



Contract Number

23-238

SAP Number

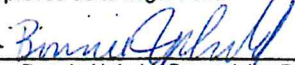
Innovation and Technology Department

Department Contract Representative	Christine Onyango
Telephone Number	909-388-5943
Contractor	Elixir Technologies Corporation
Contractor Representative	John S. Jones
Telephone Number	805-648-9125
Contract Term	3/28/23 to 3/27/24
Original Contract Amount	Non-financial
Amendment Amount	N/A
Total Contract Amount	Non-financial
Cost Center	1200504048

Briefly describe the general nature of the contract: *Non-financial End User License Agreement, including non-standard terms, with Elixir Technologies Corporation, for graphic design software, in purchase amounts as authorized by County Policy for the period beginning March 28, 2023, through March 27, 2024, with four optional one year renewal terms.*

FOR COUNTY USE ONLY

Approved as to Legal Form

► 
Bonnie Uphold, Supervising Deputy County Counsel

Date 2-21-2023

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

►

Date

ELIXIR TECHNOLOGIES CORPORATION END USER LICENSE AGREEMENT

IMPORTANT: THIS END USER LICENSE AGREEMENT ("AGREEMENT") IS A LEGAL AGREEMENT BETWEEN THE PERSON, COMPANY OR ORGANIZATION THAT HAS LICENSED THIS LICENSED SOFTWARE ("CUSTOMER") AND ELIXIR TECHNOLOGIES CORPORATION AND ITS SUBSIDIARIES ("ELIXIR"). BY CLICKING ON THE "YES" BUTTON CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT. READ THIS AGREEMENT CAREFULLY BEFORE CLICKING ON THE "YES" BUTTON. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK THE "NO" BUTTON AND RETURN THE LICENSED SOFTWARE TO ELIXIR.

1. DEFINITIONS

"Affiliate" and **"Affiliates"** mean any company that controls, is controlled by or is under common control with Customer. A company shall be deemed to control a company if it has power to direct management or policies of such company, whether through ownership of voting stock, by contract or otherwise.

"Annual License Fee" means money paid by the Customer to License the License Software and receive Software Support for every year after the first year of the License pursuant to the terms of this Agreement.

"Concurrent User License" means a License that authorizes the Customer to deploy the Licensed Software on one or more Physical Machines and/or Virtual Machines under Customer control, and that allows a number of Users, up to the limit allowed by the License, to activate concurrent sessions of the Licensed Software. Use of the Concurrent User License requires that the License Server be installed and running on a License Server Host residing on the same network as and accessible by the Physical Machine and/or Virtual Machine running the Licensed Software.

For example, under a five-user Concurrent User License, five separate Users can activate Licensed Software sessions simultaneously. If a sixth attempts to start a session, the License Server will prohibit access until one of the five active sessions is terminated.

"Initial License Fee" means money paid by the Customer to License the Licensed Software and receive Software Support for the first year of the License pursuant to the terms of this Agreement.

"License" means: the right to use the Licensed Software and be bound by the terms of this Agreement.

"Licensed Software" means any or all object code, technical data, images, recordings, support documentation and other related material for the Elixir software packages delivered to Customer under this Agreement.

"License Server" means the Licensed Software component that controls access to and use of all other Licensed Software components via a Concurrent User License.

"License Server Host" means a Physical Machine or Virtual Machine that contains the License Server and a valid Concurrent User License.

"New Release" means a major update, material enhancement to the features and/or capabilities of the Licensed Software, a functional addition and/or feature improvement to the Licensed Software, and may include but is not limited to a different user interface, additional print stream, operating system compatibility (such as Microsoft Windows), and database rewrites.

"Physical Machine" means a single computing device on which the host operating system, such as Microsoft Windows, is used to run the Licensed Software or License Server.

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“Single Physical Machine Hard Key License” and “Hardkey” means a License that resides on a removable physical device, such as a USB key.

“Single Physical Machine Softkey License” means a License contained in a computer file that is registered to a single Physical Machine and which resides on the physical storage of that Physical Machine.

“Single Virtual Machine License” means a License contained in a computer file that is registered to a single Virtual Machine and which resides in the storage in that Virtual Machine.

