

## **AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR**

**THIS AGREEMENT** (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and Inergex LLC dba Crossfuzze with an address at 6110 Golden Hills Drive, Minneapolis, MN 55416 (hereafter CONTRACTOR) wherein CONTRACTOR agrees to provide and COUNTY agrees to accept the services specified herein.

**WHEREAS**, COUNTY wishes to retain CONTRACTOR to provide software licensing, which is identified in Exhibit A;

**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**

Andre Monostori at phone number (805) 568-2606 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Paul Avery at phone number (415) 250-7744 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: Andre Monostori, Interim Assistant Director of General Services, 105 E. Anapamu Street, Santa Barbara, CA 93101, (805) 568-2606.

To CONTRACTOR: Paul Avery, Account Manager, Inergex LLC dba Crossfuzze, 6110 Golden Hills Drive, Minneapolis, MN 55416, (415) 250-7744.

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 EXHIBIT A attached hereto and incorporated herein by reference.

4. **TERM**

CONTRACTOR shall commence performance on November 18, 2020 and end performance upon completion, but no later than December 30, 2020 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. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY and which is delivered to the address given in Section 2 NOTICES above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

As part of the State's adopted FY 2020-21 budget, approximately \$46.1 million in federal CARES Act Coronavirus Relief Fund funding will be passed from the State to Santa Barbara County to support activities and expenses that promote public health and safety in response to the COVID-19 public health emergency. According to the State, funds may be used to offset appropriations in FY 2019-20 and FY 2020-21 that were made to support the COVID-19 response. Includes costs for enhanced electronic delivery of public services, such as to establish video arraignment capabilities; expanded bandwidth of the County's IT infrastructure; technology to support teleconferencing and remote public participation in public hearings; and additional network storage and processing capabilities.

**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 COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

11. **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 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 intellectual 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.

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 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.** 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 COUNTY fail to pay CONTRACTOR 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 COUNTY within thirty (30) days of written notice to COUNTY 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.

## 20. 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.

**21. 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.

**22. 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.

**23. TIME IS OF THE ESSENCE**

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

**24. 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.

**25. 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.

**26. 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.

**27. 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.

**28. 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.

**29. 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.

**30. 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.

**31. 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.

**32. 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.

**33. 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.

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and Inergex LLC dba Crossfuze

**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

**COUNTY OF SANTA BARBARA:**

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

By: \_\_\_\_\_  
Chair, Board of Supervisors

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

**RECOMMENDED FOR APPROVAL:**

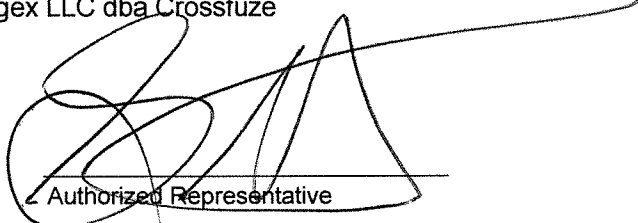
General Services

**CONTRACTOR:**

Inergex LLC dba Crossfuze

By: Janette D. Pell  
\_\_\_\_\_

Janette Pell  
Director

By:   
\_\_\_\_\_


Name: Steve Griffiths  
Title: COO

**APPROVED AS TO FORM:**

Michael C. Ghizzoni  
County Counsel

**APPROVED AS TO ACCOUNTING FORM:**

Betsy M. Schaffer, CPA  
Auditor-Controller

By:   
\_\_\_\_\_ Deputy County Counsel

By: C. Edith  
\_\_\_\_\_ Deputy

**APPROVED AS TO FORM:**

Risk Management

By: Ray Aramataria  
\_\_\_\_\_ Risk Management



## **EXHIBIT A.1**

### **STATEMENT OF WORK**

Inergex, LLC dba Crossuze shall be the individual(s) personally responsible for providing all services hereunder. CONTRACTOR may not substitute other persons without the prior written approval of COUNTY's designated representative. The services described in this Statement of Work are designated as Phase 1. CONTRACTOR shall perform the services designated as Phase 1 for a period of November 18, 2020 through December 30, 2020. As for the dates noted in the ServiceNow Order Form under Subscription Terms (EXHIBIT A.2), the time frame listed of December 1, 2020 through December 1, 2021 is for the life of the licenses and are separate from the service agreement herein with Inergex, LLC dba Crossfuze. Subscriptions are commonly purchased upfront and in bulk to take advantage of better pricing. To fit this expenditure within the CARES Act time frame, all required GRC licenses will be purchased by November 30, 2020 and will be valid from December 1, 2020 through December 1, 2021.

COUNTY 's designated representative may, without cause, order CONTRACTOR in writing to suspend, delay, or cancel the services under this Agreement in whole or in part. COUNTY shall incur no liability for suspension, delay, or contract termination under this provision and suspension, delay, or contract termination shall not constitute a breach of this Agreement.

## ServiceNow® Order Form - Product and Use Definitions

### USER TYPE DEFINITIONS

"User" means any employee or contractor of Customer or Customer Affiliate that is assigned a unique username and password and has a user profile in the Subscription Service designated as "active". Only Users may be given access to the subscription service by Customer. A use right may not be shared or transferred. Customer shall not use the subscription service in a manner that circumvents usage restrictions.

"Approver User" is any User performing any of the functions set forth in the table below for an Approver User. An Approver User may only perform the functions set forth in the table below for an Approver User.

"Requester User" is any User that performs only the functions set forth in the table below for a Requester User.

"End User" has the same use rights as "Requester User."

"Fulfiller User" is any User other than an Approver User or Requester User. Without limitation, a Fulfiller User is any User that performs any function other than an Approver User function or Requester User function, including those set forth in the table below for a Fulfiller User.

"Process User" has the same use rights as "Fulfiller User."

