

**COUNTY OF TULARE
SERVICES AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into as of July 1, 2019, between the **COUNTY OF TULARE**, a political subdivision of the State of California ("COUNTY"), and **BI, Incorporated, d/b/a BI Correctional Services, Inc.**, a Colorado corporation ("CONTRACTOR"). COUNTY and CONTRACTOR are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

- A. COUNTY is operating electronic monitoring programs for adults as to pre-disposition and post-disposition cases ("Adult EM Services").
- B. COUNTY is providing limited probation services for certain post-disposition adult offenders ("Limited Supervision Cases").
- C. COUNTY has contracted with CONTRACTOR for the provision of such services since March 2000 and desires by this agreement to continue such services upon the terms and conditions expressed in this Agreement.
- D. CONTRACTOR represents that it possesses the necessary skill, expertise, resources, and is ready, willing, and able to continue to provide such services as provided in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **TERM:** This Agreement is effective as of July 1, 2019 and expires at 11:59 PM on June 30, 2020 unless earlier terminated as provided below, or unless the Parties extend the term by a written amendment to this Agreement.
2. **SERVICES:** See attached **Exhibit A**.
3. **PAYMENT FOR SERVICES:** See attached **Exhibit B**.
4. **INSURANCE:** Before approval of this Agreement by COUNTY, CONTRACTOR must file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in the attached **Exhibit C**.
5. **GENERAL AGREEMENT TERMS AND CONDITIONS:** COUNTY'S "General Agreement Terms and Conditions" are hereby incorporated by reference and made a part of this Agreement as if fully set forth herein. COUNTY'S "General Agreement Terms and Conditions" can be viewed at <http://tularecountycounsel.org/default/index.cfm/public-information/>
6. **ADDITIONAL EXHIBITS:** CONTRACTOR shall comply with the terms and conditions of the Exhibits listed below and identified with a checked box, which are by this reference made a part of this Agreement.

<input type="checkbox"/>	Exhibit D	Additional terms and conditions for federally-funded contracts. This Exhibit can be viewed at http://tularecountycounsel.org/default/index.cfm/public-information/
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<input checked="" type="checkbox"/>	Exhibit E	HIPAA Requirement: See Attached.
<input checked="" type="checkbox"/>	Exhibit F	Reporting Standards: See Attached.
<input checked="" type="checkbox"/>	Exhibit G	Monitoring and Audit: See Attached.

6. NOTICES: (a) Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission or sent by first class mail, postage pre-paid and addressed as follows:

COUNTY:

Tulare County Probation Department
Marichu Baker, Fiscal Manager
221 S. Mooney Blvd., Rm. 206
Visalia, CA 93291
Phone No.: (559) 713-2750
Fax No.: (559) 730-2557
MABaker@co.tulare.ca.us

With a Copy to:

COUNTY ADMINISTRATIVE OFFICER
2800 W. Burrel Ave.
Visalia, CA 93291
Phone No.: 559-636-5005
Fax No.: 559-733-6318

CONTRACTOR:

BI Incorporated
6265 Gunbarrel Ave., Suite B
Boulder, Colorado 80301
Phone No.: (303) 218-1000
Fax No.: (303) 218-1250

With a Copy to:

GEO Reentry Services, LLC
4955 Technology Way
Boca Raton, Florida 33431
Phone No.: (561) 793-0101
Fax No.: (561) 999-7648

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail will be deemed received on the fifth calendar day after the date of mailing. Either Party may change the above address by giving written notice under this section.

7. AUTHORITY: CONTRACTOR represents and warrants to COUNTY that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this Agreement and bind CONTRACTOR to its terms. CONTRACTOR acknowledges that COUNTY has relied upon this representation and warranty in entering into this Agreement.

8. COUNTERPARTS: The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document.

[THIS SPACE LEFT BLANK INTENTIONALLY; SIGNATURES FOLLOW ON NEXT PAGE]

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THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

BI, Incorporated

Date: 10/4/2019 By [Signature]
Name AMBER D. MARTIN

Executive VP Contract Administration

Date: 10.04.19 By [Signature]
Print Name LOUIS V. CARILLO
Title EXECUTIVE VP CORPORATE COUNSEL

[Pursuant to Corporations Code section 313, County policy requires that contracts with a Corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a Limited Liability Company be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

COUNTY OF TULARE

Date: _____ By _____
Chairman, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

Approved as to Form
County Counsel

By [Signature] 10/10/2019
Deputy
Matter # 20191453

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**EXHIBIT A – SCOPE OF WORK
ADULT EM SERVICES**

As to each Adult referred to CONTRACTOR, the COUNTY shall request one or more of the following services:

Active Electronic Monitoring ("EM")

This system is specifically designed to determine by electronic means the presence of a person at a specified location (typically the person's residence). This radio frequency based monitoring system consists of a transmitter attached to the participant, a field monitoring device ("FMD") installed in the participant's specified location, and CONTRACTOR'S central host computer system. The transmitter and FMD together are considered an EM Unit. The central host computer system is located in CONTRACTOR'S offices (located within Tulare County). The EM Units communicate with the host computer system through the participant's standard telephone service.

Alcohol Monitoring Unit ("Sobriotor")

This system determines a participant's compliance with an alcohol consumption restriction by performing unsupervised breath alcohol tests in the participant's specified location. There are two components to the testing process. A voice verification test to ensure that the unit is testing the correct person, and a deep lung breath alcohol test to measure the participant's breath alcohol content. Upon completion of the voice verification test, the participant's breath alcohol content is registered and the results communicated to the host computer system. The Sobriotor unit is designed to register only alcohol.

