

AGREEMENT FOR PROFESSIONAL LEGAL SERVICES

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 Wilmer Cutler Pickering Hale and Dorr LLP, Attorneys at Law (hereafter ATTORNEY) wherein ATTORNEY agrees to provide and COUNTY agrees to accept the services specified herein.

WHEREAS, COUNTY requires the services of legal counsel to assist in providing legal advice and representation in the specialized area of False Claims Act litigation; and

WHEREAS, under Section 25203 of the California Government Code, COUNTY's Board of Supervisors may employ counsel to assist in the conduct of litigation in which COUNTY is a party; and

WHEREAS, ATTORNEY 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 ATTORNEY 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.** Chief Assistant County Counsel Amber Holderness at phone number 805-568-2950 is the designated representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Davina Pujari at phone number (628) 235-1136 is the designated representative for ATTORNEY. 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: Amber Holderness
 Chief Assistant County Counsel
 Office of County Counsel
 County of Santa Barbara
 105 East Anapamu Street, #201
 Santa Barbara, CA 93101
 Fax (805) 568-2982

To ATTORNEY: Davina Pujari
 WilmerHale
 One Front Street, Suite 3500
 San Francisco, CA 94111
 Fax (628) 235-1001

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.** ATTORNEY agrees to provide services to COUNTY in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. **TERM.** ATTORNEY shall commence performance on January 18, 2022, and end performance upon completion, but no later than October 30, 2023 unless otherwise directed by COUNTY or unless earlier terminated.

5. **COMPENSATION OF ATTORNEY.** In full consideration for ATTORNEY's services, ATTORNEY 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.

6. **INDEPENDENT CONTRACTOR.** It is mutually understood and agreed that ATTORNEY, (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 ATTORNEY shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that ATTORNEY is performing its obligations in accordance with the terms and conditions hereof. ATTORNEY 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. ATTORNEY shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, ATTORNEY shall be solely responsible and save COUNTY harmless from all matters relating to payment of ATTORNEY'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, ATTORNEY may be providing services to others unrelated to the ATTORNEY's representation of the COUNTY and consistent with this Agreement and the Engagement Agreement.

7. **STANDARD OF PERFORMANCE.** ATTORNEY represents that she has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, ATTORNEY shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which ATTORNEY is engaged. All products of whatsoever nature, which ATTORNEY 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 ATTORNEY's profession. ATTORNEY shall correct or revise any errors or omissions, at COUNTY'S request without additional compensation. All required permits and/or licenses shall be obtained and maintained by ATTORNEY without additional compensation.

8. **DEBARMENT AND SUSPENSION.** ATTORNEY 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. ATTORNEY certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. **TAXES.** ATTORNEY 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 ATTORNEY's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, ATTORNEY 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.** Except as provided in this paragraph 10, ATTORNEY covenants that ATTORNEY 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. ATTORNEY further covenants that in the performance of this Agreement, no person having any such interest shall be employed by ATTORNEY. ATTORNEY has conducted a conflicts evaluation and has discovered no potential conflicts. The COUNTY acknowledges and agrees to the advance waiver and other provisions in the engagement letter provided such representation is not violative of Government Code section 1126. During the course of ATTORNEY's representation of the COUNTY in this matter, to the extent consistent with ATTORNEY's obligations to COUNTY and ATTORNEY's other clients, ATTORNEY shall inform the COUNTY immediately of any direct adversities undertaken by ATTORNEY regarding the COUNTY. At no time shall ATTORNEY use or disclose any information relating to COUNTY's representation in connection with ATTORNEY's representation of another client without the COUNTY's written consent.

11. **EXPERTS/CONSULTANTS/OTHER LAW FIRMS.** ATTORNEY shall get COUNTY's written approval prior to retaining any expert/consultant, or other outside attorney to assist with any matter covered by this Agreement.

12. **OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.** COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. ATTORNEY shall not release any of such items to other parties except after prior written approval of COUNTY. Unless otherwise specified in Exhibit A, ATTORNEY 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 ATTORNEY pursuant to this Agreement (collectively referred to herein as "Copyrightable Works and Inventions"). COUNTY shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. ATTORNEY 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. ATTORNEY 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. ATTORNEY 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 ATTORNEY hereunder infringe upon any intellectual property or other proprietary rights of a third party, and ATTORNEY 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 the Agreement.

