", Secure Socket Layer [SSL] encryption, or most current industry standard encryption, intrusion detection or similar barriers) and password protected access to the County's Data including hosted data. For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of County's Data. Contractor also shall establish and maintain any additional physical, electronic and procedural controls and safeguards to protect the County's hosted data from unwarranted disclosure.

c.   No Use of High Risk Identifiers: Contractor shall not request or create fields for social security numbers and driver licenses numbers. If such fields or requests are made by

Contractor, unless specifically requested and approved in writing by County HRS, any and all limitations of liability contained in this contract shall not apply.

d. Data Transmission: The Contractor shall ensure that all electronic transmission or exchange of System and application data with County and/or any other parties expressly designated by County shall take place via secure means (using HTTPS or SFTP or equivalent). The Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in this Agreement. County Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor (except for purposes of Disaster Recovery). Contractor shall ensure that no County Data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties except to Users under the terms of this Agreement, or otherwise as authorized by the County in this Agreement, or on a case-by-case basis as specifically agreed to in writing by County.

e. Loss or Unauthorized Access to County Data; Security Breach Notification

    (1) Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification.

    (2) Contractor shall notify County of any actual exposure or misappropriation of County Data (any "Leak") within twenty four (24) hours of the discovery of such, whether required by law or not.

    (3) Shall a security breach, loss or unauthorized access to County data occur (an Incident), Contractor notification shall include an email to the System Administrator(s) and include the following information:

        (a) The cause of the Incident.

        (b) How Contractor became aware of the Incident.

        (c) Steps taken to resolve the Incident.

        (d) Brief description of steps Contractor is taking to prevent a reoccurrence.

    (4) Contractor shall reasonably cooperate with County and with law enforcement authorities in investigating any such Leak, at Contractor's expense. Contractor shall likewise reasonably cooperate with County and with law enforcement agencies in any effort to notify injured or potentially injured parties.

f. County Data Storage: Contractor agrees to store all data within the United States within a Tier 3 data center with high availability and disaster recovery.

g.   County Data Redundancy: Contractor agrees all County Data shall be replicated on multiple redundant data centers. Contractor shall operate multiple geographically diverse redundant data centers within the United States, each of which shall contain a copy of all County Data.

h.   County Data Retrieval: County shall at all times have access and control of County Data and shall be able to retrieve it. County may retrieve County Data any time prior to termination or expiration of the Agreement using built in reporting tools or optional Data Exporter or APIs. All data shall be provided in an industry standard mutually agreed to by both the Contractor and County. Prior to termination or expiration of this Agreement, County shall notify Contractor if County needs continued access to County Data following termination and Contractor shall postpone destruction of County Data for a mutually agreed period, and for a mutually agreed fee

10.   Security Certification: Contractor shall maintain their security policies which are based on NIST 800-53 (medium risk) and undergo an AT 101 SOC 2 audit annually (which can be provided to the County under NDA).

11.   Background Checks: Contractor shall confirm that all individuals with access to County data have completed and passed a background check.

a.   Confidentiality and Backgrounds Check. Contractor must confirm that all individuals working on or with access to County data have completed and passed a background check by the later of 10 days from Contractor's execution of the Contract or 2 days from execution by County. The County may request a confirmation of any individual's background check to the extent applicable to the services provided by the contract and allowed by law.

12.   Statistical Data: Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, Contractor has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting Contractor from utilizing the Statistical Data for business and/or operating purposes, provided that Contractor does not share with any third party Statistical Data which reveals, or can be reversed engineered to reveal, the identity of the County, County's users, or County's Confidential Information. If there is any breach of confidentiality or the underlying information from statistical data is breached, disclosed, exposed or misappropriated it shall be considered a Leak and Contractor shall immediately notify County.

13.   Contractor shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Products any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by the County or its users relating to the operation of the Products.

14.   Service Requirements

a. Project Management: The Contractor shall provide an implementation approach, plan, and timeline that shall include the following key elements:

    (1)   Scope Statement;
    (2)   Project Management Plan;
    (3)   Management of Contract Change Orders;
    (4)   Review all Significant Deliverables;
    (5)   Management of Deliverable Sign-Offs;
    (6)   Communication Plan/Execution;
    (7)   Monitor Staffing Resources (bidder and County staff);
    (8)   Schedule Management (and a maintenance of a work plan);
    (9)   Issue Management (and maintenance of an issue log);
    (10)   Risk Management;
    (11)   Maintenance of a Digital Project Library (analysis documents, training documents, user guides, etc.);
    (12)   Training; and
    (13)   Vendor and County roles;
    (14)   Project management approach, staffing, risk management strategies, etc.

b. Implementation: Contractor shall tailor the implementation to the County's specific needs based on a comprehensive evaluation of County processes. Contractor shall provide professionals with expertise and best practice techniques to provide for rapid System deployment requiring minimal technical resources. Contractor shall provide templates for deliverables and project plans throughout all phases; allowing the System and services to be deployed in significantly less time than required for similar deployments of legacy software. The implementation shall be conducted based on Key Milestones.

c. System Installation: The Contractor shall be responsible for installing all application software components (i.e., application modules, reporting tools, workflow tools, etc.) of the new system in at least two environments:

    (1)   Staging
    (2)   Production

If needed by County, additional environments can be purchased from Contractor.

d. System Configuration: Contractor shall be responsible for configuring all of the Talent & Learning functions, for interface development, for data import and conversion, for testing and for migration to production, as scoped in the Statement of Work (Exhibit A-2).

Configuration details will be documented in a Configuration Workbook, as described in the Statement of Work (Exhibit A-2).

e.   System Testing: The Contractor shall install the application in a stage and production environment, complete all integrations, test in staging, and finally prepare for the production launch. Contractor shall work with the client as they test and validate the system.

f.   Hosting Services: Shall be provided by the Contractor.

      (1)   Proactive system maintenance, tuning and monitoring to minimize downtime and/or slowness;

      (2)   A high degree of system availability;

      (3)   Disaster recovery services, including geographically diversified failover locations;

      (4)   Data refreshes for the environments as requested by the County; and

      (5)   Upgrades and maintenance for all application and system components. System update and maintenance shall be included in the annual fee.

g.   Customer Sales Director and Customer Success Manager: The Customer Success Manager shall be focused on County's needs and ensuring that the System and Services meets County's requirements. The Customer Sales Director and Customer Success Manager shall be the primary point of contact with the County's Training & Education Center to ensure alignment of solution with overall County needs.

h.   Self Service: The County shall have 24x7 access to self-service resources within an online knowledge base and customer community. This shall be able to provide sufficient information to self-assist or seek best-practice advice from Contractor subject matter experts and peer organizations.

i.   Client Success Support: The Contractor shall work with the County for product utilization, engagement, and overall satisfaction to ensure the continued alignment of support to the County process to ensure a high level of user adoption and overall success.

j.   Custom Reports Development: The County may require custom reports in addition to standard reports that are available in the system. The County may require the design of graphical reports where the look and feel may be adjusted.

k.   Training: Contractor shall provide training to the County project team and others as identified during implementation. Training shall include the provision of training materials, training data, exercises and user guides. Contractor shall provide existing end user guides and templates for the County to customize and train the end users. Contractor shall provide County with training materials, lesson plans, and user guide templates to

County to train future system and Domain Administrators. Contractor shall also provide the source files for the training materials.

l.   Onsite Training: Contractor shall provide at least one two-day training customized to the County's domains configuration for County Administrators delivered onsite.

If needed, at no additional cost to County, Contractor shall provide access to online administrator training to assure that all Administrators are fully trained.

(1)   Contractor shall conduct two consecutive full days of training (eight-hour day with a one-hour lunch break) onsite at County's location.

(2)   The training will be conducted after completion of system configuration and County data import.

(3)   The County and Contractor will agree upon specific topics to include in the training that fit within the duration of the training sessions.

(4)   The training session shall be conducted using the County's portal and configuration, including demonstrating functionality.

(5)   Class participants will use their own User ID and configured security roles for the training sessions. Contractor shall also ensure that the portal to be used for training is updated with the configuration and security roles needed to conduct the training.

(6)   Contractor shall provide User ID's and security roles for the trainer and for class participants to use for the training sessions. Contractor shall also ensure that the portal to be used for training is updated with the configuration and security roles needed to conduct the training.

(7)   The County and Contractor will agree upon County-relevant use cases of configured system functionality for the trainer to incorporate into the training.

(8)   The County shall provide an appropriate room for the training to be conducted. The Contractor's trainer shall bring their own laptop but County shall provide access to connect to the internet and to a projector.

(9)   Training shall be conducted live onsite, via live webcast or both at County discretion. Webcast sessions may be recorded.

15.   Optional Add Ons: Workforce/Succession Planning/ Talent Profile**.** Note: SumTotal Succession Planning implementation is not in scope for this Agreement, however, may individually or in their entirety, be added by Amendment including pricing. If these services are added, features will include:

a. Workforce/Succession Planning. Services shall be provided to track and communicate what knowledge and skills are present in the current workforce to plan for future vacancies and transitions. These services shall include:

(1) Managers are able to:

(a) Review succession data for all key direct report positions and highlight readiness gaps for key positions;

(b) Perform a detailed search of talent profiles to identify potential candidates as possible successors for key positions and run searches on the basis of custom criteria;

(c) View side-by-side comparison of potential candidates displaying multiple criteria such as a match of employee aspirations, performance, potential, and readiness with key positions; and

(d) Create future state organization charts for scenario planning and conduct succession what-if scenarios based on succession plans, with view of employees in a ready-now status for other lateral or horizontal positions and indicate successor and dates.

(2) Administrators or defined users are able to:

(a) Create and view hierarchy of the leadership pipeline inside and across domains, and the leadership pipeline by competency;

(b) Designate a population of employees as "talent eligible" based on multiple criteria so that they can be actively monitored and groomed for growth/new opportunities;

(c) Ascertain the vulnerability of the employees in key positions (likelihood of attrition, retirement, e.g.) and flag and alert management of positions without ready-now successors;

(d) Assess the degree of interest of employees in lateral or horizontal positions other than the ones they are in today;

(e) Workforce Segmentation: Ability to:

(i) Define job templates and position profiles, including defined sets of skills, across the organization and customized workforce segments;

(ii) Rank the importance of specific capabilities and state the current and desired levels for each; and

   (iii) Identify critical roles across the organization (critical/pivotal, strategic, core).

b. Workforce Reporting & Analytics. Ability to:

  (1) Flexibly configure 9-box axis or configurable number of boxes to be shown in an "n-box" matrix (such as potential rating or competency proficiency) and reporting as part of the candidate comparison process;

  (2) Manage and display "risk" information to managers when viewing critical talent tools such as organizational charts and 9-box analyses;

  (3) Report on open critical positions by organization, division, and position and provide dashboard with analytics and metrics at the group, divisional, and company levels;

  (4) Have manager dashboard that summarizes information related to the management of their team's talent, highlighting important information such as retirement risk, job criticality, succession and opportunity;

  (5) Create and print interactive organization charts showing open critical positions, display the org chart if successor is moved into key position;

  (6) Publish succession plans and share them securely online and return suggested candidates based on a percentage fit to the criteria; and

  (7) Export talent calibration grid data to various formats (e.g. PDF, PowerPoint, etc.).

c. Workforce Demand Planning and Gap Analysis. Ability to:

  (1) Track and project retirement timelines.

  (2) Calculate job turnover rates by different categories, i.e., region, business unit, division, location, practice area, job function, voluntary/involuntary, years of service, etc.

  (3) Generate gap analysis dashboards and reports featuring demographic trends and analysis, combined with scenario, demand, supply, gap, and capabilities data, to be viewed online on real time dashboards or distributed by email.

  (4) Ability to model effects of multiple future scenarios and long term (i.e. 5 years out) contingency planning.

d. Workforce Action Planning & Progress Monitoring. Ability to:

(1)   Search for alignment with open positions by experience, skill set, education, geography, language capability, relocation preference, etc.

(2)   Save and review multiple planning scenarios.

(3)   Measures the gaps between the readiness of high-potential employees and future organizational needs.

(4)   Embed or link leadership potential assessments within the succession management workflow.

(5)   Share succession scenarios online with other managers for talent review discussions and give alternate managers (project leaders, dotted-line relationships) insight into risks and succession management participation.

e.   Talent Pools. Ability for:

(1)   Managers and administrators to define and manage talent pools for broader purposes, such as leadership-development pools, and rank readiness.

(2)   Pool owner to define "pool profile," i.e., a wish list of requirements and desired attributes that would define the ideal candidate for the opportunity and designate required/desired.