FUNCTION / USE RIGHTS AUTHORIZED	USER TYPES		
	REQUESTER	APPROVER	FULFILLER
Create its own request	included	included	included
View its own request	included	included	included
Modify its own request	included	included	included
Search the Service Catalog	included	included	included
Search the Knowledge Base	included	included	included
Access public pages	included	included	included
Take surveys	included	included	included
Set its own notification preferences	included	included	included
View assets assigned to user	included	included	included
Access and post to Live Feed	included	included	included
Initiate Chat sessions	included	included	included
Participate in a Watch List	included	included	included
View a report published to them	included	included	included
Approve requests by email that are routed to user	-	included	included
Approve requests routed to user via system	-	included	included
Create any record	-	-	included
Delete any record	-	-	included
Modify any record	-	-	included
Drill through any report	-	-	included
Create any report	-	-	included
Delete any report	-	-	included
Modify any report	-	-	included
Perform development activities	-	-	included (see below)
Perform administrative activities	-	-	included

### CUSTOM TABLE CREATION AND INSTALLATION

The creation or installation of Custom Tables in a production instance requires either the purchase of the Now Platform App Engine product or an express Custom Table entitlement that is granted with the purchase of another product.

A "Custom Table" is any non-ServiceNow provided table created or installed by or on behalf of Customer on the ServiceNow Platform and used for any purpose, including the creation of a custom application, unless such table is specifically exempt. A list of exempt ServiceNow provided tables and Custom

Table use rights are as set forth in the Custom Table Guide on <https://www.servicenow.com/upgrade-schedules.html> and ARE EXPRESSLY DEEMED INCORPORATED HEREIN BY THIS REFERENCE. Customer may request printed copies of the documents incorporated herein by reference by emailing us at [legal.request@servicenow.com](mailto:legal.request@servicenow.com).

SUBSCRIPTION PRODUCTS	
Subscription Product Code/Name	Included ServiceNow Applications and Use Rights
<p>PROD12490 ServiceNow® Integrated Risk Management Professional</p>	<p>Included Applications: Policy and Compliance Management; Risk Management; Audit Management; Use Case Accelerators; Advanced Risk Management; Predictive Intelligence; Virtual Agent; and Performance Analytics</p> <p>Customer is granted use rights for the following Applications as described herein:</p> <p>Advanced Risk Management: Customer is granted the right to manage advanced risk assessments through manual risk factors, risk-rollups, and risk hierarchies.</p> <p>Predictive Intelligence, Virtual Agent, and Performance Analytics: Use rights apply only to Integrated Risk Management (IRM) Professional Applications and included Bundled Custom Tables.</p> <p>Virtual Agent includes 1000 Virtual Agent Conversation Transactions per IRM Operator per month (unused Virtual Agent Conversation Transactions expire monthly). A Virtual Agent Conversation Transaction is defined as any structured conversation between a chatbot and user on a pre-built or custom topic.</p> <p>Additional monthly Virtual Agent Transactions require the purchase of Virtual Agent Transaction Pack(s).</p> <p>An IRM Operator is any User who contributes to, or is part of, an IRM application workflow or process in any way, including the receipt of an attestation or assessment request. An IRM Operator may perform any or all functions within the Integrated Risk Management Applications.</p> <p>IRM purchase does not include access to Unified Compliance Framework (UCF) which Customer must purchase separately.</p> <p>Bundled Custom Tables: Customer is granted the right to create or install up to 5 Custom Tables and to grant each IRM Operator the right to access those Custom Tables.</p> <p>The following Application(s) became available according to the release indicated below:                      Risk Management - Geneva                      Policy and Compliance Management; Audit Management - Helsinki                      Predictive Intelligence - Kingston                      Virtual Agent - London                      Use Case Accelerators; Advanced Risk Management - New York</p>



## SERVICENOW ORDER FORM

This order is between County of Santa Barbara ("Customer") and Inergex, LLC dba Crossfuze ("Crossfuze"). Customer accepts ServiceNow flow down terms.

Bill To Address	
Customer Name:	County of Santa Barbara
Address:	105 E Anapamu St Rm 304
City:	Santa Barbara
State/Province:	CA
Zip/Postal Code:	93101-6066
Country:	USA

Notification Address	
Customer Name:	County of Santa Barbara
Address:	105 E Anapamu St Rm 304
City:	Santa Barbara
State/Province:	CA
Zip/Postal Code:	93101-6066
Country:	USA

<b>Subscription Term (Months):</b>	12 months and 1 day
<b>Start Date:</b>	December 1, 2020
<b>End Date:</b>	December 1, 2021
<b>Pricing Expires:</b>	November 30, 2020

Subscription:	Type:	Units:	Monthly Unit Price:	Annual Net Price:
ServiceNow Integrated Risk Management Professional - IRM	IRM Operator	30	\$147.00	\$52,920.00

Annual Pre-Pay Schedule				
Invoice Schedule:	Invoice Date:	Amount:	Est. Taxes:	Grand Total:
Annual Subscription Fee	Upon Signature	\$53,062.26	\$-	\$53,062.26
		<b>\$53,062.26</b>	<b>\$-</b>	<b>\$53,062.26 USD</b>

### 1. Terms and Conditions

PRICES ARE FINAL AND ORDERS ARE NON-CANCELLABLE AND NON-REFUNDABLE. The order is for the entire subscription term and is undividable.

### 2. Payment Terms:

Payments are due as per the invoice schedule. Subscription Fees are invoiced annually in advance, due upon receipt of each invoice, and payments shall be made in U.S. dollars as indicated on the invoice. If Customer specifies in an Order Form that it is issuing a purchase order for such Order Form, then Crossfuze shall reference the applicable Customer purchase order number on its invoices (solely for administrative convenience) so long as Customer provides the purchase order number to Crossfuze at least five (5) business days prior to the date of the applicable Crossfuze invoice. All remaining fees are due immediately if Crossfuze terminates for non-payment.