Voice Verification ("Voice")

This passive voice verification system checks on the participant's compliance to curfew and location restrictions with random scheduled telephone calls. Voice compares the participant's voice to a "voiceprint," a digitized representation of the participant's voice. By comparing the voiceprint from the telephone call with the enrolled voiceprint, Voice verifies the participant's identity and compliance to curfew and location restrictions.

BI HomeGuard 205:

The BI HomeGuard 205 DS receiver used in conjunction with the BI HomeCell Plus provides RF monitoring of clients. Data is sent to the central monitoring computer using cellular service eliminating the need for a landline phone connection.

Cellular Sobriotor is a handheld remote alcohol monitoring device that measures breath alcohol content. When used in conjunction with the BI HomeCell Plus, test results are sent using cellular service to the central monitoring computer.

BI HG206 HomeGuard Digital Cell Unit ("HG206")

Enables BI's electronic monitoring services to be installed without a telephone line connected to the Client's home. Cellular telephone service must be available within the Client's home.

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BI TAD (Transdermal Alcohol Device) Unit ("TAD")

Provides continuous alcohol monitoring. TAD uses transdermal technology to constantly monitor whether or not the Client has been drinking. If alcohol is detected, TAD transmits the data to a receiver in the Client's home when he or she comes within range of the receiver. The data is then transmitted to the central monitoring computer via telephone systems, and a report or alert is generated.

EXACUTRACK ONE (Global Positioning System) Unit ("ETI")

ExacuTrack One is an ankle-mounted GPS tracking unit that records the client's location while the client is away from home. The unit collects GPS location information as frequently as specified by the COUNTY, up to once per minute. The unit uses a built-in cellular modem to relay the collected data to the central monitoring computer as frequently as specified by the COUNTY, up to once per minute. In addition, the client's location can also be requested at any time by "pinging" the unit through the TotalAccess monitoring software.

SERVICE CONDITIONS

COUNTY recognizes and acknowledges that information is transmitted via third-party telecommunications service providers. BI makes no representations or warranties regarding carriage of information over any communications medium not directly controlled by BI, including, but not limited to, wireless and "land-line" telecommunications services. Further, BI shall not be liable for any interruption of service or non-transfer of information due to interruptions, temporary downage or other failure to any system that is not directly in BI's control. BI agrees to notify COUNTY as soon as is practicable in the event BI Equipment is not operational due to any such interruption. The foregoing Service Conditions shall not apply to CONTRACTOR's indemnification obligations under the Agreement.

SCOPE OF SERVICES

1. Case Management/Administration. CONTRACTOR will perform any and all appropriate case management duties required to enroll and monitor participants referred by COUNTY. Case management duties shall include, without limitation: screening and enrollment at CONTRACTOR's office; financial assessment according to criteria provided by COUNTY; determination and collection of fees; and, associated file administration. All duties shall be in accordance with predetermined parameters as further defined by the COUNTY and CONTRACTOR.
2. CONTRACTOR will provide adequate equipment and supplies (e.g., batteries, latches, straps, etc.) as needed to maintain the EM Services. Title to any equipment whose use is provided by the COUNTY shall remain with the COUNTY, and title to the additional equipment and supplies to be provided by CONTRACTOR shall remain with CONTRACTOR.
3. CONTRACTOR will track and maintain serialized inventories of all equipment used in the EM program.
4. CONTRACTOR will perform the functions of electronic data entry and electronic data storage for all participants. The data entry function shall consist of the input of all required demographic, curfew, and system configuration information on each case into the host computer system as required.

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5. CONTRACTOR shall maintain 24 hour, 7 day per week monitoring of participants in accordance with each enrolled participant's schedule.
6. CONTRACTOR will notify the COUNTY of any program violations and/or alert conditions specified in the "Response Protocol" previously agreed upon by COUNTY and CONTRACTOR.
7. CONTRACTOR will prepare and maintain adequate documentation as to alert conditions, violations and equipment status for each participant. In addition, CONTRACTOR will prepare and archive a termination record which shall include all monitoring data compiled as to every participant who completes the program – all for a period of not less than 5 years from the date of such completion.
8. CONTRACTOR shall assume the responsibility for any and all long distance telephone charges associated with the operation of any EM Unit and the central host computer.
9. Participants shall be required by COUNTY to visit CONTRACTOR's office in Tulare County for enrollment, and on a periodic basis (generally, weekly) for the purpose of collection of fees and compliance monitoring. Participants will also be subject to drug tests at the discretion of the COUNTY. Unless otherwise directed by the COUNTY, participants will also receive breath alcohol tests at each office visit.

RATES/FEES

SERVICE	TARGET RATE/FEE	ACTUAL RATE/FEE*
Voice Verification	\$6.00/Day	
Active EM Unit	\$15.00/Day	
Alcohol Monitoring Unit	\$12.00/Day	
EM Unit w/ Sobrieter	\$18.00/Day	
Drug Testing	\$20.00/Test	
TAD	\$11.00/Day	
HG206	\$18.00/Day	
ET1 Passive**	\$16.00/Day	
ET1 Active***	\$21.00/Day	

* Each participant will be required to pay a daily rate based upon a sliding scale determined as follows: each participant shall pay two times (2X) the participant's equivalent hourly wage per day of participation in the program. Household income will be considered for those indigent participants who cannot otherwise meet the applicable target rate. There will be no cap on the sliding scale fee and no cap on the number of indigent participants.

** ET1 Passive 1.1440.AO.NZ Description: GPS Point Collection every 1 minute, Data Transmission every 1440 minutes, no AFLT, no Zone Crossing Notification.