(3)   Automatically create detailed talent pools based on defined criteria (i.e., performance, skills/competencies, potential, experience etc.).

(4)   Designate certain pools as "private," making them only visible to that pool's owner.

f.   Talent Profile View & Analytics. Ability to:

(1)   Support a data warehouse for all talent information and view a comparison of employees based on their talent profiles;

(2)   Support the identification of organizational, team and employee talent performance and competency gaps;

(3)   Do ad-hoc reporting, analytics and dashboard display of organizational talent data by talent pools, organization, departments, roles, jobs, etc.);

(4)   Let managers and employees to view and print an employee's comprehensive talent profile (including resume, current goals, and potential information); and

(5)   Limit access (read, edit) to succession plans based on security role.

16. Other Talent Management Modules that may be purchased and deployed from Contractor:

    a.   SumTotal Compensation

    b.   SumTotal Recruiting

    c.   SumTotal Onboarding

    d.   SumTotal Workforce Management

    e.   Time & Attendance

    f.   Scheduling

    g.   Absence Management

EXHIBIT A-2

STATEMENT OF WORK (SCOPE OF SERVICES)

1.   Project and Module Summary

The purpose of this Statement of Work ("SOW") is to communicate the tasks and resources required to assist Customer with the implementation of selected modules in the SumTotal® suite listed below, with the associated estimated durations.

The performance of this Statement of Work involves activities to be performed by both parties. If Customer deliverables are not received as scheduled, then completion of this Statement of Work in a timely manner may be jeopardized. SumTotal will notify Customer, should this occur, of the potential timeline and/or cost impact. If the project extends beyond the specified duration, the impacts will be assessed with Customer and SumTotal and may result in a change order.

Module Implementation Summary

Module (package)	Estimated Duration*
Core Platform	**n/a**
Learning	16-18 weeks
Talent (Performance Management)	10-12 weeks

*Estimated duration may increase depending on services noted below

Additional Services Summary

Activity	Description
Historic Learning Data Migration	Import of extracted learning data from other systems using flat files via a batch process
Mobile Implementation Services	Consulting services specific to setting up Mobile content capability
Extended Enterprise/e-Commerce	Assistance with the implementation of Extended Enterprise/e-Commerce
Training Service – Advanced Reporting - Onsite class	Design and delivery of one, two-day onsite class focused on creating and administrating ad hoc reports using standard Advanced Reporting functionality
Additional Performance Management Forms and Workflows	Additional consulting services to support configuration of up to **two** additional Performance Review form and the associated workflow (for a total of three)

2.   Professional Services Implementation Tasks

a.   SumTotal Core Platform

The SumTotal Core Platform implementation comprises the core set of objects and features that are leveraged by other modules and represents the core functionality of the application.

SumTotal Tasks and Assumptions	Customer Tasks and Assumptions
Configuration Workshop	

- Up to four virtual workshops, each up to four (4) hours in length, focused on the following topics
 	
    o Employee Profile
 	
    o Organizational Hierarchy
 	
    o Security settings and roles
 	
    o Home dashboard/widgets
 	
    o Branding and themes
 	
    o Data import
 	
- Review of standard configuration options with Customer
 	
- Configuration Workbook to document decisions made during the workshop.
	- Completion of the following training classes, available on the SumTotal Customer Community:
	
	    o Core Platform Overview
	
	- Workshop participation by Customer resources who are knowledgeable about customer business models and empowered to make decisions on behalf of their respective organizations.
	
	- Review and sign-off of Configuration Workbook in a timely manner

System Configuration
 	
- Assistance with configuration of the system based on the signed-off Configuration Workbook
 	
- Two (2) iterations of changes to configuration based on Customer feedback
 	
Configuration scope:
 	
- Up to eight (8) domains
 	
- Up to two (2) Organizational Hierarchies
 	
- Up to five (5) customer-defined demographic fields
 	
- Employee Details form configuration (adding/removing fields or changing labels)
 	
- Four (4) Standard Security Profiles (Employee, Manager, HR Manager, Administrator)
 	
- Up to two (2) additional customer-defined security profiles
 	
- Home and Profile Dashboard configuration based on standard widgets
 	
- Configuration of customer logo, colors and in accordance with out of the box theming features
 	
- The activities above will not include:
 	
    • Changes to icons used within the system navigation
 	
    • Coding/building of new widgets that are not included within the SumTotal product
 	
    • Building of approval workflows
	- Configure the appropriate areas of the system as needed
	
	- Timely review of configuration as denoted in project schedule
	
	- Timely feedback during iterations as denoted in project schedule
	
	- Approval of configuration
	
	- Basic branding (set system colors, upload logo, etc.)

User Data Import (Batch Synchronization) - User Data import file specifications, including file format and file transmission requirements - Up to thirty (30) hours of consulting services to assist	- Creation of required data file(s) from Customer's internal user database into the file format specified by SumTotal - Testing and data validation after data import

with the setup of the standard data-synchronization import	• Data cleanup/correction as needed
• Up to two (2) iterations of user data file review and troubleshooting. Assumes one (1) system of record for user data.	• Additional iterations of data import, testing, and troubleshooting, if needed

b.   SumTotal Learn

Although all LMS functionality is included in the system and documentation available to Customer, Customer has elected to engage Professional Services support for the scope listed below.

SumTotal Tasks and Assumptions	Customer Tasks and Assumptions
Part-Time Engagement Management: • Kickoff call • Project plan • Identification, tracking, and managing of issues, risks, and action items • Weekly status reports and weekly status calls • Transition to customer support • Coordination of resources An estimated 4-6 hours per week is allocated for engagement management throughout the duration of this module implementation.	Project Management • Review project plan • Project management of Customer tasks, resources, and timelines in coordination with SumTotal project plan • Timely coordination of Customer deliverables and action items
Configuration Workshop • One, two (2) day session or up to four (4) four-hour virtual sessions to review business configurations • Review of standard configuration options with Customer, answer questions and make recommendations based on customer business requirements. • Configuration Workbook to document decisions made during the workshop.	• Completion of the following training classes, available on the SumTotal Customer Community: o SumTotal Learn Product Orientation • Review and sign-off of Configuration Workbook • Participation in workshops by Customer resources who are knowledgeable about customer business models and empowered to make decisions on behalf of their respective organizations.

System Configuration
 	
• Customer assistance through configuration of the system based on the signed-off Configuration Workbook and the configuration scope defined below.
 	
Configuration scope:
 	
• Although all functions in the system will be available to the Customer upon installation (and can be configured by Customer, if desired), SumTotal will provide consulting services for configuration/enablement of up to 4 of the following functions:
 	
    •   Continuing Education
 	
    •   e-Signature/Auditing
 	
    •   External user account self-creation
	• Configure the application with SumTotal assistance
	
	• Timely feedback of configurations during iterations as denoted in the project plan
	
	• Approval of configuration
	
	• Loading of Customer training content into system
	
	• Configuration of Customer learning activities (e.g. training content, ILT sessions, etc.)

- Certification rules

- Curricula with registration tracks

- Tying learning to skills/competencies

- On the Job Training

- Observation Checklist

- Training Plans

- Make-up structures

- Supplemental Data/Metadata

- Development Plans

- Proxy

- Although the following functions will be available to the Customer upon installation (and can be configured by Customer, if desired), consulting services for the following functions are considered out of scope for the SumTotal Learn implementation package – unless purchased as additional implementation items:

  - Versioning

  - Extended Enterprise/E-Commerce (additional services required)

  - Remote Content Servers

  - Social

  - Mobile

Consulting Services	

- Up to fifty-six (56) hours of functional and technical assistance for topics such as:
 	
    o Configuration assistance (learning activities, structures)
 	
    o Content upload
 	
    o Troubleshooting
 	
    o Skillsoft OLSA integration
	- Completion of the following training classes, available on the SumTotal Customer Community:
	
	    o SumTotal Learn Essentials

Advanced Reporting Consulting	

- Up to eight (8) hours of remote part-time Advanced Reporting consulting support in the form of providing best practice guidance around the usage of Advanced Reporting; assistance for issue investigation during customer testing; and assistance for answering questions Customer team may have during their development of new reports.	- Completion of the following training classes, available on the SumTotal Customer Community:
	
	    o Essentials of Advanced Reporting – End User Edition
	
	    o Essentials of Advanced Reporting –Report Author Edition
	
	    o Essentials of Advanced Reporting –Administrator Edition
	
	    o Essentials of Advanced Reporting –Domain Creation Edition. (if Customer requires Domain creation for reporting)

LMS Administrator – Onsite Product Coaching Session	
- SumTotal will design and lead one, onsite, LMS administrator product coaching session to Customer as single, three-day event for up to 10 attendees.	- Review sample agenda and online training courses to approve coaching topics - Provide adequate onsite facility to include projector, internet access, and other materials as needed

• Coaching is based upon customer choice of topics from sample agenda. This coaching does not include development of custom content or materials.	• Class attendance for all sessions • Record coaching sessions, if desired • Leverage recordings for additional sessions to other admins or users • Completion of the following online, training curriculum, available on the SumTotal Customer Community: o SumTotal Learn Essentials
Testing and Validation Support • Assistance during Customer's User Acceptance Testing (UAT) period to provide coordination and liaison between SumTotal and Customer's test team. • Assistance for up to two (2) rounds testing, each with a maximum of one (1) week duration. • Review test scripts and test result logs for completeness and relevance.	• Creation of test scripts • Execution of test scripts • Provide test logs to be reviewed by SumTotal *As noted above, Customer is responsible for creating the test scripts. SumTotal involvement in creating test scripts will require additional consulting fees.* *If test plans/scripts are not complete, or if test plans/scripts are not fully executed, SumTotal may request a pause or delay in project timeline, or a change order to assist Customer with creation of test scripts or completion of testing.*
Hypercare • Includes ongoing consulting assistance for later of two (2) weeks post system launch or completion of all holdover P1 issues identified prior to go-live. • Transition to SumTotal Customer Support	• Timely submission of issues • Management of cut-over from legacy systems • Change management, user and administrator training, and communication • Participate in transition to SumTotal Customer Support

Assumptions

- Although all LMS functionality is included in the system and documentation available to Customer, this SOW is **not** intended to provide implementation, consulting, or configuration of all LMS functionality. It covers discussion and configuration of the features documented in the above sections **only**. If Customer desires additional assistance with advanced features beyond those listed in scope above, SumTotal shall provide a Change Order and Amendment to this Agreement.

    c.   SumTotal Performance Management

SumTotal Tasks and Assumptions	**Customer Tasks and Assumptions**
Part-Time Engagement Management: • Kickoff call • Project plan • Identification, tracking, and managing of issues, risks, and action items • Weekly status reports and weekly status calls • Transition to customer support	Project Management • Review project plan • Project management of Customer tasks, resources, and timelines in coordination with SumTotal project plan • Timely coordination of Customer deliverables and action items

• Coordination of resources An estimated 4-6 hours per week is allocated for engagement management throughout the duration of this module implementation.	

Configuration Workshop
 	
• SumTotal to deliver one (1) one-day on-site workshop or up to two (2) four-hour virtual sessions to review business configurations for implementing the Performance module.
 	
• Topics to be covered:
   o Task Assignment/Eligibility
   o Process Workflow
   o Notifications
   o Personal Goals
   o Organization Goals/Goal Cascading
   o Competencies
   o Development Plan
   o Continuous Feedback
   o Signatures
   o Request Feedback
 	
• Review standard configuration options with Customer
• Answer Customer's questions and make recommendations based on Customer's business requirements
• Update Configuration Workbook to document decisions made during workshop
	• (Prior to session) Completion of the following training classes, available on the SumTotal Customer Community:
	   o SumTotal Talent, Framework Orientation
	   o SumTotal Talent, Performance Management Orientation
	
	• Session participation by Customer resource(s) who are knowledgeable about customer business processes and empowered to make decisions on behalf of their respective organizations.
	
	• Review and sign-off of Configuration Workbook in a timely manner

System Configuration
 	
• Configuration of the Stage and Production systems based on the signed-off Configuration Workbook
 	
• Virtual walkthrough with Customer to review the configured process.
 	
• Up to two (2) iterations of changes to configurations based on Customer feedback.
 	