“Software Support” means commercial efforts to resolve user problems and questions related to the Licensed Software and includes Licensed Software related bug fixes through patch releases. Elixir does not, however, guarantee the correction of any Licensed Software problem or any issue that is unrelated to Licensed Software specific issues such as printer management.

“User” means a single individual, employed by the Customer, operating the Licensed Software.

“Virtual Machine” means a software implementation of a computing environment in which an operating system, such as Microsoft Windows, runs as a guest application in the host operating system of a Physical Machine or Virtual Machine Host Server.

“Virtual Machine Host” means a server hosting one or more Virtual Machines and providing the Virtual Machines shared access to hardware resources.

2. LICENSE GRANT

a. The following license grant applies to a Single Physical Machine Softkey License and Single Physical Machine Hardkey License:

Subject to Elixir’s receipt of all applicable Initial License Fees and Annual License Fees owed by Customer and subject to Customer complying with the terms and conditions contained in this Agreement, Elixir grants to the Customer a non-transferable, non-exclusive one year renewable Single Physical Machine Softkey License or Single Physical Machine Hardkey License to use the Licensed Software on a single Physical Machine controlled by Customer.

If a Single Physical Machine Softkey License is issued, it is registered to a specific Physical Machine. The Licensed Software and Single Physical Machine Softkey License may only be installed on and used on that registered Physical Machine.

If a Single Physical Machine Hardkey License is issued, it is not registered to a specific Physical Machine. Customer is permitted to move a Single Physical Machine Hardkey License from one Physical Machine to another Physical Machine. Each Physical Machine must have the Licensed Software installed for proper operation. Customer is prohibited from attaching a Single Physical Hardkey License to a Virtual Machine Host for the purpose of enabling concurrent use of the Licensed Software by two or more Users.

Use of the Licensed Software is restricted to a single User at any one time.

Customer may install the Licensed Software and either a Single Physical Machine Softkey License or Single Physical Machine Hardkey License on a Physical Machine that uses remote access services to allow Users to log in and run applications resident on that Physical Machine. Use of the Licensed Software is restricted to a single User at any one time. Concurrent use by two or more Users is prohibited.

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Customer is prohibited from installing the Licensed Software and the Single Physical Machine Softkey License on a Virtual Machine and prohibited from transferring the License from a Physical Machine to a Virtual Machine.

Customer shall not copy the Licensed Software, in whole or in part, or the License without the prior written authorization of Elixir.

b. The following license grant applies to a Single Virtual Machine License:

Subject to Elixir's receipt of all applicable Initial License Fees and Annual License Fees owed by Customer and subject to Customer complying with the terms and conditions contained in this Agreement, Elixir grants to Customer a non-transferable, non-exclusive one year Single Virtual Machine License to use the Licensed Software on a single Virtual Machine active at any time and controlled by Customer. The Single Virtual Machine License specifically enables operation of the Licensed Software on a Virtual Machine. Each Single Virtual Machine License will be registered to a specific Virtual Machine and can only be used on that Virtual Machine.

Customer must first contact Elixir for authorization and specific instructions before Customer re-names the Virtual Machine, registers the Virtual Machine to another domain or de-activates the current Licensed Software.

Use of the Licensed Software is restricted to a single User at any one time.

Customer may install the Licensed Software and a Single Virtual Machine License on a Virtual Machine that uses remote access services to allow Users to log in and run applications resident on that machine. Use of the Licensed Software is restricted to a single User at any one time. Concurrent use by two or more Users is prohibited.

Customer shall not copy the Licensed Software or the Virtual Machine on which the Licensed Software is installed, in whole or in part, without the written authorization of Elixir. Customer may make a backup copy ("snapshot") of the Virtual Machine for recovery purposes only. Simultaneous use of the source Virtual Machine and the backup copy is prohibited.

c. The following license grant applies to a Concurrent User License:

Subject to Elixir's receipt of all applicable Initial License Fees and Annual License Fees owed by Customer and subject to Customer complying with the terms and conditions contained in this Agreement, Elixir grants to Customer a non-transferable, non-exclusive one year Concurrent User License to install the License Server on a single License Server Host. The Licensed Software may be installed on any number of Physical or Virtual Machines without limit. The numbers of Users activating concurrent sessions of the Licensed Software cannot exceed the total number of Licenses granted with the Concurrent User License.