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*** ETI Active 1.60.AO ZX Description: GPS Point Collection every 1 minute, Data Transmission every 60 minutes, no AFLT, with Zone Crossing Notification.

LIMITED SUPERVISION—CASES

SCOPE OF SERVICES

CONTRACTOR shall provide the following services as to each and every Limited Supervision Case referred by COUNTY:

1. Perform an in-take of sentenced offenders referred by COUNTY, including digital photographs.
2. Confer with COUNTY probation staff as required or appropriate.
3. Manage participant's compliance with court-ordered conditions.
4. Provide case management and administration of case records.
5. Prepare routine incident reports, statistical, and other reports required and requested.
6. Testify at revocation hearings, as necessary.
7. Monitor participant's compliance with payment of all fees due to the COUNTY from participants.
8. Maintain contacts with offenders at least once per month (up to 4 times per month).
9. Provide counseling, referrals for treatment and employee assistance as needed from qualified, licensed counselors.
10. Coordinate and monitor attendance at special treatment programs or schools as required.

RATES/FEES

CONTRACTOR shall charge no more than \$50 per month per participant for cost of supervision in accordance with approved sliding fee scale, and shall collect those fees for its own account in full satisfaction of any claim it may have for compensation for such services. There will be absolutely no charge to the COUNTY for such services.

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**EXHIBIT B – PAYMENT FOR SERVICES
COUNTY FUNDED MONITORING SERVICES**

CONTRACTOR's ExacuTrack One ("ET1") is an ankle-mounted GPS tracking unit that records the client's location while the client is away from home. The unit collects GPS location information as frequently as specified by the COUNTY, up to once per minute. The unit uses a built-in cellular modem to relay the collected data to the central monitoring computer as frequently as specified by the COUNTY, up to once per minute. In addition, the client's location can also be requested at any time by "pinging" the unit through the TotalAccess monitoring software. Descriptions of HG200 RF, HG206, and TAD can be found above.

RATES/FEES

EQUIPMENT	DIRECT RATE	INSTALLED RATE
ET1 Active 1.60.AO.ZX	\$3.50	\$8.70
ETI Passive 1.1440.AO.NZ	\$3.50	\$6.69
ETI Hybrid 1.720.AO.ZX	\$3.50	\$7.54
HG200RF	N/A	\$8.00
HG206	N/A	\$10.00
TAD Only	N/A	\$15.00
TAD w/ RF	N/A	\$17.00
TAD Cellular	N/A	\$19.00
TAD RF Cellular	N/A	\$21.00

ET1 Active 1.60.AO ZX Description: GPS Point Collection every 1 minute, Data Transmission every 60 minutes, no AFL T, with Zone Crossing Notification.

ETI Passive 1.1440.AO.NZ Description: GPS Point Collection every 1 minute, Data Transmission every 1440 minutes, no AFLT, no Zone Crossing Notification.

ETI Hybrid 1.720.AO.ZX Description: GPS Point Collection every 1 minute, Data Transmission every 720 minutes, no AFLT, with Zone Crossing Notification.

Direct Level of Service

The direct monitoring incorporated in the above daily unit rates includes the following:

1. 24x7 monitoring and access to our Monitoring Specialists via a toll-free, 1-800 number.
2. Alerts automatically processed within COUNTY-defined parameters.
3. Automated alerts are generally sent within minutes of the monitoring computer receiving the violation information. However, automatic notification can also be configured with a delay for certain alarms.
4. Automated notification options include email, fax, and/or page (text message). The monitoring computer can also automatically fax and/or email a report to designated personnel each day at a specified time.

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5. Users can create and modify contact lists. Contact lists specify which COUNTY staff are to be contacted; by what method (fax, email, or page); how many attempts should be made to contact each person; how long to wait between attempts; and during what hours each person may be paged.

The COUNTY is responsible for:

1. Closing alerts
2. Accessing and printing reports

20% No-charge ExacuTrack One Spares: Each month hereunder, COUNTY is entitled to keep a quantity of ET1 Tracking units equal to 20% of that month's corresponding average number of actively used ET1 Tracking units per day, in its possession at no charge. Any inactive ET1 days that exceed this allowance will incur a \$3.95 charge per inactive day.

ExacuTrack One Loss or Damage: COUNTY will be responsible for all costs related to lost, stolen or damaged ET1 Equipment. Replacement costs for ET1 units are the following: ET1 Beacon \$250.00 each; ET1 Tracking Unit \$1,740.00 each; ET1 fiber optic strap \$60.00 each; and ET1 wall-charger \$60.00.

Installed Level of Service

In addition to the monitoring services provided in the Direct Level of Service, under the Installed Level of Service CONTRACTOR will provide installation and de-installation services and attachment to selected offenders. This will be done within one business day of the offender being ordered to be on monitoring equipment. Installation or de-installation will be done at the office maintained by CONTRACTOR. For offenders using the Installed Level of Service, COUNTY will not be billed for ET1 spares and CONTRACTOR will be responsible for replacing lost or damaged ET1 units.

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EXHIBIT C

PROFESSIONAL SERVICES CONTRACTS
INSURANCEREQUIREMENTS

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than \$1,000,000 per occurrence including products and completed operations, property damage, bodily injury and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability of \$1,000,000 per occurrence including any auto or, if the CONTRACTOR has no owned autos, hired and non-owned auto coverage. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) insurance appropriate to the CONTRACTOR's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. Specific Provisions of the Certificate

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects; liability arising out of work or operations performed by or on behalf of the CONTRACTOR including material, parts, or equipment furnished in connection with such work or operations.*
 - b. *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
 - c. *CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of 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 affect 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.*
 - d. *Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled, except after written notice has been provided to the COUNTY.*

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- 3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. CONTRACTOR waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

- C. Deductibles and Self-Insured Retentions
Deductibles and Self-insured retentions must be declared and any deductible or self-insured retention that exceeds \$100,000 will be reviewed by the COUNTY Risk Manager for approval.

