



OAKLAND COUNTY EXECUTIVE. L. BROOKS

COMPLIANCE OFFICE
PURCHASING

Compliance Office | Purchasing
248-858-0511 | purchasing@oakgov.com

Buyer: RLB

CONTRACT NUMBER: 005583

Event # 004368

CONTRACT between the COUNTY OF OAKLAND and CONTRACTOR

Not To Exceed Amount: \$500,000.00		Effective Date: 12/1/2018	Expiration Date: 11/30/2021
Contract Description:	Office 365 Implem Serv-- P		
Contractor Information: RIGHTPOINT CONSULTING 29 N Wacker Dr 4th Floor Chicago Illinois 60606		Contract Administrator (If Different):	
Vendor No: 22244			
Compliance Office Purchasing Information:		Contract Administrator Oakland County Using Department:	
Buyer: Richard Brower Oakland County 2100 Pontiac Lake Rd., Bldg. 41W Waterford, MI 48328-0462 248-858-0511 purchasing@oakgov.com		Michael Timm Director Information Technology 1200 N Telegraph Rd 49W Waterford, MI 48341 timmmr@oakgov.com	

The Parties agree to the attached terms and conditions:

FOR THE CONTRACTOR:

SIGN: Naris Apichai
Naris Apichai (Dec 21, 2018)

FOR THE COUNTY:

SIGN: Michael R Timm
Michael R Timm (Dec 21, 2018)
Contract Administrator

SIGN: Scott N. Guzy
Scott N. Guzy (Dec 21, 2018)

Pamela L. Weipert, CPA, CIA, Compliance Officer
or
Scott N. Guzy, CPPO, MBA, Purchasing Admin

CLA

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This Contract is organized and divided into the following Sections for the convenience of the Parties.

- Section 1. Contract Purpose
- Section 2. Contract Definitions
- Section 3. Contract Term and Renewal
- Section 4. Contract Administration and Amendments
- Section 5. Contract Termination
- Section 6. Scope of Deliverables and Financial/Payment Obligations
- Section 7. Contractor's Warranties and Assurances
- Section 8. Liability
- Section 9. Contractor Provided Insurance
- Section 10. Intellectual Property
- Section 11. Confidential Information
- Section 12. County Data
- Section 13. Information Technology Standards
- Section 14. General Terms and Conditions

§1. CONTRACT PURPOSE

- 1.1. After a competitive bidding and selection process by County, Contractor was chosen to provide services, described more fully in the Scope of Services Exhibits, to County. Contractor desires to extend the terms and conditions in this Contract to a PPB, to enable it to make purchases from Contractor according to the terms herein. A model Agreement to be used by PPBs is provided in Exhibit X. Contractor may negotiate customized terms with the PPB at its own discretion. Contractor is under no obligation to provide services described in this Contract to a PPB if the Parties are not able to agree on customized terms.
- 1.2. County shall not be a party to a contract between Contractor and a PPB. County shall not have any liability, of any sort, for any harm or action that may arise from purchases made by any PPB pursuant to the terms of this Contract.
- 1.3. PPBs must deal directly with Contractor for any transactions such as purchases, invoices, price questions, disputes, etc. that relate to their individual agreement with Contractor. Contractor must respond timely to PPB inquiries. Failure to do so may result in County removing the Contract and Contractor's Information from the G2G MarketPlace Website.
- 1.4. County shall place this Contract and any amendments to it, on its G2G MarketPlace Website. County will provide the following information on its G2G MarketPlace website:

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- 1.4.1. Identify Contractor on its G2G MarketPlace Website, this Contract and amendments, if applicable, and a summary of the services.
- 1.4.2. State that the Contract was the result of a competitive bidding process.
- 1.4.3. Provide Contractor's phone and email address for inquiries.
- 1.4.4. Acknowledge that County and the PPB will receive a benefit from purchases subject to this Contract.
- 1.4.5. Provide a County contact to answer questions concerning the expiration date of the Contract, the procedure for purchasing off the Contract, and the competitive bidding process followed by County.
- 1.5. Contractor shall provide the following information to County and shall update the information timely whenever changes occur.
 - 1.5.1. Description of Contractor's services and products, contact information, and training opportunities for County to place on the G2G MarketPlace Website.
 - 1.5.2. Every four months a "Contract Usage Statement" which means the names, Scope of Services selected, quantities purchased, and dollar amount of each agreement signed by a PPB using this Contract. Contractor may provide the dollar amount of an agreement only if a PPB will not permit disclosure of the other items.
 - 1.5.3. The names of two representatives to act as a primary and secondary point of contact to provide County with the Contract Usage Statements and other information required in this Contract.

§2. CONTRACT DEFINITIONS

The following words when printed with the first letter capitalized shall be defined and interpreted as follows, whether used in the singular or plural, nominative or possessive case, and with or without quotation marks:

- 2.1. **"Amendment"** means any change, clarification, or modification to this Contract.
- 2.2. **"Business Day"** means Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding County designated holidays.
- 2.3. **"Claims"** means any loss; complaint; demand for relief or damages; lawsuit; cause of action; proceeding; judgment; penalty; costs or other liability of any kind which is imposed on, incurred by, or asserted against the County or for which the County may become legally or contractually obligated to pay or defend against, whether commenced or threatened, including, but not limited to, reimbursement for reasonable attorney fees, mediation, facilitation, arbitration fees, witness fees, court costs, investigation expenses, litigation expenses, or amounts paid in settlement.

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- 2.4. **“Confidential Information”** means all information and data that the County is required or permitted by law to keep confidential, which includes computer software, cybersecurity assessments and plans and measures to protect the County’s security.
- 2.5. **“Contract”** means this document and any other documents expressly incorporated herein.
- 2.6. **“Contractor”** means the entity or person listed under “Contractor” on the first page of this Contract.
- 2.7. **“Contractor Employee”** means any employee; officer; director; member; manager; trustee; volunteer; attorney; licensee; contractor; subcontractor; independent contractor; subsidiary; joint venture; partner or agent of Contractor; and any persons acting by, through, under, or in concert with any of the above, whether acting in their personal, representative, or official capacities. Contractor Employee shall also include any person who was a Contractor Employee at any time during the term of this Contract but, for any reason, is no longer employed, appointed, or elected in that capacity.
- 2.8. **“Contract Documents”** mean the following documents, which this Contract includes and incorporates:

Exhibits (Applicable if Checked)

- 2.8.1. ☒ Exhibit I: Contractor Insurance Requirements
- 2.8.2. ☒ Exhibit II: Business Associate Agreement (Health Insurance Portability and Accountability Act Requirements)
- 2.8.3. ☒ Exhibit III: Requirements for Contractors with Access to County PII (Personally Identifiable Information)
- 2.8.4. ☐ Exhibit IV: Requirements for Contractors with Access to Criminal Justice Information
- 2.8.5. ☒ Exhibit V: Federally Funded Contract Requirements
- 2.8.6. ☒ Exhibit VI: Sparks™ Terms of Use
- 2.8.7. ☒ Exhibit VII: License for Use of County Servicemark
- 2.8.8. ☒ Exhibit VIII: Acknowledgement of Independent Employment Status
- 2.8.9. ☒ Exhibit IX: Scope of Contractor Deliverables/Financial Obligations
- 2.8.10. ☒ Exhibit X: PPB Model Agreement
- 2.9. **“County”** means the County of Oakland, a Municipal and Constitutional Corporation, its departments, divisions, authorities, boards, committees, and “County Agents” as defined below.
- 2.10. **“County Agent”** means any elected and appointed officials; directors; board members; council members; commissioners; employees; and volunteers of the County; whether acting in their

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personal, representative, or official capacities. "County Agent" shall also include any person who was a "County Agent" anytime during the term of this Contract but, for any reason, is no longer employed, appointed, or elected and in that capacity.

- 2.11. **"County Data"** means information or data collected, used, processed, stored, or generated in any format, by or on behalf of the County, in connection with the Deliverables, which shall include, but not be limited to: (a) personal health information (PHI) as defined under the Health Insurance Portability Act (HIPPA) and Exhibit II, (b) personally identifiable information (PII) as defined in Exhibit III, and (c) Criminal Justice Information defined in Exhibit IV if the Exhibit(s) are incorporated into the Contract. County Data includes Confidential Information as defined in this Contract.
- 2.12. **"County Network"** means County owned, leased, or licensed equipment, hardware, and software that is interconnected via fiber optic, wireless, or other communication mediums for the purposes of County hosting, processing, using, sharing, and/or transporting data, video, voice, or any other form of information.
- 2.13. **"Day"** means any calendar day, which shall begin at 12:00:00 a.m. and end at 11:59:59 p.m.
- 2.14. **"Deliverables"** means goods and/or services expressly identified in Exhibit IX, or any Amendments to this Contract, where such goods and/or services are to be more specifically described in the Exhibits or Amendments and provided by Contractor to County (excluding all Third-Party Materials) and originally created by Contractor during performance of Contractor's obligations under such documents.
- 2.15. **"Effective Date"** means midnight on the date listed on the first page of this Contract.
- 2.16. **"Expiration Date"** means 11:59:59 p.m. on the date listed on the first page of this Contract.
- 2.17. **"E-Verify"** means an Internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees. Information and the registration process are found at the E-Verify website: <https://e-verify.uscis.gov/enroll>.
- 2.18. **"G2G Marketplace Website"** means an Internet site used by County to provide information to PPBs about businesses providing services to County and agreements used by County and available to PPBs to procure services.
- 2.19. **"Intellectual Property"** means any developments, improvements, designs, innovation, and materials that may be the subject of a trademark/service mark, copyright, patent, trade secret, which includes ideas, concepts, inventions, and processes related to the development and operation of computer software and systems.
- 2.20. **"Iran-Linked Business"** is defined in the Michigan Compiled Laws (MCL), specifically MCL 129.312, being Section 2 of Public Act 517 of 2012.

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- 2.21. **"Not to Exceed Amount"** means the dollar amount listed on the first page of this Contract, unless amended. The "Not to Exceed Amount" is not the County's financial obligation under this Contract, but the maximum amount that can be paid to Contractor during the term of this Contract.
- 2.22. **"PPB"** which stands for Participating Public Body, means an entity created by state or Federal law which is primarily funded by or through a governmental authority and which registers to access County's G2G MarketPlace Website.
- 2.23. **"Proposal"** means Contractor's response or bid to the County's Request for Proposal, Request for Qualifications, or Request for Quotes.
- 2.24. **"Purchase Order"** means the County's written request to Contractor for Deliverables pursuant to this Contract. The Purchase Order may include terms regarding delivery schedule, payment, and transportation.
- 2.25. **"Purchasing"** means the Purchasing Unit of the Oakland County Compliance Office.
- 2.26. **"Third Party Materials"** means software, hardware, content, or other materials owned or licensed by a third party.

§3. CONTRACT TERM AND RENEWAL

- 3.1. **Contract Term.** This Contract shall begin on the Effective Date and shall end on the Expiration Date.
- 3.2. **Contract Renewal.** Unless otherwise provided herein, the Parties are under no obligation to renew or extend this Contract after the Expiration Date. This Contract may only be extended by an Amendment.
- 3.3. **Legal Effect.** This Contract shall be effective and binding when all of the following occur: (a) this Contract is signed by a Contractor Employee, legally authorized to bind Contractor; (b) this Contract is signed by an authorized County Agent; (c) all Contractor certificates of insurance, required by this Contract, are submitted and accepted by Purchasing; and (d) any other conditions precedent to this Contract have been met.