### 3. Product Overview

The descriptions of the ServiceNow applications and platform services included in the Subscription are between ServiceNow and Customer as follows:

- Customer's access and use of the Subscription Offerings are pursuant to the Public Sector Subscription Terms of Service, the Customer Support Addendum, Data Security Addendum, Data Processing Addendum, Product and Use Definitions, Product Overview, and the applicable Service Description for the purchased packaged services, ALL OF WHICH ARE EXPRESSLY DEEMED INCORPORATED HEREIN BY THIS REFERENCE (if not attached herein, then as set forth on <https://www.servicenow.com/upgrade-schedules.html>) (collectively, the "ServiceNow Subscription Service Terms"). All undefined capitalized terms herein shall have the meanings ascribed to such terms in the ServiceNow Subscription Service Terms. If any provision of this Order conflicts with the other documents comprising the Agreement, then this Order shall control.
- ServiceNow Public Sector Subscription Terms of Use include the following additional documents:
  - ServiceNow Public Sector Subscription Terms:  
<https://www.servicenow.com/content/dam/servicenow-assets/public/en-us/doc-type/legal/public-sector-subscription-terms-of-service.pdf>
  - Customer Support Addendum  
<https://www.servicenow.com/content/dam/servicenow-assets/public/en-us/doc-type/legal/customer-support-addendumupgrades.pdf>
  - Data Security Addendum  
<https://www.servicenow.com/content/dam/servicenow-assets/public/en-us/doc-type/legal/data-processing-addendum.pdf>
- Crossfuze and ServiceNow reserve the right to suspend access to the instance if payment is not made within payment terms.



**SERVICENOW ORDER FORM**



**By the signatures of their duly appointed representatives below, Crossfuze and Customer, intending to be legally bound, agree to all of the provisions of this Order Form.**

Inergex, LLC dba Crossfuze

County of Santa Barbara

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

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

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





## PUBLIC SECTOR SUBSCRIPTION SERVICE TERMS

**PUBLIC SECTOR SUBSCRIPTION TERMS OF SERVICE**

THESE PUBLIC SECTOR SUBSCRIPTION TERMS OF SERVICE (“**TERMS OF SERVICE**”) APPLY ONLY IF THE CUSTOMER IS AN EXECUTIVE AGENCY OR DEPARTMENT OF THE U.S. FEDERAL, STATE, OR LOCAL GOVERNMENT (“**GOVERNMENT ENTITY**”). THESE TERMS OF SERVICE SHALL BE INCORPORATED IN ANY ORDER ISSUED BY SUCH CUSTOMER. IF THE CUSTOMER IS NOT A GOVERNMENT ENTITY, THEN SERVICENOW’S SUBSCRIPTION SERVICE AGREEMENT (LOCATED AT [HTTPS://WWW.SERVICENOW.COM/UPGRADE-SCHEDULES.HTML](https://www.servicenow.com/upgrade-schedules.html)) APPLIES.

These Terms of Service include the General Terms and Conditions, Customer Support Addendum (“CSA”), Data Security Addendum (“DSA”), Data Processing Addendum (“DPA”), and the ServiceNow Store Terms of Use (collectively, “Operational Terms”), and any other terms expressly referenced herein, all of which are expressly incorporated in these Terms of Service and attached by this reference. References to the “Agreement” in the Operational Terms shall generally mean these Terms of Service, and references to an agreement between ServiceNow and Customer shall mean the Ordering Document or Reseller Order (as defined below) executed between the Customer and Reseller, or ServiceNow and Reseller, respectively, and as appropriate based on context. References to a “Use Authorization” or “Order Form” in the Operational Terms shall mean the Ordering Document.

Pursuant to a separate transaction between the customer entity (“**Customer**”) and ServiceNow’s authorized reseller (“**Reseller**”), Customer has purchased from Reseller certain services to be delivered by ServiceNow. These Terms of Service specify the terms and conditions under which those services will be provided by ServiceNow, apart from price, payment and other terms specified in the separate agreement between Customer and Reseller.

**GENERAL TERMS AND CONDITIONS****1. DEFINITIONS**

**1.1 “Ancillary Software”** means software licensed by ServiceNow to Customer that is typically deployed on Customer’s machines to enable access to and use of the Subscription Service. Ancillary Software may include or be provided with code licensed under third-party license agreements, including open sourcesoftware.

**1.2 “Claim”** means any third-party suit, claim, action, or demand.

**1.3 “Confidential Information”** means: **(1)** ServiceNow Core Technology (which is ServiceNow’s Confidential Information); **(2)** Customer Data and Customer Technology (which is Customer’s Confidential Information); **(3)** any of a party’s information that, due to the nature of the information or circumstances of disclosure, the receiving party should reasonably understand it to be confidential and **(4)** to the extent permitted by Law, the specific terms of these Terms of Service, and any amendment or attachment (which will be deemed Confidential Information of both parties). Confidential Information excludes any information that: **(a)** is or becomes generally publicly known without fault or breach by receiving party; **(b)** that receiving party obtains (rightfully and without restriction on use or disclosure)from a third party entitled to make the disclosure; or **(c)** that is independently developed by receiving party without using disclosing party’s Confidential Information.;

**1.4 “Customer Data”** means electronic data that is uploaded by or for Customer or its agents, employees, or contractors, and processed in the Subscription Service, excluding ServiceNow Core Technology.

**1.5 “Customer Technology”** means software, methodologies, templates, business processes, documentation, or other material originally authored, invented, or otherwise created by or for Customer (but not by ServiceNow) for use with the Subscription Service, excluding ServiceNow Core Technology.

**1.6 “Deliverable”** means anything created for Customer in performance of Professional Services other than Newly Created IP.

**1.7 “Documentation”** means the then-current ServiceNow documentation for the Subscription Service or Ancillary Software at <https://docs.servicenow.com>. Documentation includes solely technical program or interface documentation, user manuals, operating instructions, and release notes.




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**1.8** “**IPR**” means all intellectual property or other proprietary rights worldwide, including patents, copyrights, trademarks, moral rights, trade secrets, and any other intellectual or industrial property, including registrations, applications, renewals, and extensions of such rights.

**1.9** “**Law**” means any applicable law, rule, statute, decree, decision, order, regulation, and judgment of any government authority (federal, state, local, or international) having jurisdiction.

**1.10** “**Newly Created IP**” means IPR in the inventions or works of authorship that are made by ServiceNow specifically for Customer in the course of performing Professional Services for Customer that are expressly identified as “Newly Created IP” in an SOW, excluding ServiceNow Core Technology.