Customer must first contact Elixir for authorization and specific instructions before Customer re-names the License Server Host, registers the License Server Host to another domain, de-activates the current License Server and/or transfers the License Server to another License Server Host.

Customer shall not copy the License Server, Licensed Software or the Virtual Machine on which the License Server or Licensed Software is installed, in whole or in part, without the written authorization of Elixir. Customer may make a backup copy ("snapshot") of a Virtual Machine for recovery purposes only. Simultaneous use of the source Virtual Machine and the backup copy is prohibited.

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3. ASSIGNMENT

Neither party shall assign this Agreement or its rights hereunder without the prior written consent of the other party.

4. UNAUTHORIZED USE AND CUSTOMER COMPLIANCE

Customer shall ensure that persons employed by Customer or under Customer's direction and control (including Customer's subcontractors and consultants) comply with all of the terms and conditions of this Agreement. Customer shall not knowingly permit anyone to use any portion of the Licensed Software for the purpose of deriving its source code. Customer shall not modify, reverse engineer, disassemble, or decompile the Licensed Software, or any portion thereof. In the event the Customer becomes aware that the Licensed Software is being used by such persons in a manner unauthorized by this Agreement, Customer shall immediately have such unauthorized use of the Licensed Software immediately cease. Customer shall immediately notify Elixir in writing of the unauthorized use of the Licensed Software.

Any use or utilization of the Licensed Software in violation of this Agreement shall be a material breach of this Agreement and shall entitle Elixir to all the rights deriving from such a breach, without limitation. Such rights shall also include Elixir's right to obtain an immediate injunction enjoining any such unauthorized use and charge Customer additional Initial License Fees or Annual License Fees.

The Licensed Software is licensed for use by only the Customer and its Affiliates. The Customer is prohibited from providing access to the License Software to any person or entity that is not an Affiliate such as a subcontractor, consultant or service provider.

5. PROPRIETARY RIGHTS AND PROTECTION

All ownership rights, title and interest in and to the Licensed Software, including all applicable copyrights, trademarks, trade secrets, patents and other proprietary and intellectual property rights therein shall at all times remain with Elixir. The Licensed Software is protected by all applicable copyrights, trademarks, trade secrets, patents and other proprietary and intellectual rights of Elixir. Customer shall respect and not remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Licensed Software and to reproduce and include same on each copy of the Licensed Software. Customer shall secure and protect the Licensed Software consistent with Elixir's proprietary rights.

6. TERM OF LICENSE AGREEMENT AND RENEWAL OF LICENSE AGREEMENT

The initial term of this Agreement shall be twelve (12) months commencing on the first full month following the Effective Date of this Agreement. Customer may renew at the then current Annual License Fee in effect at the time of renewal, for up to four (4) additional one year terms upon written notice of renewal to Elixir at least thirty (30) days prior to the end of an annual term. This License including Software Support will be terminated by Elixir if Customer does not pay the Initial License Fee and Annual License Fee in a timely manner.

7. INITIAL LICENSE FEES AND ANNUAL LICENSE FEES

a. FEES

Customer shall pay to Elixir the Initial License Fees as outlined below for the first year after the Licensed Software is delivered to Customer. Customer shall pay to Elixir the Annual License Fees as outlined below prior to the expiration of the Licensed Software.

This License and Software Support will continue so long as the Customer pays the Initial License Fees and Annual License Fees in full pursuant to clause 7 b. PAYMENT TERMS of this Agreement.

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b. PAYMENT TERMS

Elixir will issue an invoice for the Initial License Fees on the date of delivery of the Licensed Software. For every year after the first year of the License, Elixir will issue an invoice for Annual License Fees prior to expiration of the Licensed Software. Customer's payment shall be due within thirty (30) days from the date of receipt of all invoices.

Elixir shall charge interest at the rate of one and one half percent (1 1/2 %) per month, eighteen percent (18%) per annum, or at the maximum rate allowed by law, whichever is lower, for all payments not received within forty-five (45) days after Customer's receipt of the invoice. Customer shall also pay all of Elixir's costs incurred (including attorney fees) with the collection of all overdue accounts.