13. **NO PUBLICITY OR ENDORSEMENT.** ATTORNEY shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. ATTORNEY shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing ATTORNEY. ATTORNEY shall not in any way contract on behalf of or in the name of COUNTY. ATTORNEY 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.

14. **COUNTY PROPERTY AND INFORMATION.** All of COUNTY's property, documents, and information provided for ATTORNEY's use in connection with the services shall remain COUNTY's property, and ATTORNEY shall return any such items whenever requested by COUNTY and whenever

required according to the Termination section of this Agreement. ATTORNEY may use such items only in connection with providing the services. ATTORNEY shall not disseminate any COUNTY property, documents, or information without COUNTY's prior written consent.

15. **RECORDS, AUDIT, AND REVIEW.** ATTORNEY shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of ATTORNEY'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 practices. COUNTY shall have the right to audit and review all such documents and records at any time during ATTORNEY's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00) ATTORNEY shall be subject to the examination and audit of the State Auditor General for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). ATTORNEY shall participate in any audits and review, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, ATTORNEY 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, ATTORNEY shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

16. **INSURANCE.** ATTORNEY agrees to the insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

17. **NONDISCRIMINATION.** COUNTY hereby notifies ATTORNEY 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 ATTORNEY agrees to comply with said ordinance.

18. **NONEXCLUSIVE AGREEMENT.** ATTORNEY 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 ATTORNEY as the COUNTY desires.

19. **NON-ASSIGNMENT.** ATTORNEY shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of COUNTY and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

20. **TERMINATION.**

A. **By COUNTY.** COUNTY may, by written notice to ATTORNEY, terminate this Agreement in whole or in part, whether for COUNTY's convenience, for nonappropriation of funds, or because of the failure of ATTORNEY 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, ATTORNEY 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 ATTORNEY 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, but will make payments for work already performed at the direction of COUNTY.

3. For Cause. Should ATTORNEY 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, ATTORNEY 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 ATTORNEY, unless the notice directs otherwise.

B. By ATTORNEY. ATTORNEY may, by written notice to COUNTY, terminate this Agreement in whole or in part, for any reason, subject to ATTORNEY's professional obligations to the COUNTY under the applicable rules of professional conduct. Additionally, should COUNTY fail to pay ATTORNEY all or any part of the payment set forth in EXHIBIT B, ATTORNEY may, at ATTORNEY'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, ATTORNEY 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 ATTORNEY in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit ATTORNEY to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay ATTORNEY 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 ATTORNEY be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. ATTORNEY 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 ATTORNEY. In the event of a dispute as to the reasonable value of the services rendered by ATTORNEY, the decision of COUNTY shall be final. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

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

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

23. REMEDIES NOT EXCLUSIVE. No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

24. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement and each covenant and term is a condition herein.

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

26. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except for the Engagement Letter and Business Associate Agreement entered into between ATTORNEY and COUNTY, effective January 18, 2022, and as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

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

28. **COMPLIANCE WITH LAW.** ATTORNEY 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 ATTORNEY in any action or proceeding against ATTORNEY, whether COUNTY is a party thereto or not, that ATTORNEY has violated any such ordinance or statute, shall be conclusive of that fact as between ATTORNEY and COUNTY.

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

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

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

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

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

34. **BUSINESS ASSOCIATE.** The parties agree to the terms and conditions set forth in the Business Associate Agreement (BAA) effective January 18, 2022, attached hereto and incorporated herein by reference.

35. **EFFECTIVE DATE OF AGREEMENT.** The effective date of this Agreement shall be the date it is executed by COUNTY. This Agreement shall apply to services performed by ATTORNEY for COUNTY on this matter during the term of the Agreement as defined above in Paragraph 4, including services provided before the effective date.

(signatures on following page)

Agreement for Professional Legal Services between the County of Santa Barbara and Wilmer Cutler Pickering Hale and Dorr LLP.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective January 18, 2022.