**1.11** “**Ordering Document**” means a written agreement entered into solely between Reseller and Customer specifying the ServiceNow services that Customer has purchased, along with the term and scope of the authorized use thereof, subject to these Terms of Service. An Ordering Document is not binding on ServiceNow.

**1.12** “**Product Overview**” means ServiceNow’s published description of its products and the functionality of such products, solely to the extent attached to or expressly referenced in the Ordering Document.

**1.13** “**Professional Services**” means any consulting, development, or educational services provided by or for ServiceNow pursuant to an agreed SOW or Service Description.

**1.14** “**Reseller Order**” means the supporting order executed by ServiceNow and Reseller or ServiceNow’s authorized distributor, as applicable.

**1.15** “**Service Description**” means the written description for a packaged Professional Service, attached to or referenced in an Ordering Document.

**1.16** “**ServiceNow Core Technology**” means: **(1)** the Subscription Service, Ancillary Software, Documentation, and technology and methodologies (including products, software tools, hardware designs, algorithms, templates, software (in source and object forms), architecture, class libraries, objects, and documentation) created by or for, or licensed to, ServiceNow; and **(2)** updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related documentation.

**1.17** “**SOW**” means a statement of work or work order that describes scoped Professional Services by and between ServiceNow and Reseller or ServiceNow’s authorized distributor, as applicable.

**1.18** “**Subscription Service**” means the ServiceNow software-as-a-service offering ordered by Customer under an Ordering Document.

**1.19** “**Subscription Term**” means the period of authorized access to and use of the Subscription Service, as set forth in an Ordering Document.

## 2. SERVICENOW RESPONSIBILITIES

**2.1** PROVISION OF THE SUBSCRIPTION SERVICE; COMPLIANCE WITH LAWS. During the Subscription Term, ServiceNow will: (1) make the Subscription Service available to Customer pursuant to these Terms of Service, and (2) provide Customer Support, an Availability SLA, Upgrades and Updates, and ServiceNow’s Insurance Coverage disclosure as described in the Customer Support Addendum (“**CSA**”) at <https://www.servicenow.com/upgrade-schedules.html>; and (3) provide the Subscription Service in accordance with all Laws applicable to ServiceNow’s provision of the products and services to its general customer base (i.e., without regard to Customer’s particular use of the Subscription Service or Laws not applicable to ServiceNow as a lower-tier supplier).

**2.2** PROTECTION AND RETURN OF CUSTOMER DATA. During the Subscription Term, ServiceNow will maintain a written Security Program that includes policies, procedures and controls aligned to ISO27001, or a substantially equivalent standard, that includes industry-standard practices designed to protect Customer Data from accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access as described in the data security addendum (“**DSA**”) at <https://www.servicenow.com/upgrade-schedules.html>. The terms of the data processing addendum at <https://www.servicenow.com/upgrade-schedules.html> (“**DPA**”) shall apply to ServiceNow’s Processing of Personal Data (as defined in the DPA). Upon written request by Customer within 45 days after termination or expiration of the Subscription Service, ServiceNow will provide any Customer Data in the Subscription Service to Customer in ServiceNow’s standard



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database export format at no additional charge to the Reseller under the applicable Reseller Order. After such 45 day period, ServiceNow shall have no obligation to maintain or provide any Customer Data and will, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control, delete Customer's instances of the Subscription Service, and upon written request, provide confirmation of such deletion.

**2.3** UPDATES. The CSA, DSA and DPA in effect as of the date of the Ordering Document will apply to the Subscription Services specified on such Ordering Document. ServiceNow may update the CSA, the DSA and the DPA, however, in no event will any update be effective until the end of the applicable Subscription Term.

### **3. ACCESS AND USE RIGHTS; RESTRICTIONS; PROFESSIONAL SERVICES**

**3.1** ACCESS AND USE RIGHTS. For each Subscription Term, ServiceNow grants the access and use rights set forth in this Section 3 to the ServiceNow Core Technology described in the applicable Ordering Document.

**3.1.1.** SUBSCRIPTION SERVICE. ServiceNow authorizes Customer to access and use the Subscription Service during the Subscription Term in the applicable Ordering Document, solely for its internal business purposes in accordance with the Documentation.

**3.1.2.** ANCILLARY SOFTWARE. ServiceNow grants Customer a limited, personal, worldwide, non-sublicensable, non-transferable (except as set forth in Section 11.1), non-exclusive, royalty-free license during the Subscription Term to install and execute Ancillary Software on Customer's machines, solely to facilitate Customer's authorized access to and use of the Subscription Service.

**3.2** RESTRICTIONS. With respect to the ServiceNow Core Technology, Customer will not (and will not permit others to): **(1)** use it in excess of contractual usage limits (including as set forth in the Ordering Document), or in a manner that circumvents use limits or technological access control measures; **(2)** license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share, or otherwise make any of it available for access by third-parties, except as may otherwise be expressly stated herein or in a Ordering Document; **(3)** access it for purposes of developing or operating products or services for third-parties in competition with the ServiceNow Core Technology; **(4)** disassemble, reverse engineer, or decompile it; **(5)** copy, create derivative works based on, or otherwise modify it, except as may be otherwise expressly stated in these herein; **(6)** remove or modify a copyright or other proprietary rights notice in it; **(7)** use it in violation of Law (including those applicable to collection and processing of Customer Data through the Subscription Service); **(8)** use it to reproduce, distribute, display, transmit, or use material protected by copyright or other I P R (including the rights of publicity) without first obtaining the owner's permission; **(9)** use it to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or otherwise engage in a malicious act or disrupt its security, integrity, or operation; or **(10)** access or disable any ServiceNow or third-party data, software, or network (other than Customer's instance of the Subscription Service). Customer will notify ServiceNow at [legalnotices@servicenow.com](mailto:legalnotices@servicenow.com) 30 days before it engages in any of the foregoing acts that it believes it may be entitled to and provide reasonably requested information to allow ServiceNow to assess Customer's claim. ServiceNow may, in its discretion, provide alternatives that reduce adverse impacts on ServiceNow's I P R or other rights.

