

AGREEMENT FOR PROFESSIONAL LEGAL SERVICES

THIS Agreement is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Baker & Hostetler LLP (hereafter CONTRACTOR), wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, COUNTY requires the services of legal counsel to assist in providing legal advice and representation in the specialized area of data security, including matters relating to regulatory compliance, risk assessment, and avoiding, preparing for, and responding to data security incidents; and,

WHEREAS, COUNTY's Board of Supervisors, under the provisions of Section 31000 of the California Government Code, is empowered to contract for special legal services; and,

WHEREAS, CONTRACTOR represents that CONTRACTOR is specially trained, skilled, experienced, expert, 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.** Santa Barbara County Risk Manager Ray Aromatorio, at telephone number 805-568-6865 is the authorized representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. M. Scott Koller at telephone number (310) 979-8427 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: Ray Aromatorio
 Santa Barbara County Risk Manager
 105 East Anapamu Street, #102
 Santa Barbara, CA 93101

To CONTRACTOR: M. Scott Koller
 BakerHostetler
 11601 Wilshire Boulevard, Suite 1400
 Los Angeles, CA 90025-0509

or at such other address or to such other person as 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 received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed to alter the legal requirements for service of process.

3. **SCOPE OF SERVICES.** CONTRACTOR agrees to provide services to COUNTY in accordance with EXHIBIT A, which is attached hereto and incorporated herein by reference.
4. **TERM.** CONTRACTOR shall commence performance on February 5, 2019 and end performance upon completion, but no later than February 4, 2021 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, 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 for 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 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 workman-like 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. All required 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 has conducted a conflicts evaluation and has discovered no potential conflicts other than those (if any) that CONTRACTOR disclosed to COUNTY prior to this Agreement. CONTRACTOR shall inform COUNTY immediately upon learning of any potential ethical issues or conflicts that may arise in the future. COUNTY retains the right to waive a conflict of interest if

COUNTY determines it to be immaterial. Such waiver shall be effective only if given by COUNTY to CONTRACTOR in writing.

11. **EXPERTS/CONSULTANTS/OTHER LAW FIRMS.** CONTRACTOR shall get COUNTY's written approval prior to retaining any expert, consultant, or other attorney to assist with any matter covered by this Agreement.
12. **OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.** COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any of such items to other parties except after prior written approval of COUNTY. Unless otherwise specified in Exhibit A, CONTRACTOR hereby assigns to COUNTY all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by CONTRACTOR pursuant to this Agreement (collectively referred to herein as "Copyrightable Works and Inventions"). COUNTY shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. CONTRACTOR agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. CONTRACTOR warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless COUNTY against any claim that any Copyrightable Works or Inventions or other items provided by CONTRACTOR hereunder infringe upon any intellectual property or other proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.
13. **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 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 COUNTY or its projects without obtaining the prior written approval of COUNTY.
14. **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.
15. **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 COUNTY or as part of any audit of COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Gov. Code § 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.

16. INDEMNIFICATION AND INSURANCE. To the extent of and not inconsistent with the terms of CONTRACTOR'S insurance policies, CONTRACTOR agrees to the indemnification and insurance provisions set forth in EXHIBIT C, which is attached hereto and incorporated herein by reference.

17. 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.

18. 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 COUNTY desires.

19. 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.

20. 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 non-appropriation 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 Non-appropriation of Funds. Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or county governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the term.

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 CONTRACTOR not receive all or any part of the payment set forth in EXHIBIT B, CONTRACTOR may, at CONTRACTOR's option, terminate this Agreement if such failure is not remedied by within thirty (30) days of written notice of such late payment.

C. Upon termination, CONTRACTOR shall deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers 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. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of COUNTY shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

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. 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.

- 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 and statutes 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. BUSINESS ASSOCIATE.** The parties agree to the terms and conditions set forth in Exhibit D - HIPAA Business Associate Agreement (BAA), attached hereto and incorporated herein by reference.
- 35. EFFECTIVE DATE OF AGREEMENT.** The effective date of this Agreement shall be the date it is executed by COUNTY. This Agreement shall apply to services performed by CONTRACTOR for COUNTY on this matter only during the term of the Agreement as defined above in Paragraph 4.

