

# ATTACHMENT A

## Clearwater FY 22-25 BC Amended and Restated Agreement

**AMENDED AND RESTATED AGREEMENT FOR SERVICES OF  
INDEPENDENT CONTRACTOR**

**THIS AMENDED and RESTATED AGREEMENT** for Services of Independent Contractor, referenced as **BC 22-228**, (hereafter “Amended and Restated Agreement”) is made by and between the **County of Santa Barbara** (County or Department) and **Clearwater Security & Compliance LLC** (Contractor) for the continued provision of services specified herein.

**WHEREAS**, Contractor represents that it is specially trained, skilled, experienced, and competent to perform the special services required by County, and County desires to continue to retain the services of Contractor pursuant to the terms, covenants, and conditions herein set forth;

**WHEREAS**, on February 28, 2023, the County Board of Supervisors authorized the County to enter into an Agreement for Services of Independent Contractor, referred to as BC 22-228, for the provision of an annual Software Service Subscription of Integrated Risk Management, a cyber risk management system, for a total contract maximum amount not to exceed **\$62,250**, inclusive of \$21,750, per Fiscal Year for the period of July 1, 2022, through June 30, 2025 (Agreement); and

**WHEREAS**, on March 22, 2023, the Contractor changed its legal name from Clearwater Compliance LLC to Clearwater Security & Compliance LLC.

**WHEREAS**, this Restated Agreement revises the Agreement to reflect Contractor’s name change, adds a new Statement of Work for a Risk Assessment Program, updates the Contract Maximum Value amount, updates the Exhibit B-1 (Schedule of Fees), adds a new Exhibit E (HIPAA Business Associate Agreement), and adds \$41,250 for FY 23-24 and \$82,500 for FY 24-25 in Mental Health Services funding, for a new total maximum contract amount not to exceed **\$189,000**, for the period of July 1, 2022, through June 30, 2025, subject to annual Board appropriation of budgeted funds and otherwise incorporates the terms and conditions set forth in the original Agreement approved by the Board on June 6, 2023, except as modified in this Amended and Restated Agreement; and

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

- I. Delete the Agreement in its entirety and replace it with the following Amended and Restated Agreement:**

**AMENDED AND RESTATED  
AGREEMENT FOR SERVICES OF  
INDEPENDENT CONTRACTOR**

**BETWEEN**

**COUNTY OF SANTA BARBARA  
DEPARTMENT OF BEHAVIORAL WELLNESS**

**AND**

**CLEARWATER SECURITY & COMPLIANCE LLC**

**FOR**

**ALCOHOL AND DRUG PROGRAM  
AND  
MENTAL HEALTH SERVICES**

**INFORMATION TECHNOLOGY  
SERVICES**

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**STANDARD TERMS**  
**AND CONDITIONS**

**AMENDED AND RESTATED AGREEMENT**  
**FOR SERVICES OF INDEPENDENT CONTRACTOR**  
**(Specific to this Agreement)**

**THIS AMENDED AND RESTATED AGREEMENT** is made by and between the County of Santa Barbara (hereafter County or Department), a political subdivision of the State of California, and **Clearwater Security & Compliance LLC** (hereafter Contractor) with an address at 40 Burton Hills Boulevard, Nashville, Tennessee 37215 wherein Contractor agrees to provide, and County agrees to accept, the services specified herein (hereafter “ Agreement”).

**WHEREAS**, Contractor represents that it is specially trained, skilled, experienced, and competent to perform the special services required by County, and County desires to retain the services of Contractor pursuant to the terms, covenants, and conditions herein set forth;

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

**1. DESIGNATED REPRESENTATIVE.**

Director at phone number (805) 681-5220 is the representative of County and will administer this Agreement for and on behalf of County. Marie Lange at phone number (615) 545-1827 is the authorized representative for Contractor. Changes in designated representatives shall be made only after advance written notice to the other party.

**2. NOTICES.**

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To County:                    Director  
                                      County of Santa Barbara  
                                      Department of Behavioral Wellness  
                                      300 N. San Antonio Road  
                                      Santa Barbara, CA 93110  
                                      Phone: (805) 681-5220  
                                      Fax: 805-681-5262

To Contractor:            Clearwater Security & Compliance LLC  
                                      40 Burton Hills Blvd  
                                      Nashville, Tennessee 37215  
                                      Phone: (800) 704-3394  
                                      Fax: (866) 704-3394

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

**3. SCOPE OF SERVICES.**

Contractor agrees to provide services to County in accordance with each Statement of Work (“SOW”) as an EXHIBIT A(s) (the initial SOW being labeled as Exhibit A-1, and any subsequent SOWs shall be labeled Exhibit A-2, Exhibit A-3 and so forth) attached hereto and incorporated herein by reference.

**4. TERM.**

Contractor shall commence performance **July 1, 2022**, and end performance upon completion, but no later than **June 30, 2025**, unless otherwise directed by County or unless earlier terminated.

**5. COMPENSATION OF CONTRACTOR.**

In full consideration for Contractor’s services, Contractor shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B(s) attached hereto and incorporated herein by reference.

**6. INDEPENDENT CONTRACTOR.**

It is mutually understood and agreed that Contractor (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent Contractor as to County and not as an officer, agent, servant, employee, joint venturer, partner, or associate of County. Furthermore, County shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its work and function. However, County shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions hereof. Contractor understands and acknowledges that it shall not be entitled to any of the benefits of a County employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation, and protection of tenure. Contractor shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Contractor shall be solely responsible and save County harmless from all matters relating to payment of Contractor’s employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to the County or to this Agreement.

**7. STANDARD OF PERFORMANCE.**

Contractor represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Contractor shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which Contractor is engaged. All products of whatsoever nature, which Contractor delivers to County pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in Contractor's profession. Contractor shall correct or revise any errors or omissions, at County's request without additional compensation. Permits and/or licenses shall be obtained and maintained by Contractor without additional compensation.

**8. DEBARMENT AND SUSPENSION.**

CONTRACTOR certifies to COUNTY that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

**9. TAXES.**

Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. County shall not be responsible for paying any taxes on Contractor's behalf, and should County be required to do so by state, federal, or local taxing agencies, Contractor agrees to promptly reimburse County for

the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

**10. CONFLICT OF INTEREST.**

Contractor covenants that Contractor presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Contractor. Contractor must promptly disclose to the County, in writing, any potential conflict of interest.

**11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.**

All of Contractor's intellectual property used or generated solely by Contractor during the provision of the services and creation of any deliverables shall remain the sole property of Contractor. Contractor hereby grants to County a royalty-free (except for the payments described elsewhere herein), unlimited, perpetual, irrevocable, worldwide, non-exclusive license to use, create derivative works from, perform, display, but not to sell, transfer or sublicense, such intellectual property insofar as necessary to enable County to realize intended benefits of the services provided by Contractor hereunder (and any deliverables provided in connection therewith); provided, however, that this license does not apply to (i) any trademark, service mark, trade name, or corporate name owned or used by Contractor or any of its affiliates identified to County or (ii) any Subscription issued to or software licensed to County by Contractor under this Agreement or any separate agreement.

**12. NO PUBLICITY OR ENDORSEMENT.**

Contractor shall not use County's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Contractor shall not use County's name or logo in any manner that would give the appearance that the County is endorsing Contractor. Contractor shall not in any way contract on behalf of or in the name of County. Contractor shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the County or its projects, without obtaining the prior written approval of County.

**13. COUNTY PROPERTY AND INFORMATION.**

All of County's property, documents, and information provided for Contractor's use in connection with the services shall remain County's property, and Contractor shall return any such items whenever requested by County and whenever required according to the Termination section of this Agreement. Contractor may use such items only in connection with providing the services. Contractor shall not disseminate any County property, documents, or information without County's prior written consent.