§4. CONTRACT ADMINISTRATION AND AMENDMENTS

- 4.1. **Contract and Purchase Order Issuance.** Purchasing shall issue this Contract and any Purchase Orders that may be required. Purchasing is the sole point of contact in the County regarding all procurement and contractual matters relating to this Contract and any Purchase Orders. Purchasing is the only County office/department authorized to make any Amendments to this Contract or Purchase Orders.
- 4.2. **Purchase Orders.** Purchase Orders issued under this Contract are governed by the terms and conditions of this Contract and are included and incorporated herein.

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- 4.3. **Project Managers.** Each Party may designate an employee or agent to act as a Project Manager. If Project Managers are selected, they shall be listed, along with their duties, in Exhibit IX. Unless otherwise stated in Exhibit IX, the County's Project Manager has no authority to amend this Contract.
- 4.4. **Contract Administrators.** The County shall designate an employee or agent to act as Contract Administrator(s). Contractor may designate its employee or agent to act as Contract Administrator(s). The Contract Administrators shall be listed on the first page of this Contract. The County's Contract Administrator(s) shall be responsible for monitoring and coordinating day-to-day activities under this Contract, reviewing Deliverables and invoices, and submitting requests for Amendments to Purchasing. The County's Contract Administrator(s) have no authority to amend this Contract.
- 4.5. **Contract Amendments.** All Amendments to this Contract must be in writing. This Contract shall not be amended by any packing slip, Purchase Order, invoice, click through license agreement, or Contractor policies or agreements published on Contractor's website or otherwise. Amendments to this Contract shall be issued only by Purchasing. The Amendment shall be effective when signed by an authorized Contractor Employee and an authorized County Agent.
- 4.6. **Unauthorized Changes.** Contract changes shall not be effective until an Amendment containing the change is executed according to the procedures described in this Contract. Contractor will have no obligation to perform additional work outside what was previously agreed to in the Contract without such an Amendment. If the Contractor is directed to perform work that Contractor believes is a change in the Contract/Deliverables, then Contractor must notify Purchasing that it believes the requested work is a change to the Contract before performing the requested work. If Contractor fails to notify Purchasing before beginning the requested work, then Contractor waives any claims for additional compensation for performing the requested work. If Contractor begins work that is outside the scope of this Contract or begins work before an Amendment is executed and then stops performing that work, Contractor must, at the request of the County, undo any out-of-scope work that the County believes would adversely affect the County.
- 4.7. **Precedence of Contract Documents.** In the event of a conflict, the terms and conditions contained in Sections 1 through 14 of this Contract shall prevail and take precedence over any allegedly conflicting provisions in all Contract Documents, Exhibits, Purchase Orders, Amendments, and other documents expressly incorporated herein. Terms and conditions contained in Contractor invoices, packing slips, receipts, acknowledgments, click-through licenses, and similar documents shall not change the terms and conditions of this Contract.
- 4.8. **County Responsibilities.** In connection with Contractor's provision of the Deliverables, County will perform the tasks and assume the responsibilities agreed to in the Contract ("County Responsibilities"). County understands that Contractor's performance depends on County's timely and effective performance of the County Responsibilities, timely decisions and

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approvals by County and the accuracy of the assumptions set forth in any document agreed between the Parties. Contractor may rely on all County decisions and approvals in connection with the Contract; any changes by County of its decisions or approvals are subject to Section 4.6. Contractor shall not be responsible for delays in delivery caused by County.

- 4.9. **Performance.** Contractor shall determine the method, details and means of performing the work and providing the Deliverables to County hereunder.

§5. CONTRACT TERMINATION

- 5.1. **County Termination.** In addition to any other legal rights the County may have to terminate or cancel this Contract, the County may terminate the Contract as follows:

- 5.1.1. **Immediate Termination.** The County may terminate or cancel this Contract, in whole or in part, immediately, upon notice to Contractor, if any of the following occur: (a) Contractor, officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense; or (b) if any third-party funding for this Contract is reduced or terminated.
- 5.1.2. **Termination for Convenience.** The County may terminate or cancel this Contract, in whole or part, at any time, upon ninety (90) Days' notice to Contractor, for any reason, including convenience without incurring obligation or penalty of any kind. The effective date for termination or cancellation shall be clearly stated in the notice.
- 5.2. **Contractor Termination.** Contractor may terminate or cancel this Contract, in whole or part, upon ninety (90) Days' notice to the County, if the County breaches any duty or obligation contained herein and within such notice period has failed to cure the breach. The effective date of termination or cancellation and the specific alleged default shall be clearly stated in the notice to the County. In addition, except for disputed amounts subject to section 6.4, County's failure to pay fees when due constitutes a material breach and, in addition to any other remedies available to Contractor, County agrees that Contractor may cease performance of the work until full payment of fees is received.
- 5.3. **County's Obligations Upon Termination.** In the event of termination or cancellation of this Contract, County must pay for the actual Deliverables provided to the County before the effective date of termination. Any Contractor materials provided by Contractor to County must be returned by County. Under no circumstances shall the County be liable for any future loss of income, profits, any consequential damages, any loss of business opportunities, revenues, or any other economic benefit Contractor may have realized but for the termination or cancellation of this Contract. The County shall not be obligated to pay Contractor any cancellation or termination fee if this Contract is cancelled or terminated as provided herein. If the County chooses to terminate the Contract in part, then the charges payable under this Contract must be equitably adjusted to reflect those Deliverables that are terminated.
- 5.4. **Contractor's Obligations Upon Termination.** If the County terminates this Contract, for any reason, then Contractor must do the following: (a) cease providing all Deliverables as

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specified at the time stated in the notice of termination; (b) take any action necessary, or as the County may direct, to preserve and protect Deliverables or other property derived or resulting from the Contract that is in Contractor's possession; (c) return all materials and property provided to Contractor by the County; (d) unless otherwise directed by the County, transfer title in and deliver to the County all Deliverables for which Contractor has been paid in the possession of Contractor or Contractor Employees; and (e) take any action to mitigate and limit any potential damages, including terminate or limit, as applicable, those subcontracts and outstanding orders for materials and supplies connected with or related to this Contract.

- 5.5. **Assumption of Subcontracts.** If Contractor is in breach of this Contract and the County terminates this Contract, then the County may pursue completion of the Deliverables with another vendor as the County, in its sole judgment, deems expedient.

§6. SCOPE OF DELIVERABLES AND FINANCIAL/PAYMENT OBLIGATIONS

- 6.1. **Performance of Deliverables.** Contractor shall provide all Deliverables identified in and as set forth in Exhibit IX, any Purchase Orders, or any Amendments to this Contract. If less than all Scopes of Services are selected when the Contract is executed, an amendment to the Contract is required to add additional Exhibits (and their associated services).
- 6.2. **Software License(s).** If this Contract includes a Software License(s) as described in Exhibit VI, then the Parties shall follow the terms and conditions therein. Unless specifically agreed to by County, if County Agents are required to accept click through license terms to access any of the Deliverables in this Contract, the terms and conditions of those click through licenses are without force and effect.
- 6.3. **Financial Obligations.** Except as otherwise set forth in this Contract, the County's sole financial obligation under this Contract shall be set forth in the Exhibit IX. This is a fixed fee transaction. The amount and manner of payment of the financial obligation shall be set forth in Exhibit IX and may be in the Software License Exhibit VI, if applicable, or a Purchase Order. If the Parties agree to have additional services provided, the Contract will be amended to describe the additional services and the associated costs.
- 6.4. **Payment Obligations.** Except as otherwise set forth in the Exhibits, Contractor shall submit an invoice to the County's Contract Administrator itemizing amounts due and owing under this Contract, as of the date of the invoice. Invoices shall contain the following information: (a) County Contract Number; (b) dates of Deliverables; (c) itemized list of Deliverables; (d) Contractor Tax ID Number (federal and State); (e) licenses; and (f) any other information requested by Purchasing. The County shall have no obligation to make a payment under this Contract until an invoice is submitted in the form set forth herein and shall have no obligation to pay for Deliverables, which have not been invoiced (as required herein) within ninety (90) Days of Contractor's performance. Unless otherwise set forth in the Exhibits, the County shall only pay Contractor for Deliverables under this Contract and not any subcontractors or

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assignees of Contractor. County will notify Contractor in writing of any disputed invoiced amount by no later than the due date for the applicable invoice, in sufficient detail to permit Contractor to investigate the dispute, otherwise such invoice will be deemed accepted. County shall pay the undisputed amount by the due date for the applicable invoice.

- 6.5. **Not to Exceed Amount.** The amount due and owing to Contractor, under this Contract, shall not exceed the "Not to Exceed Amount." If Contractor can reasonably foresee that the total financial obligation for the Contract will exceed the "Not to Exceed Amount," then Contractor shall provide Purchasing with notice of this fact at least ten (10) Days before this event.
- 6.6. **No Obligation for Penalties/Costs/Fines.** The County shall not be responsible, under any circumstances, for any cost; fee; fine; penalty; or direct, indirect, special, incidental, or consequential damages incurred or suffered by Contractor in connection with or resulting from the performance of this Contract.
- 6.7. **In-Kind Services.** Unless expressly provided herein, this Contract does not authorize any in-kind services by either Party.
- 6.8. **County's G2G MarketPlace Administration.**

Every ninety (90) days from the beginning of the Contract term, Contractor will provide the County with a report identifying all G2G MarketPlace contracts between Contractor and PPBs and payments from the PPB for the services rendered. When a report identifies that Contractor has received payments for contracts with PPB's for services based on the G2G MarketPlace, County will be entitled to receive at its choosing, either complimentary Training, complimentary additional services, or discounts for existing services it receives from Contractor. The discounts, if chosen by County will be valued at three percent (3%) of the payments Contractor has received from contracts it has entered into with PPBs who are receiving services from Contractor based on the G2G MarketPlace Contract. County and Contractor will work cooperatively to schedule the training and/or services, if selected by County. In no event shall the total value of the training, services or discounts be greater than the annual total value of the services ordered by the County.

§7. CONTRACTOR'S WARRANTIES AND ASSURANCES

- 7.1. **Full Knowledge of Contract Expectations.** Contractor warrants that before submitting its Proposal and/or entering into this Contract, it had a full opportunity to review all County requirements and/or expectations for this Contract. Contractor is responsible for being adequately and properly prepared to execute this Contract. Contractor has satisfied itself in all material respects that it will be able to perform the Contract as specified herein.
- 7.2. **Access to Contractor Policies.** If the Parties agree in this Contract to follow any Contractor policies, such as acceptable use or privacy policies, then Contractor shall retain each version of such policy with the effective dates and shall promptly provide such to the County, if requested.