(Agreement for Services of Independent Contractor between County of Santa Barbara and Baker & Hostetler, LLP)

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____
Deputy Clerk

COUNTY OF SANTA BARBARA:

By: _____
Chair, Board of Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:

County Counsel

By: _____
Michael C. Ghizzoni, County Counsel

CONTRACTOR:

Baker & Hostetler LLP

By: M. Scott Koller
Authorized Representative

Name: M. Scott Koller

Title: Partner

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: _____
Martin G. McKenzie, Chief of Litigation

APPROVED AS TO ACCOUNTING FORM:

BETSY SCHAFFER, CPA
Auditor-Controller

By: _____
Deputy

APPROVED AS TO FORM:

Risk Management

By: _____
Ray Aromatorio, Risk Manager

EXHIBIT A
STATEMENT OF WORK

As requested by COUNTY, CONTRACTOR shall assist COUNTY by providing legal advice and representation in matters relating to data security, including regulatory compliance, risk assessment, and avoiding, preparing for, and responding to potential data security incidents. Unless previously agreed in writing by COUNTY's Designated Representative, the only attorneys through which CONTRACTOR will provide services under this Agreement are M. Scott Koller, Stephanie Lucas, and Theodore J. Kobus III. COUNTY may, in its sole discretion, request CONTRACTOR to discontinue the services of any person providing services to COUNTY under this Agreement, whereupon CONTRACTOR shall promptly do so.

Pursuant to California Government Code Section 25203, COUNTY's Board of Supervisors directs and controls the conduct of litigation in which COUNTY is a party. COUNTY, acting by and through County Counsel, retains control over the course and conduct of the case. CONTRACTOR and County Counsel, in consultation with the Board of Supervisors, will review and decide, among other matters, the following specific issues: (1) ultimate disposition of the case, including but not limited to settlement, (2) witnesses and evidence to be presented at trial, (3) waiver of jury trial, (4) final approval of all dispositive motions and any oppositions to such motions, (5) selection of consultants and experts, (6) approval of any expert reports, (7) overall discovery approach, and (8) all other questions of litigation and trial strategy. County Counsel retains veto power over any decisions made or proposed to be made by CONTRACTOR. Decisions regarding settlement of the case are reserved exclusively to the discretion of COUNTY's Board of Supervisors, through County Counsel. Any party in the litigation may contact County Counsel directly without having to confer with CONTRACTOR.

EXHIBIT B
PAYMENT ARRANGEMENTS
Periodic Compensation (with attached Schedule of Fees)

- A. COUNTY is insured by Beazley under a policy of Information Security & Privacy Insurance with Electronic Media Liability coverage. Beazley, COUNTY, and CONTRACTOR have agreed that CONTRACTOR will submit directly to Beazley all billings related to services CONTRACTOR performs under this Agreement. CONTRACTOR's billings are not to exceed One Hundred Thousand Dollars (\$100,000), unless this Agreement is amended to provide a different amount in accordance with Paragraph 26 of the Agreement.
- B. 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 and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **Attachment B-1** (Schedule of Fees). Invoices submitted for payment that are based upon **Attachment B-1** must contain sufficient detail to enable an audit of the charges, and CONTRACTOR must provide supporting documentation if requested.
- C. Monthly, CONTRACTOR shall submit to Beazley and COUNTY's DESIGNATED REPRESENTATIVE an invoice for the services performed over the period specified. These invoices must cite the assigned Board Contract Number.
- D. 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.

**ATTACHMENT B-1
(Schedule of Fees)**

HOURLY RATES

CONTRACTOR's hourly rates shall not exceed the following:

- For work performed by partners in CONTRACTOR's law firm: \$525 per hour.
- For work performed by associate attorneys in CONTRACTOR's law firm: \$395 per hour.
- For work performed by paralegals in CONTRACTOR's law firm: \$175 per hour.