8. SOFTWARE SUPPORT

- a. Software Support for Licensed Software shall be included in the Initial License Fees for the first year after the shipment of the Licensed Software and in the Annual License Fees every year after the first anniversary of the shipment of the Licensed Software that this License is in effect. Elixir shall discontinue Software Support and this License if Customer fails to pay the Initial License Fees or Annual License Fees.
- b. Elixir's obligations to provide Software Support and the warranty set forth in section 9 of this Agreement are contingent on Customer's use of the of the Licensed Software in accordance with this Agreement and in accordance with any instructions provided with the Licensed Software contained with the Licensed Software documentation. These instructions may be amended, supplemented, or modified by Elixir from time to time. In addition, Elixir shall have no Software Support or warranty obligations with respect to any failure or problems of the Licensed Software that are the result of accident, abuse, misapplication, modification, or change in environment. Elixir has no obligation to remedy coding errors if Customer has modified the Licensed Software.
- c. Elixir reserves the right to charge Customer a separate Initial License Fee and Annual License Fee for a New Release.

9. WARRANTIES AND DISCLAIMERS

- a. Elixir warrants the physical media to be free from material defects for a period of thirty (30) days from the date of delivery to Customer. Elixir shall replace the physical media, on which the Licensed Software is resident, or documentation upon receipt of written notification of material defect. If there is a material defect in the software protection device (Hardkey), Elixir requires return of the defective device prior to shipment of a replacement device.
- b. Elixir warrants that for a period of ninety (90) days from the date of delivery to Customer of the Licensed Software, the Licensed Software shall be free from material coding errors. The Customer must notify Elixir in writing of a material coding error within the ninety (90) day warranty period. Elixir, at its option, may either provide Customer with Licensed Software which is free from the material coding error or a work around which avoids the material coding error, or accept an alternate Elixir product in exchange for the Licensed Software. Elixir shall provide the replacement Licensed Software, work around or exchange for the Licensed Software within a reasonable time after receiving the notice of a material coding error from Customer. In addition to the foregoing, no portion of the Licensed Software shall contain at the time of delivery, any "back door", "time bomb", "Trojan horse", "worm", "drop dead device", "virus", or other computer software routines or hardware components designed to: (i) permit unauthorized access to or use of

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the Licensed Software or computer systems on which the Licensed Software is loaded, (ii) damage, or erase Licensed Software or data, or (iii) perform any other similar actions that would preclude full use of Licensed Software by Customer, except that a late payment message or warning that the Licensed Software will expire in a number of days depending on the current date and expiration date does appear on the screen prior to the due date and the Licensed Software will shut off if the Customer has not paid the Annual License Fees in a timely manner.

- c. **THE EXPRESS WARRANTIES SET FORTH ABOVE ARE THE ONLY EXPRESS WARRANTIES. ELIXIR DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ELIXIR DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS MADE BY PERSONS OTHER THAN ELIXIR INCLUDING, BUT NOT LIMITED TO, DISTRIBUTORS OF ANY LICENSED SOFTWARE.**

10. LIMITATION OF LIABILITY

IN NO EVENT WILL ELIXIR OR ITS SUPPLIERS BE LIABLE TO THE CUSTOMER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR SPECIAL DAMAGES, INCLUDING ANY LOST PROFITS OR LOST SAVINGS CONNECTED WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREIN, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT ELIXIR HAS BEEN INFORMED OF, OR OTHERWISE MIGHT HAVE ANTICIPATED, THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO ELIXIR, PURSUANT TO THIS AGREEMENT, FOR THE TWELVE (12) MONTHS PRECEDING THE MONTH IN WHICH THE EVENT OCCURRED OR DISPUTE AROSE GIVING RISE TO THE CLAIM FOR DAMAGES.