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- 7.3. **Grant Compliance.** If any part of this Contract is supported or paid for with any State, federal, or other third-party funds granted to the County, then Contractor shall comply with all applicable grant requirements. Upon request of Contractor, the County shall provide Contractor with a copy of the applicable grant requirements.
- 7.4. **Contractor Incidental Expenses.** Except as otherwise expressly provided in this Contract, Contractor shall be solely responsible and liable for all costs and expenses associated or needed to perform this Contract, including, but not limited to, any professional dues, association fees, license fees, fines, taxes, and penalties.
- 7.5. **Equipment and Supplies.** Contractor is responsible for providing all equipment and supplies to perform this Contract, which are not expressly required to be provided by the County. County will supply Contractor Employees working on County's premises with reasonable access to necessary office equipment and support including computer resources, network access, building access, telephone services, and general office supplies and services in connection with Contractor's performance of the work.
- 7.6. **Contractor Employees.**
- 7.6.1. **Number and Qualifications of Contractor Employees.** Contractor shall employ and assign qualified Contractor Employees as necessary and appropriate to perform this Contract. Contractor shall ensure all Contractor Employees have the knowledge, skill, and qualifications to perform this Contract and possess any necessary licenses, permits, certificates, and governmental authorizations as may be required by law.
- 7.6.2. **Control and Supervision of Contractor Employees.** Contractor shall solely control, direct, and supervise all Contractor Employees with respect to all Contractor obligations under this Contract. Contractor will be solely responsible for and fully liable for the conduct and supervision of any Contractor Employees.
- 7.6.3. **Removal or Reassignment of Personnel at the County's Request.** Contractor shall remove a Contractor Employee performing work under this Contract at the County's request provided that the County's request is based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the removal of a Contractor Employee results in an unanticipated delay, which is attributable to the County, then this delay shall not be considered a breach of the Contract and the terms and conditions of this Contract effected by the removal will be adjusted accordingly.
- 7.6.4. **Contractor Employee Identification.** If requested by the County, Contractor Employees shall wear and display a County-provided identification badge at all times while working on County premises. In order to receive a County identification badge, a Contractor Employee shall sign the "Acknowledgement of Independent Contractor Status" form, Exhibit VIII to this Contract. Contractor shall return all County-provided identification(s) upon completion of Contractor's obligations under this Contract.

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- 7.6.5. **Background Checks.** At the County's request, Contractor Employees performing work under this Contract shall be subject to a background check by the County. The scope of the background check is at the discretion of the County and the results will be used to determine Contractor Employee's eligibility to perform work under this Contract. Any request for background checks will be initiated by the County and will be reasonably related to the type of work requested. Contractor and Contractor Employees shall provide all information or documents necessary to perform the background check.
- 7.6.6. **Contractor Employee Expenses.** All Contractor Employees shall be employed at the Contractor's sole expense (including employment-related taxes and insurance). Contractor warrants that all Contractor Employees shall fully comply with and adhere to the terms of this Contract. Contractor shall be solely liable for all applicable Contractor Employees' federal, state, or local payment withholdings or contributions and/or all Contractor Employee related pension or welfare benefits plan contributions under federal or state law. Contractor shall indemnify and hold the County harmless for all Claims against the County by any Contractor Employee, arising out of any contract for hire or employer-employee relationship between Contractor and any Contractor Employee including, but not limited to, Worker's Compensation, disability pay, or other insurance of any kind.
- 7.6.7. **Contractor's Compliance with the Patient Protection and Affordable Care Act.** If Contractor is subject to the Patient Protection and Affordable Care Act ("ACA"), PL 111-148, 124 Stat 119, then Contractor shall ensure that all Contractor Employees, under assignment to the County, and their dependents, as defined by the ACA, are provided with or have access to insurance as required by the ACA. If Contractor is subject to the ACA, Contractor warrants it offers group health coverage to Contractor Employees and their dependents that is affordable, that provides minimum essential coverage and value, and that each offer of coverage meets the timing requirements of the ACA. Contractor warrants, whether or not it is subject to the ACA, that it will pay all applicable fees, taxes, or fines, as set forth in the employer mandates of the ACA under Tax Code §4980H and related regulations for any Contractor Employee, whether the fee, tax, or fine is assessed against the Contractor or the County.
- 7.7. **Acknowledgment of Independent Contractor Status.**
- 7.7.1. **Independent Contractor.** Nothing in this Contract is intended to establish an employer-employee relationship between the County and Contractor or any Contractor Employee. In no event, shall Contractor Employees be deemed employees, agents, volunteers, or subcontractors of the County. Contractor shall ensure that Contractor Employees are apprised of their and the limitations independent contractors have of this status.
- 7.7.2. **Contractor/Contractor Employee Representations.** Contractor and/or Contractor Employees shall not represent themselves as County employees. Contractor shall ensure that Contractor Employees do not represent themselves as County employees.
- 7.7.3. **County Benefits and Plans.** Contractor and Contractor Employees shall not be entitled to participate in any County employee benefit plans and programs, including but not limited to,

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retirement, deferred compensation, insurance (including without limitation, health, disability, dental, and life), and vacation pay. This limitation includes access to benefit plans and programs that are not described by a written plan. However, Contractor Employees who are retired County Employees may receive vested post-employment benefits such as retiree health care and pension benefits from Oakland County.

- 7.7.4. **County Reliance.** The County entered into this Contract in reliance of the representations made by Contractor regarding its understanding of the role of independent contractors, its stated relationship to Contractor Employees, and other representations Contractor has made regarding the management and performance oversight of Contractor Employees.
- 7.7.5. **Independent Employment Status.** If Contractor provides Contractor Employees for staffing and/or leasing services to County, those Contractor Employees shall sign Exhibit VIII, Acknowledgement of Independent Employment Status, prior to performing services for the County.
- 7.8. **Permits and Licenses.** Contractor shall be responsible for obtaining and maintaining, throughout the term of this Contract, all licenses, permits, certificates, governmental authorizations, and business/professional licenses necessary to perform this Contract. Upon request by the County, Contractor shall furnish copies of any permit, license, certificate, or governmental authorization necessary to perform this Contract.
- 7.9. **E-Verify.** In accordance with Miscellaneous Resolution No.09116 (BOC Minutes, July 30, 2009, pp 37-38), unless otherwise exempted, all service contractors who wish to contract with the County to provide services must first certify they have registered with, will participate in, and continue to utilize, once registered, the E-Verify Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the Contractor. Breach of this term or condition is considered a material breach of this Contract. Contractor's execution of this Contract constitutes a certification that they are authorized to certify on behalf of Contractor and do hereby certify on behalf of Contractor that the Contractor has registered with, has and will participate in, and does and will continue to utilize once registered and throughout the term of this Contract and any permissible extension hereof, the E-Verify Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the Contractor.
- 7.10. **Iran-Linked Business Certification.** Contractor certifies that it is not an Iran-Linked Business. Contractor further certifies that it was not an Iran-Linked Business at the time it submitted its Proposal for this Contract. Contractor must promptly notify the County, if Contractor becomes an Iran-Linked Business at any time during this Contract.
- 7.11. **Taxes.**

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- 7.11.1. **Contractor Taxes.** Contractor shall collect and pay its local, state, and federal taxes, including but not limited to, all employment taxes, sales taxes, personal property taxes, and real property taxes. The County shall not be liable to or required to reimburse Contractor for any local, state, or federal tax of any kind.
- 7.11.2. **County Tax-Exempt.** The County is exempt from state and local sales tax, personal property tax, and real property tax. Prices under this Contract shall not include taxes, unless the County is not tax-exempt for a specific Deliverable. Exemption certificates for sales tax will be furnished upon request.
- 7.12. **Warranty for Services.** Contractor warrants that all Deliverables that are services shall be performed in compliance with all applicable laws, statutes, regulations, ordinances, and professional standards.
- 7.13. **Warranty for Goods.** All Deliverables that are goods shall be subject to the following warranties:
- 7.13.1. **Warranty of Merchantability.** Goods provided by Contractor pursuant to this Contract shall substantially conform to the specifications and descriptions contained in this Contract.
- 7.13.2. **Warranty of Title.** All goods conveyed to the County shall be conveyed and transferred free from any security interest, lien, or encumbrance that the County did not have knowledge of when the Contract was executed.
- 7.14. **ADA and Section 508 Compliance.** If Contractor is providing a Deliverable that requires County Agents or the public to use a software application or to access a website, Contractor warrants that end users can utilize the software or access the website in accordance with the accessibility requirements of the ADA and the Rehabilitation Act of 1973. Contractor's Deliverable will conform, where relevant, to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0. Contractor may provide a description of conformance with the above-mentioned specifications by means of a completed Voluntary Product Accessibility Template for WCAG 2.0 (WCAG 2.0 VPAT) or another comparable document. Any additional compliance requirements shall be specified in the Scope of Contractor's Deliverables Exhibit IX.
- 7.15. **Warranty Period.** County must provide a written notice to Contractor within thirty (30) days of delivery of the Deliverables ("Warranty Period") describing any breach of the warranties in Section 7.13 and 7.14 in sufficient detail to allow Contractor to correct and redeliver those Deliverables.
- 7.16. **Remedies.** Contractor shall, as its sole obligation and County's exclusive remedy for any breach of the foregoing warranties in Sections 7.13 and 7.14, correct any non-compliance with such warranty reported to Contractor by County in writing during the Warranty Period or, if Contractor determines that it is unable to correct the non-conformity, Contractor shall refund

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to County the fees actually paid to Contractor for the Deliverables containing such non-conformity, in which case, County's ownership interest in or other right to use such Deliverables shall immediately terminate.

- 7.17. **Exclusions.** Contractor shall have no warranty obligations to the extent that: (a) any non-conformity is not material; (b) any non-conformity is not reproducible; or (c) any entity other than Contractor has modified any Deliverables, unless County obtains Contractor's prior written approval of such modification. If no specifications are agreed in writing by the Parties, then the Deliverables shall be deemed irrevocably accepted upon delivery to County. If County does not provide a written notice of non-conformity within the Warranty Period, County agrees that the relevant Deliverables are deemed irrevocably accepted by County.
- 7.18. **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES STATED ABOVE, CONTRACTOR MAKES NO ADDITIONAL WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR THAT THE DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE OR COMPATIBLE WITH SUBSEQUENT VERSIONS OF RELEVANT SOFTWARE.

§8. LIABILITY

- 8.1. **Contractor Indemnification.** Contractor shall indemnify, defend, and hold the County harmless from all third party Claims, incurred by or asserted against the County by any person or entity, based on the acts or omissions of Contractor or Contractor's Employees working on site at the County as well as for the infringement of a U.S. patent or copyright by County's authorized and proper use of the Deliverables, as delivered by Contractor to County (an "IP Claim"), provided that County agrees that Contractor will have sole control of the investigation, defense and settlement of any IP Claim. County agrees to provide Contractor prompt notice of any IP Claim so as to not materially prejudice the defense of the IP Claim. County agrees to provide Contractor with reasonable cooperation and assistance in defense of the claim at Contractor's expense. Contractor's obligations under this Section 8.1 do not apply to Deliverables (or portions of them) that are: (i) modified by anyone other than Contractor or its agents, if the alleged infringement relates to that modification; (ii) created according to a plans or specifications created or provided by or on behalf of County; (iii) combined with other products, processes or materials, where the alleged infringement relates to that combination; (iv) used by County after County was notified of the allegedly infringing activity or after being informed of modifications that would have avoided the alleged infringement; (v) not used in accordance with the terms and conditions of this Contract; or (vi) used by any third-party or by County other than for County's internal purposes. The County's right to indemnification is in excess and above any insurance rights/policies required by this Contract. This Section 8 sets forth the entire liability of Contractor and the sole remedies of County with respect to any alleged violation, infringement or misappropriation of third party rights by the Deliverables or any part of them.