**14. RECORDS, AUDIT, AND REVIEW.**

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.



If federal, state or COUNTY audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

**15. INDEMNIFICATION AND INSURANCE.**

Contractor agrees to the indemnification and insurance provisions as set forth in EXHIBIT C – Standard Indemnification and Insurance Provisions attached hereto and incorporated herein by reference.

**16. NONDISCRIMINATION.**

County hereby notifies Contractor that County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and Contractor agrees to comply with said ordinance.

**17. NONEXCLUSIVE AGREEMENT.**

Contractor understands that this is not an exclusive Agreement and that County shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Contractor as the County desires.

**18. NON-ASSIGNMENT.**

Contractor shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of County and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

**19. TERMINATION.**

**A. By County.** County may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, whether for County's convenience, for nonappropriation of funds, or because of the failure of Contractor to fulfill the obligations herein.

1. **For Convenience.** County may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, Contractor shall, as directed by County, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on County from such winding down and cessation of services.

2. **For Nonappropriation of Funds.**

i. The parties acknowledge and agree that this Agreement is dependent upon the availability of County, State, and/or federal funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the County, State and/or federal governments for the Agreement, or is not allocated or allotted to County by the County, State and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of County to make payments after the effective date of such non-allocation or non-funding, as provided in the notice, will cease and terminate.

- ii. As permitted by applicable State and Federal laws regarding funding sources, if funding to make payments in accordance with the provisions of this Agreement is delayed or is reduced from the County, State, and/or federal governments for the Agreement, or is not allocated or allotted in full to County by the County, State, and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of County to make payments will be delayed or be reduced accordingly or County shall have the right to terminate the Agreement. If such funding is reduced, County in its sole discretion shall determine which aspects of the Agreement shall proceed and which Services shall be performed. In these situations, County will pay Contractor for Services and Deliverables and certain of its costs. Any obligation to pay by County will not extend beyond the end of County's then-current funding period.
  - iii. Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, County in the event that the necessary funding to pay under the terms of this Agreement is not available, not allocated, not allotted, delayed or reduced.
3. **For Cause.** Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County may, at County's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, Contractor shall immediately discontinue all services affected (unless the notice directs otherwise) and notify County as to the status of its performance. The date of termination shall be the date the notice is received by Contractor, unless the notice directs otherwise.
- B. By Contractor.** Should County fail to pay Contractor all or any part of the payment set forth in EXHIBIT B(s), Contractor may, at Contractor's option terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.
- C. Upon Termination.** Contractor shall deliver to County all deliverables as may have been accumulated or produced by Contractor in performing this Agreement, whether completed or in process, except such items as County may, by written permission, permit Contractor to retain. Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to County such financial information as in the judgment of County is necessary to determine the reasonable value of the services rendered by Contractor. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.
- D.** Upon expiration of any Subscription or termination of any Subscription by COUNTY, or termination of the Subscription or discontinuation of the Software by CONTRACTOR for any reason, COUNTY's access to the Software will be eliminated as of midnight on the date such termination is effective (the "Termination Date").
- E.** Upon any termination for cause by COUNTY, CONTRACTOR shall refund COUNTY any prepaid fees prorated for the remainder of the applicable billing period remaining upon the Termination Date.
- F.** It will be the responsibility of COUNTY's Account Owner to export the Data and export or print all Output from the Software prior to the Termination Date; provided, however, that if requested, CONTRACTOR will assist COUNTY with such export prior to the

Termination Date. CONTRACTOR shall retain all Data and Output for a period of ninety (90) days following the Termination Date and upon COUNTY's request in writing, CONTRACTOR will grant temporary access to the terminated Subscription during such period so as to enable COUNTY to obtain a good export of its Data and Output. Promptly thereafter, CONTRACTOR shall delete the Data and Output.

**20. SUSPENSION FOR CONVENIENCE.**

The Director of the Department of Behavioral Wellness or designee may, without cause, order Contractor in writing to suspend, delay, or interrupt the services under this Agreement in whole or in part for up to 120 days. County shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this Agreement.

**21. SECTION HEADINGS.**

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

**22. SEVERABILITY.**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**23. REMEDIES NOT EXCLUSIVE.**

No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

**24. TIME IS OF THE ESSENCE.**

Time is of the essence in this Agreement and each covenant and term is a condition herein.

**25. NO WAIVER OF DEFAULT.**

No delay or omission of County to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to County shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of County.

**26. ENTIRE AGREEMENT AND AMENDMENT.**

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. No terms or conditions disclosed on CONTRACTOR's website(s) relating to the Software that vary those set out in this Agreement are applicable. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel. Requests for changes to the terms and conditions of this agreement after April 1 of the Fiscal Year for which the change would be applicable shall not be considered. All requests for changes shall be in writing. Changes shall be made by an amendment pursuant to this section. Any amendments or

modifications that do not materially change the terms of this Agreement (such as changes to the Designated Representative or Contractor's address for purposes of Notice) may be approved by the Director of the Department of Behavioral Wellness or designee. Except as otherwise provided in this Agreement, the Board of Supervisors of the County of Santa Barbara must approve all other amendments and modifications.

**27. SUCCESSORS AND ASSIGNS.**

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**28. COMPLIANCE WITH LAW.**

CONTRACTOR shall, at its sole cost and expense, comply with all County, State and Federal ordinances; statutes; regulations; and orders including, but not limited to, executive orders now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY.

**29. CALIFORNIA LAW AND JURISDICTION.**

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

**30. EXECUTION OF COUNTERPARTS.**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

**31. AUTHORITY.**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

**32. SURVIVAL.**

All provisions of this Agreement, which by their nature are intended to survive the termination or expiration of this Agreement, shall survive such termination or expiration.

**33. PRECEDENCE.**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

**34. SOFTWARE SUBSCRIPTIONS.**

If set forth on any Statement of Work as part of the services purchased by COUNTY, CONTRACTOR shall convey to COUNTY certain non-transferrable subscription(s) to CONTRACTOR's proprietary software (the "Subscription(s)"). Details of the software being provided under such Subscription(s), the quantity of entities allotted under such Subscription(s), the terms relating to the payment of fees for the Subscription(s) and the length of period for which we shall have the right of access to the Subscription(s) shall also be set out in any Statement of Work or in Exhibits B and B-1. All Subscriptions conveyed under this Agreement shall be conveyed in accordance with the terms of the Software Subscription Agreement attached to this Contract as Attachment 1 and deemed incorporated herein. CONTRACTOR, at CONTRACTOR'S own expense, shall defend, indemnify, and hold COUNTY harmless against any claim that any items provided by CONTRACTOR hereunder infringe upon intellectual or other proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees) including reasonable attorneys' fees) that may be incurred by COUNTY in connection with any such claims.

**35. NON-SOLICITATION.**

The parties agree that during the term of this Agreement and for one (1) year thereafter neither party will, directly or indirectly, on its own behalf or together with, through, or on behalf of any other person, partnership, corporation, trust, association, or other entity, exclusive of the other, attempt to induce any employee, subcontractor or agent of the other to terminate their employment or agency and seek or accept employment or agency elsewhere.

**36. WARRANTIES; DISCLAIMERS.**

Both CONTRACTOR and COUNTY represent and warrant that it has the legal power to enter into this Agreement. CONTRACTOR represents and warrants that (i) it will perform the services in a professional and workmanlike manner with due care in a manner consistent with general industry standards reasonably applicable to the provision of the Services; (ii) it will perform the Services and supply the Subscription(s) in conformance with the specifications in this Contract and the applicable Statement of Work; (iii) the Services and Subscriptions shall comply with all applicable law; (iv) it owns or otherwise has sufficient rights to the Services and Subscriptions necessary or appropriate for the performance of its obligations under this Contract, the Software Subscription Agreement and each Statement of Work; and (v) the Services and Subscriptions do not infringe any intellectual property rights of any third party.