- D. Acceptability of Insurance
Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A:-VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

- E. Verification of Coverage
Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

WAIVERS:

I represent and attest that I am a person authorized to make representations on behalf of the CONTRACTOR, and represent the following:

(mark X if applicable)

- Automobile Exemption: I certify that _____ does not own nor use vehicles in the performance of the agreement for which this insurance requirement is attached.

- Workers' Compensation Exemption: I certify that _____ is not required to carry workers' compensation coverage or has filed an exemption with the State of California as required by law.

I acknowledge and represent that we have met the insurance requirements listed above.

Print Name AMBER D. MARTIN Executive VP Contract Administration Date: 10/4/2019

Contractor Name The Geo Group, Inc.

Signature 

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EXHIBIT E

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Exhibit shall constitute the Business Associate Agreement (the "Exhibit") between Contractor, (the "Business Associate") and the County of Tulare (the "Covered Entity"), and applies to the functions Business Associate will perform on behalf of Covered Entity (collectively, "Services"), that are identified in the Agreement (as defined below).

Business Associate acknowledges and agrees that all Protected Health Information ("PHI") that is created or received by Covered Entity and disclosed or made available in any form, including but not limited to paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

1. Purpose. This Exhibit is intended to ensure that the Business Associate will establish and implement appropriate privacy and security safeguards with respect to PHI (as defined below) that the Business Associate may create, receive, use, or disclose in connection with the Services to be provided by the Business Associate to the Covered Entity. Such safeguards will be consistent with the standards set forth in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("HITECH Act") and amendments to include HIPAA's Administrative Simplification provisions.

2. Regulatory References. All references to regulatory Sections, Parts and Subparts in this Exhibit are to Title 45 of the Code of Federal Regulations, parts 160 and 164 (the "HIPA Privacy Rule" and the "HIPA Security Rule") as in effect or as amended, and for which compliance is required, unless otherwise specified.

3. Definitions. Unless otherwise defined in this Agreement, the terms used in this Agreement shall have the meanings ascribed in the HIPAA Regulations; provided that PHI shall mean Protected Health Information, as defined in 45 C.F.R. section 160.103, limited to the Protected Health Information Business Associate received from, created, or received on behalf of Covered Entity as its Business Associate.

4. Obligations and Activities of Business Associate.

Business Associate agrees to:

- a. Acknowledge that it is required by Sections 13401 and 13404 of the HITECH Act to comply with the HIPAA Security Rule, Sections 164.308 through 164.316, including the Security Rule's Administrative, Physical and Technical safeguard requirements and the use and disclosure provisions of the HIPAA Privacy Rule, Sections 164.502 and 164.504.
- b. Not use or further disclose PHI other than as permitted or required by this Exhibit, or as required by law.
 1. Use appropriate safeguards to maintain the security, including compliance with Subpart C of 45 CFR Part 164, with respect to electronic PHI, to prevent use or disclosure of the PHI other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that is created, received, maintained or transmitted on behalf of the Covered Entity and limiting use and disclosure to applicable minimum necessary rules, regulations and statutes.
 2. To the extent practicable, Business Associate will secure all PHI by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with any applicable standards or guidance issued by the Department of Health and Human Services under Section 13402 of the HITECH Act.
- c. Report breach disclosures immediately to Covered Entity. Business associate: 1) shall report to Covered Entity any use or disclosure of PHI not provided for by this Agreement on the first day the Business Associate knows or should have known about it; 2) notify the Covered Entity of any and all breaches of PHI, and provide detailed information to the Covered Entity about the breach, along with the names and contact

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information, when available, of all individuals whose PHI was involved. *(See Section 6 of this Exhibit for further detail.)* 3) agrees that such notification will meet the requirements of Section 13402 of the HITECH Act and § 164.410 of the amended HIPAA regulations.

- d. Enter into a written agreement with any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, pursuant to which such agent or subcontractor agrees to be bound by the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) if applicable.

(See Section 11 of this Exhibit for further detail.)

- e. Make internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI available to the Covered Entity or to the Secretary of the United States Department of Health and Human Services ("Secretary") for purposes of determining Business Associate's compliance with the HIPAA Privacy Rule and Security Rule.

(See Section 12 of this Exhibit for further detail.)

1. Business Associate shall concurrently provide to the Covered Entity a copy of any PHI that Business Associate provides to the Secretary.

- f. Maintain and make available the information required to provide an accounting of disclosures of PHI as would be required for Covered Entity to respond to a request by an individual for an account of disclosures of PHI in accordance with 45 CFR § 164.528.

5. Permitted Uses and Disclosures by Business Associate.

- a. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities consistent with Section 164.502(j).

Unless otherwise limited in this Exhibit, Business Associate may:

- b. Use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as necessary to perform the services described in Exhibit A to the Agreement, or as

otherwise specified in the Master Exhibit, subject to limiting use and disclosure to applicable minimum necessary rules, regulations and statutes and provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

- c. Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

- d. Disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains the appropriate medical release from the person whose PHI is being disclosed and the person to whom the PHI is disclosed provides reasonable assurances in writing that the PHI will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- e. Use PHI to provide Data Aggregation services to Covered Entity as permitted by Section 164.504(e)(2)(i)(B).