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- 8.2. **No Indemnification from the County.** Contractor shall have no rights against the County for indemnification, contribution, subrogation, or any other right to be reimbursed by the County, except as expressly provided herein.
- 8.3. **LIMITATIONS ON DAMAGES.** CONTRACTOR WILL NOT BE LIABLE OR OBLIGATED IN ANY MANNER FOR ANY EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS AND LOST DATA) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF CONTRACTOR HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CONTRACTOR'S OBLIGATIONS UNDER SECTION 8.1, CONTRACTOR'S AGGREGATE LIABILITY UNDER (OR FOR BREACH OF) THIS CONTRACT WILL NOT EXCEED THE FEES PAID OR PAYABLE TO CONTRACTOR FOR THE PORTION OF THE SERVICES OR DELIVERABLES GIVING RISE TO SUCH LIABILITY. THE PARTIES AGREE THAT THE TERMS IN THIS LIMITATION OF LIABILITY SECTION REPRESENT A REASONABLE ALLOCATION OF RISK AND WILL APPLY EVEN IN THE EVENT OF THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- §9. **CONTRACTOR PROVIDED INSURANCE**
At all times during this Contract, Contractor shall obtain and maintain insurance according to the requirements listed in Exhibit I.
- §10. **INTELLECTUAL PROPERTY**
- 10.1. **Contractor Use of County Licensed Software.** In order for Contractor to perform this Contract, the County may permit Contractor or Contractor Employees to access certain Software licensed to the County. Contractor or Contractor Employees shall not transfer, remove, use, copy, or otherwise provide or make available such Software or documentation to any other person or entity, for any purpose, without the prior written consent of the County and/or the licensor. Furthermore, neither Contractor nor Contractor Employee shall produce a source listing, decompile, disassemble, or otherwise reverse engineer any Software. Neither Contractor nor Contractor Employee shall use any Software contrary to the provisions of any applicable Software license agreement or state or federal law.
- 10.2. **Contractor License to Use County Servicemarks.** If this Contract involves the use of County servicemarks, then Contractor is granted a license to use the servicemarks subject to the terms listed in Exhibit VII. Contractor shall only use the servicemarks as directed by the County in Exhibit VII.
- 10.3. **Assignment of Rights.** In consideration for the performance of this Contract and the fees paid to Contractor, Contractor agrees to the following: (a) Contractor shall have no copyright, patent, trademark, or trade secret rights in County Intellectual Property; (b) all Deliverables delivered to the County and for which Contractor has been paid are works made for hire, created for, and owned exclusively by the County, unless otherwise specified in the Contract; and (c) Contractor and its applicable Contractor Employees shall sign any documents

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necessary for the County to register patents, copyrights, or trademarks with federal or state agencies. Contractor shall ensure Contractor Employees assign their rights and interests in County Intellectual Property to the County, to the extent applicable.

- 10.4. **Third Party Materials.** To the extent that any Deliverables contain or require for their use any Third-Party Materials, Contractor will assist County with obtaining the license rights for those Third-Party Materials. The fees for Third Party Materials are not included in the fees for the Deliverables, unless Contractor expressly agrees otherwise. Contractor is not responsible for the performance of any Third-Party Materials.
- 10.5. **Knowledge Capital.** Contractor will retain all right, title and interest in all of Contractor's ideas, know-how, approaches, methodologies, concepts, skills, tools, techniques, expressions, processes, including, without limitation, generally-applicable software and code (and related components), independently-developed software and code (and related components), and any patent, copyright, trademark, trade secret or other Intellectual Property rights in any of the foregoing (collectively, "**Knowledge Capital**"), whether possessed by Contractor prior to, or acquired, developed, or refined by Contractor (either independently or in concert with County but excluding County's Confidential Information) during performance of this Contract. To the extent that any Knowledge Capital is delivered in connection with Deliverables, or County requires that Knowledge Capital to exercise its rights to the Deliverables, Contractor grants to County, upon payment of all applicable fees, a perpetual, non-exclusive, royalty-free license to use Contractor Knowledge Capital solely to exercise its rights to the Deliverables for County's internal use only.
- 10.6. **Infringement Remedies.** If, in either Party's opinion, any of the Deliverables supplied by Contractor or Contractor Employees is likely to become the subject of an IP Claim, Contractor may at its own expense and option: (a) procure for County the right to continue using the services or Deliverables; (b) replace or modify the same so that it becomes non-infringing; or if neither of these options is reasonably available to Contractor; (c) accept its return by County with appropriate credits to County, less a reasonable amount for use of such Deliverables prior to such termination.

§11. CONFIDENTIAL INFORMATION

- 11.1. **Contractor Use of Confidential Information.** County and Contractor (including Contractor Employees) shall use appropriate safeguards to protect the confidentiality and integrity of the other's Confidential Information. A receiving Party shall not reproduce, provide, disclose, or give access of Confidential Information to any third-party (or in the case of Contractor, to a Contractor Employee) not having a legitimate need to know. The receiving Party shall only use the Confidential Information for performance of this Contract. Notwithstanding the foregoing, the receiving Party may disclose the Confidential Information, if required by law, statute, or other legal process; provided that the receiving Party uses reasonable efforts to give the disclosing Party prompt written notice of the impending disclosure. This Contract

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imposes no obligation upon the receiving Party with respect to any Confidential Information which the receiving Party can establish by legally sufficient evidence: (a) was in possession of or was known by the receiving Party, prior to its receipt from the disclosing Party, without any obligation to maintain its confidentiality; or (b) is obtained by the receiving Party from a third party having the right to disclose it, without an obligation to keep such information confidential.

- §12. COUNTY DATA.** If Contractor uses or possesses County Data in the performance of this Contract, then the following provisions contained in this section apply:
- 12.1. Use of County Data.** Contractor and Contractor Employees shall have a limited license to County Data, including a license to collect, process, store, generate and display County Data but only to the extent necessary to provide services under this Contract. Contractor and Contractor Employees may not use, sell, rent, transfer, distribute, or otherwise disclose or make available County Data for Contractor's own purposes or for the benefit of anyone other than the County, without the County's prior written consent, unless otherwise provided for within an Exhibit to this Contract.
- 12.2. Unauthorized Access/Disclosure or Theft of County Data.** Contractor or Contractor Employees shall notify the County's Chief Information Office as soon as practicable but no later than forty-eight (48) hours of "Discovery" of suspected unauthorized access, acquisition, disclosure, or theft of County Data (a "Security Breach"). "Discovery" means the first day on which the Security Breach is known to Contractor or Contractor Employees or should have been known by exercising reasonable diligence. Upon Discovery of a Security Breach, Contractor shall do the following: (a) take reasonable measures to promptly cure the deficiencies relating to the Security Breach in order to secure County Data; (b) cooperate with the County in investigating the occurrence, including making available all relevant records, logs, files, and data reporting materials required upon request by the County; and (c) comply with all applicable federal or state laws and regulations pertaining to unauthorized disclosures or as otherwise reasonably directed by the County. If Contractor uses or possesses County Data described in in Exhibit II (HIPPA), Exhibit III (PII), or Exhibit IV (CJIS), Contractor shall follow the procedures in the applicable Exhibits governing the unauthorized access/disclosure or theft of County Data.
- 12.3. Storage of County Data.** Contractor shall only store and process County Data at and from data centers located within the United States. Contractor shall not permit Contractor Employees to store County Data on portable devices, including personal computers, except for portable devices that encrypt data at rest and are used and kept within the U.S. Contractor shall permit its Contractor Employees to access County Data remotely only as required to provide technical support.
- 12.4. Requirements for PCI Data.** If Contractor agrees to possess, store, process, or transmit County Data that is considered Payment Card Industry (PCI) Data by the PCI Security Standards Council, Contractor shall comply with PCI Data Security Standard (DSS) and shall

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provide the County with a copy of its PCI DSS Attestation of Compliance and its Certificate of Compliance with PCI Data Security Standard. Contractor warrants that it will keep its Certification of Compliance with PCI Data Security Standard current.

- 12.5. **Response to Legal Request for County Data.** If the County receives a Court Order, a Freedom of Information Act (FOIA) request, or other legal request to provide County Data held by Contractor, then at County's expense Contractor shall provide County Data to the County, in a format directed by the County, within the time frame required by law.
- 12.6. **Obligations upon Expiration, Termination or Cancellation of Contract.** At the County's sole discretion, upon expiration, termination, or cancellation of this Contract, Contractor shall return County Data in a mutually agreeable format in a prompt and orderly manner or provide for the secure disposal of County Data as directed by County.
- §13. INFORMATION TECHNOLOGY STANDARDS.** If Contractor provides a technology application or requires the use of the Internet to access a Deliverable, the following sections apply:
- 13.1. **County Standards.** If Contractor and Contractor Employees that will be given access to the County Network, Contractor and Contractor Employees shall comply with the County Electronic Communications and Use of Technology Policy.
- 13.2. **Implementation of Security Measures.** Contractor shall implement and maintain appropriate administrative, technical, and organizational security measures to safeguard against unauthorized access to the County Network and County Data. Such measures shall be in accordance with security industry best practice and not less stringent than the measures Contractor applies to protect its own data of a similar kind.
- 13.3. **Completion of County Security Questionnaire.** Contractor warrants it has completed the County's security questionnaire. Each year, prior to the anniversary date of this Contract, and upon receipt of the County's security questionnaire, Contractor shall provide the County with the answers to the County's security questionnaire.

§14. GENERAL TERMS AND CONDITIONS

- 14.1. **Access to County Property or Facilities.** As set forth in this Contract, Contractor has access to and the right to use County property and facilities necessary to perform this Contract. Unless otherwise provided in this Contract or Contractor receives prior written permission from the County's Director responsible for the department requiring access outside of Business Days, Contractor may only access and use County property and facilities for performance of this Contract on Business Days.
- 14.2. **Signs on County Property or Facilities.** Contractor shall not place any signs or advertisements on County property or facilities without the prior written permission of the County's Director of Facilities Management or successor.