**37. FORCE MAJEURE.**

Noncompliance with any obligation under this Agreement for reasons of force majeure (such as: acts, regulations or laws of any government; war or civil commotion or destruction of production facilities or materials; fire, earthquake or storm; labor disturbances; epidemic or pandemic (excluding the present COVID-19 pandemic); failure of public utilities or common carriers; and any other causes beyond the reasonable control of the party affected) shall not constitute a breach of this Agreement.

**38. PROTECTED HEALTH INFORMATION.**

While providing the Services, it is not necessary for CONTRACTOR to receive, create, maintain or transmit personally identifiable data, including without limitation, Protected Health Information ("PHI"), as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), on behalf of COUNTY. COUNTY agrees not to: (i) permit CONTRACTOR to access, receive, create, maintain or transmit such personally identifiable data; or, (ii) to send CONTRACTOR any personally identifiable data related to the Services.

**39. LEGAL DISCLAIMER.**

COUNTY acknowledges and agrees that the Services provided by CONTRACTOR do not constitute legal advice. The information conveyed by CONTRACTOR to COUNTY may be based in part on



current federal law and subject to change based on changes in federal law or subsequent interpretative guidance. Where this information is based on federal law, it must be modified to reflect state law where that state law is more stringent than the federal law or other state law exceptions apply. Information and recommendations provided by CONTRACTOR should not be relied upon as a substitute for competent legal advice specific to COUNTY's circumstances. COUNTY SHOULD EVALUATE ALL INFORMATION, OPINIONS AND RECOMMENDATIONS PROVIDED BY CLEARWATER IN CONSULTATION WITH COUNTY'S LEGAL OR OTHER ADVISORS, AS APPROPRIATE.

THIS SECTION LEFT BLANK INTENTIONALLY

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE**

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **Clearwater Security & Compliance LLC**.

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective on April 23, 2024.

**COUNTY OF SANTA BARBARA:**

By: \_\_\_\_\_  
STEVE LAVAGNINO, CHAIR  
BOARD OF SUPERVISORS

Date: \_\_\_\_\_

**ATTEST:**

MONA MIYASATO  
COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD

By: \_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

**CONTRACTOR:**

**CLEARWATER SECURITY &  
COMPLIANCE LLC**

DocuSigned by:  
*Baxter Lee*  
601F845DF79B4FE...

By: \_\_\_\_\_  
Authorized Representative

Name: Baxter Lee

Title: CFO

Date: 4/9/2024

**APPROVED AS TO FORM:**

RACHEL VAN MULLEM  
COUNTY COUNSEL

DocuSigned by:  
*Bo Bae*  
CAFC05445C0F408...  
By: \_\_\_\_\_  
Deputy County Counsel

**APPROVED AS TO ACCOUNTING FORM:**

BETSY M. SCHAFFER, CPA  
AUDITOR-CONTROLLER

DocuSigned by:  
*Betsy Schaffer*  
6BAAEA15901943F...  
By: \_\_\_\_\_  
Deputy

**RECOMMENDED FOR APPROVAL:**

ANTONETTE NAVARRO, LMFT,  
DIRECTOR  
DEPARTMENT OF BEHAVIORAL  
WELLNESS

DocuSigned by:  
*Toni Navarro*  
2095C5A16FE1474...  
By: \_\_\_\_\_  
Director

**APPROVED AS TO FORM:**

GREG MILLIGAN, ARM  
RISK MANAGER

DocuSigned by:  
*Greg Milligan*  
53A8AAB798BA4D7...  
By: \_\_\_\_\_  
Risk Manager

**THIS AMENDED AND RESTATED AGREEMENT INCLUDES THE FOLLOWING EXHIBITS:**

**EXHIBIT A – STATEMENT OF WORK**

EXHIBIT A-1 Statement of Work

ATTACHMENT 1 Software Subscription Terms and Conditions

EXHIBIT A-2 Statement of Work Risk Assessment Program

**EXHIBIT B – FINANCIAL PROVISIONS**

EXHIBIT B Payment Arrangements

EXHIBIT B-1 Schedule of Fees

**EXHIBIT C – STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS**

**EXHIBIT E – HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)**



# **EXHIBIT A**

# **STATEMENT OF WORK**

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**EXHIBIT A-1**  
**STATEMENT OF WORK**

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- I. PERFORMANCE.** Clearwater Security & Compliance LLC (Contractor) shall provide an annual Software Subscription of Integrated Risk Management (IRM) Analysis for Risk Analysis & Risk Response and IRM Privacy to County through which the County of Santa Barbara, Department of Behavioral Wellness staff may access online.
- II. COMPONENTS.** The Software Subscription Attachment I provided by Contractor will include the following:
- A. IRM Analysis for Risk Analysis & Risk Response which:**
1. Provides access to Clearwater's enterprise cyber risk management system (ECRMS); and
  2. Accesses, manages, monitors, and reports progress on management of all risks to the organization's information systems.
  3. Analyze, prioritize, respond to, manage, and document security risks to an organization's information systems. Meet Office of Civil Rights' (OCR) expectations for accurate and thorough Risk Analysis and Risk Management as mandated by 45 CFR § 164.308(a)(1)(ii)(A) and (B)
- B. IRM Privacy which:**
1. Assess and document an organization's compliance with the requirements of the HIPAA Privacy and Breach Notification Rules, identify gaps, and manage a plan to remediate gaps.
  2. Identifies gaps in its compliance program; and
  3. Manages a plan to remediate gaps.

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**ATTACHMENT 1**  
**SOFTWARE SUBSCRIPTION TERMS AND CONDITIONS**

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All proprietary software developed and owned by Clearwater Security & Compliance LLC (hereafter “CONTRACTOR”) and which software is subscribed to by COUNTY under purchase terms set out in this Agreement shall be provided to COUNTY under the terms and conditions set out below.

**Section 1. Software.**

Such software shall be collectively referred to herein as the “Software” and these Software Subscription Terms and Conditions (“SSA”) describe CONTRACTOR’s and COUNTY’s rights and responsibilities with respect to the Software.

- A. Subscriptions.** CONTRACTOR grants COUNTY the limited, nontransferable (except as otherwise provided herein), non-exclusive, non-sublicensable, revocable, royalty-free (except for the payment terms described in this Agreement) right to access and use the Software (hereafter, the “Subscription(s)”), solely for and on behalf of its own internal business operations, for the specified edition, which includes (i) the number of logical assessment and/or reporting entities (“Entity(ies)”) allotted to COUNTY; and (ii) certain features and functions of the Software included in the Subscription(s) based on COUNTY’s payment of the Subscription Fees, as defined herein, and with respect to each Subscription, for the initial length of period (“Subscription Term”) as also set out in this Agreement. Each Subscription granted hereunder is subject to the restrictions set out in this SSA. For purposes of this SSA, the verb “use” shall mean to login, access, interact with, enter data into or otherwise benefit from the Software.
- B. Users and Account Owner(s).** COUNTY will select and authorize at least one (1) initial primary account owner of the Software (“Account Owner(s)”) on its behalf to serve on behalf of COUNTY as (i) the subject matter expert for the Software; (ii) the administrator of the Software, its settings and its users and their permissions; (iii) the trainer of other users on the functionality and use of Software; and (iv) the first point of contact to triage questions, potential issues, and/or to generally provide feedback and input to CONTRACTOR, in relation to the use of the Software by COUNTY. COUNTY will provide the name and email address for such initial Account Owner(s) and will request in writing or email that CONTRACTOR set up login credentials for such Account Owner(s). CONTRACTOR will provide and communicate such login credentials directly to the Account Owner(s) on such date COUNTY requires access to the Software. COUNTY will require all Account Owner(s) to engage in introductory training session(s) made reasonably available by CONTRACTOR as described in Section 5 below, with the objective for such Account Owner(s) to develop proficiency in use of the Software and all administrative functions. Additionally, COUNTY’s Account Owner(s) may set up login credentials to access the Software for an unlimited number of individual employees and/or contractors COUNTY may authorize from time to time, including additional Account Owner(s). The Account Owner(s) and other individuals authorized by COUNTY to access the Software on its behalf will be collectively referred to as “Users.” Such Users will be considered for authorization by COUNTY (i) when an Account Owner establishes login credentials and permissions to the Software for such individuals, or (ii) if an Account Owner is temporarily unavailable, COUNTY may request CONTRACTOR to do so on its behalf by providing a written request (which may be emailed), communicating the name and email address of such individuals COUNTY authorizes and the permission parameters of such individuals. In this case, CONTRACTOR will create and maintain such User accounts based solely on COUNTY’s written instructions or actions. If an Account Owner is anticipated to be