Configuration scope:
 	
Performance Process
• SumTotal to configure one (1) Performance process, for all participants
• Standard 7-step OR 9-step Performance process* will be used (modifications allowed):
 	
   • 7-Step: Annual review with mid-year review phase
 	
   • 9-Step: Annual review (no mid-year review phase)
 	
• Process can be used for annual or quarterly focal-point reviews (i.e. same timing for all participants). Fully-automated anniversary-based reviews not supported
 	
• One (1) standard Performance Assessment form** will be used for all participants
 	
Competency Configurations
	• Configure the appropriate areas of the system as needed
	• Timely review of configurations
	• Timely feedback during iteration(s) as denoted in the project plan
	
	• Approval of configurations

- SumTotal to configure up to three (3) job-specific competency models (e.g. individual contributor, manager, executive), using a combination of customer-specific and/or SumTotal-provided competencies - Customer is responsible for managing the Competency Library (i.e. adding, removing and editing competencies as needed) - Customer may configure additional competency models/jobs as needed - Competency weighting (when applicable) Goal Configurations (when applicable) - Organization goals - Goal cascading/alignment - Goal weighting Continuous Feedback Configurations - SumTotal to configure feature for use within and/or outside of Performance form Advanced features such as the following, are not supported in this package: - Multi-Rater input - Custom Workflows/Rules - Ratings Distribution Model	
Consulting and Training Services Up to eight (8) hours on-site or remote assistance for up to six (6) administrators. Training scope includes a walkthrough of how to administer the system based upon the final process configurations.	- Customer is responsible for designing/delivering end user training (Prior to session) Completion of the following training classes, available on the SumTotal Customer Community: - SumTotal Talent, Framework Orientation - SumTotal Talent, Performance Management Orientation
Advanced Reporting Training - Up to eight (8) hours of remote part-time Advanced Reporting consulting support, consisting of the following: - Providing best practice guidance around the usage of Advanced Reporting - Assistance for issue investigation during customer testing - Assistance for answering questions Customer team may have during their development of new reports.	(Prior to session) Completion of the following training classes, available on the SumTotal Customer Community: - Essentials of Advanced Reporting – End User Edition - Essentials of Advanced Reporting –Report Author Edition - Essentials of Advanced Reporting –Administrator Edition - Essentials of Advanced Reporting –Domain Creation Edition (if Customer requires Domain creation for reporting).
Testing and Validation Support - Assistance during Customer's User Acceptance Testing (UAT) period to provide coordination and liaison between SumTotal and Customer's test team. - Assistance for up to two (2) rounds testing, each with a maximum of one (1) week duration. - Review test scripts and test result logs for completeness and relevance.	- Creation of test scripts - Execution of test scripts - Provide test logs to be reviewed by SumTotal *As noted above, Customer is responsible for creating the test scripts. SumTotal involvement in creating test scripts will require additional consulting fees.* *If test plans/scripts are not complete, or if test plans/scripts are not fully executed, SumTotal may request a pause or delay in project timeline, or a change order to assist Customer with creation of test scripts or completion of testing.*

Hypercare • Includes ongoing consulting assistance for later of two (2) weeks post system launch or completion of all holdover P1 issues identified prior to go-live. • Transition to SumTotal Customer Support	• Timely submission of issues • Management of cut-over from legacy systems • Change management, user and administrator training, and communication • Participate in transition to SumTotal Customer Support

* The 7-step process includes: 1.Employee Drafts Goals, 2. Manager Approves Goals, 3. Employee Year-End self-assessment, 4. Manager Year-End Assessment, 5. Second Level Approval, 6. Discussion with Employee, 7. Employee Acknowledgement. The 9-step process can include 1.Employee Drafts Goals, 2. Manager Approves Goals, 3. Employee Mid-Year Review, 4. Manager Mid-Year Review, 5. Employee Year-End self-assessment, 6. Manager Year-End Assessment, 7. Second Level Approval, 8. Discussion with Employee, 9. Employee Acknowledgement.

* All participants assessed with the same form and process at the same time

** Form is identical for all participants, with the exception of job-specific competencies (which may vary by participant)

d.   Additional Services

(1)   Core

SumTotal Tasks and Assumptions	Customer Tasks and Assumptions
Historic Learning Data Migration SumTotal will provide up to 64 hours of remote engagement management and technical consulting services towards historical training data migration. SumTotal will configure the SumTotal standard training data migration utility (TMU) that will read from a set of pipe delimited flat files in a format specified by SumTotal, prepared by Customer, from a single data source. A shell activity will be created for all LMS-hosted content. LMS-hosted content must be loaded by Customer through the ELMS user interface. User bookmarks and course interactions are not migrated. Examples of information contained within the import files include: employee number (or some other unique employee identifier), course name, course code (unique identifier), date offered, instructor, location, cost, course completed /missed. Customer is responsible to create, cleanse, and merge the data from their data source in the multiple files according to the format SumTotal specifies. Customer is also responsible for testing the data once it has been migrated into the ELMS. **Effort assumes one data source up to 100,000 historical training records from Customer's current LMS.** If more than one data source, additional scoping may be required.	• Provide extracted files from Customer's legacy system per SumTotal specifications. • Complete any data cleansing or changes prior to extracts and migrations • Discuss, decide and agree on all data mapping between Customer's legacy system and SumTotal Enterprise Learn • Complete testing and verification of migrated data in a timely manner • Make corrections to the files for erroneous or missing data • Complete any regression testing on data changes/reloads

(2)   Learning

SumTotal Tasks, Deliverables, and Assumptions	Customer Tasks, Deliverables, and Assumptions
Mobile Implementation Package SumTotal will provide remote assistance towards the implementation of Mobile Learning within Customer's SumTotal Learn Enterprise system. • Engagement Management • A 4-hour virtual orientation session for up to eight (8) participants on using Mobile. • Mobile system configuration consulting to help Customer decide what content to present as mobile offerings, define mobile users • Note: Does not include creation of mobile content or conversion of existing content	• Development of mobile-ready content • Convert any current content to mobile friendly technologies • Identify user groups to access mobile content • Test and correct content to work on mobile devices
Historic Learning Data Migration – Additional Records SumTotal will provide up to an additional 64 hours of remote engagement management and technical consulting services towards historical training data migration. SumTotal will configure the SumTotal standard training data migration utility (TMU) that will read from a set of pipe delimited flat files in a format specified by SumTotal, prepared by Customer, from a single data source. A shell activity will be created for all LMS-hosted content. LMS-hosted content must be loaded by Customer through the ELMS user interface. User bookmarks and course interactions are not migrated. Examples of information contained within the import files include: employee number (or some other unique employee identifier), course name, course code (unique identifier), date offered, instructor, location, cost, course completed /missed. Customer is responsible to create, cleanse, and merge the data from their data source in the multiple files according to the format SumTotal specifies. Customer is also responsible for testing the data once it has been migrated into the ELMS. **Effort assumes one data source up to 600,000 additional historical training records from Customer's current LMS.** If more than one data source, additional scoping may be required.	• Provide extracted files from Customer's legacy system per SumTotal specifications. • Complete any data cleansing or changes prior to extracts and migrations • Discuss, decide and agree on all data mapping between Customer's legacy system and SumTotal Enterprise Learn • Complete testing and verification of migrated data in a timely manner • Make corrections to the files for erroneous or missing data • Complete any regression testing on data changes/reloads
Extended Enterprise/e-Commerce • Engagement Management • A 4-hour virtual orientation session for up to 8 participants on using Extended Enterprise/e-Commerce. • Assist in the set-up of a domain to support Extended Enterprise/e-Commerce activities • BrainTree/PayPal, Pre-Pay/Post-Pay is supported • Consulting on configuration of training activities • Implementation of Extended Enterprise/e-Commerce Limited for only USD($). Other currencies available at additional cost.	• Acquire and set up banking and routing information and certificates • Coordinate payment handling • Configure training activities for Extended Enterprise/ e-Commerce • Review Extended Enterprise/e-Commerce user guide • Implementation of additional currencies.
Training Service - Advanced Reporting - Onsite class • Design and lead Advanced Reporting Training to Customer as single two-day training event for up to 10 attendees. • Deliver training based upon customer choice of topics from existing training content. • This training does not include development of custom training content.	• Review existing guides and training to approve training topics. • Provide adequate onsite training facility to include projector, internet access, and other training materials as needed • Class attendance for all sessions • Record training sessions, if desired. • Leverage trainings for additional sessions to other admins or users

(3)   Performance Management

SumTotal Tasks, Deliverables, and Assumptions	Customer Tasks, Deliverables, and Assumptions
Additional Performance Management Form and Workflow – up to two additional forms • SumTotal will provide additional configuration of up to (2) additional Performance process/form pairs. • The process(es) will be created following the predefined 7-step or 9-step, integrated performance review process. • The form(s) will consist of six (6) sections - General Information, Performance Objectives, Development Objectives, Competencies (optional), Overall Rating/Summary and Signatures.	• Timely review of configuration • Timely feedback during iterations • Approval of configuration

3.   Payment Terms

All fees under this Statement of Work are included in Exhibit B (Payment Terms/Order Form – Section 2, Total to Be Paid) by and between the parties but will be invoiced in accordance with the Implementation Payment Milestones detailed below. Invoices shall be due and payable 100% net 45 days from date of invoice.

Unless noted otherwise, all prices provided herein are denominated in the currency of the United States of America ($ or USD).

The scope of services of this statement of work is inclusive of travel costs. Travel-related decisions (number of trips, number of resources traveling and trip duration) will be made at the sole discretion of SumTotal. Notwithstanding the foregoing, SumTotal shall make a minimum of two (2) trips.

To assist you in budgeting for this Statement of Work, we are able to provide the following budgetary guidance as listed in below:

Project Items	Fixed Fee Cost $ (USD)
Base Platform Implementation	$25,200
Learn Implementation	$88,704
Performance Management Implementation (up to 3 forms/workflows)	$56,448
Historic Data Migration Initial import of up to 100,000 records	$16,128
Historic Data Migration – SumTotal assistance with import of up to 600,000 additional records	$24,000
Mobile Implementation	$7,056
Extended Enterprise / eCommerce	$16,800

Advanced Reporting Training (Onsite)	$14,048
FIXED FEE TOTAL	$248,384
One Time Discount: The following discount is applied to the above Total. This discount is only applicable if the Agreement between the County and SumTotal is signed on or prior to Jan 31, 2019. Payment Milestones in section 3.1 below reflect discounted rates, and will need to be adjusted if the discount is no longer valid. If the Agreement is executed after January 31, 2019, this discount will be void.	15%
FIXED FEE TOTAL AFTER DISCOUNT	$211,126

a. Implementation Payment Milestones

Milestone	Description	Invoice Amount	% of Total
1	Execution of agreement	$52,781.50	25%
Learn			
2	The earlier of Core and Learn modules configured and ready for UAT *(as described 2.1, 2.2.)* or net 120 from date of execution.	$52,781.50	25%
3	The earlier of Core and Learn module ready for go-live *(as described in section 2.1, 2.2)* or net 150 from date of execution	$52,781.50	25%
Talent (includes performance management, historic data migration and up to two additional forms and workflows)			
4	The earlier of Performance Management module configured and ready for UAT *(as described in section 2.3)* or net 270 from date of execution	$31,668.90	15%
5	The earlier of Performance Management module ready for go-live *(as described in section 2.3)* or net 300 from date of execution	$21,112.60	10%

4. Optional Annual Professional Services

The following services are recommended as optional, annual services, which if desired by the Customer, can be included by Amendment to this Agreement.

Ongoing Consulting Support Services	SumTotal will provide up to four (4) hours of remote consulting services on a scheduled,

	monthly basis over the course of one year from the Customer go-live date as Customer further utilizes the SumTotal Learn system. Sessions may cover technical or functional consulting assistance. **This service is offered at $12,000 per year, separate from this budget and if selected, would be added to the Customer's annual renewal.**
Report Club	Customer is purchasing a one-year subscription which allows direct access to SumTotal's Report Factory for development of custom reports. Customer receives twenty (20) report credits to be used within one (1) year for the development of reports in the SumTotal Advanced Reporting module. Credits expire at the end of the year, and are spent as follows: - Simple report = 2 credits - Moderate report = 4 credits - Complex report = 8 credits Report development process is dependent upon Customer providing detailed information for the report, including data, filters, format, screen shots, and other details to describe the report. Customer shall document these details in a Functional Specification provided by Report Club point of contact. Customer will approve environment set up for reports development and validation prior final delivery of reports. If customer environment not available reports development and validation will be done using sample database. - Via phone, WebEx, and email, the customer works with the report developer in an iterative manner to review and test the reports. - Once the report is completed and approved, the source file is sent to the customer. - SumTotal tracks report credit usage and provides quarterly summary at the request of the customer. - Changes to report design after development is complete may result in the need to draw down additional credits. Effort does not include: - Engagement management - Functional specification or design - Data model changes For purposes of clarification, Report Definitions: - Simple: Matrix or tabular reports that represent data from the standard domains. No calculations or custom domains are supported. - Moderate: Matrix or tabular reports that represent data from the standard domains and can include charts or graphical representation. Calculations or expressions are allowed. Does not include creation of custom domains. - Reports built with drill down or sub reports (maximum 2 sub-reports); data manipulation, extensive calculations, and/or custom data domains using standard data model. Maximum 2 custom reports per domain. Additional credits needed for additional domains. **This service is offered at $30,000 per year, separate from this budget and if selected, would be added to the Customer's annual renewal.**

5.   Modification to the Statement of Work

Project scope and schedule changes will be addressed through the Change Order (the "Change Order") process as an Amendment to this Agreement. Any changes shall be documented, reviewed, and mutually agreed upon by both parties. The Amendment shall document the scope of work and a fee estimate. Implementation of the change shall be factored into the initial project plan and a modified completion date for the project will be detailed, if necessary.