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- 14.3. **Use of County Property or Facilities.** While performing this Contract, Contractor shall keep County property or facilities and anything stored thereon in a clean, safe, and healthful condition and shall keep the property and facilities in a manner that will not prevent or interfere with the County's performance of its functions.
- 14.4. **Removal of Contractor Personal Property.** At the expiration or termination of this Contract, Contractor shall leave County property or facilities in the same condition that Contractor found them and clean of all rubbish, reasonable wear and tear excepted. Contractor shall remove all of its personal property within thirty (30) Days of expiration or termination of this Contract. If Contractor does not remove its personal property within the thirty (30) Day period, then the County shall dispose of it and bill Contractor for any costs associated with the removal and disposal.
- 14.5. **Damage to County Property or Facilities.** Contractor shall be responsible for any damage to any County property or a facility that is caused by Contractor or Contractor Employees. If damage occurs, the County shall make the necessary repairs and/or replacements or cause a third party to make the necessary repairs or replacements, provided, however, that Contractor shall reimburse the County for all costs associated with repairing and/or replacing the damaged property or facilities.
- 14.6. **Damage to Contractor's Property.** Contractor shall be solely liable and responsible for any property loss or damage resulting from fire, theft, or other means to Contractor's personal property located, kept, or stored on or at County property or facilities during performance of this Contract.
- 14.7. **County's Right to Suspend Contract Performance.** Upon written notice, the County may require Contractor to suspend performance of this Contract if Contractor has failed to comply with federal, state, or local laws or any requirements contained in this Contract. The right to suspend performance of this Contract is in addition to the County's right to terminate and/or cancel this Contract. The County shall incur no penalty, expense, or liability to Contractor if the County suspends performance of this Contract under this Section.
- 14.8. **Discrimination.** Contractor shall not discriminate against any employee or applicant for employment in violation of state or federal law. Contractor shall promptly notify the County of any complaint or charge filed and/or of any determination by any court or administrative agency of illegal discrimination by Contractor.
- 14.9. **Conflict of Interest.** Pursuant to Public Act 317 and 318 of 1968, as amended (MCL 15.301, *et seq.* and MCL 15.321, *et seq.*), no contracts shall be entered into between the County and any County Agent. To avoid any real or perceived conflict of interest, Contractor shall disclose to the County the identity of all Contractor Employees and all relatives of Contractor Employees who: a) are employed by the County on the date the Contract is executed; and b) become employed by the County during the term of the Contract. Contractor shall also disclose to the County the identity of all County Agents and all relatives of County Agents who: a) are

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employed by Contractor on the date the Contract is executed; and b) become employed by Contractor during the term of the Contract.

- 14.10. **Access and Records.** Contractor will maintain accurate books and records in connection with performance of this Contract for thirty-six (36) months after the end of this Contract and Contractor shall provide the County with reasonable access to such books and records, upon request.
- 14.11. **Audit.** The County or an independent auditor hired by the County (provided such third-party auditor executes a confidentiality agreement reasonably acceptable to Contractor) may perform contract audits (in its sole discretion) and shall have the authority to access all pertinent records and data and to interview any Contractor Employee during the term of this Contract and for a period of three years after final payment. Contractor shall explain any audit findings, questioned costs, or other Contract compliance deficiencies to the County within thirty (30) Business Days of receiving the draft audit report. Contractor's written response shall include all necessary documents and information that refute the draft audit report and an action plan to resolve the audit findings. A copy of Contractor's response will be included in the final report. Failure by Contractor to respond in writing within thirty (30) Business Days shall be deemed acceptance of the draft audit report and will be noted in the final report. County will provide at least thirty (30) days' notice before commencing any audit. No more than one audit in any twelve-month period may be conducted. No audits and inspections will be conducted onsite at any Contractor location, unless otherwise agreed to by Contractor. County will conduct such audits during Contractor's normal business hours and in a manner that does not interfere unreasonably with Contractor's normal business operations. Except to the extent necessary to enforce its rights or comply with applicable law or requests of regulatory authorities, County and its representatives will hold the results of the audit in confidence.
- 14.12. **Assignments/Delegations/Subcontracts.**
- 14.12.1. **Prior Written Consent Required.** Except by operation of law, neither Party may assign or delegate any of its duties, obligations, or rights under this Contract without the prior written consent of the other Party; provided, however, Contractor may assign or delegate this Contract to an affiliate or subsidiary as long as the affiliate or subsidiary is adequately capitalized and can provide adequate written assurances to the County that the affiliate or subsidiary can perform this Contract. The County may withhold consent, if the County determines that the assignment or delegation would impair performance of this Contract or the County's ability to recover damages under this Contract. Contractor shall also provide the County with adequate information to allow the County to make a determination regarding the assignment or delegation. Notwithstanding the foregoing, Contractor may subcontract any part of the work to independent contractors selected by Contractor (who will be Contractor Employees), in which case Contractor will be responsible to County for their performance. In addition, Contractor may assign this Contract in its entirety without consent in connection

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with a merger, acquisition, sale of substantially all its assets, or other recapitalization or reorganization. County may terminate for convenience in the case of such an assignment.

- 14.12.2. **Flow Down Clause Required.** Any assignment or delegation by Contractor must include a requirement that the assignee or delegee will comply with the terms and conditions of this Contract. The assignment or delegation shall in no way diminish or impair performance of any term or condition of this Contract.
- 14.12.3. **Contractor Responsibility for Assigns/Delegates/Subcontractors.** If Contractor assigns, delegates, or subcontracts this Contract, in whole or in part, Contractor shall remain the sole point of contact regarding all matters under this Contract and shall remain liable for performance of this Contract. Contractor is solely responsible for the management of assignees, delegees, and subcontractors.
- 14.12.4. **Performance Required.** If an assignee, delegee, or subcontractor materially fails to perform as required under this Contract, Contractor shall contract with another entity for such performance. Any additional costs associated with securing another assignee, delegee, or subcontractor shall be the sole responsibility of Contractor.
- 14.13. **Non-Exclusive Contract.** This Contract is a non-exclusive agreement. No provision in this Contract limits or is intended to limit, in any way, Contractor's right to offer and provide its services to the general public, other business entities, municipalities, or governmental agencies during or after the term of this Contract. Similarly, the County may freely engage other persons to perform the same work that Contractor performs. Except as provided in this Contract, this Contract shall not be construed to guarantee Contractor or any Contractor Employee any fixed or certain number of Deliverables.
- 14.14. **No Third-Party Beneficiaries.** Except as provided for the benefit of the Parties, this Contract does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to be indemnified, right to be subrogated to the Parties' right in this Contract, or any other right in favor of any other person or entity.
- 14.14.1. **Survival of Terms and Conditions.** The following terms and conditions shall survive and continue in full force beyond the termination or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their nature: **Section 1.** Contract Purpose, **Section 2.** Contract Definitions, **Section 6.** Scope of Deliverables and Financial/Payment Obligations, **Section 7.** Contractor's Warranties and Assurances, **Section 8.** Liability, **Section 9.** Contractor Provided Insurance, **Section 10.** Intellectual Property, **Section 11.** Confidential Information, **Section 12.** Information Technology Standards, and **Section 14.** General Terms and Conditions; and if incorporated into this Contract, Exhibit II: Business Associate Agreement (Health Insurance Portability and Accountability Act Requirements), Exhibit III: Requirements for Contractors with Access to County PII (Personally Identifiable Information), and Exhibit IV: Requirements for Contractors with Access to CJIS Data (Criminal Justice Information Security).

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- 14.15. **Reservation of Rights.** This Contract does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, or other legal right, privilege, power, obligation, duty, or immunity of the County.
- 14.16. **Compliance with Laws.** Each Party shall comply with all federal, state, and local laws, statutes, ordinances, regulations, insurance policy requirements, and requirements applicable to its activities under this Contract.
- 14.17. **Force Majeure.** Notwithstanding any other term or condition of this Contract, neither Party shall be liable for failure to perform contractual duties or obligations (excluding payment obligations) caused by events beyond their reasonable control, including but not limited to: (a) acts of public enemies; (b) natural disasters; (c) terrorism; (d) war; (e) insurrection or riot; (f) natural disasters; (g) strikes, lockouts, work stoppages, or other labor difficulties; or (h) compliance with law. Reasonable notice shall be given to the affected Party of such event. Contractor is expected, through insurance or alternative temporary or emergency service arrangements, to continue its contractual duties or obligations if a reasonably anticipated, insurable business risk, such as business interruption or any insurable casualty or loss occurs.
- 14.18. **Notices.**
- 14.18.1. **Written Notice.** All notices required under this Contract shall be in writing. Notices shall be effective: (a) the next Business Day, if personally delivered; (b) the third Business Day, if sent by U.S. mail, postage prepaid, return receipt requested; (c) the next Business Day, if sent by a nationally recognized overnight express courier with a reliable tracking system; or (d) the next Business Day with a receipt of confirmation, if sent by e-mail or fax.
- 14.18.2. **Notice to Contractor.** Unless otherwise specified, Notice to Contractor shall be addressed to the Contract Administrator listed on the first page of this Contract.
- 14.18.3. **Notice to County.** Unless otherwise specified herein, Notice to the County shall be addressed to Purchasing, the County Project Manager (if applicable), and the County Contract Administrator(s) listed on the first page of this Contract.
- 14.19. **Captions.** Section and subsection numbers, captions, and any index to sections or subsections contained in this Contract are intended for the convenience of the reader and are not intended to have any substantive meaning and shall not be interpreted to limit or modify any substantive provisions of this Contract. In this Contract, for any noun or pronoun, use of the singular or plural form, use of the nominative, possessive, or objective case, and any reference to gender (masculine, feminine, and neuter) shall mean the appropriate form, case, or gender as the context requires.
- 14.20. **Waiver.** Waiver of any term or condition under this Contract must be in writing and notice given pursuant to this Contract. No written waiver, in one or more instances, shall be deemed or construed as a continuing waiver of any term or condition of this Contract. No waiver by either Party shall subsequently affect its right to require strict performance of this Contract.

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- 14.21. **Cumulative Remedies.** A Party's exercise of any remedy shall not preclude the exercise of any other remedies, all of which shall be cumulative. A Party shall have the right, in its sole discretion, to determine which remedies are to be exercised and in which order.
- 14.22. **Severability.** If a court of competent jurisdiction finds a term or condition of this Contract to be illegal or invalid, then the term or condition shall be deemed severed from this Contract. All other terms or conditions shall remain in full force and effect. Notwithstanding the above, if Contractor's promise to indemnify or hold the County harmless is found illegal or invalid, Contractor shall contribute the maximum it is permitted to pay by law toward the payment and satisfaction of any Claims against the County.
- 14.23. **Dispute Resolution.** All disputes arising under or relating to the execution, interpretation, performance, or nonperformance of this Contract involving or affecting the Parties may first be submitted to the respective Project Manager (if applicable) and Contract Administrators for possible resolution.
- 14.24. **Governing Laws/Consent to Jurisdiction and Venue.** This Contract shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Contract shall be brought in the Sixth Judicial Circuit Court of the State of Michigan, the 50th District of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above. The choice of forum set forth above shall not be deemed to preclude the enforcement of any judgment obtained in such forum or taking action under this Contract to enforce such judgment in any appropriate jurisdiction.
- 14.25. **Entire Contract.** This Contract represents the entire agreement and understanding between the Parties. This Contract supersedes all other prior oral or written understandings, communications, agreements, or contracts between the Parties. The language of this Contract shall be construed as a whole according to its fair meaning.

EXHIBIT I

CONTRACTOR INSURANCE REQUIREMENTS

During this Contract, the Contractor shall provide and maintain, at their own expense, all insurance as set forth and marked below, protecting the County against any Claims, as defined in this Contract. The insurance shall be written for not less than any minimum coverage herein specified.

Primary Coverages

Commercial General Liability Occurrence Form including: (a) Premises and Operations; (b) Products and Completed Operations (including On and Off Premises Coverage); (c) Personal and Advertising Injury; (d) Broad Form Property Damage; (e) Independent Contractors; (f) Broad Form Contractual including coverage for obligations assumed in this Contract;

\$1,000,000 – Each Occurrence Limit

\$1,000,000 – Personal & Advertising Injury

\$2,000,000 – Products & Completed Operations Aggregate Limit

\$2,000,000 – General Aggregate Limit

\$ 100,000 – Damage to Premises Rented to You (formally known as Fire Legal Liability)

Workers' Compensation Insurance with limits statutorily required by any applicable Federal or State Law and Employers Liability insurance with limits of no less than \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit.