unavailable, or has become unavailable, for more than thirty (30) consecutive days, and no additional Account Owner(s) has or have been designated and trained, COUNTY shall promptly designate a new Account Owner. CONTRACTOR shall provide training for up to one (1) new Account Owner per year at no cost to COUNTY. Training of Account Owner(s) in excess of the forgoing shall be subject to billing at then-current hourly rates.

COUNTY understands and acknowledges that Users authorized as an Account Owner may authorize and de-authorize Users and modify their access permissions. COUNTY also understands and acknowledges that Users will have access to make additions, deletions, or changes to COUNTY Data entered and maintained within the Software, based on permissions granted by an Account Owner. It is the responsibility of COUNTY to establish and maintain its procedures for authorizing and de-authorizing Account Owners and Users and maintaining access permissions of all Users. It is also COUNTY's responsibility to revoke Software access authorization and/or to add or change such access permissions for its Users by (i) implementation of such changes within the Software by an Account Owner; or (ii) if an Account Owner is temporarily unavailable, COUNTY may request CONTRACTOR to do so on its behalf by providing a written request (which may be emailed), setting out the name and email address of such Users and the action COUNTY authorizes.

Use of the Software requires that COUNTY or its Users provide professional and organizational contact information. CONTRACTOR may contact Users directly via email to inquire as to such Users' use of the Software as well as to make Users aware of Updates to the Software; best practices for use of the Software; education and news relating to HIPAA and/or information risk management; announcements of the availability of new resources; and other such information regarding the Software and its use. Upon receipt of an opt-out notice from any User that he/she is no longer interested in receiving such contact or information, CONTRACTOR shall promptly cease such contact with that User. Such User contact information will not be disclosed or otherwise shared with any third parties and will be used by CONTRACTOR solely for assisting COUNTY and Users with use of the Software and the Subscriptions.

- C. Right To Copy.** Only in the case of any of the policy and procedure Software, which is provided by CONTRACTOR in a one-time download format, COUNTY may make ONE additional copy of such Software solely for archival, emergency back-up, or disaster recovery purposes, provided that: (i) COUNTY shall only make one exact copy of the Software as originally delivered by CONTRACTOR, (ii) COUNTY shall ensure that the one copy contains all titles, trademarks, and copyright and restricted rights notices as in the original, and (iii) such copy shall be subject to the terms and conditions of this SSA. COUNTY understands that at no time will CONTRACTOR have access to or a copy of COUNTY's tailored version of such policy and procedure Software, once it has been downloaded and altered by COUNTY.

## **Section 2. Purpose and Use of Software.**

The term "Software" shall mean the CONTRACTOR software, policy, and procedure templates and/or "Software as a Service" ("SaaS") services more fully-described in this Agreement, and includes without limitation the proprietary computer software, underlying algorithms, formulae and methodology, database design, associated media, printed materials, online or other User documentation provided to COUNTY, release notes, User questions and their sequence and presentation, Data (as defined below) capture forms, and the design of the Output (as defined below) resulting from the operation of the Software on the Data. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software is not sold. The SaaS Software and Data do not reside on COUNTY's systems. COUNTY's

access to use the Software is provided solely in the form of a Subscription for which COUNTY shall pay a fee ("Subscription Fee") which shall be invoiced in the amount and frequency as more specifically described in Exhibit B and Exhibit B1 of this Agreement under which the Subscription is purchased and conveyed to COUNTY. Unless otherwise stated, CONTRACTOR's Subscription Fees as set out in this Agreement do not include any local, state, federal or foreign taxes, levies, or duties of any nature ("Taxes"). COUNTY is responsible for paying all applicable Taxes, excluding only taxes based on CONTRACTOR's business income and employees. If CONTRACTOR has the legal obligation to pay or collect Taxes for which COUNTY is responsible under this Section 2, the appropriate amount shall be invoiced to and paid by COUNTY unless COUNTY provides CONTRACTOR with a valid tax exemption certificate authorized by the appropriate taxing authority.

The Software has no requirement for creation, receipt, maintenance or transmission of, nor does it provide for the creation, receipt, maintenance or transmission of any personally identifiable information ("PII") or protected health information ("PHI"). The only information comprising the Data or Output is information concerning COUNTY's HIPAA Compliance program; its information systems used to create, receive, maintain or transmit sensitive information; and/or its information risk management program. COUNTY agrees to take reasonable steps to ensure that Authorized Users do not upload or otherwise enter any PHI or PII into the Software.

In developing the Software, CONTRACTOR has made commercially reasonable efforts to interpret and apply the provisions and requirements of the HIPAA Security Rule, the HIPAA Privacy Rule, and the HIPAA Breach Notification Rule (the "Rules") and recommended standards and best practices as set forth by the Office for Civil Rights ("OCR") under such Rules. When used as designed, the Software provides a consistent approach to the performance of certain activities required or suggested by the Rules by guiding the User through a series of questions. The Software follows a proprietary decision flow to pose such series of questions, capture the User's responses and, based on those responses, allows the Software to calculate certain proprietary compliance and/or risk management rating(s), highlight additional controls COUNTY might consider implementing and suggest tasks that COUNTY might consider completing in managing identified risks or closing compliance gaps. Although the Subscriptions to the Software shall support and promote COUNTY's compliance with the Rules, COUNTY's purchase of Subscription(s) to the Software, alone, does not assure COUNTY's compliance with the Rules.

### **Section 3. Legal Disclaimer.**

COUNTY acknowledges and agrees that the Software provided by CONTRACTOR does not constitute legal advice. The information in the Software may be based in part on current federal law and subject to change based on changes in federal law or subsequent interpretative guidance. Where this information is based on federal law, it must be modified to reflect state law where that state law is more stringent than the federal law or other state law exceptions apply. Information and recommendations provided by CONTRACTOR should not be relied upon as a substitute for competent legal advice specific to COUNTY's circumstances. CUSTOMER SHOULD EVALUATE ALL INFORMATION, OPINIONS, AND RECOMMENDATIONS PROVIDED BY CLEARWATER IN CONSULTATION WITH CUSTOMER'S LEGAL OR OTHER ADVISORS, AS APPROPRIATE.

### **Section 4. Updates to the Software.**

"Update" means a subsequent release of the Software, if any, that CONTRACTOR makes generally available to subscribers of the specified edition of the Software at no additional charge. Updates will be provided at no cost to COUNTY and CONTRACTOR will provide the Software via the Subscription(s) (including all Updates), for so long as COUNTY maintains its Subscription to the specified edition, and for so long as COUNTY is current on its payment obligations; or, in the case of policy and procedure Software, for so long as CONTRACTOR continues to actively provide and



maintain such Software. Updates shall include all (i) bug fixes, patches, and maintenance releases, (ii) updates to maintain consistency with Federal regulations, (iii) new point releases denoted by a change to the right of the first decimal point (e.g., v6.0 to 6.1), and (iv) new major version releases denoted by a change to the left of the first decimal point (e.g., v6.0 to 7.0) that are not Upgrades. Updates shall not include any release, option, future services, or any upgrade in features, functionality or performance of the Software which CONTRACTOR provides separately or offers only for an additional fee to all similarly situated customers subscribing to the relevant edition. All Updates to the Software shall be considered part of the Software and are subject to the terms and conditions of this SSA. "Upgrade" includes any release, option, future services, or any upgrade in features, functionality or performance of the Software which CONTRACTOR subscribes to all similarly situated customers separately or offers only for an additional fee.