**3.3** PROVISION OF PROFESSIONAL SERVICES. Customer and Reseller may enter into one or more SOWs in an Ordering Document which may incorporate one or more Service Descriptions for the provision of Professional Services by ServiceNow. ServiceNow will perform the Professional Services, subject to the fulfillment of any Customer responsibilities and payments due, as stated in the Ordering Document.

### **4. ORDERING**

**4.1** RESELLER ORDERS. Customer shall order and purchase the Subscription Service and Professional Services directly from Reseller pursuant to an agreement specifying price, payment, and other commercial terms reflected in an Ordering Document. ServiceNow is not a party to the Ordering Document, but will provide the purchased services pursuant to a Reseller Order and these Terms of Service. Reseller is not authorized to make any changes to these Terms of Service or bind ServiceNow to any additional or different terms or conditions, except as ServiceNow may expressly agree in writing in a





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Reseller Order or any agreed SOW attached thereto. Subsequent or additional orders for ServiceNow products or services may be placed by Customer through Reseller.

**4.2 USE VERIFICATION.** ServiceNow or Reseller may remotely review the scope of Customer's use of the Subscription Service, and on ServiceNow or Reseller's written request, Customer will provide reasonable assistance to verify Customer's compliance with these Terms of Service with respect to access to and use of the Subscription Service. If ServiceNow or Reseller determines that Customer has exceeded its permitted access and use rights to the Subscription Service, ServiceNow or Reseller will notify Customer, and Customer will within 30 days, either: **(1)** disable any unpermitted use, or **(2)** purchase additional subscriptions commensurate with Customer's actual use. If Customer fails to regain compliance within such thirty (30) day period, Customer will stop accessing, and ServiceNow and Reseller will stop providing access to, the Subscription Service, in addition to any other available rights or remedies.

## 5. INTELLECTUAL PROPERTY

**5.1 SERVICENOW OWNERSHIP.** As between the parties, ServiceNow and its licensors exclusively own all right, title, and interest in and to all I P R in the ServiceNow Core Technology, notwithstanding anything in an Ordering Document or other documents purportedly to the contrary. Except for the access and use rights, and licenses expressly granted in Section 3, ServiceNow, on behalf of itself and its licensors, reserves all rights in the ServiceNow Core Technology and does not grant Customer any rights except those expressly set forth herein. Any ServiceNow Core Technology delivered to Customer, or to which Customer is given access has been licensed, not sold, even if, for convenience, ServiceNow or Reseller makes reference to words such as "sale" or "purchase" in the applicable Ordering Document or other documents.

**5.2 CUSTOMER OWNERSHIP.** As between the parties, Customer and its licensors will retain all right, title, and interest in and to all I P R in Customer Data and Customer Technology. Customer grants to ServiceNow a royalty-free, fully-paid, non-exclusive, non-transferrable (except under Section 11.1, worldwide, right to use Customer Data and Customer Technology solely to provide and support the ServiceNow Subscription Service.

**5.3 FEEDBACK.** If Customer provides suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to the Subscription Service (collectively, "Feedback") Customer grants to ServiceNow a royalty-free, fully paid, sub-licensable, transferable (notwithstanding Section 11.1), non-exclusive, irrevocable, perpetual, worldwide right and license to use, license, and commercialize Feedback (including by incorporation of such Feedback into ServiceNow Core Technology) without restriction.

**5.4 PROFESSIONAL SERVICES.** Subject to this Section 5.4, ServiceNow assigns (and in the future is deemed to have assigned) to Customer any Newly Created IP upon receipt of payment in full to ServiceNow under the SOW that specifies the creation of Newly Created IP. If any ServiceNow Core Technology is incorporated into a Deliverable, ServiceNow grants to Customer a non-exclusive, royalty-free, non-transferable (except under Section 11.1), non-sublicensable worldwide license to use such ServiceNow Core Technology in connection with the use of Subscription Service under these Terms of Service during the applicable Subscription Term. Nothing in these Terms of Service may be construed to limit ServiceNow's right to perform (and to assign employees or contractors to perform) similar Professional Services for any other party or to use any information incidentally retained in the unaided memories of its employees providing Professional Services.

## 6. WARRANTIES; DISCLAIMER OF WARRANTIES

**6.1 SERVICENOW WARRANTIES.** ServiceNow warrants that: (1) during the Subscription Term, Customer's production instance of the Subscription Service will materially conform to the Product Overview; and (2) Professional Services will be performed in a competent and workmanlike manner in accordance with accepted industry standards and practices and all material requirements in the applicable SOW or Service Description.

### 6.2 REMEDIES.

**6.2.1. SUBSCRIPTION SERVICE.** If any non-conformity to the Product Overview (excluding any non-conformity caused by a modification to the Subscription Service made by Customer or a third-party acting at Customer's direction), persists without relief more than 30 days after Customer's notice to the Reseller of the non-conformity, then upon ServiceNow's timely receipt of such notice from Reseller, as Customer's exclusive remedy (and ServiceNow's sole liability in connection with this warranty), ServiceNow may terminate the affected Subscription Service immediately, and ServiceNow will refund to Reseller any prepaid subscription fees covering the remainder of the applicable Subscription Term for the non-conforming Subscription Service after the date of termination, whereupon Customer may submit to Reseller a claim for



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refund of any amounts paid for the same. This Section 6.2.1 sets forth Customers exclusive rights and remedies (and ServiceNow's sole liability) in connection with this warranty.

**6.2.2. PROFESSIONAL SERVICES.** If within 30 days after performance of any non-conforming Professional Services Customer notifies Reseller of a breach then, upon ServiceNow's timely receipt of notice from Reseller, ServiceNow at its option will, as Customer's exclusive remedy (and ServiceNow's sole liability in connection with this warranty) either use commercially reasonable efforts to re-perform the Professional Services in conformance with the material requirements of the applicable SOW or Service Description or terminate the affected Professional Services and refund to Reseller any amounts paid for the nonconforming Professional Services, whereupon Customer may submit to Reseller a claim for refund of any amounts paid for the same. This Section 6.2.2 sets forth Customers exclusive rights and remedies (and ServiceNow's sole liability) in connection with this warranty.