BILLING PROCEDURE

All invoices must include the following information, in addition to the information specified in Exhibit B:

- Matter description and number;
- A chronological listing and informative description of all legal activity performed (whether or not billed) broken down by date, identity of timekeeper, time spent in increments of one-tenth of an hour, and amounts billed;
- A summary of the names and corresponding billing rates of each attorney or other personnel working on the matter with the total number of hours billed by each during the time period covered by the invoice;
- The total number of hours billed for the matter during the time period covered by the invoice;
- The total charges for the matter for the time period covered by the invoice, for the year to date, and for the matter to date; and
- The last payment, the total payments made, and any outstanding balances for the matter.

Reimbursable expenses must be included on each bill and broken down by category.

EXHIBIT C
Indemnification and Insurance Requirements
(For Professional Contracts)

1. **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 arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. CONTRACTOR's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.
2. **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.
3. **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 CONTRACTOR, CONTRACTOR's 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:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** 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.
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to CONTRACTOR'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

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

B. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **[Intentionally Omitted]**
2. **Primary Coverage** – For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers,

officials, employees, agents or volunteers shall be excess of 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 COUNTY.
4. **[Intentionally Omitted]**
5. **[Intentionally Omitted]**
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish 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 COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive CONTRACTOR's obligation to provide them. CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. 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, 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

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

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.

EXHIBIT D
HIPAA Business Associate Agreement

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

RECITALS

- A. Covered Entity has retained Business Associate to provide certain legal services (the “Services”), as set forth in the attached Agreement.
- B. The Parties’ performance under the attached Agreement may or will require Covered Entity to disclose and/or provide to Business Associate private and/or protected health and/or medical information as defined under, and governed by, applicable state law and Individually Identifiable Health Information and/or Electronic Protected Health Information as defined in the Health Insurance Portability and Accountability Act (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and/or regulations promulgated under such laws (state law, HIPAA, and HITECH are hereafter referred to collectively as “Privacy Laws”) and may or will require Business Associate to receive, access, review, maintain, retain, modify, record, store, forward, produce, hold, use, create, disclose, and/or destroy such information (the “PHI”).
- C. Business Associate’s performance of the Services may give rise to certain legal obligations under Privacy Laws and Business Associate may be considered a “business associate” and Covered Entity may be a “covered entity” as those terms are defined in 45 C.F.R. § 160.103.

Accordingly, the parties hereto (“Parties”) agree to the terms and conditions set forth below:

TERMS OF BUSINESS ASSOCIATE AGREEMENT (“BAA”)

- 1. **Performance and Compliance With Law.** The Parties will work together in good faith to determine applicability of Privacy Laws, to comply with applicable Privacy Laws, and to amend this BAA as necessary for Covered Entity and Business Associate to comply with applicable Privacy Laws, as modified and/or supplemented from time to time.
- 2. **Interpretation.** Any ambiguity herein must be resolved in favor of a meaning that permits both Covered Entity and Business Associate to comply with applicable Privacy Laws, consistent with the attached Agreement.
- 3. **Ownership of PHI.** The PHI is and will remain at all times, the property of Covered Entity as between Covered Entity and Business Associate.
- 4. **Privileges and Protections.** This BAA does not constitute or evidence a waiver of, nor does it amend, the attorney-client privilege, the attorney work product doctrine, and/or any other applicable privileges or protections.
- 5. **Business Associate’s Obligations.**
 - 5.1 **Management and Administration.** In using and/or disclosing PHI for management and administrative purposes, Business Associate will comply with all applicable Privacy Laws and with Covered Entity’s obligations under subpart E of 45 CFR Part 164.
 - 5.2 **Safeguards.** Business Associate shall use appropriate safeguards to prevent the unlawful use or disclosure of the PHI and will implement administrative, physical, and technical safeguards that

protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity, as required by Privacy Laws.