### **Section 5. Training and Support.**

Concurrent with the initial issuance of the Subscription, CONTRACTOR will schedule and provide introductory training on the functionality of and administration of the Software ("Software Training") to the Account Owner(s) designated by COUNTY, at no charge to COUNTY. Additionally, at its sole option, CONTRACTOR will proactively contact Account Owner(s) to suggest or offer ongoing Software Training when Updates occur or in response to COUNTY inquiries about the use of the Software. Software Training may take the form of live, web-based training session(s), or (if available) pre-recorded video training, at COUNTY's option. Software Training will not include the provision training on general subjects not directly related to the functionality of and administration of the Software and the Subscriptions, such as, but not limited to, general HIPAA or state privacy or security regulations and compliance, risk analysis and risk management requirements or processes, NIST publications and requirements, and the like. Such general training may be made available to COUNTY at then current hourly rates. Additionally, throughout the term of COUNTY's Subscription, CONTRACTOR will provide technical support services to Account Owners via phone and email during regular business hours, Central Time, to address issues or questions encountered by Users regarding the administration of, function of and underlying processes associated with the Software. When communicating such questions or issues, Account Owners will make reasonable efforts to provide details of the context of issues, including, but not limited to, screen shots, report examples, descriptions of the sequence of events, details of error messages, etc. Support requests will receive an acknowledgement and status of processing such questions and issues within two business hours of receipt. CONTRACTOR will make commercially reasonable efforts to respond to questions and issues within a reasonable period. CONTRACTOR will also make commercially reasonable efforts to correct confirmed defects in the Software of which it is made aware and that are capable of being corrected, based on the severity of the defect.

### **Section 6. Ownership.**

The Software is the sole and exclusive property of CONTRACTOR. All right, title, and interest in and to the Software, any copies thereof, including but not limited to all copyrights, trademarks, and other proprietary rights, are owned by CONTRACTOR. Without limiting the generality of the foregoing, all data entered or information provided by a User (herein "User Data" or "COUNTY Data" and collectively "Data") and the resultant data calculated or generated by the Software in the form of dashboards, charts and reports (herein "Output"), including any related COUNTY copyrights, trademarks, and other proprietary rights, remain the sole and exclusive property of COUNTY. COUNTY grants CONTRACTOR a non-exclusive, revocable, non-transferrable, non-sublicenseable license to use the Data and the Output for the purposes of: (i) assisting Users and COUNTY with Support and Training on the Software; (ii) assisting Users and COUNTY to evaluate COUNTY's compliance with the Rules; and (iii) only if de-identified and in aggregate and combined with other users' de-identified data for the sole purposes of: improving the validity and capability of the Software;

compiling anonymous benchmarking; and/or further evaluating the information privacy and security compliance and risk management market outlook, provided that such use will not, under any conditions, reveal the identity of COUNTY or Users. Data or Output will be maintained in confidence by CONTRACTOR in accordance with the terms of this SSA. Data and Output will be available to COUNTY, without charge, at any time during the Subscription Term. CONTRACTOR will not release, use, alter, de-identify, aggregate, sell, or perform any activity with the Data or the Output outside the scope of services of this SSA. Except for any hosting or data backup service, CONTRACTOR will not distribute Data nor the Output to any third party without first obtaining COUNTY's prior written permission. The recipient of any Data or Output from CONTRACTOR shall be obligated to comply with provisions no less stringent than those of this Section 6. CONTRACTOR will use commercially reasonable administrative, physical, and technical safeguards, to back-up and secure such Data and Output and prevent unauthorized use or disclosure of Data and Output.

### **Section 7. Suspension/Discontinuance of the Software and/or User Access.**

CONTRACTOR reserves the right to suspend or discontinue the Software, or any portion thereof, and/or COUNTY's or its Users' use of the Software, without penalty, under certain circumstances:

- (a) without prior notice or liability to COUNTY or Users, if emergency maintenance is necessary, and CONTRACTOR will promptly notify COUNTY and Account Owners of such suspension and the estimated period of time until the operation will resume; or
- (b) with not less than thirty (30) days' prior written notice to COUNTY for nonpayment of Subscription Fees or other material breach of this SSA or the SOW, provided that COUNTY has been given notice of such nonpayment or breach and such breach has not been cured within such 30-day period, and provided that CONTRACTOR will promptly restore COUNTY's (or the applicable User's) access to and use of the Software after the event giving rise to the suspension has been resolved; or
- (c) with not less than one hundred eighty (180) days prior written notice to COUNTY if the Software is being replaced or permanently discontinued for reasons beyond CONTRACTOR's reasonable control. In such case, CONTRACTOR will reimburse COUNTY in the amount of any unused portion of Subscription Fees paid. If the Software is/are being replaced, CONTRACTOR will offer COUNTY the opportunity to subscribe to the replacement Software at the then current Subscription Fee. If COUNTY subscribes to such replacement Software, CONTRACTOR will make all commercially reasonable efforts to migrate the Data to the replacement Software.

At the time of discontinuance for any reason, CONTRACTOR will make reasonable efforts to ensure all Data will be available for COUNTY to export in CSV format and that Output can be either exported in CSV format or printed, as appropriate, as of the date of discontinuation.

### **Section 8. Prohibitions on Use; Other Restrictions.**

COUNTY and its Users will not knowingly use the Software for any purpose that is unlawful or is prohibited by this SSA. By way of example, and not as a complete list, COUNTY and its Users will not knowingly:

- (a) Alter or tamper with the Software in any way.
- (b) Attempt to defeat any security measures that CONTRACTOR may take to protect the confidential and proprietary nature of the Software.
- (c) Remove, obscure, conceal, or alter any marking or notice of patent, copyright, trademark, trade name, or other proprietary rights that may appear on or within the Software.

- (d) Sell, lease, license, rent, loan, resell, or otherwise transfer (including, but not limited to, transferring or sharing the Software electronically from one computer to another through any communication means or over a computer network), with or without consideration, to or with any third party except as otherwise permitted hereunder.
- (e) Share use of the Software with third parties through the sharing of login credentials or any other means.
- (f) Make any attempt to reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code, algorithms or formulae used within the Software.
- (g) Modify or create derivative works based upon the Software, or any portion thereof, provided that COUNTY may tailor policy and procedure Software solely for its own use.
- (h) Use the Software in any manner that could damage, disable, overburden, or impair CONTRACTOR's website or servers or networks connected to the website.
- (i) Use the Software in a manner that interferes with any other party's use of the Software.

### **Section 9. Login Credentials.**

Each User is responsible for selecting a strong password and for maintaining the confidentiality and security of his/her User ID and password. Each User is responsible for all activity occurring under User's login credentials, except if such login credentials were compromised due to an act or omission of CONTRACTOR or unauthorized third-party intervention. Each party will promptly notify the other upon becoming aware of unauthorized use of any User's login credentials.

### **Section 10. Access Rights.**

If CONTRACTOR reasonably and in good faith believes that a User has violated the terms of this SSA, CONTRACTOR may investigate such alleged misuse of or access to the Software without prior notice to the User or COUNTY to determine whether a violation has occurred. Promptly thereafter, CONTRACTOR shall provide the results of its investigation to COUNTY for the parties to determine, in good faith, the appropriate action to be taken.