6.   Assumptions

      a.   Scheduling for professional services to be performed are based upon a first come first served basis and will be mutually agreed upon by the parties prior to the commencement of the Professional Services hereunder.

      b.   Services are provided during regular business hours (8:30 a.m. to 5:00 p.m. PST), not to exceed forty (40) hours per person per week, Monday through Friday, except legal holidays ("Business Hours"). The customer will support SumTotal's holiday schedule.

      c.   The performance of this Statement of Work involves activities to be performed by both parties. If Customer deliverables are not received as scheduled, then completion of this Statement of Work in a timely manner will be jeopardized. SumTotal will notify Customer, should this occur, of the potential impact with regards to additional expenses and/or subsequent schedule changes.

      d.   Communications and discussions related to the scope of this Statement of Work will be conducted and completed in the English language.

      e.   Services and documentation will be delivered following SumTotal standard methodologies and templates. Additional requirements to adhere to customer-specific methodologies may result in cost and schedule impact.

      f.   Unless otherwise indicated, creation of reports is not in scope in this Statement of Work. Standard out-of-the-box reports are provided.

      g.   SumTotal expects that the customer will migrate data in valid format according to SumTotal's data import specifications.

      h.   Customer is responsible for all User Acceptance Testing (UAT) documentation (i.e. test plans, test cases, scripts, and scenarios) and the development and the execution of all testing in relation to UAT.

      i.   The scope defined in this Statement of Work stands alone to be delivered without dependency on any future functionality defined or to be added to the product roadmap.

      j.   To the extent that Customer develops their own content, Customer is responsible for all online content development, testing and association to their learning activities.

k.   Any efforts related to system performance/load testing by customer is out of scope. If required, this will be scoped and agreed upon separately between SumTotal and customer

l.   This effort does not include migration of legacy goals and competencies from current review forms. Customer and/or users are responsible for entering those goals and competencies on the new SumTotal review form assigned to the user.

m.   The implementation of this SOW will be executed and delivered in two (2) separate and distinct Phases:

  (1)   Phase 1: Core & Learning Implementation

  (2)   Phase 2: Performance Management Implementation

n.   The two Phases that will not be run in parallel.

o.   There will be a 4-week gap ("On-Hold Gap Period") between the end of the Hypercare period of the Core & Learning Phase and the beginning of the Performance Management Phase, starting with the Performance Management Kickoff Call.

p.   SumTotal Professional Services engagement during the "On-Hold Period" is out of scope.

q.   Continuity of SumTotal Professional Services resources between phase cannot be guaranteed.

EXHIBIT A-3

CONTRACTOR SECURITY

Contractor shall provide and maintain services at no less than the levels set forth in response to each of the following items.

Security Certifications
Shall have a Service Organization Control (SOC) Report SumTotal is SSAE18 SOC 1 and AT 101 SOC 2 audited. A copy of our most recent SOC 2 report can be provided (NDA required).

Risk Management
Shall have a risk assessment program that has been approved by management, communicated to appropriate constituents and has an owner to maintain and review the program The TotalSuccess Risk Management process advocates proactive risk management, continuous risk assessment, and integration into decision-making throughout the implementation life cycle. Risks are continuously assessed, monitored, and actively managed until they are either resolved or the possible negative event happens, and the risks have become real problems to be handled as such. The process defines six (6) logical steps the team uses to manage current risks, plan, and execute risk management strategies, and capture knowledge for the enterprise. Risk management plan is maintained in the PM workbook and the figure below illustrates the relationship between the six (6) steps.   The following list provides detailed information about each of the six (6) risk management steps. **Identify**: The process of risk identification calls for all team members to participate in surfacing risks to make the team aware of potential problems. As the input to the risk management process, risk identification should be undertaken from the Envision phase and repeated frequently throughout the life cycle. **Analyze and Quantify**: Risk analysis transforms the estimates or data about specific engagement risks that surface during risk identification into a form that the team can use to make decisions. For every risk identified, ratings are provided for probability of occurrence and the potential impact the risk has on effort, schedule, and quality. **Mitigation Plan and Responsibility**: Mitigation planning takes the information obtained from risk analysis and uses it to formulate strategies, plans, actions. Along with the mitigation actions, the owner for each risk is identified.

Track and Report: Risk tracking monitors the status of specific risks and the progress in their respective action plans. Risk tracking also includes monitoring the probability, impact, exposure, and other measures of risk for changes that could alter priority, risk plans, and resources or schedule.

Risk Tracking: Enables visibility of the risk management process from the perspective of risk levels as opposed to the task completion perspective of the standard operational project management process. Risk reporting ensures that the team, sponsor, and other stakeholders are aware of the status of risks and the plans to manage them.

Control: Risk control is the process of executing risk action plans and their associated status reporting. Risk control also includes initiation of change control requests when changes in risk status or risk plans could result in changes in resources or schedule.

Learn: Risk learning formalizes the lessons learned from the engagement, collects the relevant artifacts and tools, and captures that knowledge in reusable form.

Shall have a risk treatment plan that has been communicated to management

Please see the answer above which details SumTotal's risk management program.

Compliance

Shall have an internal audit, risk management or compliance department with responsibility for identifying and tracking resolution of outstanding regulatory issues

SumTotal's Product Development Process (PDP) and quality practices are audited by various companies (Pharma customers mainly) from time to time. Per our audit policy, we conduct an internal audit if we are not audited by any customer for a 12-month period. Starting this year, we will be performing an internal audit once every year. SumTotal has a CAPA policy and all the audit findings are managed per this policy.

Shall have audits performed to ensure compliance with any legal, regulatory or industry requirements

The product itself is not subject to most legislation and acts since all information entered into the system is information provided by and uploaded by the Customer. SumTotal provides a secure online storage facility for employee data, along with an interface for retrieving that data. SumTotal retains no rights, ownership interest, or liability to such information, but will comply with all applicable laws, rules, and regulations regarding necessary disclosure, upon appropriate notification to Customer. SumTotal is dedicated to meeting all our clients data privacy needs and will be happy to work with you to ensure full compliance of any local data protection or privacy requirements that may apply to the transfer of your data.

SumTotal has been periodically audited by many of our clients to make sure our processes and systems can meet the requirements of their business such as 21 CFR Part 11, Gramm–Leach–Bliley, NIST. SumTotal will be happy to work with any customer to make sure we can help them meet or maintain their compliance requirements.

Additionally, SumTotal is audited annually to AT 101 SOC2 Type 2 standards.

Shall have procedures to ensure compliance with legislative, regulatory, and contractual requirements on the use of material where intellectual property rights may be applied

SumTotal is audited annually to AT 101 SOC2 Type 2 standards.

Shall have an internal compliance and ethics reporting mechanism and training program for constituents to report compliance issues

Yes. SumTotal has an internal compliance and ethics reporting procedure and training program for employees to report compliance issues.

Right to Audit

Shall allow Alameda county to audit the service you will provide

SumTotal is available for auditing in conjunction with SumTotal Hosting but depending upon requirements may result in additional charges.

Alameda county may conduct an audit of the hosting services, including a Data Center tour and review of Data Center policies and procedures, no more often than once in any 12-month period. A fee of $250 per hour will be charged for the labor involved in support of such audits.

With advanced notification and upon request, Customers can schedule visits so the appropriate SumTotal personnel are available to provide tours of our facilities, including SumTotal's Cloud Operations Data Center. Customers usually control the process by submitting an agenda for the on-site visit.

In unannounced visits, SumTotal is unable to schedule the appropriate people to be available to Alameda county and hence discourages such visits.

Security Policy

Shall have an information security policy that has been approved by management, communicated to appropriate constituents and an owner to maintain and review the policy

Yes, there is a documented information security policy that has been approved by management and an owner identified to maintain and review the policy at least annually.

SumTotal's Information Security / Acceptable Use Policy (AUP) details what is considered to be an acceptable use of SumTotal's electronic infrastructure and what is considered to be acceptable behavior by employees when using that infrastructure. SumTotal's AUP Policy includes the following sections:

- • Passwords
- • Data Classification
- • Encryption and Labeling Requirements
- • Data Sanitization and Destruction
- • Access Privileges
- • Clear Desk and Clear Screen
- • Mobile Devices
- • Virtual Private Network (VPN)
- • Email, Phone, and Internet/Intranet Use
- • No Expectation of Privacy
- • Anti-Virus
- • Decorum and Content – Email and Phone Systems
- • Offensive Information and Material
- • Social Media
- • Misuse/Abuse
- • Copyright Issues
- • External Services
- • Software
- • Security Training and Awareness

SumTotal will be happy to further discuss this in more detail upon request.

Shall have employees to annually re-acknowledge compliance with information security policies

Yes. SumTotal's employees are required to undergo annual security refresher training in which they must review, acknowledge and confirm their compliance with SumTotal's Information Security / Acceptable Use Policy.

Shall have a well-planned internal audit plan to measure compliance with Information Security Policies

SumTotal maintains and goes through an annual AT 101 SOC2 Type 2 audit. In addition, SumTotal conducts monthly vulnerability assessments performed by SumTotal's Cloud Operations Security Staff. Each assessment yields a detailed report showing what was tested, test results, and recommendations for improved network security.

The specific items included in audits are:

- Network Vulnerabilities are explored, including checks for commonly exploited vulnerabilities in infrastructure components such as DNS and message transfer agents

- Application Vulnerabilities are checked, such as cross-site scripting, and the existence of potentially hostile scripts or pages

- The strength of the authentication facility is tested to ensure outside users cannot gain privileged access to the system.

Shall perform periodic reviews to update security policies and guidelines for relevance and emerging topics

Reviews are performed at least annually or on an ad hoc basis if necessary.

Shall have controls in place to restrict your ability to transmit customer data to unauthorized personnel outside the company

Yes. Typically SumTotal does not access customer data, unless in an attempt to resolve an issue. SumTotal limits access to the production system to ensure the security and privacy of customer data. We utilize Least Privilege Access and subscribe to a strict RBAC approach where users are only granted the access required to perform their job duties. Only members of database administration and system administration teams have access to production systems. These select users' access to customer production systems is logged and monitored on a daily basis.

Security Organization

Shall have a full time information security officer

Yes, SumTotal Systems employs a security team that includes a CISSP certified full-time Security Officer who is dedicated to the CloudOps environment.

Shall have roles and responsibilities for protecting assets and implementing security measure explicitly defined and communicated to all department/groups

Yes, SumTotal's Security Policy defines the roles and responsibilities. The hosting facility has dedicated, certified Security staff whom is focused 100% on the security of the hosting operation. SumTotal's Data Center's Security Officer reviews Cloud Hosting roles and responsibilities, with SumTotal's Cloud Hosting Management approving each employee for those roles. SumTotal uses role-based access so that staff only has the level of access they need to perform their jobs.

Have a formal risk analysis process to assist management in identifying security threats

Security is considered throughout the SDLC, from architecture and design, through development and code review, to QA testing. SumTotal uses our PDP to define and enforce every product release cycle. For example, during development and code review, the PDP contains pre-defined secure coding guidelines that all SumTotal developers must follow, which are subject to two-level code reviews, and ensures that any security threats identified in our internal secure coding practices are not exposed.

SumTotal uses a market leading Commercially-Off-The-Shelf (COTS) application to conduct security testing during product development. These tests can include vulnerability scans, URL manipulation, SQL injection, cross-site scripting, spoofing, etc. Any issues identified during security testing are assigned corrective actions and must be resolved prior to product release.

Awareness & Training

Shall have a formal , on-going Security Training program

SumTotal has an ongoing security program to educate and remind employees about security awareness topics. Annual training is provided to applicable employees.

Implemented a process to measure effectiveness of security training

SumTotal utilizes metrics for the security awareness phishing campaigns.