1. ☒ Fully Insured or State approved self-insurer.
2. ☐ Sole Proprietors must submit a signed Sole Proprietor form.
3. ☐ Exempt entities, Partnerships, LLC, etc., must submit a State of Michigan form WC-337 Certificate of Exemption.

Commercial Automobile Liability Insurance covering bodily injury or property damage arising out of the use of any owned, hired, or non-owned automobile with a combined single limit of \$1,000,000 each accident. This requirement is waived if there are no company owned, hired or non-owned automobiles utilized in the performance of this Contract.

Commercial Umbrella/Excess Liability Insurance with minimum limits of \$2,000,000 each occurrence. Umbrella or Excess Liability coverage shall be no less than following form of primary coverages or broader. This Umbrella/Excess requirement may be met by increasing the primary Commercial General Liability limits to meet the combined limit requirement.

Supplemental Coverages (Required as Checked)

1. ☐ **Professional Liability/Errors & Omissions Insurance** (Consultants, Technology Vendors, Architects, Engineers, Real Estate Agents, Insurance Agents, Attorneys, etc.) with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate.
2. ☐ **Commercial Property Insurance.** The Contractor shall be responsible for obtaining and maintaining insurance covering their equipment and personal property against all physical damage.
3. ☒ **Cyber Liability Insurance** with minimum limits of \$5,000,000 per claim and \$5,000,000 aggregate.
4. ☐ **Other Insurance Coverages** as may be dictated by the provided product/service and deemed appropriate by the County Risk Management Department.

General Insurance Conditions

The aforementioned insurance shall be endorsed, as applicable, and shall contain the following terms, conditions, and/or endorsements. All certificates of insurance shall provide evidence of compliance with all required terms, conditions and/or endorsements.

1. All policies of insurance shall be on a primary, non-contributory basis with any other insurance or self-insurance carried by the County;
2. The insurance company(s) issuing the policy(s) shall have no recourse against the County for subrogation (policy endorsed written waiver), premiums, deductibles, or assessments under any form. All policies shall be endorsed to provide a written waiver of subrogation in favor of the County;
3. Any and all deductibles or self-insured retentions shall be assumed by and be at the sole risk of the Contractor;
4. Contractors shall be responsible for their own property insurance for all equipment and personal property used and/or stored on County property;
5. The Commercial General Liability and Commercial Automobile Liability policies along with any required supplemental coverages shall be endorsed to name the County of Oakland and its officers, directors, employees, appointees and commissioners as additional insured where permitted by law and policy form;
6. The Contractor shall require its contractors or sub-contractors, not protected under the Contractor's insurance policies, to procure and maintain insurance with coverages, limits, provisions, and/or clauses equal to those required in this Contract;
7. Certificates of insurance must be provided no less than ten (10) Business Days prior to the County's execution of the Contract and must bear evidence of all required terms, conditions and endorsements; and
8. All insurance carriers must be licensed and approved to do business in the State of Michigan and shall have and maintain a minimum A.M. Best's rating of A- unless otherwise approved by the County Risk Management Department.

EXHIBIT II

BUSINESS ASSOCIATE AGREEMENT

(Health Insurance Portability and Accountability Act Requirements)

Exhibit II is a Business Associate Agreement between Contractor ("Business Associate") and the County ("Covered Entity"). This Exhibit is incorporated into the Contract and shall be hereinafter referred to as "Agreement." The purpose of this Agreement is to facilitate compliance with the Privacy and Security Rules and to facilitate compliance with HIPAA and the HITECH Amendment to HIPAA.

- §1. DEFINITIONS.** The following terms have the meanings set forth below for purposes of the Agreement, unless the context clearly indicates another meaning. Terms used but not otherwise defined in this Agreement have the same meaning as those terms in the Privacy Rule.
- 1.1 **Business Associate.** "Business Associate" means the Contractor.
 - 1.2 **CFR.** "CFR" means the Code of Federal Regulations.
 - 1.3 **Contract.** "Contract" means the document with the Purchasing Contract Number.
 - 1.4 **Contractor.** "Contractor" means the entity or individual defined in the Contract and listed on the first page of this Contract.
 - 1.5 **Covered Entity.** "Covered Entity" means the County of Oakland as defined in the Contract.
 - 1.6 **Designated Record Set.** "Designated Record Set" is defined in 45 CFR 164.501.
 - 1.7 **Electronic Health Record.** "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
 - 1.8 **HIPAA.** "HIPAA" means the Health Insurance Portability and Accountability Act of 1996.
 - 1.9 **HITECH Amendment.** "HITECH Amendment" means the changes to HIPAA made by the Health Information Technology for Economic and Clinical Health Act.
 - 1.10 **Individual.** "Individual" is defined in 45 CFR 160.103 and includes a person who qualifies as a personal representative in 45 CFR 164.502(g).
 - 1.11 **Privacy Rule.** "Privacy Rule" means the privacy rule of HIPAA as set forth in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
 - 1.12 **Protected Health Information.** "Protected Health Information" or "PHI" is defined in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - 1.13 **Required By Law.** "Required By Law" is defined in 45 CFR 164.103.

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- 1.14 **Secretary.** “Secretary” means the Secretary of the Department of Health and Human Services or his or her designee.
- 1.15 **Security Incident.** “Security Incident” is defined in 45 CFR 164.304.
- 1.16 **Security Rule.** “Security Rule” means the security standards and implementation specifications at 45 CFR part 160 and part 164, subpart C.

§2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE. Business Associate agrees to perform the obligations and activities described in this Section.

- 2.1 Business Associate understands that pursuant to the HITECH Amendment, it is subject to the HIPAA Privacy and Security Rules in a similar manner as the rules apply to Covered Entity. As a result, Business Associate shall take all actions necessary to comply with the HIPAA Privacy and Security Rules for business associates as revised by the HITECH Amendment, including, but not limited to, the following (to the extent required by law): (a) Business Associate shall appoint a HIPAA privacy officer and a HIPAA security officer; (b) Business Associate shall establish policies and procedures to ensure compliance with the Privacy and Security Rules; (c) Business Associate shall train its workforce regarding the Privacy and Security Rules; (d) Business Associate shall enter into a privacy/security agreement with Covered Entity; (e) Business Associate shall enter into privacy/security agreements with its subcontractors that perform functions relating to Covered Entity involving PHI; (f) Business Associate shall conduct a security risk analysis; and (g) Business Associate shall provide documentation upon request in relation to performance under this section.
- 2.2 Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as required by law.
- 2.3 Business Associate shall use appropriate safeguards to prevent use or disclosure of the PHI. Business Associate shall implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule.
- 2.4 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of law or this Agreement.
- 2.5 Business Associate shall report to Covered Entity any known Security Incident or any known use or disclosure of PHI not permitted by this Agreement.
- 2.6 Effective September 23, 2009 or the date this Agreement is signed, if later, Business Associate shall do the following in connection with the breach notification requirements of the HITECH Amendment:
 - 2.6.1 If Business Associate discovers a breach of unsecured PHI, as those terms are defined by 45 CFR 164.402, Business Associate shall notify Covered Entity without unreasonable delay but no later

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than ten (10) calendar days after discovery. For this purpose, “discovery” means the first day on which the breach is known to Business Associate or should have been known by exercising reasonable diligence. Business Associate shall be deemed to have knowledge of a breach if the breach is known or should have been known by exercising reasonable diligence, to any person, other than the person committing the breach, who is an employee, officer, subcontractor, or other agent of Business Associate. The notification to Covered Entity shall include the following: (a) identification of each individual whose unsecured PHI has been breached or has reasonably believed to have been breached, and (b) any other available information in Business Associate’s possession that the Covered Entity is required to include in the individual notice contemplated by 45 CFR 164.404.

- 2.6.2 Notwithstanding the immediate preceding subsection, Business Associate shall assume the individual notice obligation specified in 45 CFR 164.404 on behalf of Covered Entity where a breach of unsecured PHI was committed by Business Associate or its employee, officer, subcontractor, or other agent of Business Associate. In such case, Business Associate shall prepare the notice and shall provide it to Covered Entity for review and approval at least five (5) calendar days before it is required to be sent to the affected individual(s). Covered Entity shall promptly review the notice and shall not unreasonably withhold its approval.
- 2.6.3 Where a breach of unsecured PHI involves more than five hundred (500) individuals and was committed by the Business Associate or its employee, officer, subcontractor, or other agent, Business Associate shall provide notice to the media pursuant to 45 CFR 164.406. Business Associate shall prepare the notice and shall provide it to Covered Entity for review and approval at least five (5) calendar days before it is required to be sent to the media. Covered Entity shall promptly review the notice and shall not unreasonably withhold its approval.
- 2.6.4 Business Associate shall maintain a log of breaches of unsecured PHI committed by the Business Associate or its employee, officer, subcontractor, or other agent with respect to Covered Entity and shall submit the log to Covered Entity within thirty (30) calendar days following the end of each calendar year, so that the Covered Entity may report breaches to the Secretary in accordance with 45 CFR 164.408. This requirement shall take effect with respect to breaches occurring on or after September 23, 2009.
- 2.7 Business Associate shall ensure that any agent or subcontractor to whom it provides PHI, received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions and conditions that apply to Business Associate with respect to such information. Business Associate shall ensure that any such agent or subcontractor implements reasonable and appropriate safeguards to protect Covered Entity’s PHI.
- 2.8 Business Associate shall provide reasonable access, at the written request of Covered Entity, to PHI in a Designated Record Set to Covered Entity or, as directed in writing by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.

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- 2.9 Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs in writing or agrees to pursuant to 45 CFR 164.526.
- 2.10 Following receipt of a written request by Covered Entity, Business Associate shall make internal practices, books, and records reasonably available to the Secretary in order to determine Covered Entity's compliance with the Privacy Rule. The afore mentioned materials include policies and procedures and PHI relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity.
- 2.11 Business Associate shall document disclosures of PHI and information related to such disclosures, to permit Covered Entity to respond to a request by an Individual for: (a) an accounting of disclosures of PHI in accordance with 45 CFR 164.528 or (b) effective January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures PHI from an Electronic Health Record in accordance with the HITECH Amendment.
- 2.12 Following receipt of a written request by Covered Entity, Business Associate shall provide to Covered Entity or an Individual information collected in accordance with Section 2 to permit Covered Entity to respond to a request by an Individual for: (a) an accounting of disclosures of PHI in accordance with 45 CFR 164.528 or (b) effective as of January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures of Protected Health Information from an Electronic Health Record in accordance with the HITECH Amendment.
- §3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.** Business Associate may use and disclose PHI as set forth in this Section.
- 3.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity as specified in the underlying service agreement between Covered Entity and Business Associate, provided that such use or disclosure shall not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. If no underlying service agreement exists between Covered Entity and Business Associate, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity for the purposes of payment, treatment, or health care operations as those terms are defined in the Privacy Rule, provided that such use or disclosure shall not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- 3.2 Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law or

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Business Associate obtains reasonable assurances in writing from the person to whom the information is disclosed that: (a) the disclosed PHI will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and (b) the person notifies the Business Associate of any known instances in which the confidentiality of the information has been breached.