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: *Shela de la Guerra*
Deputy Clerk

COUNTY OF SANTA BARBARA:

By: *Joan Hartman*
Chair, Board of Supervisors
Date 4-5-22

**RECOMMENDED FOR APPROVAL:
COUNTY COUNSEL**

By: *Rachel Van Mullem*
Department Head

ATTORNEY:

Wilmer Cutler Pickering Hale and Dorr LLP

By: _____
Authorized Representative
Name Davina Pujari
Title Attorney at Law

APPROVED AS TO FORM:

Rachel Van Mullem
County Counsel

By: *Jeresa M. Masby*
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA
Auditor-Controller

By: _____
Deputy

APPROVED AS TO FORM:

Risk Management

By: _____
Risk Management

Agreement for Professional Legal Services between the County of Santa Barbara and Wilmer Cutler Pickering Hale and Dorr LLP.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective January 18, 2022.

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:
COUNTY COUNSEL**

ATTORNEY:

Wilmer Cutler Pickering Hale and Dorr LLP

By: *Rachel Van Mullem*
Department Head

By: *Davina Pujari*
Authorized Representative

Name Davina Pujari

Title Attorney at Law

APPROVED AS TO FORM:

Rachel Van Mullem
County Counsel

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA
Auditor-Controller

By: *Yvonne M. Madry*
Deputy County Counsel

By: *C. Schaffer*
Deputy

APPROVED AS TO FORM:

Risk Management

By: *Ray Aromatorio*
Risk Management

EXHIBIT A

STATEMENT OF WORK

- A. As requested by COUNTY, ATTORNEY shall assist COUNTY by providing legal advice and representation in false claims act matters, including in the litigation entitled *United States of America ex rel. Judith Zissa v. Santa Barbara County Alcohol, Drug and Mental Health Services, et al.*, United States District Court for the Central District of California case number 2:14-cv-06891-DMG (RZx).

- B. COUNTY agrees that ATTORNEY's acceptance of this engagement does not involve an undertaking to represent COUNTY in any matter other than that described in the paragraph above, unless and until the scope of the representation is expanded in writing.

- C. Unless previously agreed in writing by COUNTY's Designated Representative, the primary attorneys through which ATTORNEY will provide services under this Agreement are Davina Pujari and Christopher Rheinheimer. COUNTY may, in its sole discretion, request ATTORNEY to discontinue the services of any person providing services to COUNTY under this Agreement, whereupon ATTORNEY shall promptly do so.

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

EXHIBIT B

PAYMENT ARRANGEMENTS Periodic Compensation (with attached Schedule of Fees)

- A. For ATTORNEY services to be rendered under this Agreement, ATTORNEY shall be paid the hourly rates defined in Attachment B-1 for a total contract amount, including cost reimbursements, up to but not to exceed \$250,000.00.
- B. Payment for services and/or reimbursement of costs shall be made upon ATTORNEY's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **Attachment B-1 (Schedule of Fees)**. Invoices submitted for payment must contain sufficient detail to enable an audit of the charges and ATTORNEY must provide supporting documentation if requested.
- C. Monthly, ATTORNEY shall submit to the COUNTY DESIGNATED REPRESENTATIVE an invoice or certified claim on the County Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. COUNTY DESIGNATED REPRESENTATIVE shall evaluate the quality of the service performed and/or item(s) delivered and if found to be satisfactory and within the cost basis of **Attachment B-1**, 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 ATTORNEY.
- 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 ATTORNEY to correct such work or billings or seek any other legal remedy.

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

HOURLY RATES

ATTORNEY's hourly rates shall not exceed the following:

- For work performed by a Partner: \$650 per hour.
- For work performed by an Associate Attorney: \$450 per hour.
- For work performed by a Paralegal: \$300 per hour.

COSTS AND EXPENSES

COUNTY shall reimburse ATTORNEY for certain costs and expenses actually incurred and reasonably necessary for completing the matter for which COUNTY has engaged ATTORNEY, as long as ATTORNEY's charges for costs and expenses are competitive with other sources of the same products or services. COUNTY shall reimburse ATTORNEY in accordance with the following guidelines:

Billable costs and expenses: COUNTY shall reimburse ATTORNEY at COUNTY's reimbursement rates for reasonable costs and expenses incurred by ATTORNEY in performing services for COUNTY, such as photocopying, messenger and delivery service, computerized research, travel (including mileage, parking, airfare, lodging, meals, and transportation), long-distance telephone, and filing fees.