The on-going Security Awareness program to include instructing users on how to detect and avoid social engineering attacks

Yes. Third-party solution which includes personal instruction for those requiring assistance.

Users are being educated on how to report suspected security violations or vulnerabilities

Yes, via security awareness training and IT newsletters.

The importance of Information Security visible through the organization (e.g. posters, company meetings etc.)

The importance of Information Security is reiterated through the IT newsletters and through the management team.

Recruitment Process/New Employee Orientation

New hire workers subjected to a history and background check

The background check practice for Skillsoft / SumTotal is selective and based on employee's access to sensitive customer data.
- Departments deemed to have access to sensitive customer data (including Hosting): new hires are required to successfully complete a background check conducted by a third party in compliance with all legal requirements.
- Our consumer reporting agency: PT Research – http://www.ptresearchinc.com/.

All initial offers of employment (regular, temporary, or contractual) **deemed by the company to have access to security-sensitive client data** are subject to the following investigations:

- SSN Verification
- Criminal History Check
- Employment Verification
- Highest Level Education Verification
- Sex Offender Check

Background investigations are conducted with the assistance of a consumer-reporting agency (CRA). Failure to sign a release authorizing Skillsoft and the CRA to conduct the check will result in non-selection for employment.

As of July 2018, Skillsoft / SumTotal has identified a requirement to expand this policy in the US to require ALL new employees to complete a background check, and we will expand the scope of the background check.

Pursuant to this requirement, we issued and completed a Request for Proposal (RFP) to find a qualified supplier to provide Pre-Employment Screening Services. For the purpose of this RFP, Background Screenings were defined as the verification of credentials, criminal history, and other information related to employment and appointments, from federal, state, and local, and international government agencies and institutions.

The selected supplier is Sterling Solutions https://www.sterlingtalentsolutions.com/.

Effective no later than November 1, 2018, Sterling will provide service and timely deliveries to Skillsoft / SumTotal by providing accurate, timely, and customer-friendly background screening services for **ALL new hires,** including:
- Criminal and civil record checks at county courthouses, state repositories, federal courts and/or international courts
- SSN trace
- Verification of employment, education, professional licensure
- Reference checks
- Registry checks; such as sex offender and child and elder abuse lists
- Credit history (specific roles)

Employees receive introductory security awareness training

All employees are required to take annual security awareness training which touches on and covers client privacy concerns. We also have informational privacy warnings that are displayed anytime our support staff works on client systems that have specific privacy requirements, such as no off-shore regulations. Our information security staff is also alerted via Email anytime specific clients data is accessed not through the application, if that is a requirement.

Employee Exit /Transfer

Human Resource department provide administrators with a list of:
Workers transferring department
Workers leaving company

Yes. This information is provided in a prompt manner.

There is a process to notify system administrator when workers leave the business

Yes. SumTotal's Data Center staff is on a distribution list for all personnel changes. If an employee leaves the company, the Data Center Team is notified so any related accounts can be terminated. SumTotal has a very detailed written process that describes what changes need to be made when a privileged staff member leaves the organization. This includes a list of accounts that need passwords changed, as well as terminating various access methods.

Exit interviews conducted to recover the property given to worker

Yes. All property is required to be returned to HR in a prompt manner.
Please note that Mobile and tablet devices are not used to access customer information, nor is customer data stored on employees' computers, laptops, or mobile devices.

There is a program for immediate removal of employees system access when departing employee is identified as disgruntled or high risk

Yes. SumTotal's Data Center staff is on a distribution list for all personnel changes. If an employee leaves the company, the Data Center Team is notified so any related accounts can be terminated. SumTotal has a very detailed written process that describes what changes need to be made when a privileged staff member leaves the organization. This includes a list of accounts that need passwords changed, as well as terminating various access methods.

Access /exit controls employed in your facility

Yes. Only specific SumTotal Data Center personnel are permitted in the facility. Access to the facility must be initially approved by the Director or the Vice President of Cloud Operations. Once approved, each Data Center staff member is issued a card key that is unique to them and allows physically access systems at the hosting facility.

The SumTotal Data Center has multiple individual checkpoints that must be navigated before an individual can lay hands on a server or network component. This includes a mix of biometrics, Security Guards, card keys, and locked cabinets. The cage entrance and the cabinets themselves can only be opened using keys that are maintained by the onsite security personnel. Both the interior and exterior of the hosting facility are monitored by closed-circuit TV or video surveillance system, and security breach alarms.

Visitors are allowed if accompanied by an authorized Data Center staff member. Only certain personnel are authorized to bring visitors to the site. All visitors must remain with the escort.

Change Management

Shall have document change control procedures to manage all modification to development/production environment

SumTotal Cloud Operations has a formal Change Management process based on ITIL standards. Absolutely no change to any system can occur without submittal of a "request for change" ticket. Every change no matter how simple must follow a procedure, and the procedure used must be documented in the change ticket by the technician. Any change not previously flagged as BAU (Business as Usual), must be approved by a change manager or the CAB (Change Advisory Board), which meets daily.

Depending on the change, clients are notified via email, DSC Portal, or SumTotal Connect Portal. SumTotal's SumTotal Connect Portal acts as an information database, where administrative users can find online courses that introduce the Suite, a User Guide, a Starter Guide, white papers and documentation that you can download and distribute at will, and tools that you can modify for your own company. SumTotal's DSC Portal includes Case Management capabilities that allow designated users to support case submission, updates, priority setting, and reporting. Clients can also download maintenance packs, service packs, and product documentation in the DSC Portal.

Change control performed on regular basis

Any change not previously flagged as BAU (Business as Usual) must be approved by a change manager or the CAB (Change Advisory Board), which meets daily.

Changes are approved in change control document

Yes. This is kept up to date by the Change Advisory Board.

Alameda County to sign off on the changes affecting them

Yes. Your Customer Success Manager will engage SumTotal's Professional Services. SumTotal Professional Services will perform Discovery and Scoping (as applicable) for the new feature/functionality requested. Once the Discovery is completed, SumTotal's Professional Services will provide The County with a Statement of Work to be executed between both parties that will detail all tasks involved in the implementation process, timeline, and costing.
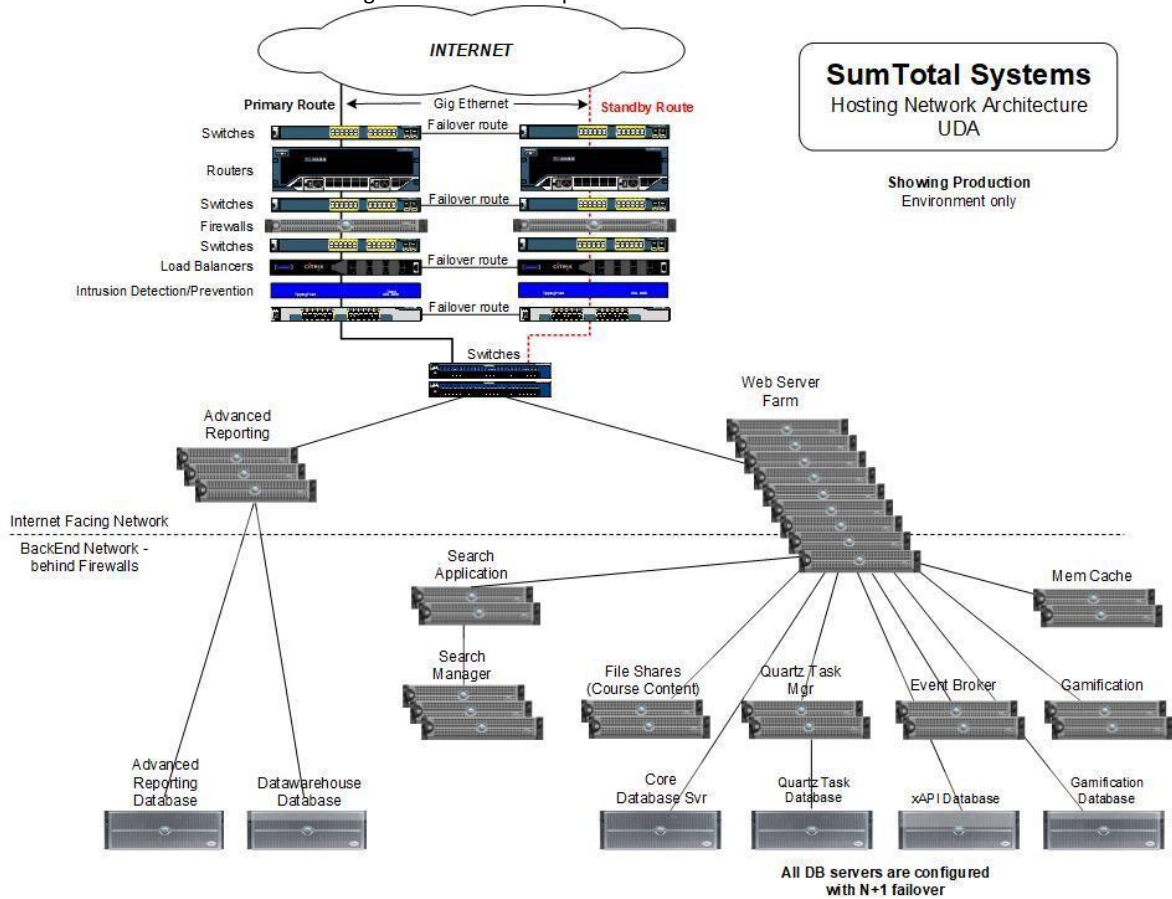
There is a documented procedure for performing emergency changes outside the change control process.

Yes. SumTotal has a fully documented and implemented emergency change procedure.

Router /Firewall

Shall always maintain a current network diagram

Yes. SumTotal maintains a current network diagram of our Cloud Operations infrastructure.

At a minimum, state full firewall been deployed at all external connections

SumTotal's web servers are Internet facing, however its database servers are not. Only specific servers have a network path to the Internet, most of those servers are not allowed to initiate connections through the firewalls. For those servers with a network path to the Internet, can only initiate connections over ports that have been specifically permitted.

All network perimeter devices, including the firewall and load balancers are fully redundant, and can individually fail in most cases without any visible impact to the availability of the environment. Failover scenarios regarding these devices are tested regularly.

firewall configured with policy that all services are denied unless expressly permitted

Yes. SumTotal relies on a defense-in-depth approach to defending the Data Center. The perimeter is protected by a series of redundant firewalls. The security posture of these firewalls allows only specific traffic into the network and also restricts what traffic can leave.

The next layer of defense is a series of redundant load balancers. These systems perform additional packet filtering and are capable of filtering up to Layer 7. Again, these systems only allow explicitly permitted traffic to flow in or out. Only specific servers have a network path to the Internet, most of those servers are not allowed to initiate connections through the firewalls.

Have a process /criteria to evaluate the risk of protocols/port before implementing it on firewall

Yes. SumTotal subscribes to a strict RBAC approach where users are only granted the access required to perform their job duties. Authorization to access the Data Center is controlled by the Director or the Vice President of Cloud Operations, via our change control process.

All services prohibited unless specifically requested

Yes.

Access to all firewalls, routers and proxies restricted to only those individuals who need to manage these devices

Yes. SumTotal subscribes to a strict RBAC approach where users are only granted the access required to perform their job duties.

There a process in place to ensure that all routers /firewalls have the latest software and that they are patched regularly

Yes. SumTotal takes a very proactive approach to patch management. SumTotal's Security Officer considers each patch carefully and independently, to determine if it is necessary to deploy it within the Data Center. In many cases the vulnerability being addressed by the patch has been mitigated through any number of other countermeasures already in place, such as firewalls, the intrusion prevention systems, or an aspect of our hardening process. In these cases, patches may be deferred until they are included in a future service pack. If the SumTotal Security Staff decides that the patch is necessary, and should be deployed, the existing "patch bundle" script is modified to include the patch, and the bundle is handed off to the Data Center Team for testing. Once the patch has been thoroughly tested, it is approved for deployment in the environment.

A server patch is deemed critical if the following three (3) conditions are met:
1. There is a valid attack vector to exploit the vulnerability (given current security posture on both the network and the servers)
2. Successful exploit of the vulnerability would likely result in a violation of a target's confidentiality, integrity, or availability
3. There are no reasonable workarounds that can be implemented to mitigate the threat

VPN and remote access

Shall not allow remote access to computers that do not implement antivirus software

SumTotal subscribes to a strict RBAC approach where users are only granted the access required to perform their job duties. Authorization to access the Data Center is controlled by the Director or the Vice President of Cloud Operations, via our change control process. Privileged users are equipped with a SecureID token from RSA and required to present the code displayed on the token every time they wish to gain access to a system within the Data Center.