6. Reporting Unauthorized Uses and Disclosures.

- a. Business Associate agrees to notify Covered Entity of any breach, or security incident involving PHI of which it becomes aware, including any access to, or use or disclosure of PHI not permitted by this Exhibit. Such notification will be made immediately after discovery and will include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed, a description of the PHI involved, the nature of the unauthorized access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by Business Associate. Business Associate will also provide to Covered Entity any other available information that the Covered Entity is required to include in its notification to the individual under Section 164.404(c) at the time of the initial report

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or within three (3) days of the information becoming available.

- b. In the event of a request by law enforcement under Section 164.412, Business Associate may delay notifying Covered Entity for the applicable timeframe.
- c. A breach or unauthorized access, use, or disclosure shall be treated as discovered by the Business Associate on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the Business Associate or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent or other representative of the Business Associate.
- d. In meeting its obligations under this section, it is understood that Business Associate is not acting as the Covered Entity's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Exhibit, it is understood and agreed that Business Associate is at all times acting as an independent contractor in providing services pursuant to this Exhibit and the Agreement.

7. Mitigation of Harmful Effects.

- a. Business Associate agrees to mitigate, to the greatest extent possible, any harm that results from the following actions: breach, security incident, or unauthorized access, use or disclosure of PHI by Business Associate or its employees, officers, subcontractors, agents, or other representatives.
- b. Following the actions listed in Section 7(a) of this Exhibit, Business Associate agrees to take any and all corrective action necessary to prevent recurrence, to document any such action, and to make said documentation available to Covered Entity.
- c. Except as required by law, Business Associate agrees that it will not inform any third party of a breach or unauthorized access, use or disclosure of PHI without obtaining the Covered Entity's prior written consent. Covered Entity hereby reserves the sole right to determine whether and

how such notice is to be provided to any individuals, regulatory agencies, or others as may be required by law, regulation or contract terms, as well as the contents of such notice.

8. Indemnification.

Business Associate agrees to:

- a. Hold harmless, defend at its own expense, and indemnify Covered Entity for the costs of any mitigation undertaken by Business Associate pursuant to Section 7 of this Exhibit.
- b. Assume responsibility for any and all costs associated with the Covered Entity's notification of individuals affected by a breach or unauthorized access, use or disclosure by Business Associate or its employees, officers, subcontractors, agents or other representatives when such notification is required by any state or federal law or regulation, or under any applicable contract to which Covered Entity is a party.
- c. Hold harmless, defend at its own expense and indemnify Covered Entity and its respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Exhibit or from any acts or omissions related to this Exhibit by Business Associate or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorney's fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate's acts or omissions hereunder. Business Associate's obligation to indemnify any Indemnified Party shall survive the expiration or termination of the Agreement.

9. Individuals' Rights.

Business Associate agrees to:

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- a. Provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements under Section 164.524.
- b. Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526, at the request of Covered Entity or an individual, and in the time and manner designated by the Covered Entity.
- c. Document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Section 164.528.
- d. Provide to Covered Entity or an individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 9(c) of this Exhibit, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Section 164.528.
- e. Comply with any restriction to the use or disclosure of PHI that Covered Entity agrees to in accordance with Section 164.522.

10. Obligations of Covered Entity.

Covered Entity shall:

- a. Provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.
- b. Provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

11. Agents and Subcontractors of Business Associate.

- a. Business Associate agrees to ensure that any agent, subcontractor, or other representative to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions, conditions and requirements that apply through this Exhibit to Business Associate with respect to such information, including the requirement to promptly notify the Business Associate of any instances of unauthorized access to or use or disclosure of PHI of which it becomes aware. Upon request, Business Associate shall provide copies of such agreements to Covered Entity.
- b. Business Associate shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation.

12. Audit, Inspection, and Enforcement.

- a. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to any state or federal agency, including the Secretary, for the purposes of determining compliance with HIPAA and any related regulations or official guidance.
- b. With reasonable notice, Covered Entity and its authorized agents or contractors may audit and/or examine Business Associate's facilities, systems, policies, procedures, and documentation relating to the security and privacy of PHI to determine compliance with the terms of this Exhibit. Business Associate shall promptly correct any violation of this Exhibit found by Covered Entity and shall certify in writing that the correction has been made. Covered Entity's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under the Agreement.

13. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or

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disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

14. Term and Termination.

- a. The terms of this Exhibit shall remain in effect for the duration of all services provided by Business Associate under the Agreement and for so long as Business Associate remains in possession of any PHI received from, or created or received by Business Associate on behalf of Covered Entity unless Covered Entity has agreed in accordance with this section that it is not feasible to return or destroy all PHI.
- b. Upon termination of the Agreement, Business Associate shall recover any PHI relating to the Agreement and this Exhibit in its possession and in the possession of its subcontractors, agents or representatives. Business Associate shall return to Covered Entity, or destroy with the consent of Covered Entity, all such PHI, in any form, in its possession and shall retain no copies. If Business Associate believes it is not feasible to return or destroy the PHI, Business Associate shall so notify Covered Entity in writing. The notification shall include: (1) a statement that the Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (2) the specific reasons for such determination. If Covered Entity agrees in its sole discretion that Business Associate cannot feasibly return or destroy the PHI, Business Associate shall ensure that any and all protections, requirements and restrictions contained in the Agreement and this Exhibit shall be extended to any PHI for so long as Business Associate maintains such PHI, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the PHI infeasible.
- c. Covered Entity may immediately terminate the Agreement if it determines that Business Associate has violated a material term of this Exhibit.