Non-billable overhead and administration: COUNTY does not expect to be charged for and will not pay for any of the following: attorney time spent preparing time sheets or bills, conflicts checks, local phone service, local travel costs, secretarial services, word processing services, librarian services, other clerical activities such as creating, organizing and maintaining files, distributing documents, overtime, or any other services traditionally considered overhead or administrative.

Photocopying: COUNTY will reimburse ATTORNEY at a maximum of \$.15 per page for normal photocopying and will not be responsible for time spent by photocopying personnel. ATTORNEY shall give COUNTY an opportunity to use its own internal staff to duplicate documents or an outside photocopying vendor if certain jobs can be less expensively performed by COUNTY or by the vendor.

Computerized research: ATTORNEY shall perform any computerized research in a low-cost manner. Computerized research charges such as Lexis/Nexis or Westlaw that are billed to COUNTY shall be billed at ATTORNEY's cost and shall be accompanied by a copy of the invoice received by ATTORNEY.

Document delivery: For document delivery costs that are billed to COUNTY, ATTORNEY shall use the most economical delivery method or service available. To help minimize such costs, ATTORNEY shall use messengers and overnight delivery only where necessary in the interests of urgency and reliability.

Multiple billing: If an attorney works simultaneously on a COUNTY matter and a matter for another client of ATTORNEY's firm, COUNTY shall be billed only for the proportionate amount of time spent on the COUNTY matter.

Travel: COUNTY will reimburse ATTORNEY at COUNTY's reimbursement rates for reasonable travel expenses directly related to ATTORNEY's work for COUNTY when ATTORNEY has obtained COUNTY's prior approval. First class airfare, luxury accommodations and lavish meals are considered unreasonable expenses and will not be paid. ATTORNEY shall not bill for travel time.

BILLING PROCEDURE

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

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

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

EXHIBIT C

Insurance Requirements (For Professional Contracts)

NOTIFICATION OF ACCIDENTS

ATTORNEY shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

INSURANCE

ATTORNEY 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 ATTORNEY, its agents, representatives, employees or subcontractors. The County's rights to assert claims and obtain remedies are not contingent or dependent on Attorney's insurance coverage for the claim. For the avoidance of doubt, in the event that Attorney fails to maintain the above referenced insurance coverage or the insurer denies a claim, the County may nevertheless maintain an action to establish liability and recover damages against Attorney for the claim.

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 or equivalent 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 or equivalent covering any auto (Code 1), or if ATTORNEY 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 ATTORNEY's profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

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

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

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be added as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of ATTORNEY 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 ATTORNEY'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) or equivalent endorsements.

2. Intentionally omitted.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY which shall not be less than thirty (30) days' notice except for non-payment, which is ten (10) days' notice
4. **Waiver of Subrogation Rights** –Each party hereby grants a waiver of any right to subrogation which any insurer of a party's CGL, Automobile or Workers' Compensation policies may acquire against the other party to the extent permitted by law and by virtue of the payment of any loss under such insurance. Each party agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not a party has received a waiver of subrogation endorsement from the insurer. With respect to the policies named herein, a waiver of subrogation in favor of client is included for claims related to ATTORNEY's sole negligence.
5. **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".
6. **Verification of Coverage** – ATTORNEY shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements (if any) as required by this Agreement. The proof of insurance, certificates and endorsements (if any) 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 ATTORNEY's obligation to provide them. ATTORNEY shall furnish evidence of renewal of coverage throughout the term of the Agreement.
7. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
8. **Subcontractors** – ATTORNEY shall make best efforts to ensure that all subcontractors maintain adequate insurance .
9. **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, ATTORNEY must purchase "extended reporting" coverage for a minimum of three (3) years after completion of contract work.
10. **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. COUNTY will provide ATTORNEY at least ninety (90) days advance notice before such modification is effective.

Any change requiring additional types of insurance coverage, or higher or lower coverage limits must be made by amendment to this Agreement which shall be mutually agreed upon by the parties.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance requirements will not be deemed as a waiver of any rights on the part of COUNTY.