### **Section 11. Feedback.**

In the event a User or COUNTY provides any comments, suggestions, or ideas ("Feedback") to CONTRACTOR regarding the Software or otherwise, COUNTY acknowledges and agrees that (i) at its sole option, CONTRACTOR shall have the right to retain and use such Feedback to develop or improve current or future products or services, without obligation or compensation to COUNTY or User and without COUNTY's or its Users' approval, provided that CONTRACTOR removes from the Feedback any confidential or proprietary information of COUNTY and any information that could disclose the identity of COUNTY, any User, or the creator of the Feedback; and (ii) CONTRACTOR may already have something similar to the Feedback from other COUNTYs or Users or under consideration or development.

### **Section 12. Disclaimer of Warranties.**

CONTRACTOR represents and warrants that it has the legal power to enter into this SSA. CONTRACTOR represents and warrants that (i) it shall supply the Subscriptions in conformance with the specifications in this SSA, (ii) the Software and the Training and Support of the Software described in Section 5 of this SSA will be provided in a professional, workmanlike and timely manner with due care in a manner consistent with general industry standards reasonably applicable to the provision of such Software and support, (iii) the Subscriptions shall comply with all applicable laws, (iv) it owns and has sufficient rights to the Software necessary or appropriate for the performance of its obligations under this SSA, and (v) the Software and use thereof as contemplated by this SSA does not and will



not infringe any intellectual property or other rights of any third party or violate applicable law. CLEARWATER REPRESENTS AND WARRANTS THAT THE SOFTWARE IS AND WILL REMAIN FREE FROM VIRUSES AND MALWARE. EXCEPT AS SPECIFICALLY SET FORTH IN THIS SSA, CLEARWATER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES FOR THE SOFTWARE WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CLEARWATER CANNOT ENSURE THAT ACCESS TO THE SOFTWARE WILL BE UNINTERRUPTED AND ERROR FREE.

### **Section 13. Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR ANY INDEMNITY PROVIDED BY EITHER PARTY TO THE OTHER IN THIS SSA OR ANY OTHER AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, WHETHER BASED IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), OR OTHERWISE, ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IF CUSTOMER IS DISSATISFIED WITH ANY PORTION OF THE SOFTWARE, THE SOLE AND EXCLUSIVE REMEDY IN RESPECT OF THE SOFTWARE IS TO DISCONTINUE USE OF THE SOFTWARE AND TERMINATE THE SSA. EXCEPT FOR ANY INDEMNITY PROVIDED BY EITHER PARTY TO THE OTHER IN THIS SSA, IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY ARISING OUT OF OR RELATED TO THIS SSA, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THREE TIMES AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER UNDER THIS SSA. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER.

### **Section 14. Confidentiality.**

“Confidential Information” means any information of any type in any form that (i) is disclosed to or observed or obtained by one party from the other party in the course of, or by virtue of, this Agreement; and (ii) either is designated as confidential or proprietary at the time of such disclosure or within a reasonable time thereafter or is of a nature that the recipient knew or reasonably should have known, under the circumstances, would be regarded by the owner of the information as confidential or proprietary. Without limiting any other provisions of this Agreement, and whether or not otherwise meeting the criteria described herein, the Software shall be deemed conclusively to be Confidential Information of CONTRACTOR and all Data and Output shall be deemed conclusively to be Confidential Information of COUNTY.

For purposes of this Agreement, however, the term “Confidential Information” specifically shall not include any portion of the foregoing that (i) was in the recipient’s possession or knowledge at the time of disclosure and that was not acquired directly or indirectly from the other party, (ii) was disclosed to the recipient by a third party not having an obligation of confidence of the information to any person or body of which the recipient knew or which, under the circumstances, the recipient reasonably should have assumed to exist, (iii) is or, other than by the act or omission of the recipient, becomes a part of the public domain not under seal by a court of competent jurisdiction, or (iv) was independently developed by the recipient without breach of any obligation owed to the disclosing party. In the event of any ambiguity as to whether information is Confidential Information, the foregoing shall be

interpreted strictly and there shall be a rebuttable presumption that such information is Confidential Information. COUNTY represents and warrants to CONTRACTOR that all such Confidential Information heretofore and in the future disclosed to CONTRACTOR in connection with this Agreement has been and will be disclosed in a manner which does not violate the rights of third parties.

Except as otherwise may be permitted by this Agreement or as necessary to comply with the law including, but not limited to, the California Public Records Act and the Ralph M. Brown Act, neither party shall disclose any Confidential Information of the other party to any person without the express prior written consent of the other party; provided, however, that either party may disclose appropriate portions of Confidential Information of the other party to those of its employees, contractors, agents, service providers and professional advisors having a substantial need to know the specific information in question in connection with professional advice to be provided to the party or with such party's exercise of rights or performance of obligations under this Agreement, provided that all such persons (i) have been instructed that such Confidential Information is subject to the obligation of confidence set forth by this Agreement and (ii) are bound either by contract, employment policies, or fiduciary or professional ethical obligations to maintain such information in confidence.

Notwithstanding any other provision of this Agreement, if either party is ordered by a court, administrative agency, or other governmental body of competent jurisdiction, or is otherwise required by law to disclose Confidential Information, then such party shall immediately notify the other party of the order or rule (if not prohibited by order or law from informing the other party) by the most expeditious possible means. Clearwater acknowledges that the County is subject to the California Public Records Act and the California Brown Act.

The recipient agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting the Confidential Information. If the recipient becomes aware that Confidential Information has been disclosed due to a breach in security or otherwise, it shall provide the disclosing party with notice in reasonable detail of the disclosure promptly. If the recipient discloses or uses (or threatens to disclose or use) any Confidential Information of the disclosing party in breach of this Section 15, the disclosing party shall be entitled, in addition to any other remedies available to it, to seek injunctive relief to enjoin the acts, all without the requirement of posting bond or having to prove the inadequacy of monetary damages, it being specifically acknowledged by the parties that any other available remedies are inadequate.

Both parties shall return or delete relevant Confidential Information held by it upon termination of this Agreement, subject to CONTRACTOR's obligations in Section 13 (Termination) of the Standard Terms and Conditions of this Agreement; provided, however, that it is understood that information in an intangible or electronic format cannot be immediately removed, erased or otherwise deleted from system back-ups but that such information will continue to be protected under the confidentiality requirements contained in this Agreement. Notwithstanding any other provision of this Agreement, upon termination of this Agreement, either party may retain a copy of Confidential Information to fulfill a legal or regulatory obligation, or its document retention policies and practices (including any litigation data destruction holds). The obligations and rights of this Section 15 shall survive termination of this Agreement or any Subscriptions granted hereunder.

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**EXHIBIT A-2**  
**STATEMENT OF WORK**  
**RISK ASSESSMENT PROGRAM**

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1. **PERFORMANCE.** Clearwater Security & Compliance LLC (Contractor) shall perform an annual Information Technology (IT) security risk assessment for two (2) consecutive years for the Department of Behavioral Wellness (County) as required by the Department of Behavioral Wellness' policy and procedure 14.001, 45 CFR Section 164.308 (a)(1)(ii)(A)<sup>1</sup>, and the National Institute of Standards and Technology (“NIST”) Special Publications (“SP”) describing risk assessments, risk management and controls<sup>2</sup>. Public Law 116-321<sup>3</sup>. Contractor shall:
  - A. Have the background, training, work experience, accreditation, licenses, and supervision necessary for the performance of services in a manner of and according to the standards observed by a practitioner of the same profession and in keeping with all pertinent Federal, State, and County laws; and
  - B. Warrant that said accreditation and licensing information furnished to County is complete and accurate and agrees to notify County promptly of any changes in this information.
2. **COMPONENTS.** The security risk assessment program to be performed by Contractor will include the following:
  - A. **Key Program phases:**
    1. Overall Program Support by a Designated Program Leader.
    2. Ongoing preparation and planning, including scheduling of site visits/reviews and discovery interviews, as applicable.
    3. Conduct on-site visits and discovery interviews.
    4. Entry of information systems into the IRM|Analysis Software, identification of components, and characterization of properties for grouping.
    5. Performance of risk determination.
    6. Analysis.
    7. Preparation and presentation of FOR Report.
    8. Remediation Planning and Support.
  - B. **Contractor shall provide the following deliverables:**
    1. Contractor's fully populated Clearwater IRM Analysis software;
    2. Draft and final Summary FOR Report(s); and
    3. Remediation Planning and Support results in an average of 1.5 risks per information system for high and critical risk or Program Support Deliverables related to adoption of recognized security practices under Public Law 116-321.
3. **SERVICES.** The completion of the security risk assessment each year (“Program”) will enable County to meet explicit HIPAA Security Rule requirements for risk analysis as mandated by 45