11. CONFIDENTIALITY AND RELEASE OF INFORMATION

a. CONFIDENTIALITY

Both parties to this Agreement agree that except as required by law, or as necessary to comply with law, they shall not disclose, privately or publicly, any of the terms or provisions of this Agreement to anyone other than their attorneys, accountants, and members their respective companies who have a need to know and who each shall likewise maintain such information in confidence.

b. RELEASE OF INFORMATION

Neither party shall, without securing the prior written consent of the other party, divulge the terms of this Agreement to any third party other than as allowed herein or publicly announce the existence of this Agreement, or advertise or release any publicity in regard thereto. This provision shall survive expiration, cancellation or termination of this Agreement.

12. AUDIT AND REQUEST FOR INFORMATION

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Elixir may during the term of this Agreement on reasonable notice, have access to Customer's premises for the limited purpose of conducting an audit to determine and verify that Customer is in compliance with this Agreement including Customer's usage of the Licensed Software. Customer shall grant such access and reasonably cooperate with Elixir in the audit. The audit shall be reasonably restricted in scope, manner and duration to that necessary to achieve its purpose and not disrupt Customer's operations. In addition, Customer will cooperate with Elixir's request for information and documentation if Elixir chooses to conduct the audit without accessing Customer's premises. Customer shall be liable to Elixir for promptly remedying any underpayments revealed during the audit, including any payments as a result of unauthorized use of the Licensed Software. Elixir employees and agents shall, while on Customer premises, comply with all rules and regulations of the premises, including security requirements.

13. INDEMNIFICATION

Elixir agrees that if notified promptly in writing and given sole control of the defense and all related settlement negotiations it shall defend and indemnify Customer against, and hold Customer harmless from any claim, to the extent such claim arises from or is based upon an allegation that the Licensed Software infringes a third party's patent, trade secret, copyright or other intellectual property right. Elixir shall have no liability and shall not indemnify, defend and hold Customer harmless from any claim to the extent that the alleged infringement in the Licensed Software is caused by any modifications or combinations with non-Elixir products, services, equipment or materials unauthorized by Elixir. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against Customer, or Customer receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, Customer will notify Elixir promptly of such lawsuit, claim or election. However, Customer's failure to provide or delay in providing such notice will relieve Elixir of its obligations only if and to the extent that such delay or failure prejudices Elixir's ability to defend such lawsuit or claim. Customer will give Elixir sole control of the defense (with counsel reasonably acceptable to Customer) and settlement of such claim; provided that Elixir may not settle the claim or suit absent the written consent of Customer unless such settlement (a) includes a release of all claims pending against Customer, (b) contains no admission of liability or wrongdoing by Customer, and (c) imposes no obligations upon Customer other than an obligation to stop using the Licensed Software or Software Support. If, in Elixir's opinion, the Licensed Software or Software Support becomes, or is likely to become, the subject of a claim of infringement of Intellectual Property Rights, Elixir may, at its option: (i) procure for Customer the right to continue using the Licensed Software or Software Support; or (ii) replace or modify the Licensed Software or Software Support to be non-infringing, without incurring a material diminution in performance or function. Without in anyway affecting the indemnity herein provided and in addition thereto, Contractor shall secure and maintain throughout the Agreement term the types of insurance with limits as shown and under the requirements set forth in Attachment A, as attached hereto and incorporated herein.

14. TERMINATION OF AGREEMENT

This Agreement shall terminate immediately: (i) if either party breaches a material provision of this Agreement and fails to cure the breach within thirty (30) days of the non-breaching party's notice of said breach; (ii) upon notice in the event of a material breach which by its nature cannot be cured; or (iii) the Agreement is terminated pursuant to section 6 of this Agreement.

In the event this Agreement is terminated pursuant to section 6 or 14 of this Agreement, Customer shall return all Licensed Software and Hardkeys to Elixir immediately upon the termination of this Agreement. In addition, Elixir shall discontinue all Software Support immediately upon the termination of this Agreement. Customer shall continue to be responsible for the payment of the Initial License Fees and Annual License Fees until Customer returns all Licensed Software and Hardkeys to Elixir.