EXHIBIT D

BUSINESS ASSOCIATE AGREEMENT: WILMER CUTLER PICKERING HALE AND DORR LLP

This Business Associate Agreement (“Agreement”) pertains to the case entitled *United States of America ex rel. Judith Zissa v. Santa Barbara County Alcohol, Drug and Mental Health Services, et al.*, Case No. 2:14-CV-06891-DMG-AGR(x), presently pending in the Central District of California (the “Matter”). The law firm of Hanson Bridgett LLP, located at 1676 North California Boulevard, Suite 620, Walnut Creek, California 94596 (“the Firm”) currently represents the County of Santa Barbara and Santa Barbara County Department of Behavioral Wellness, formerly known as the Department of Alcohol, Drug and Mental Health Services (hereinafter collectively referred to as “Clients”) in the Matter. Clients seek to transfer representation of the Matter to the law firm Wilmer Cutler Pickering Hale and Dorr LLP, located at One Front Street, Suite 3500, San Francisco, California 94111 (“WilmerHale”). Clients will engage WilmerHale through a separate agreement. At the request of Clients, the Firm will assist in the transition of the Matter to WilmerHale, including transferring protected health information (PHI) or other confidential information subject to the Stipulated Qualified Protective Order entered into by the parties to the Matter on May 29, 2020, and incorporated herein by this reference.

This Agreement was entered into as of January 18, 2022 (“Commencement Date”), by and between the Clients and WilmerHale.

RECITALS

- A. This Agreement is entered into for the purposes of complying with privacy and security regulations issued by the United States Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”).
- B. Clients are covered entities as such term is defined under HIPAA, and as such are required to comply with the requirements thereof regarding the confidentiality and privacy of Protected Health Information (“PHI”) (defined below). The Matter may require Clients to disclose individually identifiable health information to WilmerHale, some of which may constitute Protected Health Information (“PHI”) (defined below) for the purpose of defending the Matter. As Covered Entities, the Clients are referred to below as “CE.”
- C. WilmerHale will provide legal services to Clients pursuant to the terms of the engagement agreement, commencing as of January 18, 2022. The Clients have deemed the services of WilmerHale to be necessary in the representation of the Clients in regard to the Matter. Because Clients are “covered entities” within the with privacy and security regulations pursuant to HIPAA and the HITECH Act, it is necessary for WilmerHale to enter into this Agreement to comply with such regulations. As a Business Associate, WilmerHale is referred to below as “BA.”

NOW THEREFORE, in consideration of the promises and mutual agreement contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as set forth below.

AGREEMENT

1. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the meanings ascribed to them below:

- 1.1 "Breach" shall have the meaning given to such term under the Privacy Rule, including but not limited to, 45 C.F.R. § 164.402.
- 1.2 "Business Associate" shall have the meaning given to such term under the Privacy Rule, including but not limited to, 45 C.F.R. § 160.103.
- 1.3 "Covered Entity" shall have the meaning given to such term under the Privacy Rule, including but not limited to, 45 C.F.R. § 160.103.
- 1.4 "Designated Record Set" shall have the meaning given to such term under the Privacy Rule, including but not limited to, 45 C.F.R. § 164.501.
- 1.5 "Disclosure" shall have the meaning given to such term under the Privacy Rule, including but not limited to, 45 C.F.R. § 160.103.
- 1.6 "Electronic Protected Health Information" or "ePHI" shall have the meaning given to such term under the Privacy Rule, including but not limited to, 45 C.F.R. § 160.103.
- 1.7 "Individual" shall have the meaning given to such term under the Privacy Rule, including but not limited to, 45 C.F.R. § 160.103.
- 1.8 "Minimum Necessary" shall have the meaning given to such term under the Privacy Rule, including but not limited to, 45 C.F.R. §§ 164.502(b) and 164.514(d).
- 1.9 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- 1.10 "Protected Health Information" or "PHI" shall have the meaning given to such term in 45 C.F.R. §§ 160.103 and 164.501, and is the information created or received by BA from or on behalf of CE.
- 1.11 "Required By Law" shall have the meaning given to such term in 45 C.F.R. § 164.103.
- 1.12 "Secretary" shall have the meaning given to such term in 45 C.F.R. § 160.103.
- 1.13 "Security Incident" shall have the meaning given to such term under the Security Rule, including but not limited to, 45 C.F.R. § 164.304.
- 1.14 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- 1.15 "Subcontractor" shall have the meaning given to such term under the Privacy Rule, including but not limited to, 45 C.F.R. § 160.103.