**6.3 DISCLAIMER.** Except for the warranties expressly stated in this Section 6, to the maximum extent allowed by Law, ServiceNow disclaims all warranties of any kind (express, implied, statutory, or otherwise, oral or written, including warranties of merchantability, accuracy, title, non-infringement, or fitness for a particular purpose, and any warranties arising from usage of trade, course of dealing, or course of performance). Without limiting the above, ServiceNow does not warrant that the Subscription Service: (1) will meet the requirements of Customer or others; or (2) will be accurate or operate without interruption or error; or (3) is designed for any purpose requiring fail-safe performance for which failure could result in death, personal injury or severe physical, property, or environmental damage.

## **7. CONFIDENTIAL INFORMATION**

**7.1 RIGHTS AND OBLIGATIONS.** To the extent permitted by law, the recipient of Confidential Information will: (1) at all times protect it from unauthorized disclosure with the same degree of care that it uses to protect its own confidential information, and in no event less than reasonable care; and (2) not use it except to the extent necessary to exercise rights and obligations under the Ordering Document or these Terms of Service. Each party will limit the disclosure of the other's Confidential Information to those of its employees and contractors with a need to know such Confidential Information to exercise its rights and obligations under the Ordering Document and these Terms of Use, and then only to employees and contractors subject to binding disclosure and use restrictions at least as protective as those in these Terms of Service. Each party's obligations under this Section 7 will remain in effect during, and for 3 years after termination of the Subscription Term. Receiving party will, at disclosing party's request, return all originals, copies, reproductions, and summaries of Confidential Information and other tangible materials and devices provided to receiving party as Confidential Information, or at disclosing party's option, certify destruction of the same. Provisions for return of Customer Data are set forth in Section 11.2 (Return of Customer Data).

**7.2 THIRD PARTY REQUESTS.** These Terms of Service will not prevent receiving party from disclosing the other party's Confidential Information to a court, or governmental body pursuant to a valid court order, Law, subpoena, or regulation, but only if receiving party: (1) gives prompt notice (or the maximum notice permitted under Law) before making the disclosure, unless prohibited by Law; (2) to the extent permitted by law, reasonably assists disclosing party, at disclosing party's cost, in its lawful efforts to resist or limit such disclosure; and (3) discloses only that portion of disclosing party's Confidential Information that is legally required to be disclosed.

## **8. INDEMNIFICATION**

### **8.1 BY SERVICENOW.**

**8.1.1. OBLIGATION.** Subject to this Section 8, ServiceNow will: (1) defend Customer, and its and their officers, directors, and employees against any Claim to the extent alleging any: (a) ServiceNow Core Technology used in accordance with these Terms of Service infringes any IPR of any unaffiliated third-party ("IPR Claim"); or (b) ServiceNow personnel when onsite at Customer's premises caused death, bodily harm, or damage to tangible personal property due to their negligence or willful misconduct; and (2) pay any settlement amount or court-ordered damages award, under the forgoing clauses (1)(a) or (1)(b) to the extent arising from such Claim.

**8.1.2. MITIGATION.** In connection with any IPR Claim, ServiceNow may: (1) contest the Claim; (2) obtain claimant's permission for Customer's continued use of the applicable Subscription Service or ServiceNow Core Technology; (3) replace Customer's access to or use of the applicable Subscription Service or ServiceNow Core Technology with substantially similar functionality that avoids the Claim; or, (4) if ServiceNow determines the foregoing clauses (1), (2), and



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(3) are commercially impracticable, terminate Customer's access to and use of the affected Subscription Service on 60-days' prior notice, whereupon Customer may submit to Reseller a claim for a refund of any prepaid subscription fees covering that part of the applicable Subscription Term for such Subscription Service remaining after the effective date of termination.

**8.1.3. LIMITATIONS.** Notwithstanding the above, ServiceNow has no obligation or liability for any Claim under Section 8.1.1(1)(a) to the extent arising from: **(1)** use of any ServiceNow Core Technology not expressly authorized under these Terms of Service, to the extent the Claim would have been avoided without such access or use; **(2)** Customer Data or Customer Technology; or **(3)** use of ServiceNow Core Technology: **(a)** in violation of Law; **(b)** after termination under Section 8.1.2(4); or **(4)** modification to the ServiceNow Core Technology to Customer's specifications or by anyone other than ServiceNow or its contractors, or if combined with anything not provided by ServiceNow, if the Claim would have been avoided but for such modifications or combinations.

**8.2 CUSTOMER WARRANTY.** Customer warrants that: (1) Customer Data, (2) Customer Technology, and (3) a modification to any ServiceNow Core Technology made to Customer's specifications or otherwise made by or on behalf of Customer by any person other than ServiceNow or a person acting at ServiceNow's direction (but only if the Claim would have been avoided by use of the unmodified ServiceNow Core Technology), does not infringe any IPR, or violates any third-party privacy rights.

**8.3 PROCESS.** ServiceNow's duty to indemnify under Section 8.1 is subject to Customer **(1)** notifying ServiceNow promptly of any actual or threatened Claim, **(2)** except where prohibited by Law, giving ServiceNow sole control of the defense of such Claim and of any related settlement negotiations, and **(3)** cooperating and, at ServiceNow's reasonable request and expense, allowing ServiceNow to assist in such defense. Neither party will stipulate, acknowledge, or admit fault or liability on the other's part without the other's prior, written consent. ServiceNow will not publicize any settlement without the Customer's prior, written consent.. **To the extent the parties perform as required, this Section 8 states ServiceNow's entire liability and the Customer's exclusive remedy for third-party claims and third-party actions.**

## 9. LIMITATION OF LIABILITY

**9.1 LIMITED LIABILITY.** ServiceNow shall have no liability for any refund that, in accordance with these Terms of Service, is to be paid by Reseller. To the extent permitted by Law, ServiceNow's total, cumulative liability arising out of or related to these Terms of Service and the products and services provided under it and the Ordering Document, whether based on contract, tort (including negligence), or any other legal or equitable theory, will be limited to the amounts received for the Subscription Service or the provision of Professional Services giving rise to the claim during the 12-month period preceding the first event giving rise to liability. Multiple claims will not enlarge this limit.