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<sup>1</sup> [http://www.ecfr.gov/cgi-bin/text-idx?SID=f27b0e2ed3da04ecf4c9fe25c2edb8d1&mc=true&node=se45.1.164\\_1308&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=f27b0e2ed3da04ecf4c9fe25c2edb8d1&mc=true&node=se45.1.164_1308&rgn=div8)

<sup>2</sup> <http://clearwatercompliance.com/hipaa-hitech-resources/> - Links to a full list of the NIST Special Publications can be found under the heading “HIPAA Security Risk Analysis”

<sup>3</sup> <https://www.govinfo.gov/app/details/PLAW-116publ321/summary>

CFR Section 164.308 (a)(1)(ii)(A). Performance of this risk assessment will also help County demonstrate the adoption of recognized security practices under Public Law 116-321, and identify, rate, and prioritize all risks to the specific information assets that are used to create, receive, maintain, and/or transmit its e-Patient Health Information (PHI). Contractor will utilize Clearwater IRM Analysis software and assessment process to perform the information security risk analysis. Details of the Program include:

**A. Overall Program Support by a Designated Program Leader.**

1. Program Leader will augment County's Cyber Risk Management ("CRM") team and provide Program oversight, guidance, and hands-on support to County's Program team.
2. Facilitate seamless performance of the Program.
3. Exercise oversight for development of the Program Plan, project plans for the execution of Services and updates.
4. Communicate Program status to County.

**B. Planning and Preparation:** Planning and preparation of schedule by Contractor and County staff.

1. IT Risk Assessment program is dependent upon County's Subject Matter Experts (SMEs) ability to provide the requested documentation, commit in advance to schedule, prepare for and fully engage in discovery interviews, training opportunities, and document reviews.

**C. Site Visit(s):** Performance of site visit and review by Contractor consultants of primary physical location of where County's information assets are managed or housed.

1. Contractor's consultants will visit County's location based on a schedule that will be mutually agreed upon by Contractor and County.
2. The County location is **315 Camino Del Remedio, Bldg. 3, Santa Barbara, CA 93110.**
3. All administrative, physical, and technical security controls used to protect relevant information will be evaluated at this site.
4. County SME(s) responsible for each in-scope information asset and the relevant security control areas will be interviewed and applicable procedures, processes, and practices will be reviewed within the scope of the discovery.
5. Follow-up interviews may also be conducted via telephone, web meetings, conference calls, and email.
6. Based on the quantity of information assets provided in the inventory developed above, it is estimated that discovery visits and interviews can be completed over the course of two (2) to three (3) business days and will require a total of one (1) trip by two (2) consultants.

**D. Information Asset Inventory:** The scope of the risk analysis will include information assets used by County to create, receive, maintain, or transmit sensitive information. Contractor and County will determine the information assets to be analyzed each program year through execution of the Information Asset Inventory.

1. A detailed inventory was developed by Contractor and County regarding County's current information system environment and needs. The following **twelve (12)** assets will be analyzed each program year:

- i. Admin Workstations;
  - ii. Clinicians Gateway- Krassons Technologies (EHR);
  - iii. EOB Database;
  - iv. Microsoft 365;
  - v. Network fileshare;
  - vi. Reportal database (in- house);
  - vii. ServiceNow;
  - viii. ShareCare Billing (Echo Group);
  - ix. Smartsheet;
  - x. Tableau;
  - xi. RX30/Pyxis (Med Station);
  - xii. SmartCare (EHR).
- E.** On-going training of County staff by Contractor in the use of the IRM Analysis software during and after engagement with Contractor to operationalize the maintenance of Customer's risk analyses and ongoing information risk management program.
- F.** Interviews of County SMEs by Contractor and documentation reviews each Program Year:
- 1. Contractor relies heavily on information provided in interviews and documentation provided by County SMEs assigned to the Project.
- G.** Project status reports as mutually agreed upon by County and Contractor.
- H.** Provision of complete documentation and reporting of the risk analysis results and risk response actions during the engagement and after.
- I.** Data entry, analysis, preparation, and presentation of an Executive Summary of the engagement process and results by Contractor in one comprehensive Findings, Observations, and Recommendations (FOR) Report each Program Year.
- J.** The findings and recommendations of the (IT) security risk assessment provided in the FOR Report presentation will set out the degree to which County's information technology and cybersecurity practices align with recognized security practices under Public Law 116-321.
- K.** Planning, preparation, the initial software training, the documentation review, the detailed data entry into the Software, analysis, and FOR Report preparation will be conducted remotely.

**EXHIBIT B**  
**FINANCIAL PROVISIONS**

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**EXHIBIT B**  
**PAYMENT ARRANGEMENTS**

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- A. Contract Maximum Value.** For services to be rendered under this contract, Contractor shall be paid at the rate specified in the Schedule of Rates (Exhibit B-1), with a maximum value not to exceed **\$189,000**, the value shown on the Purchase Agreement B1. Notwithstanding any other provision of this Contract, in no event shall County pay Contractor more than this Maximum Contract Amount for Contractor’s performance hereunder without a properly executed amendment.
- B. Payment for Services.** Payment for services and/or reimbursement of costs shall be made upon Contractor’s satisfactory performance, based upon the scope and methodology contained in EXHIBIT A. Payment for services shall be based upon the expenses, as defined in EXHIBIT B-1. Invoices submitted for payment that are based upon EXHIBIT B-1 must contain sufficient detail and provide supporting documentation to enable an audit of the charges.
- C. Proper Invoice.** Contractor shall submit to County’s representative an invoice or certified claim on the County treasury for the service performed over the period specified. County’s representative shall evaluate the quality of the service performed, and if found to be satisfactory, shall initiate payment processing.
- a. The invoice must show the Purchase Agreement number, the services performed or detailed statement of purchases with receipts, the rate and authorization form, if applicable.
  - b. County’s Designated Representative:  
  
Santa Barbara County  
Department of Behavioral Wellness  
Attn: Accounts Payable  
429 North San Antonio Road  
Santa Barbara, CA 93110  
[ap@sbcbswell.org](mailto:ap@sbcbswell.org)
- D. Correction of Work.** County’s failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of County’s right to require Contractor to correct such work or billings or seek any other legal remedy.



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**EXHIBIT B-1**  
**SCHEDULE OF FEES**

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<u><b>Type of Service</b></u>	<u><b>Unit Reimbursement</b></u>	<u><b>Total Maximum Contract Value</b></u>
<b>IT Services:</b> User Software Subscription	\$21,750 per fiscal year for FY 22-25	\$65,250 FY 22-25
<b>IT Services:</b> Clearwater Risk Assessment Program	\$41,250 for FY 23-24 \$82,500 for FY 24-25	\$123,750 for FY 23-25
<b>Annual Contract Amount FY 22-23</b>		<b>\$21,750</b>
<b>Annual Contract Amount FY 23-24</b>		<b>\$63,000</b>
<b>Annual Contract Amount FY 24-25</b>		<b>\$104,250</b>
<b>Total Maximum Contract Amount FY 22-25</b>		<b>*\$189,000</b>

- License/Subscription Fees are based on the: (a) Edition selected, (b) size of the organization into which the Subscription is being deployed, as measured by the quantity of beds/components/workforce members within the organization, and (c) length of Renewal Term selected.
- ASF is invoiced yearly
- Quarterly fee will be invoiced upon execution of this Amended and Restated Agreement.
- Subsequent quarterly payments will be invoiced on the fifth (5th) day of each quarter for the remainder of the contract term.
- Any payment made with a credit card will incur an additional fee of three percent (3%) added upon payment of fees.