15. Amendment. The Parties agree to take such action as is necessary to amend this Exhibit from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Privacy and Security Rules and the HITECH Act.

16.

Lost Revenues; Penalties/Fines.

- a. Lost Revenues. Business Associate shall make Covered Entity whole for any revenues lost arising from an act or omission in billing practices by Business Associate.
- b. Penalties/Fines for Failure to Comply with HIPAA. Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with the obligations imposed by HIPAA.
- c. Penalties/Fines (other). Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

17. Entire Agreement. This Exhibit constitutes the entire HIPAA Business Associate Agreement between the parties, and supersedes any and all prior HIPAA Business Associate Agreements between them.

Revised 6/29/16/ SDF/ 2015418/ 930874_

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EXHIBIT F

REPORTING STANDARDS

- A. CONTRACTOR will enter information as outlined below, into the case management system as identified by the Tulare County Probation Department no later than two (2) business days after the event occurs for all clients served. Until a system is identified, the CONTRACTOR will notify the COUNTY monthly via email.
- a. CONTRACTOR will enter into the system the type, date, location, and duration of service provided to each client
 - b. CONTRACTOR will enter into the system the admission date of each client
 - c. CONTRACTOR will enter into the system the discharge date and reason for the discharge of each client
 - d. CONTRACTOR will correct any identified errors in the system

Tulare County Probation Department
11200 Ave. 368, Rm. 102
Visalia, CA 93291
ATTN: Amy Story, Staff Services Analyst
astory@co.tulare.ca.us

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EXHIBIT G

MONITORING AND AUDIT

COUNTY staff shall have the right to monitor, assess, and evaluate the CONTRACTOR'S performance pursuant to this Agreement. Said monitoring, assessment, and evaluation may include but is not limited to, audits, inspections of project premises, and interviews of project staff and participants. This fiscal audit shall be:

- Performed timely – not less frequently than annually and a report submitted timely. The audit is required to be completed no later than nine (9) months after the end of the subcontractor's fiscal year.
 - Performed in accordance with Government Auditing Standards – shall be performed by the County or an independent audit and be organization-wide.
 - All inclusive – includes an audit of the financial statements; an assessment of internal controls, including tests of transactions; and a determination of compliance with laws and regulations of all major programs and selected non-major program transactions.
1. The COUNTY shall prepare a summary worksheet of results from the audit resolutions performed for all CONTRACTORS. The summary worksheet shall include, but not be limited to, contract amount, amount resolved, variances, whether an audit was relied upon or the CONTRACTOR performed and independent expense verification review of the CONTRACTOR in making the determination, whether audit findings were issued, and if applicable, date of management letter.
 2. Audits to be performed shall be, minimally, financial and compliance audits, and may include economy and efficiency and/or program results audits.
 3. Audits may be conducted by the County, an independent, third party, including either a private professional, or a separate governmental agency or office. The audit will be conducted at a time specified by the COUNTY.

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1. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK: CONTRACTOR is not entitled to any payments from COUNTY until the County Department for which services are provided under the Agreement approves services, including any furnished deliverables, as satisfying all of the requirements of this Agreement. Payments to CONTRACTOR by COUNTY shall not excuse CONTRACTOR from its obligation to replace unsatisfactory deliverables, including equipment, components, materials, or services even if the unsatisfactory character of such deliverables, equipment, components, materials, or services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and services that do not conform to the requirements of this Agreement may be rejected by COUNTY and in such case must be replaced by CONTRACTOR without delay and at no cost to the COUNTY.

2. DISALLOWANCE: If CONTRACTOR requests or receives payment from COUNTY for services hereunder, reimbursement for which is later disallowed by the State of California or United States Government, CONTRACTOR shall promptly refund the disallowed amount to COUNTY upon COUNTY'S request. At its option, COUNTY may offset the amount disallowed from any payment due or to become due to CONTRACTOR under this Agreement or any other Agreement between CONTRACTOR and COUNTY. CONTRACTOR'S obligations under this section 2 will survive the expiration or termination of this Agreement.

3. LIABILITY OF COUNTY: COUNTY'S payment obligations under this Agreement shall be limited to the payment of the compensation provided for in section 3, "PAYMENT FOR SERVICES," of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall COUNTY be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

4. QUALIFIED PERSONNEL: CONTRACTOR shall utilize only competent personnel under the supervision

of, and in the employment of, CONTRACTOR (or CONTRACTOR'S authorized subcontractors) to perform the services. CONTRACTOR will comply with COUNTY'S reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at COUNTY'S request, must be supervised by CONTRACTOR. CONTRACTOR shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

5. INDEPENDENT CONTRACTOR STATUS: The Parties enter into this Agreement with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. The Parties agree that the CONTRACTOR and any of its agents, employees, or officers cannot be considered agents, employees, or officers of COUNTY.

CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR will be solely responsible for determining the means and methods of performing the specified services and COUNTY will have no right to control or exercise any supervision over CONTRACTOR as to how the CONTRACTOR will perform the services. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- (1) Withhold FICA (Social Security) from CONTRACTOR'S payments.
- (2) Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- (3) Withhold state or federal income tax from payments to CONTRACTOR.
- (4) Make disability insurance contributions on behalf of CONTRACTOR.
- (5) Obtain unemployment compensation insurance on behalf of CONTRACTOR.

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Notwithstanding this independent contractor relationship, COUNTY will have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

6. COMPLIANCE WITH LAW: CONTRACTOR must provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

7. LICENSES AND PERMITS: CONTRACTOR represents and warrants that it possesses and will maintain during the term of this Agreement all licenses and permits required for its performance of the services required under this Agreement.