**9.2 EXCLUDED DAMAGES.** To the extent permitted by Law, neither ServiceNow nor Customer will be liable to the other or any third party for lost profits (direct or indirect), for loss of use or data, or for any incidental, consequential, punitive, special, or exemplary damages (including damage to business, reputation, or goodwill), or indirect damages of any type however caused, whether by breach of warranty, breach of contract, in tort (including negligence), or any other legal or equitable cause of action, even if such party has been advised of such damages in advance or if such damages were foreseeable.

**9.3 APPLICABILITY.** The limits in Section 9.1 and exclusions in Section 9.2 do not apply: **(1)** obligations to pay for products, services, or taxes; **(2)** obligations to pay third parties under Section 8; **(3)** IPR infringement, or **(4)** an action in tort, separate or distinct from a cause of action for breach of these Terms of Service, for the party's gross negligence or willful misconduct.

## 10. TERM AND TERMINATION

**10.1 GENERALLY.** The Subscription Term for the Subscription Service shall begin on the Term Start Date and continue until the Term End Date indicated in the Reseller Order. Professional Services are separately ordered from the Subscription Service and are not required for use of the Subscription Service. A party's breach of its Professional Services obligations will not by itself constitute a breach by that party of its Subscription Service obligations, even if the services are enumerated in the same Ordering Document.

**10.2 SUBSCRIPTION SERVICE.** On termination of an Ordering Document, Reseller Order, or expiration of a Subscription Term, Customer will stop accessing and using, and ServiceNow will stop providing, the Subscription Service and



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all related rights granted to Customer in these Terms of Service terminate immediately, automatically, and without notice. Customer will, within 30 days after the effective date of termination by Customer for ServiceNow's breach, submit to Reseller a claim for refund for any prepaid fees paid to Reseller covering that part of the Subscription Term for the affected Subscription Service, if any, remaining after the effective date of termination.

**10.3 SURVIVAL.** Sections 3.3 (Restrictions), 5 (Intellectual Property), 6 (Warranties; Disclaimer of Warranties) (solely in accordance with its terms), 7 (Confidential Information) through 9 (Limitation of Liability), 10 (Term and Termination) (solely in accordance with its terms), and 11 (General Provisions), together with any other terms required for their construction or enforcement, will survive termination or expiration of the Subscription Service.

## 11. GENERAL PROVISIONS

**11.1 ASSIGNMENT.** Neither party may assign or novate its rights or obligations under these Terms of Service, by operation of law or otherwise (collectively, "Assign"), without the other party's prior written consent. Notwithstanding the foregoing, on notice and without consent: **(1)** either party may in connection with a merger, reorganization, or sale of all or substantially all of such party's assets or equity, Assign these Terms of Service in its entirety to such party's successor; and **(2)** ServiceNow may Assign these Terms of Service in its entirety to any ServiceNow affiliate. Any attempted or purported Assignment in violation of this Section 11.1 is null and void. Subject to the foregoing, these Terms of Service bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

**11.2 EXPORT.** The Subscription Service is subject to U.S. and international laws, restrictions, and regulations that may govern the import, export, and use of the Subscription Service ("Export Laws"). Customer agrees to comply with Export Laws that apply to Customer's use of the Subscription Service. Without limiting the foregoing, Customer agrees it will not: **(1)** export, re-export, transfer, or otherwise use the Subscription Service in any country subject to an embargo or other sanctions by the U.S. (currently including Cuba, Iran, North Korea, Sudan, Syria, and Crimea Region of Ukraine); **(2)** export, re-export, or transfer, either directly or indirectly, to a person or entity barred by the applicable Export Laws from participating in export activities; and **(3)** use the Subscription Service for any purpose prohibited by Export Laws, including the design, development, or production of nuclear, chemical, or biological weapons, or rocket systems, space launch vehicles, sounding rockets, or unmanned air vehicle systems.

**11.3 US GOVERNMENT RIGHTS.** The Subscription Service and Professional Services are commercial items, and any software therein is commercial computer software (per Federal Acquisition Regulation ("FAR" 12.211 and 12.212 and Department of Defense FAR Supplement ("DFARS") 227.7202, as applicable). Government Customers shall only have those rights in technical data, computer software, and computer software documentation (collectively, "data") set forth in these Terms of Service except that Department of Defense Customers may acquire additional rights in technical data pursuant to DFARS 252.227-7015(b). This provision applies in lieu of any FAR, DFARS, or other data rights clause or provision.

**11.4 FORCE MAJEURE.** ServiceNow is not, and may not be construed to be, in breach of these Terms if performance is prohibited or delayed by acts outside of ServiceNow's reasonable control, including strikes, lock-outs, or other industrial disputes, or government action; failure of Internet connectivity or backbone or other telecommunications failures, in each case outside of ServiceNow's local network; fire, flood, natural disaster, extreme adverse weather, or other acts of God (each a "Force Majeure Event"). ServiceNow will use reasonable efforts to mitigate the effects of such Force Majeure Event.

**11.5 WAIVER; AMENDMENT.** Failure by ServiceNow to enforce any part of these Terms of Service will not be deemed a waiver of future enforcement of that or any other provision. Only written waivers signed by an authorized representative of the waiving party are effective.

**11.6 SEVERABILITY.** If any term of these Terms of Service is held invalid, unenforceable, or void by a court of competent jurisdiction, it will be enforced to the maximum extent permissible, and it will be deemed amended or replaced by a valid and enforceable term matching the intent of the original language as closely as possible.