**EXHIBIT C**  
**STANDARD**  
**INDEMNIFICATION**  
**AND**  
**INSURANCE PROVISIONS**

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**EXHIBIT C**  
**INDEMNIFICATION AND INSURANCE REQUIREMENTS**  
**(For Information Technology Contracts)**  
**(Specific to this Agreement)**

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INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities (“Claims”) arising out of this Agreement and for any costs or expenses (including but not limited to attorneys’ fees) (“Costs”) incurred by COUNTY on account of any (i) breach of the Agreement by CONTRACTOR resulting in the unauthorized disclosure of COUNTY’s confidential information, (ii) violation of applicable law by CONTRACTOR, or (iii) gross negligence or willful misconduct of CONTRACTOR, provided in no event will CONTRACTOR be required to indemnify COUNTY to the extent any such Claims or Costs would not have arisen but for gross negligence or intentional misconduct of COUNTY or any of its officers, officials, employees, agents or volunteers.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONTRACTOR has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers’ Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. **(Not required if CONTRACTOR provides written verification that it has no employees)**
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the CONTRACTOR’S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
5. **Cyber Liability Insurance:** Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently

broad to respond to the duties and obligations as is undertaken by the CONTRACTOR in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

## B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR’S insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR’S insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR’S insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the CONTRACTOR to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of Tennessee and with a minimum A.M. Best’s Insurance Guide rating of “A- VII”.
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and

approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR'S obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

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, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
  - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances; provided that if any such modification would increase the cost of the insurance CONTRACTOR is required to maintain hereunder, it may request that COUNTY reimburse CONTRACTOR in the amount of such increased cost, and if COUNTY declines to do so, then in lieu of procuring such additional insurance CONTRACTOR may terminate this Agreement without penalty.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement.

Any failure, actual or alleged, on the part of COUNTY 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 COUNTY.

Indemnification and Insurance Requirements (For IT Service Contracts) 2022 03 02

**EXHIBIT E**  
**HIPAA BUSINESS ASSOCIATE**  
**AGREEMENT (BAA)**

**EXHIBIT E**  
**HIPAA BUSINESS ASSOCIATE AGREEMENT**  
**(BAA)**

This Business Associate Agreement (“BAA”) supplements and is made a part of the Agreement between COUNTY (referred to herein as “Covered Entity”) and CONTRACTOR (referred to herein as “Business Associate”).

**RECITALS**

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

Covered Entity and Business Associate intend to protect the privacy and provide for the security of any PHI that involves the creation, receipt, maintenance, transmission of, access to or disclosures to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“HITECH Act”), and 45 CFR Parts 160 and 164, Subpart C (the “Security Rule”), Subpart D (the “Data Breach Notification Rule”) and Subpart E (the “Privacy Rule”) (collectively, the “HIPAA Regulations”).

As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (C.F.R.) and contained in this BAA.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

**1. Definitions**

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
  - j. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
  - k. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
  - l. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
  - m. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).
2. **Obligations of Business Associate.** Solely to the extent Covered Entity should disclose Protected Health Information to Business Associate, Business Associate agrees to the following:
- a. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
  - b. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third



party, and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information, to the extent the third party has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

- c. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement, the BAA, or the HIPAA Regulations.
- d. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
- e. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA, and any Breach of Unsecured PHI, as required by the Data Breach Notification Rule, of which it becomes aware without unreasonable delay and in no case later than five (5) business days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- f. **Business Associate's Subcontractors and Agents.** Business Associate shall ensure that any agents and subcontractors to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph (d) above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- g. **Access to Protected Information.** To the extent that the Covered Entity keeps a designated record set then Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within five (5) days of a



request by Covered Entity to enable Covered Entity to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).

- h. **Amendment of PHI for Business Associate who is Required to Maintain a Record Set.** If Business Associate is required to maintain a designated record set on behalf of the Covered Entity the Business Associate shall within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
- i. **Accounting Rights.** Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of Protected Information, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Business Associate maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Sections 2.b. of this BAA [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph shall survive the termination of this

Agreement.

- j. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (Secretary) for purposes of determining Business Associate's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. Business Associate shall provide to Covered Entity a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- k. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)]. Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- l. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.
- m. **Business Associate's Insurance.** Business Associate represents and warrants that it purchases commercial insurance to cover its exposure for any claims, damages or losses arising as a result of a breach of the terms of this BAA.
- n. **Notification of Possible Breach.** During the term of the Agreement, Business Associate shall notify Covered Entity within twenty-four (24) hours of any suspected or actual breach of security, or any access, use or disclosure of Protected Information not permitted by the Agreement or this BAA or unauthorized use or disclosure of PHI of which Business Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]
- o. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- p. **Audits, Inspection and Enforcement.** Within ten (10) days of a written request by

Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether Business Associate has complied with this BAA; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this BAA, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under the Agreement or this BAA, Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

- q. **Compliance with HIPAA Workforce Training.** As set forth in section 164.530 of 45 CFR Business Associate is expected to adhere to the Health Insurance Portability and Accountability Act (HIPAA) regulations to the extent necessary to comply with Covered Entity's legal obligations and to develop and maintain comprehensive consumer confidentiality policies and procedures, provide annual training of all affected staff regarding those policies and procedures including Security and Privacy safeguards, and demonstrate reasonable effort to secure written and/or electronic data to document the provision of such training and agrees to make available to the Covered Entity upon request. The parties should anticipate that this agreement will be modified as necessary for full compliance with HIPAA.

### 3. Termination

- a. **Material Breach.** A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Judicial or Administrative Proceedings.** Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. **Effect of Termination.** Upon termination of the Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected

Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section 2 of this BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If Covered Entity elects destruction of the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

#### **4. Indemnification**

If Business Associate fails to adhere to any of the privacy, confidentiality, and/or data security provisions set forth in this BAA or if there is a Breach of PHI in Business Associate's possession and, as a result, PHI or any other confidential information is unlawfully accessed, used or disclosed, Business Associate agrees to reimburse Covered Entity for any and all costs, direct or indirect, incurred by Covered Entity associated with any Breach notification obligations. Business Associate also agrees to pay for any and all fines and/or administrative penalties imposed for such unauthorized access, use or disclosure of confidential information or for delayed reporting if it fails to notify the Covered Entity of the Breach as required by this BAA.

#### **5. Disclaimer**

Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

#### **6. Certification**

To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security practices, Covered Entity or its authorized agents or contractors, may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this BAA.

#### **7. Amendment to Comply with Law**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Covered Entity may terminate the Agreement upon thirty (30) days written notice in the event (i) Business Associate does not

promptly enter into negotiations to amend the Agreement or this BAA when requested by Covered Entity pursuant to this Section or (ii) Business Associate does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

#### **8. Assistance in Litigation of Administrative Proceedings**

Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Agreement or this BAA, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is named adverse party.

#### **9. No Third-Party Beneficiaries**

Nothing express or implied in the Agreement or this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

#### **10. Effect on Agreement**

Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

#### **11. Entire Agreement of the Parties**

This BAA supersedes any and all prior and contemporaneous business associate agreements between the parties and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof. Covered Entity and Business Associate acknowledge that no representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter hereof, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.

#### **12. Interpretation**

The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.