Shall have a process in place to cancel VPN access rights as soon as their project is completed or their reason for having VPN access is invalidated

Yes. This process is fully implemented. SumTotal's Data Center staff is on a distribution list for all personnel changes. If an employee leaves the company, the Data Center Team is notified so any related accounts can be terminated. SumTotal has a very detailed written process that describes what changes need to be made when a privileged staff member leaves the organization. This includes a list of accounts that need passwords changed, as well as terminating various access methods.

Security In Application Development

Shall have system development methodology address information security during the discovery and development phase

Security is built into SumTotal's software development life cycle (SDLC):

The development team ensures security vulnerabilities are addressed during coding and code review process.
The Quality Assurance team (test) runs tests to validate the product for security vulnerabilities.
The Cloud Operations team, which maintains the production environment, enforces security guidelines for hosted infrastructure.

Shall perform a security code review during each phase of development

The types of testing which will be performed on the project are as follows:

Standard Testing

SUMT-SOP-0016 Test Plan describes the standard testing procedures and SUMT-SOP-0017 QA Test Execution describes how tests are run and results recorded. Tests are designed after review of functional, UI, and design specifications. Test cases are reviewed with QA peers, Developers and Product Analysts. Every test case is examined by at least one other person, in most cases multiple people across teams review tests.

The QA team is involved early in the product development process through review of Functional and Design specifications. Testing is divided in to four phases:

- Pre-Feature Complete Activities: This phase is used to identify weak areas and discover bugs early in the cycle by doing scripted and exploratory testing. During this phase test plans and use case packages are created/updated. Once the development team reaches the code complete milestone, QA team will start doing UAT by executing automation scripts. The main goal of this testing is to ensure there are no blocker issues or major functional breaks.
- Stabilization: This phase is used to stabilize the features by appropriate mix of scripted and exploratory testing. During this phase, all use cases and test cases are executed. Exit criteria: All blocker issues and agreed major issues should be resolved before going to the next phase.
- Two Regression test pass cycles: Regression passes are done on both supported database platforms (Microsoft SQL Server and Oracle).
- Final validation of Release Candidate

Acceptance Testing

The Release Plan (SUMT-SOP-0022) contains agreed upon release criteria as well as exit criteria for major milestones.

Performance Testing

Performance goals are defined in the Release Plan. Single-user and volume tests are performed under a specified set of conditions. Performance tests are benchmarked for all supported environments using single-user performance tests and concurrent load tests.

Are there separate environments for each customer for development and testing of systems

Yes. All hosted clients receive a "Stage/Test" environment, plus a Production environment. The Stage environment is used during the project for initial configurations, testing, validation, etc. The client then goes live on a separate environment called "Production." Hosted clients keep a Stage environment for further testing as part of their Hosting agreement if provisioned for.

All software developers working on software given orientation in security requirements of customer before they start to work on project

Yes and no. SumTotal is offering a SaaS solution, so specific customer security requirements cannot be accommodated for each customer. However, all software developers are thoroughly trained in security requirements to ensure the safety and security of our SaaS solution for all of our customers.

There shall no employees with access to both the non-production and the production environment

Developers have no access to the data center operations, other than access to our analysis tools such as Splunk and App Dynamics. Changes produced by our development team are handed off to the data center team for deployment through our Change Management process.

All developed software tested for viruses and background before they are pushed to production

Yes. All developed software is thoroughly tested for viruses before being pushed to production.

Data Security

Backups of business critical data done regularly

SumTotal Hosting offers a comprehensive backup strategy:

- Every day we do a backup of all files and databases.
- The *daily* backups are archived offsite for one (1) month.
- The most recent database backups are also kept locally on disk.
- The *weekly* backup is archived offsite for six (6) months.

All backups are pushed offsite via a continuous encrypted data stream. Backups are AES 256 encrypted during transmission and storage.

The most recent database backups are kept locally on disk that is AES 256 encrypted for 48 hours.

Sensitive data at rest and in motion are encrypted

SumTotal provides 2,048 bit TLS encryption of data passing between end-user (client) and our Data Center as a standard feature. Passwords are SHA-512 secure hashing algorithm. SumTotal encrypts all customer databases at-rest at the SAN storage level using AES-256 bit algorithms. The AES-256 bit algorithm is FIPS 140-2 compliant and the storage provider's implementation of it has been validated by NIST. All backups are replicated encrypted from the Primary Data Center to Secondary Data Center over a private connection and backup data is stored AES 256 encrypted.

Have an on-line mechanism to verify that all backups complete successfully

Yes.

Periodically restore information from backup tapes to ensure data integrity

SumTotal does not use backup tapes. All backups are replicated encrypted from the Primary Data Center to Secondary Data Center over a private connection and backup data is stored AES 256 encrypted.

Backup tapes kept in an environmentally controlled and secured area

SumTotal is no longer using tapes, however online backups are encrypted.

There is a regular audit conducted to account for all backup tapes

SumTotal is no longer using tapes, however online backups are encrypted.

Backup tapes destroyed if yes then what is the procedure used to destroy them

SumTotal is no longer using tapes, however online backups are encrypted.

Data Classification

All critical business data have an owner

Yes, all systems processing personal data have an identified business information asset owner accountable for the security information processed by that system and associated risks.

Critical information classified according to a classification guideline

SumTotal supports the following industry standards:

- SumTotal is audited annually to AT 101 SOC2 Type 2 standards
- SumTotal is GDPR Compliant.
- SumTotal Hosting offers our clients the assurance of hosting and information security operations that follow industry standards such as ISO 27001, ISO 27002, and ITIL.

All customer data is categorized as Private and Confidential, which receives our strictest standards of protection. SumTotal Hosting adheres to a RBAC approach where only employees with a need to know will have access to client data and in most cases will require permission from the customer prior to accessing their data.

Access to sensitive customer data have to be authorized by the owners of the data

The Support staff does not have access to unmasked client data. The access needed to triage and identify issues are managed using masked data. Any updates or modifications that will be required will be managed with explicit approval from an authorized client contact.

Server Vulnerability and Hardening

There is a process to proactively obtain latest security patches and updates

SumTotal Service/Hosting will implement the fixes/upgrades. Generally for our SaaS customers, upgrades happen 3–4 times in a year, and this includes installation of patches which are generally released once per month. Customers will be notified 1–2 weeks in advance before the stage install is scheduled. The upgrade will be performed during a weekend under a maintenance window, and the system will be unavailable for a few hours. After the upgrade, SumTotal performs site validation before releasing it back to the customers. With our new dynamic maintenance windows, SumTotal will provide two (2) weeks' notice before any maintenance.

SumTotal does not need any specific action from the customer except updating the business/user group about the upgrade schedule so that users do not try to access the system during this time, as well as to validate the software updates in relation to their configuration settings.

Shall have a process to identify network, application and OS based systems vulnerabilities

SumTotal maintains and goes through an annual AT 101 SOC2 Type 2 audit. In addition, we conduct monthly vulnerability assessments performed by SumTotal's Cloud Operations Security Staff. Each assessment yields a detailed report showing what was tested, test results, and recommendations for improved network security.

The specific items included in audits are:

- Network Vulnerabilities are explored, including checks for commonly exploited vulnerabilities in infrastructure components such as DNS and message transfer agents
- Application Vulnerabilities are checked, such as cross-site scripting, and the existence of potentially hostile scripts or pages
- The strength of the authentication facility is tested to ensure outside users cannot gain privileged access to the system.

Shall use automated tools to assess system vulnerabilities

Yes.

Shall perform regular penetration testing at periodic intervals by an external vendor

Annual penetration testing is conducted by an external vendor.

Have all business critical systems used in customer software development been analyzed for their security risks

Yes.

Users with super user privileged reviewed and revised regularly

Administrator access is logged and monitored on a daily basis.

Have Antivirus software running on all you systems used for Customers

Yes. SumTotal has deployed industry-leading intrusion detection/prevention appliances made by Sourcefire. These advanced network appliances monitor all traffic flowing into and out of the facilities and are capable of detecting malware at any and all network layers. With the knowledge of the open source community and the expertise of the Sourcefire Vulnerability Research Team (VRT), the company regularly leads the industry in protecting users from new vulnerabilities and emerging threats. Recently, in an independent test of leading IPS solutions conducted by NSS Labs, Sourcefire earned the highest security effectiveness score, stopping 90 percent of all attacks after tuning. In addition, the Sourcefire IPS delivered 95 percent of the advertised performance using a real-world traffic mix. Checks for updates from SumTotal's Anti-Virus vendor occur every 30 minutes.

Have a procedure to ensure that all servers, User machines and laptops are configured to automatically install virus definition files

On-access/real-time anti-virus scanning is enabled on all workstations and servers. For computers and related servers within SumTotal Corporate IT, Sophos antivirus is used.

Account Management

All user account deleted on users departure date

Yes. SumTotal's Data Center staff is on a distribution list for all personnel changes. If an employee leaves the company, the Data Center Team is notified so any related accounts can be terminated. SumTotal has a very detailed written process that describes what changes need to be made when a privileged staff member leaves the organization. This includes a list of accounts that need passwords changed, as well as terminating various access methods.

System to disable user account after a period of inactivity

Yes. Inactivity lockout is set for 10 minutes for all devices.

System to lock user accounts after a number of failed login attempts

SumTotal Hosting's policy for failed login attempts is set to three (3) for the servers and four (4) for the desktops.
Inactivity lockout is set for 10 minutes for all devices.

Shall have privilege accounts fully logged and subject to regular review

Administrator access is logged and monitored on a daily basis.

Shall have a policy on privilege accounts

SumTotal limits access to the production system to ensure the security and privacy of customer data. SumTotal utilizes Least Privilege Access and subscribes to a strict RBAC approach where users are only granted the access required to perform their job duties. Only members of database administration and system administration teams have access to production systems. Their access to these systems is logged and monitored on a daily basis.

Please note that SumTotal access is typically limited to verify if a customer's site is up, maintenance of the list of Administrators, for quality and development personnel when the site is in development, and for service personnel in an effort to fix an issue.

Have a completed list of personnel having admin or root privileges

Yes. SumTotal maintains a complete list of admin personnel.

Shall disable all the default accounts in all your server applications

Yes. All default accounts are disables.

Password Management and Authentication

All users forced to change their passwords at first sign-on

Yes, default passwords are changed on installed software and applications.

Shall have passwords expire periodically

Most passwords expire every 90 days. Passwords for exceptionally-privileged accounts expire every 45 days.

All users shall be prohibited from frequently re-using passwords

Expired passwords can be reused after 10 changes, and passwords can only be changed once per day.

Monitoring and Logging

Shall have security auditing enabled on business critical systems

SumTotal Hosting and the LMS audit trails include enough of the Who, What, When information to define the event and the outcome. Date and time stamps are also included.

Shall have process to review security audit logs in timely, consistent manner and act upon any threats identified on those reviews

SumTotal Hosting maintains centralized system logs for 90 days and access log for 12 months. All logs are written to a centralized log server were access is limited to users with a need to perform their job functions. Audit logs are reviewed periodically and/or when an event alert is presented as the result of a failed login attempt.

There is an automated alerting/notification process that is initiated when defined security threshold exceeds

Yes. We use Splunk for SIEM, where all of our security logs are collated, merged, and held for alerts and analysis.

Shall use effective IDS, URL filtering and other security monitoring software

Yes. SumTotal has deployed industry-leading intrusion detection/prevention appliances made by Sourcefire. These advanced network appliances monitor all traffic flowing into and out of the facilities and are capable of detecting malware at any and all network layers. With the knowledge of the open source community and the expertise of the Sourcefire Vulnerability Research Team (VRT), the company regularly leads the industry in protecting users from new vulnerabilities and emerging threats. Recently, in an independent test of leading IPS solutions conducted by NSS Labs, Sourcefire earned the highest security effectiveness score, stopping 90 percent of all attacks after tuning. In addition, the Sourcefire IPS delivered 95 percent of the advertised performance using a real-world traffic mix. Checks for updates from SumTotal's Anti-Virus vendor occur every 30 minutes.

Incident Response

There is a process for user to report when they have identified a potential security incident

SumTotal Support is staffed 24x7x365 days for customers to report security incidents. Please note that Premier or 24x7 Extended Support is optional, for Standard Support any P0 critical issue support will be provided on an on-call basis during non-production hours OR during the weekends.

Shall have a documented security incident response procedure

SumTotal has a formal incident response policy and procedures. Our procedures include after-action reporting processes and root-cause analysis requirements.

Shall communicate the security Incident Response procedure to all employees

The security Incident Response procedure is fully communicated to all information security employees.