1.16 "Unsecured Protected Health Information or PHI" shall have the meaning given to such term under the Privacy Rule, including but not limited to, 45 C.F.R. § 164.402.

1.17 "Use" shall have the meaning given to such term under the Privacy Rule, including but not limited to, 45 C.F.R. § 160.103.

2. OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Permitted Uses and Disclosures of PHI. BA, its directors, officers, subcontractors, employees, affiliates, agents, and representatives shall use or disclose PHI (a) in connection with fulfilling its duties and obligations under this Agreement; (b) for the proper management and administration of BA; (c) to carry out the responsibilities as directed by Clients; or (d) as otherwise Required by Law.

2.2 Prohibited Uses and Disclosures of PHI. BA shall not use or disclose PHI other than as permitted or Required by Law. BA and BA shall not use or disclose PHI in any manner that violates state or federal laws or would violate such laws if used or disclosed in such manner by CE.

2.3 Third Party Disclosures. BA shall obtain and maintain an agreement, subject to the written approval of CE, with each subcontractor that has or will have access to PHI which is received from, created, or received by BA, pursuant to which agreement such subcontractor agrees to be bound by the same restrictions, terms, and conditions that apply to BA pursuant to this Agreement with respect to such PHI. BA shall also (a) obtain written reasonable assurances from the subcontractor that the PHI will be held in confidence and used or further disclosed only as Required by Law or for the purpose for which it was disclosed, and (b) obligate such person to notify BA within 48 hours of any instance in which PHI is used or disclosed, including incidents that constitute breaches of unsecured PHI or any security incident of which it becomes aware in which the confidentiality of the PHI has been breached. BA must immediately notify CE of any such disclosure.

2.4 Minimum Necessary. BA and their agents or subcontractors shall request, use, and disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. To the extent BA uses or discloses PHI received from, created, or received from CE and/or BA, BA will make reasonable efforts to limit PHI to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request.

2.5 Access of Individuals to PHI.

(i) BA shall make PHI maintained by it or its agents or subcontractors available to CE for inspection and copying within five (5) business days of a written request by CE to enable CE to fulfill its obligations under the Privacy Rule and Cal. Health & Safety Code section 123110. If BA maintains ePHI, it shall provide such information in electronic format to enable CE and/or BA to fulfill their obligations under 45 C.F.R. § 164.524.

(ii) In the event an Individual or entity requests access to PHI from BA, BA shall forward such request to CE within five (5) business days. CE is responsible for determining what PHI shall be unavailable to the Individual pursuant to 45 C.F.R. § 164.524.

(iii) Any denial of access to PHI determined by CE pursuant to 45 C.F.R. §164.524, and conveyed to BA by CE, shall be the responsibility of CE, including resolution or reporting of all appeals, and/or complaints arising from denials.

2.6 Amendment of PHI.

(i) As applicable, in order to allow CE to respond to a request by an Individual for an amendment pursuant to 45 C.F.R. § 164.526, BA shall, within ten (10) business days of a written request by CE for PHI about an Individual contained in a Designated Record Set, make such PHI available to CE for so long as such information is maintained in the Designated Record Set.

(ii) In the event that any Individual requests an amendment to his/her PHI, BA shall forward such request to CE within five (5) business days. The CE is responsible for determining what PHI is unavailable to the Individual pursuant to 45 C.F.R. § 164.526.

(iii) Any denial of an amendment to PHI determined by CE pursuant to 45 C.F.R. § 164.526, and conveyed to BA by CE, shall be the responsibility of CE, including resolution or reporting of all appeals and/or complaints arising from denials.

(iv) As applicable, within fifteen (15) business days of receipt of a request from CE to amend an Individual's PHI in a Designated Record Set, BA shall incorporate any amendments, statements of disagreement, and/or rebuttals approved by CE into its Designated Record Set, as required by 45 C.F.R. § 164.526.