- 3.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- 3.5 Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

§4. OBLIGATIONS OF COVERED ENTITY.

- 4.1 Covered Entity shall notify Business Associate of any limitation(s) of Covered Entity in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.2 Covered Entity shall notify Business Associate of any changes in or revocation of permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 4.3 Covered Entity shall use appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to this Agreement, the Contract, and the Privacy Rule, until such PHI is received by Business Associate, pursuant to any specifications set forth in any attachment to the Contract.
- 4.4 Covered Entity shall manage all users of the services including its qualified access, password restrictions, inactivity timeouts, downloads, and its ability to download and otherwise process PHI.
- 4.5 The Parties acknowledge that Covered Entity owns and controls its data.
- 4.6 Covered Entity shall provide Business Associate with a copy of its notice of privacy practices produced in accordance with 45 CFR Section 164.520, as well as any subsequent changes or limitation(s) to such notice, to the extent such changes or limitations may affect Business Associate's use or disclosure of PHI. Covered Entity shall provide Business Associate with any changes in or revocation of permission to use or disclose PHI, to the extent the changes or revocation may affect Business Associate's permitted or required uses or disclosures. To the extent that the changes or revocations may affect Business Associate's permitted use or disclosure of PHI, Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR Section 164.522. Covered Entity may effectuate any and all such notices of non-private information via posting on Covered Entity's web site.
- 4.7 Covered Entity shall not request Business Associate to take any action that would violate any applicable law if done by the Covered Entity.

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- 4.8 Covered Entity shall not agree to restrictions or impose additional requirements on the use or disclosure of PHI that might adversely affect the Business Associate, unless Business Associate is allowed to either (at Business Associate's option) (a) terminate the BAA rather than be made to comply with such restrictions or requirements, or (b) allow Business Associate to recover costs associated with such additional restrictions or requirements.
- 4.9 The limitations of liability of the Contract apply to this BAA.

§5. EFFECT OF TERMINATION.

- 5.1 Except as provided in Section 5, upon termination of this Agreement or the Contract, for any reason, Business Associate shall return or destroy (at Covered Entity's request) all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI.
- 5.2 If Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. Upon receipt of written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and shall limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI, which shall be for a period of at least six (6) years.

§6 MISCELLANEOUS.

- 6.1 This Agreement is effective when the Contract is executed or when Business Associate becomes a Business Associate of Covered Entity and both Parties sign this Agreement, if later. However, certain provisions have special effective dates, as set forth herein or as set forth in HIPAA or the HITECH Amendment.
- 6.2 **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- 6.3 **Amendment.** The Parties agree to take action to amend this Agreement as necessary for Covered Entity to comply with the Privacy and Security requirements of HIPAA. If the Business Associate refuses to sign such an amendment, this Agreement shall automatically terminate.
- 6.4 **Survival.** The respective rights and obligations of Business Associate and Covered Entity under this Agreement shall survive the termination of this Agreement and/or the Contract.

EXHIBIT III
REQUIREMENTS FOR CONTRACTORS WITH ACCESS TO COUNTY PII
(Personally Identifiable Information)

Exhibit III governs the requirements for Contractors with Access to Personally Identifiable Information (PII).

1. DEFINITIONS

- 1.1 **Security Breach** means the unauthorized access, acquisition, theft, or disclosure of PII, to the extent caused by Contractor.
- 1.2 **PII** (Personally Identifiable Information) means a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including, but not limited to, a person's name, address, telephone number, driver's license or state personal identification card number, social security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother's maiden name, demand deposit account number, savings account number, financial transaction device account number or the person's account password, any other account password in combination with sufficient information to identify and access the account, automated or electronic signature, biometrics, stock or other security certificate or account number, credit card number, vital record, or medical records or information as well as the first name or first initial and last name linked to a social security number, driver's license or state personal identification card or financial account number in combination with a code or password that would permit access to a person's financial account(s) and as otherwise may be defined by state or federal laws governing the unauthorized access to personal information. PII does not include information that is obtained through email between the Parties such as employment, business or profession an individual's name, position name or title, work address, work or business phone number, work fax number or work email address.

2. OBLIGATIONS

- 2.1 Each Party will exercise reasonable efforts not to disclose any PII to the other Party and to restrict the other Party's access to its PII. County will identify any PII which is provided to Contractor. Contractor shall not use or disclose PII other than as permitted or required by this Contract or as required by law.
- 2.2 Contractor shall implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of PII that it creates, receives, maintains or transmits on behalf of the County.
- 2.3 Contractor shall mitigate, to the extent practicable, any harmful effect known to Contractor of the use or disclosure of PII in violation of law or this Contract.

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- 2.4 If Contractor or Contractor Employees discover a Security Breach, Contractor shall notify the County without unreasonable delay, but no later than within forty-eight (48) hours of discovery. For this purpose, “discovery” means the first day on which the Security Breach is known to Contractor or Contractor Employee or should have been known by exercising reasonable diligence. Contractor shall be deemed to have knowledge of a Security Breach if the Security Breach is known or should have been known by exercising reasonable diligence by any person, other than the person committing the Security Breach. The notification to the County shall include the following: (a) describe the Security Breach in general terms; (b) describe the type of personal information that is the subject of the Security Breach; (c) identify each individual whose PII has been breached or has reasonably believed to have been breached; (d) describe in general terms, what Contractor has done to prevent additional Security Breaches; and (e) provide any other available information in Contractor or subcontractor’s possession that may be necessary to comply with Security Breach notification laws.
- 2.5 If the County determines it will provide the notice of the Security Breach to the affected individuals and/or to governmental authorities, subject to the Contract terms, Contractor shall reimburse the County for: (a) its costs in notifying the affected individuals; (b) the cost of third-party credit and identify monitoring services to each of the affected individuals with compromised PII for no less than twenty-four (24) months following the date of notification to each individual; and (c) costs associated with the Security Breach, including but not limited to any costs incurred by the County in investigating and resolving the Security Breach, including reasonable fees associated with such investigation and resolution. Contractor shall reimburse County for the applicable costs described above within thirty (30) days of receipt of an itemization of costs incurred by the County because of the Security Breach.
- 2.6 Within ten (10) calendar days of its discovery of the Security Breach, Contractor shall provide the County with a detailed plan describing the measures Contractor will undertake to prevent a future Security Breach. The County shall have the right to audit, inspect and test Contractor’s new safeguards put in place because of the Security Breach. Contractor shall be responsible for recreating lost County Data in the manner and on the schedule set by the County without charge to the County.

Exhibit VI SPARK™ Terms of Use

These SPARK™ Terms of Use apply to all use of SPARK™ by the Customer identified below (“You” and “Your”).

WHEREAS, Rightpoint Consulting, LLC (“Rightpoint”) licenses the right to use SPARK™; and You wish to license and use SPARK™; and You and Rightpoint desire to establish terms and conditions that apply to Your license and use of SPARK™;

You and Rightpoint agree as follows:

1. Definitions

- A. “Agreement” means these Terms of Use.
- B. “Authorized User” means any person designated by You to access and use SPARK™ subject to the terms of the Agreement.
- C. “Effective Date” means the last date these Terms of Use are signed by You and Rightpoint below.
- D. “SPARK™” means the Rightpoint accelerator and other SPARK™-related software, and all related materials as the same are made accessible to You by Rightpoint.
- E. “Third Party Materials” means software, hardware, content, services and other materials owned or licensed by a third party (including, without limitation, Microsoft Corporation).

2. SPARK™ License

A. *SPARK™ License.* Rightpoint hereby grants a perpetual, worldwide, royalty-free license for Customer and its affiliated entities (only for so long as they are an affiliated entity), for its internal business use only (and without any right of re-distribution), to make a reasonable number of copies of the Software and to use and execute the Software solely for the benefit of Customer and its affiliated entities, and without any right of re-distribution, re-sale, rental, service bureau or sublicensing. If You, Your agents, contractors, employees or other users violate these Terms of Use, or permit violations to occur and continue, Rightpoint may terminate the Agreement in accordance with Section 3 below. You may also make a reasonable number of non-production, non-use copies of SPARK™ solely for backup and disaster recovery purposes. Rightpoint also hereby grants You a limited, revocable, non-transferable, non-exclusive and perpetual license to access and make changes to the source code of SPARK™ (as provided by Rightpoint) solely for your internal business purposes and **with no right to distribute, sublicense or publicly display the source code**, understanding that Rightpoint will not be responsible for SPARK™ once You have made any changes. In addition to all duties and obligations in this Agreement (and without limiting the generality of Section 9 (Confidential Information) below, You agree that (a) the source code of SPARK™, including any derivative works based on the source code of SPARK™, shall be deemed Rightpoint’s Confidential Information and subject to the confidentiality restrictions contained in this Agreement; (b) You will not distribute or otherwise permit use of source code of SPARK™ by any other party; (c) You will not cause or permit anyone other than Rightpoint or You to modify the source code of SPARK™; (d) the source code of SPARK™ will be kept in a secure location, on a

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single, secure server, accessible only by password and only by Your personnel directly involved with the operation of SPARK™ who have a need to know and use the source code of SPARK™ or a third party maintenance provider who is not a direct competitor of Rightpoint and who has agreed to substantially similar confidentiality obligations as those set forth in this Agreement; and (e) You will maintain a record or log of any individuals who access the source code of SPARK™, including the date, time and duration of such access. For purposes of this Section 2, “affiliated entities” shall mean those entities in which Customer: (a) directly or indirectly (through Customer’s parent company) holds an interest which represents fifty percent (50%) or more of the ownership or voting power in such entity; and (b) has the ability to direct the usage of SPARK by the entity. You will remain liable for any breach by affiliated entities of this Agreement.

B. *Conditions to SPARK™ License:*

- i. Rightpoint will not be responsible for Your internet connection or for issues, problems or conditions arising from or related to Your network connection, including bandwidth issues, network outages, and any other conditions that are caused by Your Internet Service Provider (ISP) or network connection.
- ii. Solely for the term of any applicable support SOW, Rightpoint will make available to You any modifications, updates and upgrades to SPARK™ that it makes generally available to all licensees of SPARK™ at no additional cost or fees. If You make changes to SPARK™, Rightpoint is not responsible for any impact such modifications, updates or upgrades have on SPARK™ and the warranties in Section 6 will no longer apply.
- iii. You agree that any transmissions and submissions to Rightpoint regarding SPARK™ during the course of services by any means or by any media, any materials or other information (including, without limitation, ideas, concepts or techniques for new or improved services and products relating to SPARK™), whether as information, feedback, data (excluding your data that you enter into SPARK™), questions, comments, suggestions or the like related to SPARK™, are unrestricted and shall be deemed non-confidential and You hereby grant Rightpoint and its assigns a non-exclusive, royalty-free, worldwide, perpetual, irrevocable license, with the right to sublicense, to use, copy, transmit, distribute, create derivative works of, display and perform those transmission and submissions.