- 5.3 Minimum Necessary Use and Disclosure. Business Associate will determine the amount of PHI necessary for performance of the Services and will make reasonable efforts to limit the receipt, use, and disclosure of PHI to the minimum necessary as required by the Privacy Laws.
- 5.4 Disclosures to Subcontractors and/or Third Parties. Business Associate will ensure that all representatives, subcontractors, persons and/or entities (other than entities that are merely conduits) to whom Business Associate discloses or provides the PHI execute a written Business Associate Agreement, as required under the Privacy Laws, in which such third persons and/or entities expressly agree to the same restrictions and conditions that apply to Business Associate hereunder. If a Business Associate Agreement is not required by the Privacy Laws, Business Associate will obtain reasonable assurances from all persons and entities who have access to or are recipients of the PHI that: (i) the PHI will be held confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party; and (ii) the third party will promptly notify Business Associate of any Compromise of PHI, and Business Associate will, in turn, notify Covered Entity.
- 5.5 Access to, or Amendment of, PHI. Business Associate will not maintain a Designated Record Set, as defined in applicable law, in performing the Services, and therefore, if an individual contacts Business Associate directly to access or amend PHI, Business Associate will direct the individual to contact the Covered Entity.
- 5.6 Restrictions on PHI. Business Associate will comply with any patient restrictions on the Use and Disclosure of PHI requested by Covered Entity under Section 6.3 below.
- 5.7 Reporting of Violations and Security Incidents. Business Associate will promptly report to Covered Entity, and only to Covered Entity, any and all impermissible use(s) or disclosure(s) of PHI, as defined under Privacy Laws, that compromise(s) the security or privacy of the protected health information ("breach") and any modification to or destruction of information or interference with system operations in an information system ("security incidents"). Business Associate will identify suspected or known breaches and/or security incidents, mitigate, to the extent practicable, harmful effects of such breaches and security incidents that are known to Business Associate or that should be known with the exercise of reasonable diligence, will document all known and suspected breaches and/or security incidents and their outcomes, and will provide such documentation to Covered Entity upon request. Business Associate does not assume Covered Entity's obligations to provide notification of a breach pursuant to Section 13402 of HITECH.
- 5.8 Accounting of PHI Disclosures. At the request of Covered Entity, Business Associate will document and report to Covered Entity all disclosures of PHI that are required for Covered Entity to provide an accounting under 45 C.F.R. § 164.528 and/or the Privacy Laws. If an individual contacts Business Associate directly for such an accounting, Business Associate will direct the individual to contact Covered Entity.
- 5.9 Audits and Inspections. Business Associate will make its internal practices, books, and such records as are not protected by applicable legal privilege or work product protection relating to the use, disclosure, and/or compromise of PHI available to Covered Entity to determine compliance with applicable Privacy Laws and this BAA, and to the Secretary of the United States, Department of Health and Human Services and/or other authorized lawful authority as required by law or authorized by Covered Entity in writing.
- 5.10 Prohibition on Sale of PHI and use of PHI for Marketing. Business Associate will not directly or indirectly receive remuneration in exchange for any PHI, and will not use or disclose PHI for

Fundraising and/or Marketing purposes, except with prior written consent of Covered Entity and in accordance with applicable Privacy Laws.

6. Covered Entity's Obligations.

- 6.1 Authorizations. Covered Entity will obtain all consents and authorizations necessary and/or required by law for Covered Entity and Business Associate to fulfill their obligations under applicable Privacy Laws and this BAA.
- 6.2 Restrictions and Revocations. Covered Entity will promptly notify Business Associate in writing of any patient-requested restrictions, changes to, or revocation of, consent and/or authorization to use and/or disclose PHI that may affect Business Associate's ability to perform its obligations under this BAA and/or the attached Agreement.
- 6.3 Notice of Privacy Practices. Covered Entity will promptly provide Business Associate a copy of its Notice of Privacy Practices ("Notice") under the Privacy Laws, including without limitation 45 C.F.R. § 164.520, and any changes to the Notice that may affect Business Associate's use or disclosure of PHI or performance of this BAA.
- 6.4 Accounting of PHI Disclosures. Covered Entity will include in individual accountings requested under the Privacy Laws, including without limitation, 45 C.F.R. § 164.528, any disclosures by Business Associate.
- 6.5 Meet and Confer. Upon any suspected or actual Breach, unauthorized disclosure of the PHI or breach of this BAA, Covered Entity will meet and confer in good faith with Business Associate before notifying affected individuals and/or commencing any legal action.