2.7 Accounting of Disclosures.

(i) In order to allow CE to respond to a request by an Individual for an accounting of disclosures of a Designated Record Set pursuant to 45 C.F.R. § 164.528, BA shall, within ten (10) business days of a CE's written request for an accounting of disclosures of PHI about an Individual, make such information available to CE. As applicable, BA shall provide CE with the following information: (a) the date of the disclosure; (b) the name of the entity or person who received the PHI, and, if known, the address of such entity or person; (c) a brief description of the PHI disclosed; and (d) a brief statement of the purpose of such disclosure.

(ii) In the event an Individual requests an accounting of disclosures of PHI directly from BA, BA shall forward such request to CE within five (5) business days.

(iii) As applicable BA shall implement an appropriate recordkeeping process of Designated Records Sets to enable it to comply with the requirements of the current disposition.

2.8 Subpoena or Legal Request for PHI. BA shall notify CE within five (5) business days of receipt of any request, subpoena, or other legal process to obtain PHI received from CE or BA. CE, in conjunction with BA, shall determine whether BA may disclose PHI pursuant to such request, subpoena, or other legal process. The provisions of this Section 2.8 shall survive the termination of this Agreement.

2.9 Reporting Breaches, Improper Disclosures, and Security Incidents.

(i) Breaches. In the event of a Breach or suspected Breach of any Unsecured PHI that BA accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds or uses, BA shall report such Breach to CE within forty-eight (48) hours after discovering the breach.

(ii) Improper Disclosures. BA shall report any actual or suspected unauthorized or improper use or disclosure of PHI regarding the terms and conditions of this Agreement or applicable federal and state laws to CE within forty-eight (48) hours of the date on which BA becomes aware of such actual or suspected unauthorized or improper use or disclosure. BA shall, in consultation with CE, mitigate to the extent practicable any harmful effect of such improper disclosures.

(iii) Security Incidents. BA shall report to CE any Security Incident of which it becomes aware within twenty-four (24) hours.

2.10 Safeguards. BA shall implement appropriate administrative, technical, and physical safeguards, consistent with the size and complexity of BA's operations, to protect the confidentiality and security of PHI that it creates, receives, maintains, or transmits on behalf of CE and to prevent the use or disclosure of PHI in any manner inconsistent with the terms of this Agreement. BA is solely responsible for all decisions made by BA regarding safeguarding of PHI.

2.11 Availability of Books and Records to CE.

(i) Within ten (10) calendar days of a written request by CE, BA and its agents or subcontractors shall permit CE to audit BA's internal practices, books, and records to determine how BA is managing CE's PHI at reasonable times as they pertain to the use and disclosure of PHI received from, or created or received by BA on behalf of CE in order to ensure that CE and BA are in compliance with the requirements of this Agreement and the Privacy Rule, and to the extent that CE determines such examination is necessary to comply with CE's obligations pursuant to HIPAA. The availability of books and records from BA to CE is subject to the following conditions:

a) BA and CE shall mutually agree in advance upon the scope, timing, and location of such an inspection.

b) CE shall protect the confidentiality of all confidential and proprietary information of BA to which CE has access during the course of inspection.

(ii) The fact that CE inspects, or fails to inspect, or has the right to inspect, BA's internal practices, books, and records does not relieve BA of its responsibility to comply with this Agreement, nor does CE's (i) failure to detect or (ii) detection, but failure to notify BA or require BA's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under this Agreement.

2.12 Governmental Access to Records. BA shall make its facilities, systems, internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining BA's compliance with the Privacy Rule and the Security Rule. BA shall notify CE within ten (10) calendar days of learning that BA has become the subject of an audit, compliance review, or complaint investigation by the Secretary. BA shall provide to CE a copy of any PHI that BA provides to the Secretary concurrently with providing such PHI to the Secretary.

2.13 Business Associate's Insurance. BA 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 Agreement.

2.14 Assistance in Litigation of Privacy Violations. BA shall make itself, and any subcontractors, employees or agents assisting BA in the performance of its obligations under this Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, 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 BA or its subcontractor, employee or agent is a named adverse party.