**11.7 LAW; JURISDICTION AND VENUE.** If Customer is the U.S. Government, these Terms of Service shall be subject to the laws of the United States, and in the event of any dispute arising from or in relation to these Terms of Service, the parties consent to the exclusive jurisdiction of, and venue in, a court of competent jurisdiction under the laws of the United States. If Customer is a state or local government entity, these Terms of Service shall be subject to the laws of the state in which Customer is located, and in the event of a dispute arising from or in relation to these Terms of Service, the parties consent to the exclusive jurisdiction of, and venue in, a court of competent jurisdiction within such state. Otherwise, to the



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extent permitted by law, these Terms of Service shall be governed by, and construed in accordance with the Laws of New York, without regard to its conflict of laws principles. The parties irrevocably consent to exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction in New York City, New York to adjudicate any dispute arising out of or related to these Terms of Service. To the extent permitted by applicable Law, the United Nations Convention on Contracts for the International Sale of Goods shall not apply. Notwithstanding the foregoing, either party, may at any time, and without waiving any other rights under these Terms of Service, seek appropriate legal or equitable relief, including but not limited to, emergency interim and/or injunctive relief, in any court of competent jurisdiction to protect its I P R.

**11.8 CONSTRUCTION.** ServiceNow may provide Subscription Service only in the English language, unless otherwise agreed in writing. The parties have expressly requested that these Terms of Service and all related documents be drafted in English. Section headings are for convenience only and are not to be used in interpreting these Terms of Service. These Terms of Servicewill be interpreted fairly and in accordance with its terms and without any strict construction in favor of or against any party. URLs are understood to also refer to successor URLs, URLs for localized content, and information or resources linked from within the websites at such URLs.

**11.9 ENTIRETY; EXECUTION.** These Terms of Service (1) are the parties' entire agreement regarding its subject and supersedes all prior or contemporaneous oral or written agreements, representations, understandings, undertakings, negotiations, letters of intent, and proposals, with respect to that subject;excludes any other terms Customer seeks to impose or incorporate or that may be implied by trade, custom, practice, or course of dealing. Customer has not relied on any statement, promise, or representation not expressly included in these Terms of Service, including related to any possible future functionality that ServiceNow may provide or offer.

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**EXHIBIT B**  
**PAYMENT ARRANGEMENTS**  
**Compensation Upon Completion**

- A. For CONTRACTOR services to be rendered under this Agreement, CONTRACTOR (Inergex LLC dba Crossfuze) shall be paid a total contract amount, including cost reimbursements, not to exceed \$53,062.26.
- 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** as determined by COUNTY.
- C. Upon completion of the work detailed in **EXHIBIT A** and/or delivery to COUNTY of item(s) specified therein, CONTRACTOR shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed by December 30, 2020. This invoice or claim must cite the assigned Board Contract Number. COUNTY DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and/or the item(s) delivered and if found to be satisfactory shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.
- 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.

## EXHIBIT C.1

### Indemnification and Insurance Requirements (For this Crossfuze Contract Only - Information Technology)

#### INDEMNIFICATION

Crossfuze (hereinafter "CONTRACTOR") hereby agrees to indemnify and hold the County of Santa Barbara (hereinafter "COUNTY") harmless from and against any and all third-party claims, demands, actions, losses, liabilities, costs and expenses (including reasonable attorney's fees) caused by or resulting from CONTRACTOR and its employees or agents actions with respect to this SOW other than if caused by the sole or willful misconduct of the COUNTY.

#### 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:** 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 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 \$5,000,000 per occurrence or claim, \$5,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving 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, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

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** – CONTRACTOR 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.
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 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.




8. **Failure to Procure Coverage** – 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.

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.

## Exhibit C.2 Indemnification and Insurance Requirements (For this Crossfuzze Contract Only - Information Technology)

	<b>CERTIFICATE OF LIABILITY INSURANCE</b>	DATE (MM/DD/YYYY) 04/30/2020					
<p><b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.</b></p> <p><b>IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION is WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).</b></p>							
<b>PRODUCER</b> Marsh USA Inc. 2325 E. Camelback Road Suite 600 Phoenix, AZ 85016 Attn: Jonie Frinkle, Phone: (602) 337-6202 CN101234622-GALWP-GALWP-20	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE NAIC # INSURER A : Continental Casualty Company 20443 INSURER B : Sentry Insurance A Mutual Co 34988 INSURER C : Endurance American Insurance Company 10641 INSURER D : National Fire Insurance Co Of Hartford 20478 INSURER E : N/A N/A INSURER F : Sentry Casualty Company 28460						
<b>INSURED</b> Insight Public Sector, Inc. 6820 S. Hail Avenue Tempe, AZ 85283							
<b>COVERAGES      CERTIFICATE NUMBER: LOS-002474309-07      REVISION NUMBER:</b>							
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:			6057351813	04/15/2020	04/15/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
D	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED:      RETENTION \$			6057351780	04/15/2020	04/15/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ EACH OCCURRENCE \$ AGGREGATE \$ \$
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	90-05749-03 (AOS) 90-05749-04 (MA, WI, HI)	04/15/2020 04/15/2020	04/15/2021 04/15/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Technology ESO and Cyber			PRX10010993103	04/15/2020	04/15/2021	Per Claim 1,000,000 Aggregate 2,000,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) County of San Mateo and its officers, officials, agents, employees, and volunteers are included as additional insured where required by written contract with respect to General Liability & Auto Liability. This insurance is primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured subject to policy terms and conditions. Waiver of subrogation is applicable where required by written contract and subject to policy terms and conditions.							
<b>CERTIFICATE HOLDER</b>				<b>CANCELLATION</b>			
County of Santa Barbara 105 East Anapamu, Suite 102 Santa Barbara, CA 93101				SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.			
				AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Kenneth Chau			

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## EXHIBIT D

### 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 PHI disclosed to Business Associate pursuant 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:

#### A. Definitions

1. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
2. **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.
3. **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.
4. **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.
5. **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.
6. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
7. **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.
8. **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.

9. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
10. **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].
11. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
12. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
13. **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).

B. Obligations of Business Associate

1. **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)].
2. **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)].
3. **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.

4. **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].
5. **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 60 calendar 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)].
6. **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 (c) 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)).
7. **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).
8. **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)].

9. **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 B.2 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.
10. **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.
11. **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."
12. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.
13. **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.
14. **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)]

15. **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.
16. **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.

### C. Termination

1. **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)].
2. **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.
3. **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 B 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.

#### D. 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.

#### E. 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.

#### F. 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.

#### G. 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.

#### H. 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.

I. 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.

J. 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.

K. 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.

L. 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.