Conduct drills to verify the readiness of the company to any security incident

No, we do not perform "table-top exercises" to cover our IR process. We exercise the process on a regular basis for minor and/or unfounded issues and are confident that it works as designed.

Disaster Recovery

Shall have formal written Disaster Recovery Plans covering the partial or full loss of servers , critical applications, physical facilities
Yes. Our Data Center is in one of the most survivable buildings in the area. However, a secondary data center at a geographically remote location is also maintained for recovery should the primary facility be lost. This alternate site has the infrastructure components necessary to reduce the amount of time it would take to resume core operations.

Our commitment to our customers is to make every effort to resume full operating capacity of their Production HCM systems within 48 hours of a disaster at our DR data center. Recovery at our DR facility would not commence unless the primary facility was damaged to the extent that repairs and recovery could take longer than 48 hours.

Services Include:

- The Stage environment is installed at an alternate Data Center that is geographically distant and serves as the DR site for your Production facility.

- The Production site will be replicated daily to the Data Center where the Stage environment resides. In case of a disaster, the Stage server capacity will be used to restore Production service.

- The RPO (Recovery Point Objective) is eight (8) hours.

- The RTO (Restore Time Objective) of 48 hours, with capacity equal to Stage.

- The Recovery process is tested at least once per year, fully recovering a customer(s) environment and providing access to the environment for the customer's review. However, the standard service does not include a customer-specific annual test for each customer.

Are there disaster recovery facilities for critical system located in geographically independent area

The facilities power needs are fed through two independent power grid substations, with one as primary and the second on automatic failover. In the event of a power loss from both substations, the data center automatically switches to uninterruptible power supplies (UPS) and then to the onsite diesel generators.

Shall have an owner responsible for devising and maintaining DRPs

Yes. SumTotal's Information Security Officer.

Laptop Security

There is a process to ensure that business and customer critical data is encrypted

Yes, all laptops are encrypted using full disk encryption.

All employees who travel with laptops provided with the theft prevention devices

Laptops are tracked and managed through an asset management system, and drives are encrypted. Mobile and tablet devices are not used to access customer information, nor is customer data is stored on employee's computers, laptops, or mobile devices.

However, SumTotal Customer Support members use highly secured and regularly validated laptops issued and monitored by our internal IT System Administrators to perform and support customer operations. Laptops are encrypted and again no customer data is stored on laptops.

Physical Security (Server Rooms)

Are servers kept in protected areas with restricted access

Yes. Only specific SumTotal Data Center personnel are permitted in the facility. Access to the facility must be approved by the Director or the Vice President of Cloud Operations. Once approved, each Data Center staff member is issued a card key that is unique to them and allows physically access systems at the hosting facility.

The SumTotal Data Center has multiple individual checkpoints that must be navigated before an individual can lay hands on a server or network component. This includes a mix of biometrics, Security Guards, card keys, and locked cabinets. The cage entrance and the cabinets themselves can only be opened using keys that are maintained by the onsite security personnel. Both the interior and exterior of the hosting facility are monitored by closed-circuit TV or video surveillance system, and security breach alarms.

Visitors are allowed if accompanied by an authorized Data Center staff member. Only certain personnel are authorized to bring visitors to the site. All visitors must remain with the escort.

Shall periodically review list of people who have access to server room

Yes. This list is periodically reviewed. Only specific SumTotal Data Center personnel are permitted in the facility. Access to the facility must be initially approved by the Director or the Vice President of Cloud Operations. Once approved, each Data Center staff member is issued a card key that is unique to them and allows physically access systems at the hosting facility.

The SumTotal Data Center has multiple individual checkpoints that must be navigated before an individual can lay hands on a server or network component. This includes a mix of biometrics, Security Guards, card keys, and locked cabinets. The cage entrance and the cabinets themselves can only be opened using keys that are maintained by the onsite security personnel. Both the interior and exterior of the hosting facility are monitored by closed-circuit TV or video surveillance system, and security breach alarms.

Visitors are allowed if accompanied by an authorized Data Center staff member. Only certain personnel are authorized to bring visitors to the site. All visitors must remain with the escort.

Asset Inventory

Shall have an inventory of authorized assets and are they regularly reviewed

Yes, an inventory of hardware assets is maintained.

There is a process in place to ensure that inventory for all computer equipment is maintained for accuracy

We have maintenance contracts with all equipment used to support customer installations.

Shall have a method of secure disposal on unwanted documents and equipment's

Yes. All media is disposed of using Department of Defense (DOD) standards.

SumTotal Hosting receives confirmation of information disposal for physically destroyed items. Hard drives are shredded versus triple-wiped.

The SumTotal Data Destruction Policy addresses the requirements for redeployment and disposal of hardware, specifically data storage devices such as hard drives, tapes, and CD-ROMs. The policy and accompanying procedure instruct personnel in exactly how each type of storage device should be prepared for redeployment, as well as how it should be destroyed in the case of disposal.

EXHIBIT B

PAYMENT TERMS

1.   Invoices will be reviewed for approval by the Director of Human Resources or their designee.

2.   Total payment under the terms of this Agreement will not exceed the total amount of Eight Hundred Nine Thousand One Hundred Sixty dollars ($809,160). This cost includes all taxes and all other charges.

3.   Payments shall be made in accordance with Exhibit B-1, Order Form.

CUSTOMER INFORMATION

BILL TO	County of Alameda	SHIP TO	County of Alameda
CONTACT	Bill Jacox	CONTACT	Bill Jacox
PHONE	(510) 208-4865	PHONE	(510) 208-4865
E-MAIL	bill.jacox@acgov.org	E-MAIL	bill.jacox@acgov.org
ADDRESS	125- 12th Street, Suite 400	ADDRESS	125- 12th Street, Suite 400
CITY	Oakland	CITY	Oakland
STATE	CA	STATE	CA
COUNTRY	US	COUNTRY	US
ZIP CODE	94607	ZIP CODE	94607

EXHIBIT B-1

ORDER FORM

1.   SUBSCRIPTION SERVICE CONFIGURATION/LICENSE DETAILS

A.   INITIAL SUBSCRIPTION TERM: START DATE: 31 JANUARY 2019 **END DATE:** 30 JANUARY 2022

SUMTOTAL PRODUCT	COMMITTED NUMBER OF USERS DURING INITIAL SUBSCRIPTION TERM	LICENSE TYPE	ANNUAL SUBSCRIPTION FEE
GENERAL USERS; LEARN (ELMS) WITH AUDIT, VERSIONING, MOBILE AND SOCIAL FUNCTIONALITY AND ADDITIONAL 220GB OF STORAGE	9,000	NAMED USER	$88,020.00
LIMITED USERS LEARN (ELMS) WITH AUDIT FUNCTIONALITY	500	MONTHLY UNIQUE LOGINS	$14,472.00
TALENT SUITE-SAAS	500	NAMED USER	IN YEAR ONE ONLY: $8,112.50 FOR ALL REMAINING TERMS AND EXTENSIONS: $16,225.00
GENERAL: PS CONSULTING (FF) (YEAR ONE ONLY)	SEE STATEMENT OF WORK (SCOPE OF SERVICES) ATTACHED AS SCHEDULE A	SERVICES	$211,126.40

B. HOSTED ENVIRONMENT TYPE: SaaS

C. INITIAL STORAGE ALLOWANCE (in GB): SumTotal will provide data storage as follows: 300 gigabytes of storage space. All environments provided (typically Production & Stage) are counted. If Customer exceeds the above allowances, Customer will be charged an additional monthly fee of $8.00 for each additional GB used beyond the above allowances. This fee will be lowered to $5.00 per month per additional GB if an amendment is signed to increase the storage allowance. The pricing outlined in the two preceding sentences is only valid for the Initial Subscription Term, and any extensions to the Initial Subscription Term if amended pursuant to this Agreement.

C. NUMBER OF DESIGNATED CONTACTS: 2

D. SKILLSOFT PRODUCT LICENSE. The following are including in the services:

SKILLSOFT PRODUCT*	AUTHORIZED AUDIENCE	LICENSE TYPE
BUSINESSPRO	50	NAMED USER
COMPLETE COURSEWARE COLLECTION	350	NAMED USER
COMPLIANCE ACTIVE CONTENT	2 OBJECTS	N/A
COMPLIANCE LIBRARY LICENSE: 1 COURSE OBJECT	2,000	NAMED USER
COMPLIANCE LIBRARY LICENSE: 1 COURSE OBJECT	8,000	NAMED USER
COMPLIANCE LIBRARY LICENSE: 1 COURSE OBJECT	1,000	NAMED USER
COMPLIANCE LIBRARY LICENSE: 1	500	NAMED USER

COURSE OBJECT		
COMPLIANCE LIBRARY LICENSE: 1 COURSE OBJECT	500	NAMED USER
ITPRO	50	NAMED USER
LEADERSHIP CHANNEL	50	NAMED USER
PREPAID SERVICES†	N/A	SERVICES

E. HOSTED ENVIRONMENT TYPE: Extranet Hosting with Open Learning Services

*See Section 7 Skillsoft Product Definitions and Section 8 below for Skillsoft Product License Terms regarding use and access.

F. † PREPAID SERVICE: The parties acknowledge and agree that the Year 1 license fees include an amount equal to $2,950.00 as a prepayment of fees to be allocated toward services (the "Prepaid Fees"). The Prepaid Fees must be allocated on or before 30 January 2020. For the purposes of this paragraph, "allocated" shall mean that the parties must have negotiated and executed a Statement of Work prior to 30 January 2020 for a term commencing no later than 31 January 2020 and ending no later than 30 January 2021. Under no circumstances shall (i) the Prepaid Fees be allocated toward payment of any committed future license fees; (ii) allocated toward new or additional Skillsoft Products; or (iii) the discounts for any services licensed using the Prepaid Fees exceed the current discount levels granted in this Agreement.

2. PAYMENT

A. SUBSCRIPTION FEES AND COMMITMENT. Customer's total commitment hereunder is set forth below and is calculated as follows (the "Commitment Fee"). Applicable state and local taxes are not included in the totals below and will be calculated as of the date of the invoice(s) issued hereunder:

YEAR/TERM	PROFESSIONAL SERVICES	ANNUAL SUMTOTAL SUBSCRIPTION FEES	ANNUAL SKILLSOFT LICENSE AND SERVICES FEES	ANNUAL FEES
Y1	$211,126.40	$110,604.50	$59,700.00	$381,430.90*
Y2	N/A	$118,717.00	$59,700.00	$178,417.00
Y3	N/A	$118,717.00	$59,700.00	$178,417.00
TOTAL				$738,264.90

B. INVOICING. Fees shall be invoiced annually in advance and due and payable 25% net 30, 25% net 120, 25% net 210, and 25% net 300, with the invoice issued no more than 30 days prior to the first day of the service period. *

C. *IMPLEMENTATION SERVICE. The fees for the professional (implementation) services, as set forth on the Statement of Work/Scope of Services in Exhibit A, are included as part of the Year 1 Subscriptions Fees/Commitment Fee. Notwithstanding the foregoing, such professional service fees shall be invoiced in accordance with the milestone/payment schedule set forth in the Statement of Work/Scope of Services. The remaining Year 1 Commitment Fee shall be invoiced as set forth in B above.

3. UPGRADE OPTION. In the event that Customer wishes to increase the Committed Number of Users to the licensed SumTotal Products, SumTotal agrees that Customer may add additional users license fees and in blocks of users as set forth in the table below. SumTotal agrees that the additional user due shall be prorated based on the number of months remaining in the Customer's Subscription Term and will be memorialized via a new Order Form signed between the parties through an Amendment to this Agreement. The GSA Purchasing Agent shall have the authority to execute any such Amendment on behalf of the County, as long as it is within the not to exceed amount of the Agreement, or within the authority otherwise delegated by Board of Supervisors.

PRODUCT	NO. OF USERS IN BLOCK	ANNUAL PRICE PER USER BLOCK
9440-ROD EE - LMS WITH AUDIT	500	$4,890.00
6138-ROD EE – VERSIONING		
8210-MOBILE FOR ELMS – SAAS		
8822-SOCIAL LEARNING – SAAS		

PRODUCT	NO. OF USERS IN BLOCK	ANNUAL PRICE PER USER BLOCK
9440-ROD EE - LMS WITH AUDIT – UNIQUE USERS	100	$2,894.40

PRODUCT	TOTAL AUTHORIZED AUDIENCE	ANNUAL PRICE PER BLOCK OF 500 USERS
TALENT SUITE - SAAS	500 – 1,000	$16,225.00
	1,001 – 3,000	$13,610.00
	3,001 – 5,000	$7,500.00
	5,001 – 9,000	$5,250.00
	9,001 – 10,000	$3,250.00
	10,001 +	$2,980.00

4.   OVERAGES: In the event that Customer exceeds the number of monthly unique logins licensed herein ("Excess Users"); Customer shall pay a license fee of $3.01 per user per month for such Excess Users. Such excess users shall be calculated at the end of each annual term and invoiced annually.