3. OBLIGATIONS OF COVERED ENTITY

3.1 General Obligations. CE warrants that CE, its directors, officers, subcontractors, employees, affiliated agents, and representatives: (a) shall comply with the Privacy Rule in its use or disclosure of PHI; (b) shall not use or disclose PHI in any manner that violates applicable federal and state laws; (c) shall not request BA to use or disclose PHI in any manner that violates applicable federal and state laws if such use or disclosure were done by CE; (d) may request BA to disclose PHI directly to another party only for the purposes allowed by the Privacy Rule.

3.2 Breach. CE shall provide notice to BA of any pattern of activity or practice of BA that CE believes constitutes a material breach or violation of the BA's obligation under the Service Agreement or this Agreement within five (5) calendar days of discovery and shall meet with BA to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

3.3 Notice of Privacy Practices. CE will notify BA of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI. CE shall provide such notice no later than fifteen (15) days prior to the effective date of the limitation.

3.4 Notification of Changes Regarding Individual Permission. CE shall notify BA of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI. CE shall provide such notice no later than fifteen (15) days prior to the effective date of the change.

3.5 Notification of Restrictions to Use or Disclosure of PHI. CE shall notify BA of any restriction to the use or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect BA's use or disclosure of PHI. CE shall provide such notice no later than fifteen (15) days prior to the effective date of the restriction.

3.6 Permissible Requests by CE. CE shall not request BA to use or disclose PHI in any manner that would not be permissible under HIPAA if done by CE, except as permitted pursuant to Section 2.

4. TERM AND TERMINATION

4.1 Term. This Agreement shall commence on the Commencement Date and shall continue, unless earlier terminated by written notice to the other party (the "Term").

4.2 Effect of Termination. Upon termination of the Agreement for any reason, BA shall, at the option of CE, return or destroy all PHI that BA or its agents or subcontractors maintains in any form and shall retain no copies of such PHI. If return or destruction is not feasible, as determined by BA, BA shall continue to extend the protections of Section 2 of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI impractical. All destruction shall be in accordance with HIPAA, the HITECH Act, and applicable state law and BA shall provide written certification that CE's PHI has been destroyed.

5. SECURITY INCIDENT

5.1 In the event BA, its employees, subcontractors and any third party engaged by the BA in furtherance of the services contemplated under this Agreement fails to comply with its obligations regarding data privacy and cybersecurity involving PHI in its possession, custody or control ("PHI Security Incident"), BA agrees to reimburse CE for all reasonable Notification Costs (as defined below) and civil fines and penalties imposed by or on behalf of a governmental agency, together with reasonable attorneys' fees, incurred by CE in connection with such PHI Breach. Notification costs are CE's reasonable costs for preparation and mailing or other transmission of notifications or other communications to clients, patients, providers, or others as CE deems reasonably appropriate, establishment of a call center or other communications procedures in response to such PHI Breach (e.g., customer services, FAQs, talking points and training), and costs for commercially reasonable reporting and monitoring services that are associated with legally required notifications.

6. MISCELLANEOUS

6.1 Amendment. The parties agree to take such action to amend this Agreement from time to time as is necessary to comply with the requirements of HIPAA.

6.2 Notices. Any notice, demand or communication required, permitted or desired to be given hereunder shall be in writing and shall be delivered personally, by certified mail, return receipt requested, postage prepaid, or by transmission by a telecommunications device, and shall be effective on the earliest of: (a) on the day when personally served, including delivery by overnight mail and courier service; (b) on the third day after its deposit in the United States mail; or (c) on the business day of confirmed transmission by telecommunications device. The addresses of the parties

If to CE:
Santa Barbara County Counsel Office
105 East Anapamu Street, Suite 201
Santa Barbara, CA 93101
Attn: Teresa Martinez
Deputy County Counsel
teresamartinez@co.santa-barbara.ca.us

If to BA:
Davina Pujari
WilmerHale
One Front Street, Suite 3500
San Francisco, CA 94111
davina.pujari@wilmerhale.com

hereto (until notice of a change thereof is served as provided in this Section 6.2) shall be as follows:

6.3 No Third-Party Beneficiaries. Except as expressly provided for in the Privacy Rule, there are no third-party beneficiaries to this Agreement.

6.4 Interpretation. The provisions of this Agreement shall prevail over any provisions in

any other agreement that may conflict with or are inconsistent with any provision in this Agreement. This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and the HITECH Act. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HITECH Act.

6.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.