8. GOVERNING LAW: The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.

9. RECORDS AND AUDIT: CONTRACTOR must maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR must maintain complete and accurate records with respect to any payments to employees or subcontractors. All of the records must be prepared in accordance with generally accepted accounting procedures, must be clearly identified, and must be kept readily accessible. Upon request, CONTRACTOR must make the records available within Tulare County to the Auditor of Tulare County and to his or her agents and representatives, for the purpose of auditing and/or copying the records for a period of five (5) years from the date of final payment under this Agreement.

10. CONFLICT OF INTEREST:

(a) At all times during the performance of this Agreement, CONTRACTOR must comply with the law of the State of California regarding conflicts of interests and

appearance of conflicts of interests, including, but not limited to, Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which the officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision that has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts of interests laws, then it will immediately inform COUNTY and provide all information needed for resolution of this question.

11. INSURANCE: The attached **Exhibit C** outlines the minimum scope, specifications, and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in **Exhibit C** cannot be used to reduce limits available to COUNTY as an additional insured from CONTRACTOR'S full policy limits. Insurance policies cannot be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer(s). If CONTRACTOR fails to maintain or renew coverage, or to provide evidence of renewal, then COUNTY may consider that failure a material breach of this Agreement. COUNTY may also withhold any payment otherwise due to CONTRACTOR for failure to provide evidence of renewal until CONTRACTOR provides such evidence.

12. INDEMNIFICATION AND DEFENSE:

(a) To the fullest extent permitted by law, CONTRACTOR must indemnify, defend (at CONTRACTOR'S sole cost and expense and with legal counsel approved by

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COUNTY, which approval may not be unreasonably withheld), protect and hold harmless COUNTY, all subsidiaries, divisions and affiliated agencies of COUNTY, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and COUNTY general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of CONTRACTOR with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors and/or omissions of CONTRACTOR, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). CONTRACTOR'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR'S indemnification obligation shall be reduced in proportion to the established comparative liability.

(b) The duty to defend is a separate and distinct obligation from CONTRACTOR'S duty to indemnify. CONTRACTOR shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to CONTRACTOR of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to CONTRACTOR by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition

precedent to enforcing the Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than CONTRACTOR are responsible for the Claim does not relieve CONTRACTOR from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if CONTRACTOR asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR may submit a claim to the COUNTY for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Indemnified Party. CONTRACTOR'S indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. CONTRACTOR'S liability for indemnification under this Agreement is in addition to any liability CONTRACTOR may have to COUNTY for a breach by CONTRACTOR of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be construed to limit CONTRACTOR'S indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.

(c) CONTRACTOR must indemnify and hold COUNTY harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

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13. TERMINATION:

(a) **Without Cause:** Either Party may terminate this Agreement without cause by giving ninety (90) days' prior written notice to the other Party of its intention to terminate under this provision, specifying the date of termination. COUNTY will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of any compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. COUNTY will not impose sanctions on CONTRACTOR under these circumstances.

(b) **With Cause:** Either Party may terminate this Agreement immediately, by written notice to the other Party, should the other Party:

- (1) Be adjudged a bankrupt, or
- (2) Become insolvent or have a receiver appointed, or
- (3) Make a general assignment for the benefit of creditors, or
- (4) Suffer any judgment that remains unsatisfied for 30 days, and that would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) Materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) Material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR'S behalf, as to any matter related in any way to COUNTY'S retention of CONTRACTOR, or
- (7) Other misconduct or circumstances that, in the sole discretion of COUNTY, either impairs the ability of CONTRACTOR to competently provide the services under this Agreement,

or exposes COUNTY to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If CONTRACTOR fails to perform according to the terms and conditions of this Agreement, then COUNTY may, in addition to any other remedy it may have, issue a declaration of default after 10 days written notice to CONTRACTOR.

Upon a material breach, the Agreement may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party within 5 days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the non-defaulting Party may terminate this Agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5-day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting Party may terminate this Agreement upon written notice specifying the date of termination.

COUNTY will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated profits or other economic loss, nor will COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If COUNTY terminates this Agreement

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for cause and the expense of finishing CONTRACTOR'S scope of work exceeds the unpaid balance of the Agreement, then CONTRACTOR must pay the difference to COUNTY. COUNTY may impose sanctions under these circumstances, which may include possible rejection of future proposals based on specific causes of CONTRACTOR'S non-performance.

(c) **Effects of Termination:** Expiration or termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where COUNTY terminates CONTRACTOR'S services, that termination will not affect any rights of COUNTY to recover damages against CONTRACTOR.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of the COUNTY department or agency for which CONTRACTOR'S services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

14. LOSS OF FUNDING: It is understood and agreed that if COUNTY'S funding is either discontinued or reduced for the services to be provided hereunder, then COUNTY will have the right to terminate this Agreement under section 13 (a) ("Termination Without Cause") as of the end of the term for which funds are appropriated. Such termination shall be without penalty, liability, or expense to COUNTY of any kind, provided that COUNTY shall pay CONTRACTOR in accordance with section 13 (a) for services satisfactorily performed prior to the date of such termination and to the extent funds have been appropriated for such payment.

15. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES: Under applicable federal and state law, if CONTRACTOR submits a false claim to COUNTY under

this Agreement, then CONTRACTOR will be liable to COUNTY for the statutory penalties set forth in those statutes, including but not limited to statutory fines, treble damages, costs, and attorneys' fees. CONTRACTOR will be deemed to have submitted a false claim to COUNTY if CONTRACTOR:

(a) Knowingly presents or causes to be presented to COUNTY a false claim or request for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by COUNTY;

(c) Conspires to defraud COUNTY by getting a false claim allowed or paid by COUNTY;

(d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to COUNTY; or

(e) Is a beneficiary of an inadvertent submission of a false claim to COUNTY, later discovers the falsity of the claim, and fails to disclose the false claim to COUNTY within a reasonable time after discovery of the false claim.

16. FORM DE-542: If CONTRACTOR is an individual, CONTRACTOR acknowledges that this Agreement is subject to filing obligations under Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include CONTRACTOR'S full name, social security number, address, the date this Agreement was executed, the total amount of the Agreement, its expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make that information available and to complete Form DE- 542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

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17. WORKS FOR HIRE: CONTRACTOR acknowledges that all work(s) under this Agreement are "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to COUNTY all rights and interests CONTRACTOR may have in the work(s) it prepares under this Agreement, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Agreement for COUNTY will be the sole property of COUNTY, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to COUNTY. CONTRACTOR will execute all necessary documents to enable COUNTY to protect COUNTY'S intellectual property rights under this section.

18. WORK PRODUCT: All work product, equipment, or materials created for COUNTY or purchased by COUNTY under this Agreement belong to COUNTY and CONTRACTOR must immediately deliver them to COUNTY at COUNTY'S request upon termination or completion of this Agreement.

19. TIME OF ESSENCE: The Parties agree that time is of the essence under this Agreement, unless they agree otherwise in writing.

20. CONFIDENTIALITY: CONTRACTOR may not use or disclose any information it receives from COUNTY under this Agreement that COUNTY has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by COUNTY. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, COUNTY may not disclose to third parties any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential. If COUNTY determines that it must disclose any information that CONTRACTOR previously identified as confidential, then it shall promptly give CONTRACTOR written notice of its intention to disclose such information and the authority for such disclosure. CONTRACTOR shall have period of five (5) calendar days thereafter within which to seek a protective court order to prevent such disclosure or to notify COUNTY that it will

not seek such an order. COUNTY shall cooperate with CONTRACTOR in any efforts to seek such a court order. COUNTY shall not disclose the information until the five (5) day period has expired without a response from CONTRACTOR, or CONTRACTOR has notified COUNTY that it will not seek such an order, or CONTRACTOR has sought and a court has declined to issue a protective order for such information. If CONTRACTOR seeks a protective order for such information, CONTRACTOR shall defend and indemnify COUNTY from any and all loss, injury, or claim arising from COUNTY'S withholding of the information from the requestor. This includes any attorney's fees awarded to the requestor. The duty of COUNTY and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Agreement.

21. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY, which consent COUNTY may grant, delay, deny, or condition in its absolute discretion.

22. DISPUTES AND DISPUTE RESOLUTION: CONTRACTOR shall continue with its responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute.

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23. PROPERTY TAXES: Under the terms of California Revenue and Taxation Code section 107.6 (possessory interest tax), CONTRACTOR'S possession or use of any COUNTY-owned real property under this Agreement may create a "possessory interest" in the real property. If a possessory interest is created, then it may be subject to property taxation and CONTRACTOR may be subject to the payment of property taxes on that possessory interest.

24. FURTHER ASSURANCES: Each Party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

25. CONSTRUCTION: This Agreement reflects the contributions of all Parties and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.

26. HEADINGS: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

27. NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

28. WAIVERS: The failure of either Party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any later breach. The acceptance by either Party of either performance or payment will not be considered a waiver of any preceding breach of the Agreement by the other Party.

29. ORDER OF PRECEDENCE: In the event of any conflict or inconsistency between or among the body of the Agreement (which includes these "General Agreement Terms and Conditions") and any Exhibit, Schedule, or Attachment, then the terms and conditions of the body of the Agreement shall prevail.

30. CONFLICT WITH LAWS OR REGULATIONS/ SEVERABILITY: This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the Parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either Party is lost, then the Agreement may be terminated at the option of the affected Party. In all other cases, the remainder of the Agreement will continue in full force and effect.

31. ENTIRE AGREEMENT: This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding will be of any force or effect. No part of this Agreement may be modified without the written consent of both Parties.

32. ASSURANCES OF NON-DISCRIMINATION: CONTRACTOR must not discriminate in employment or in the provision of services based any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation. The Parties recognize that both CONTRACTOR and COUNTY have the responsibility to protect COUNTY employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, CONTRACTOR agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. COUNTY, in its sole discretion, has the right to require CONTRACTOR to replace any employee who provides services of any kind to COUNTY under this Agreement with other employees where COUNTY is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. COUNTY'S right to require replacement of employees under this section does not preclude COUNTY from terminating this Agreement with or without cause as provided for under this Agreement.

**COUNTY OF TULARE'S
GENERAL AGREEMENT TERMS AND CONDITIONS
(Form revision approved 01/01/2018)**

33. DRUG-FREE WORKPLACE POLICY: CONTRACTOR acknowledges that under the Federal Drug-Free Workplace Act of 1989 and the California Drug-Free Workplace Act of 1990, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on COUNTY premises. CONTRACTOR agrees that any violation of this prohibition by CONTRACTOR, its employees, agents, or assigns will be deemed a material breach of this Agreement.

34. RECYCLED PAPER CONTENT: To the extent CONTRACTOR'S services under this Agreement include printing services, pursuant to Public Contract Code section 22153 CONTRACTOR shall use paper that meets the recycled content requirements of Public Contract Code section 12209.