5.   **EXTENSION (OPTION) YEARS.**

Option Year 1. Skillsoft agrees that Customer may elect to extend the License Term of this Order Form for an additional twelve (12) month period (1/31/2022 – 1/20/2023) for the same Skillsoft Products and Authorized Audience levels set forth herein for an annual license fee of $183,307.00, provided Customer provides Skillsoft with written notice of such election thirty (30) days prior to 1/20/2022.

Option Year 2. Skillsoft agrees that Customer may elect to extend the License Term of this Order Form for an additional twelve (12) month period (1/31/2023 – 1/30/2024) for the same Skillsoft Products and Authorized Audience levels set forth herein for an annual license fee of $183,307.00, provided Customer provides Skillsoft with written notice of such election thirty (30) days prior to 1/20/2023.

6.   USERS. Customer users shall be broken down into two categories, collectively referred to as **Users:**

General Users: These are individuals that (1) work for the County of Alameda as either employees, contractors, temporary employees and interns or other nonpaid staff (2) that have been identified as working for an entity that is associated with the County of Alameda, although a separate legal entity (by way of example, Alameda County Fire District and First Five Alameda County).

Limited Users: These are individuals that are using the services on a limited basis. These individuals include, but are not limited to, community-based organizations, employees of other governmental agencies and nonprofits and individuals who have signed up for training activities provided through the County that are not in affiliation with any for-profit business entity, excluding those businesses and individuals providing services to the County.

7.   SKILLSOFT PRODUCT DEFINITIONS. Any term not otherwise defined herein shall have the meaning provided it in the Agreement.

For the purposes of this Order Form, **Authorized Audience** shall mean the number of Users who are based in North America that are authorized to access and use the applicable Skillsoft Product(s) as licensed under this Order Form. Customer shall limit the use of the Skillsoft Product(s) to the number of Licensed Users for whom Customer has paid the required license fees. License consumption occurs when a member of the Authorized Audience has accessed the applicable Skillsoft Product (a **Licensed User**).

Active Content is any Custom Content that can be hosted on Skillport for which Skillport can launch, and track the scores, accesses and duration.

Complete Courseware Collection is a prepackaged offering of the Platform Software, Mentoring Service and selected Course Objects in the area of IT, business and desktop skills, in US English and any additional languages as set forth in the license table above, subject to the Authorized Audience level. Skillsoft reserves the right to modify, restrict, or update any content contained in the Complete Courseware Collection throughout the term of this Order Form.

Compliance Library License shall mean a license model that allows customer to select a defined number of Environmental, Health & Safety Environmental, Safety & Health (ES&H) and/or Legal Compliance Course Object(s) (**Course Level**) for its Authorized Audience. Customer is entitled to exchange up to 20% of the current Compliance based Course Level objects, four (4) times during each annual license term, by providing Skillsoft with written notice at least ten (10) days prior to the date of exchange. Additionally, with respect to a License Term of greater than one year Customer may elect, one month prior to each twelve (12) month anniversary date, to exchange one or more Compliance Based Course Object(s) to a maximum

of the current Course Level. This election must be in writing and provided to Skillsoft thirty (30) days prior to the anniversary date. In the event that Skillsoft retires a Compliance Based Course Object included in Customer's Course selection during an annual term, Customer will be required to select a new Compliance Based Course Object upon the next anniversary date.

Course Object shall mean current and future online computer based training materials developed and owned by Skillsoft and/or its licensors in the content areas relating to business skills, employee health and safety, legal compliance, financial services industry, desktop applications and information technology, including all hard copy, machine-readable materials that comprise the object, including, all related software, data, disks, tapes, CD-ROM, Documentation and packaging delivered, including by electronic delivery, to Customer. Planned Course Object(s) that are not commercially available at the time of Customer's selection are available on a 'when and if' basis. A target date is indicative of the anticipated release date but is subject to change or removal by Skillsoft without notice. The materials provided hereunder have been developed with subject matter expertise from various third parties but are intended for informational and educational purposes only and do not constitute legal advice or guarantee compliance with any federal, state or local laws or regulations.   Although Skillsoft undertakes all reasonable efforts to maintain the legal accuracy of this content and make updated content available to customers, neither Skillsoft nor any third party represents or warrants that the content reflects current legal developments; customers are encouraged to consult local counsel before taking any action based on the content or information provided hereunder.

Custom Content shall mean the creation of an on-line computer based training course proprietary to Customer's business.

Leadership Channel means the video lessons and other content and materials pursuant to this Order Form, including, without limitation, on demand video programs, all lesson summaries, ideas for action, and questions to ask provided by Skillsoft in connection with any video lesson. Skillsoft reserves the right to modify, restrict or update any content contained in Leadership Channel throughout the License Term.

License Term shall mean the period of time from the Start Date through the End Date.

Mentoring Service shall mean a service that enables a user to ask questions relating to specific information technology courses or the general subject matter of those courses and receive responses from experts in the field of information technology. The Mentoring Service is only available for Customers that purchase a license to Extranet Hosting Service and/or Skillport via Extranet Hosting Services.

Platform Software shall mean the technology infrastructure selected by Customer in Section 1 of this Order Form above as further defined in Section 3 of this Order Form.

Referenceware shall mean the Books24x7 online library of third party reference materials, editorial materials, electronic books and other resources hosted by Books24x7.com, Inc. Skillsoft reserves the right to modify, restrict or update any content contained in a Referenceware collection throughout the term of this Order Form.

Solution Areas shall mean the Course Object bundle(s) named in this Order Form and comprised of the Course Object(s) included in the respective bundle(s) as set forth in Skillsoft's course catalog which may be found at http://www.skillsoft.com, including any Updates thereto.

Updates shall mean (i) any new Skillsoft Product(s) added to a Solution Area licensed and/or (ii) all revisions, new versions and changes to, or modifications of, existing Skillsoft Product(s), which Skillsoft may, in its sole discretion, make generally available to its customers from time to time throughout the License Term; and/or (iii) removal of any retired Course Object from the licensed Solution Area. Skillsoft reserves the right to determine the schedule of Updates. Customer will not be provided Updates if they are not compatible with Customer's deployment method or the version of the Platform Software licensed by Customer.

8.   **SKILLSOFT PRODUCT LICENSE TERMS:** The following license terms apply solely to the use and access of the Skillsoft Products licensed herein, are in addition to the terms and conditions of the Agreement.

Subject to the restrictions stated in the Agreement, Skillsoft grants to Customer and Customer accepts, a nonexclusive, non-transferable license (without the right to sublicense) for the License Term set forth in the applicable Order Form, to use and to allow the applicable Authorized Audience to access and use the Skillsoft Product(s) set forth therein for internal training purposes only.

All Skillsoft Products are the property of Skillsoft and/or its third party publishers and/or licensors and is protected by copyright and other laws relating to proprietary rights. Except for the limited licenses granted pursuant to this Agreement, the terms of this Agreement do not convey any ownership or other rights of any kind to Customer in or to Skillsoft Property. Skillsoft and its publishers and licensors have and shall retain all right, title and interest in and to the Skillsoft Property. Skillsoft reserves all rights not expressly granted to Customer herein. Except as expressly provided in the Agreement, Customer shall have no right to receive any corrections, enhancements or other modifications.

Except as may otherwise be permitted in the Agreement, Customer shall not (a) reproduce publish, display, distribute, sell, sublicense, transfer, rent, lease, broadcast, timeshare, loan, disclose, or otherwise make available the Skillsoft Property, or any part thereof, to any third party; (b) reverse engineer, disassemble, decompile or otherwise attempt to derive source code from the Skillsoft Property, or any part thereof; (c) modify, translate, adapt, alter or create derivative works (as defined under the United States copyright laws) based upon the Skillsoft Property or any part thereof; (d) remove any proprietary notices, labels, or trademarks or service marks on any Skillsoft Property; (e) merge the Skillsoft Property, or any component thereof with another program (unless otherwise authorized herein); (f) use the Skillsoft Property, or any component thereof, for any purposes other than those explicitly stated in this Agreement; (g) have any right to any source code for the Skillsoft Property (h) permit any party not specifically licensed herein to use the Skillsoft Property; (i) use download functionality enhancement tools; or (j) make unauthorized uses of Skillsoft Intellectual Property Rights. Customer further agrees that Customer is solely responsible for the content of all visual, written, or audible communications using the Skillsoft Product(s). Although Skillsoft is not responsible for any such communications, Skillsoft may terminate or suspend any such communications at any time of which it is made aware of a communication that is unlawful, would constitute a criminal offense or give rise to civil liability. In the event of the foregoing, Skillsoft will provide prompt notice of suspension or termination to Customer.

Customer acknowledges that all of the restrictions on access to and use of the Skillsoft Property contained in the License Terms and elsewhere in the Agreement apply to the Authorized Audience. Customer will take all necessary steps to ensure compliance of the Authorized Audience therewith, and Customer will be liable and indemnify Skillsoft for any violations of the Agreement by its employees or the Authorized Audience.

Customer will track the Licensed Consumption for each Skillsoft Product licensed within each year of the License Term, as set forth in the applicable Order Form, to ensure that the Authorized Audience level has not been exceeded. If the Skillsoft Products are hosted on Skillsoft's Learner Management System, the parties acknowledge and agree that Skillsoft may (but is not obligated to) run reports to view usage on the Skillsoft Learner Management System. Skillsoft shall provide Customer the tools and ability to efficiently and accurately track consumption and run reports. In the event that Skillsoft becomes aware of an over-usage of the Skillsoft Products, then Skillsoft will notify Customer promptly. Consumed Licenses cannot be exchanged or swapped during each year of the License Term unless otherwise set forth herein. De-activated and deleted users will still be counted as Licensed Users until the annual renewal date. Except as otherwise noted above, Customer shall not swap or share the user ID's and/or passwords associated with the Authorized Audience and/or Licensed Users under any circumstance. Skillsoft agrees that licenses for terminated employees of Customer can be exchanged for a new member of the Authorized Audience during an annual License Term and that usage of the Skillsoft Product(s) by a terminated employee will not count toward Customer's License Consumption. The foregoing sentence applies only to Customer's full time, regular employees and shall not apply to contractors or temporary employees of Customer.

The terms and conditions of the Agreement shall govern the use of the Software provided hereunder

The authorized representatives of SumTotal and Customer have executed this Order Form signifying their agreement to its contents.

SUMTOTAL SYSTEMS LLC	**COUNTY OF ALAMEDA**
Melissa Talty	_John Glann_
Signature	Signature
Melissa Talty	John Glann
Print Name	Print Name
Sr. Manager Revenue, Royalties & Customer Contracts	Purchasing Manager
Title	Title
1/29/2019	1/29/2019
Date	Date

EXHIBIT C

INSURANCE REQUIREMENTS

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements·

	TYPE OF INSURANCE COVERAGES	MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	$1,000,000 each accident Combined Single Limit Bodily Injury and Property
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities.	$1,000,000 each accident Combined Single Limit Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL $1,000,000 per accident for bodily injury or disease
D	Endorsements and Conditions:	

1. ADDITIONAL INSURED: All insurance required above with the exception of Commercial or Business Automobile Liability , Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof , and all County officers, agents, employees, volunteers, and representatives . The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

2. DURATION OF COVERAGE: All required insurance policies shall be maintained during the entire term of the Agreement. In addition, Insurance and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.

3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies required herein, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.

4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.

5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:
   - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered
     party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.
   - Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".

7. CANCELLATION OF INSURANCE: Contractor shall provide County with thirty (30) days advance written notice to the County of cancellation of insurances required under this contract. Such notice is not required for policy changes due to the annual renewal process.

8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. In the event of a potential claim, the County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision.

EXHIBIT D

**COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION**
(Applicable to all agreements funded in part or whole with federal funds and contracts over $25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- **Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;**

- **Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;**

- **Does not have a proposed debarment pending; and**

- **Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.**

If there are any exceptions to this certification, insert the exceptions in the following space.
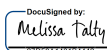
Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: **SUMTOTAL SYSTEMS, LLC**

PRINCIPAL: **MELISSA TALTY**

TITLE: **SR. MANAGER REVENUE, ROYALTIES & CUSTOMER CONTRACTS**

SIGNATURE: *Melissa Talty* _____ DATE: 1/29/2019 _____