ELIXIR TECHNOLOGIES CORPORATION END USER LICENSE AGREEMENT

15. MISCELLANEOUS

- a.** No delay or failure of Elixir to exercise any right or remedy shall operate as a waiver of such right or remedy.
- b.** This Agreement shall be governed and interpreted, in accordance with the laws of the State of California, except U.S. federal laws which govern intellectual property rights. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this Agreement, state courts of San Bernardino County, California shall have exclusive jurisdiction and venue over any dispute arising out of this Agreement. Customer hereby consents to the jurisdiction of such courts. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. .
- c.** This Agreement is the entire agreement between Customer and Elixir pertaining to the Licensed Software and supersedes all proposals or prior and contemporaneous agreements or understandings between Customer and Elixir, or Elixir's representatives, regarding the Licensed Software. Modification of this Agreement shall be invalid unless in writing and signed by the duly authorized representatives of Elixir and Customer.
- d.** The provisions of this Agreement that, by their nature and content, must survive the completion, rescission, termination or expiration of this Agreement in order to achieve the fundamental purposes of this Agreement, shall so survive and continue to bind Elixir and Customer to this Agreement.
- e.** The section headings used in this Agreement are intended for convenience only and shall not be considered substantive parts of this Agreement.
- f.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the other provisions of this Agreement will remain in full force and effect.
- g.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

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END USER LICENSE AGREEMENT**

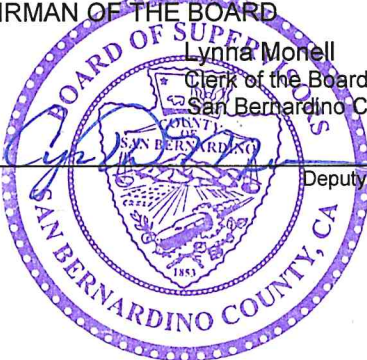
IN WITNESS WHEREOF, the San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY



►
Dawn Rowe, Chair, Board of Supervisors

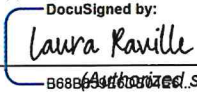
Dated: MAR 28 2023
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD


Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By 
Deputy

ELIXIR TECHNOLOGIES CORPORATION

(Print or type name of corporation, company, contractor, etc.)

DocuSigned by:
By 
(Authorized signature - sign in blue ink)

Name Laura Raville
(Print or type name of person signing contract)

Title Chief Financial Officer
(Print or Type)

Dated: March 21, 2023

Address 1314 East Ojai Avenue
Ojai, CA 93023

FOR COUNTY USE ONLY

Approved as to Legal Form

County Counsel
Date

Reviewed for Contract Compliance

Date

Reviewed/Approved by Department

Date

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ATTACHMENT A INSURANCE REQUIREMENTS

Elixir agrees to provide insurance set forth in accordance with the requirements herein. If Elixir uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Elixir agrees to amend, supplement or endorse the existing coverage to do so.

1. Without in anyway affecting the indemnity herein provided and in addition thereto, Elixir shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:
 - a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Elixir and all risks to such persons under this Agreement. If Elixir has no employees, it may certify or warrant to Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by Customer's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
 - b. Commercial/General Liability Insurance – Elixir shall carry General Liability Insurance covering all operations performed by or on behalf of Elixir providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - i. Premises operations and mobile equipment.
 - ii. Products and completed operations.
 - iii. Broad form property damage (including completed operations).
 - iv. Explosion, collapse and underground hazards.
 - v. Personal injury.
 - vi. Contractual liability.
 - vii. \$2,000,000 general aggregate limit.
 - c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If Elixir is transporting one or more non-employee passengers in performance of Agreement services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If Elixir owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
 - d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
 - e. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

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Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after Agreement completion.

- f. Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved Customer entities and cover breach response cost as well as regulatory fines and penalties.
2. **Additional Insured.** All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming Customer and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for Customer to vicarious liability but shall allow coverage for Customer to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
- 3.
4. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Customer.
5. **Severability of Interests.** Elixir agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Elixir and Customer or between Customer and any other insured or additional insured under the policy.
6. **Proof of Coverage.** Elixir shall furnish Certificates of Insurance to Customer Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, , and Elixir shall maintain such insurance from the time Elixir commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, Elixir shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
7. **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A- VII”.
8. **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, Customer has the right but not the obligation or duty to cancel the Agreement pursuant to section 14 of this Agreement.
9. **Insurance Review.** Insurance requirements are subject to periodic review by Customer. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or

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suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of Customer. Any failure, actual or alleged, on the part of Customer to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of Customer.