7. Term and Termination.

- 7.1 Term. The term of this BAA will commence upon receipt by Business Associate of any PHI or the date set forth below, whichever is earlier, and will terminate upon discharge of Business Associate's obligations under the attached Agreement and this BAA, including the obligations set forth in paragraph 7.2 below, and/or performance of the Services.
- 7.2 Effect of Termination. Upon termination of this BAA, at the request of Covered Entity, Business Associate will return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, provided, however, that in the event that Business Associate determines that returning or destroying the PHI is infeasible, and/or the Privacy Laws require or recommend that Business Associate maintain records containing PHI, Business Associate will not return or destroy the PHI, but will extend the protections of this Agreement to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible or contrary to the Privacy Laws, for so long as Business Associate maintains such PHI. Return or destruction of PHI generally will not be feasible, as applicable rules of professional conduct and/or professional responsibility and/or other state and federal laws require or recommend that Business Associate maintain records of the services provided and otherwise relating to legal representation of its clients.
- 7.3 Breach of this BAA. If either party hereto breaches its obligations under this BAA, the non-breaching party will provide the other with notice and a thirty (30) day period to cure the breach. If the breaching party fails to cure the breach or cure is not possible within thirty (30) days, the non-breaching party may terminate this BAA immediately upon written notice and without further legal action or declaration. If neither termination nor cure is feasible, the breaching party will comply with applicable reporting requirements. If the breaching party is unable to comply or otherwise does not comply with the applicable reporting requirements set forth in Section 13402 of the HITECH Act,

the non-breaching party will comply with its obligations under that section. However, in addition to any other damages flowing from the breach, the breaching party shall be liable to the non-breaching party for any costs and penalties incurred by or imposed on the non-breaching party under the Privacy Laws due to the breach.

8. Miscellaneous.

- 8.1 Entire Agreement. This BAA and attached Agreement, the consistent terms of which are incorporated herein, constitute the entire agreement between the Parties and supersede all prior negotiations, discussions, representations, or proposals, whether oral or written, unless expressly incorporated herein, related to the subject matter of this BAA. Unless otherwise expressly provided herein, this BAA may not be modified unless in writing signed by the duly authorized representatives of the parties.
- 8.2 Severability. If any provision or part thereof is found to be invalid, the remaining provisions will remain in full force and effect.
- 8.3 Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this BAA will not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties to this BAA.
- 8.4 No Third-Party Beneficiaries. Except as otherwise provided in the Privacy Laws or this BAA, there are no third-party beneficiaries to this BAA. Business Associate's obligations are to Covered Entity only.
- 8.5 Successors and Assigns. This BAA will inure to the benefit of, and be binding upon, the successors and assigns of the parties. However, this BAA is not assignable by any party without the prior written consent of the other parties.
- 8.6 Dispute Resolution. If at any time during or after the term of this BAA either party hereto believes that a dispute exists between them, then the parties will promptly meet and confer in good faith to attempt to resolve such dispute before resorting to arbitration or court action. The parties further agree that if they are unable to informally resolve any dispute arising from or relating to this BAA within 30 days, then the dispute shall be submitted for resolution exclusively through confidential, binding arbitration, instead of through trial by court or jury, in accordance with the commercial, expedited dispute rules, then in effect, of the Judicial Arbitration and Mediation Service ("JAMS") or the American Health Lawyers Association Alternative Dispute Resolution Service ("AHLA"). This agreement to arbitrate shall be specifically enforceable. Notwithstanding the foregoing and/or anything to the contrary in the rules of JAMS or AHLA, each party shall bear its own attorney's fees and costs.
- 8.7 Counterparts. This BAA may be executed in counterparts, by manual, electronic, or facsimile signature, each of which will be deemed an original and all of which together will constitute one and the same instrument.