C. *Restrictions.* You expressly agree that You will not:

- i. copy, use or exploit SPARK™ other than as permitted by these SPARK™ Terms of Use;
- ii. [deleted];
- iii. use SPARK™ to provide data processing services, commercial timesharing, rental, or any similar sharing or service bureau arrangement for a third party;
- iv. interfere, or attempt to interfere, with SPARK™ in any way;
- v. engage in any fraudulent, illegal or unauthorized use of SPARK™;
- vi. intentionally introduce into or transmit through SPARK™ (and you agree that you will use commercially reasonable efforts to prevent the introduction by external sources into SPARK™ of) any virus, worm, trap door, back door, timer, clock, counter or other harmful or limiting routine, instruction or design;
- vii. copy, distribute, sublicense, transfer, modify, create any derivative work based on, re-sell, rent, lease, lend, permit third-party access to, or service bureau, sublicense or otherwise transfer rights or assign SPARK™ or any portion or copy of SPARK™, to any third party;

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- viii. use, or permit any third party to use, SPARK™ for the purpose of developing, selling, distributing, or sublicensing any software or service that competes with SPARK™;
- ix. remove, obscure or alter any copyright notice, trademarks or other proprietary rights notices affixed to or contained within SPARK™.
- D. *Non-Exclusivity.* You acknowledge and agree that Rightpoint will provide access to and use of SPARK™ to multiple customers and that SPARK™, and licenses thereto, are non-exclusive and non-transferable (except as expressly permitted in these Terms of Use) by You.
- E. *Accessibility.* The parties acknowledge that since the use of SPARK™ may depend on Third Party Materials other than Rightpoint and the Internet, which is neither owned nor controlled by any one entity, Rightpoint makes no guarantees that any Authorized User will be able to access or use SPARK™ at any given time, and Rightpoint will not be liable to You for failure of accessibility to SPARK™.
- F. *Ownership.* SPARK™ is owned by (or licensed by) Rightpoint and is protected by United States, foreign and international laws and treaties. You are not granted or transferred any ownership right, title, or interest, nor any security interest or other interest, in any intellectual property rights relating to any part of SPARK™, but only the limited license rights set forth in this Section 2 of these Terms of Use. You will retain all right, title and interest to the data and documents created by You using SPARK™. Rightpoint does not own any data, information or material that You input into SPARK™ in the course of using SPARK™ ("Your Data"). You, not Rightpoint, will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Your Data, and Rightpoint will not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any of Your Data.

3. Term, Termination & Suspension.

- A. The Agreement will commence on the Effective Date of the Contract and continue in full force until expiration or termination of the Contract unless terminated sooner in accordance with these Terms of Use.
- B. Either party will have the right, upon written notice to the other party, to terminate the Agreement if the other party is in material breach of the Agreement and fails to remedy such material breach within thirty (30) calendar days of its receipt of such written notice.
- C. Notwithstanding Section 3(B) above, Rightpoint may immediately terminate the Agreement upon notice to You upon any breach of the terms and conditions of Section 2(C) of these Terms of Use by You.
- D. Upon the expiration or termination of the Agreement for any reason:
 - i. Your access to, and licenses to use SPARK™ will continue, subject to these Terms of Use, unless termination is due to your breach of the Agreement, in which case your license to use SPARK™ will automatically terminate upon termination of the Agreement, and your access to any modifications, updates and upgrades to SPARK™ will cease immediately; and
 - ii. each party will return any and all Confidential Information in its possession to the party that disclosed such Confidential Information and, upon request, provide written verification of same.

4. New Products

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You acknowledge and agree that Rightpoint may develop, or market, new or different products or features that may use part or all of SPARK™, including releases of new products, modules or upgrades of SPARK™ and that Rightpoint reserves the right to charge a separate fee for these solutions. You acknowledge and agree that use of new products or solutions may require You to enter into an appropriate amendment to the Agreement and to pay additional fees as determined by Rightpoint.

5. Your Responsibilities

- A. *Data Accuracy.* You are solely responsible for the accuracy of all data and information entered into SPARK™.
- B. *Storage, Backup & Retrieval.* You are responsible for all storage, backup and retrieval of Your Data.
- C. *Export Assurances.* You will not make available, export or re-export directly or indirectly SPARK™ to any countries except in compliance with the United States Export Administration Regulations (“EAR”) and any other United States export laws.
- D. *Compliance with Laws.* You represent and warrant that You will use SPARK™ in compliance with all applicable laws including, without limitation, United States copyright and export laws.
- E. *Connectivity.* You are responsible for, and must provide, all telephones, telecommunications connections, computers, hardware and software equipment and services necessary to access the Internet and SPARK™, including, without limitation, all Third Party Materials necessary to use SPARK™. Rightpoint gives no assurance that Your equipment or any Third Party Materials will be compatible with SPARK™.
- F. *Administration.* You are responsible for any and all damages, costs and expenses incurred through the use of SPARK™ by any Authorized User and for ensuring that each Authorized User will:
 - i. be accountable for the issuance, security and use of such user’s logon identifier and password (if any);
 - ii. not disclose such logon identifier and password (if any) to any person or entity (other than an agent of You for administrative purposes);
 - iii. not permit any other person or entity (other than an agent of You for administrative purposes) to use his or her logon identifier and password (if any);
 - iv. use SPARK™ consistent with the assigned business rules; and
 - v. use SPARK™ in accordance with the terms and conditions of the Agreement.
- G. *Cooperation.* You will provide Rightpoint with such time and attention of Your qualified personnel and such access to Your facilities and Your systems and will take such site preparation steps as may be necessary or appropriate to enable Rightpoint to provide SPARK™ to You.
- H. *Software.* If Rightpoint issues any software to You for use in connection with SPARK™, it will be subject to the license terms included with the software and; if no license is included with the software, it will be deemed a part of SPARK™ and governed by these Terms of Use. Rightpoint reserves all other rights to any software provided in connection with SPARK™. Any software is licensed, not sold. Unless otherwise agreed in writing, any license to such software ends when the license to SPARK™ ends. You must then promptly uninstall the software, or Rightpoint may disable it.

6. Warranty

- A. *Your Warranty.* You represent and warrant to Rightpoint that:
- You have the authority to enter into the Agreement and perform its obligations under the Agreement;
 - You and Your Authorized Users will only use SPARK™ for lawful purposes and will not violate any law of any country or the intellectual property rights of any third party;
 - You will provide all reasonable assistance to Rightpoint in providing SPARK™ set forth hereunder; and
 - should You receive notice of any claim regarding SPARK™, You will promptly provide Rightpoint with a written notice of such claim.
- B. *Rightpoint's Limited Warranties.* Rightpoint warrants that : (a) Rightpoint has the authority to enter into this Agreement and perform its obligations under this Agreement; (b) for a period of thirty (30) days from initial delivery (the "Warranty Period"), the unmodified version of SPARK™ will function in accordance with the documentation for SPARK™ made available by Rightpoint; (c) it will not intentionally introduce, and will use commercially reasonable efforts to prevent the introduction by external sources, into or through SPARK™ any virus, worm, trap door, back door, timer, clock, counter or other harmful or limiting routine, instruction or design. Rightpoint shall, as its sole obligation and Your exclusive remedy for any breach of the warranty in Section 6.B.b, correct any reproducible error in an unmodified version of SPARK™ reported to Rightpoint by You in writing during the Warranty Period or, if Rightpoint determines that it is unable to correct the error, Rightpoint may terminate this Agreement and refund to You the license fees actually paid (or a pro-rated portion thereof) to Rightpoint for SPARK™. Rightpoint shall have no warranty obligations if any entity other than Rightpoint has modified SPARK™.
- C. *Your Evaluation.* You have independently verified, without relying upon any skill or judgment of Rightpoint, that SPARK™ is appropriate for the purposes for which You intend to use them. All decisions, judgments and advice made by You with the assistance or use of SPARK™ is exclusively Your responsibility. You will indemnify, hold harmless, and defend Rightpoint from and against any claims, costs, expenses or lawsuits, including attorneys' fees, to the extent caused by Your negligence, misuse of SPARK™, or breach of this Agreement.
- D. *Disclaimer.* **EXCEPT AS SET FORTH ABOVE IN THIS SECTION 6 AND BELOW IN SECTION 8, RIGHTPOINT MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING OR RELATING TO SPARK™ OR ACCESS TO OR USE OF SPARK™ PROVIDED TO YOU UNDER THE AGREEMENT AND SPARK™ IS DISTRIBUTED AND LICENSED "AS-IS", WITH NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE (OR ANY GENERAL PURPOSE) OR NON-INFRINGEMENT OF PATENTS, COPYRIGHTS OR OTHER PROPRIETARY RIGHTS OF OTHERS. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. WHEN THE IMPLIED WARRANTIES ARE NOT ALLOWED TO BE EXCLUDED IN THEIR ENTIRETY, YOU AGREE THE IMPLIED WARRANTIES WILL BE LIMITED TO THE SHORTEST DURATION PERMITTED BY LAW. THIS LIMITED WARRANTY GRANTS YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE. RIGHTPOINT ALSO DOES NOT GUARANTEE THAT YOUR ACCESS TO SPARK™ PROVIDED UNDER THE AGREEMENT**

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WILL BE UNINTERRUPTED, ERROR FREE OR SECURE. RIGHTPOINT DOES NOT WARRANT THE ACCURACY, RELIABILITY, COMPLETENESS OR TIMELINESS OF THE CONTENT OF INTERNET WEBSITES OR OTHER DATA RECEIVED BY YOU VIA THE INTERNET. RIGHTPOINT MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY MATERIALS INCLUDING, WITHOUT LIMITATION, ANY MICROSOFT CORPORATION PRODUCTS AND RIGHTPOINT DOES NOT WARRANT COMPATIBILITY WITH SUBSEQUENT VERSIONS OF ANY THIRD PARTY MATERIALS.

7. Limitation of Liability.

- A. YOU AGREE THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL RIGHTPOINT OR ITS SUPPLIERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR TECHNOLOGY, LOSS OF PROFITS, BUSINESS INTERRUPTION, OR FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES REGARDLESS OF THE THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF RIGHTPOINT HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES.**
- B. YOU AGREE THAT RIGHTPOINT'S TOTAL LIABILITY UNDER THESE TERMS OF USE OR FOR BREACH OF THESE TERMS OF USE AND FOR ALL USE OF (OR ANY INABILITY TO USE) SPARK™, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED ALL THE APPLICABLE FEES PAID BY YOU TO RIGHTPOINT FOR LICENSE OF SPARK™.**
- C. THE LIMITATIONS IN THIS SECTION 7 WILL SURVIVE THE EXPIRATION OR TERMINATION OF THE AGREEMENT AND WILL APPLY EVEN IN THE EVENT OF THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR HAVE LEGISLATION THAT RESTRICTS THE LIMITATION OR EXCLUSION OF LIABILITY, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU IN THOSE STATES.**

8. Terms of Use.

You agree to be responsible for any damages arising out of or relating to

- i. Your and Authorized Users' use of or access to SPARK™;
- ii. all data or information entered into SPARK™ by You and Authorized Users;
- iii. Your and Authorized Users' use of the product of SPARK™;
- iv. any claim of fraudulent or unauthorized use or misuse of Services, including any unauthorized access by an Authorized User or an unauthorized user; and
- v. any act or omission of You and Authorized Users.

Rightpoint warrants that the neither the services delivered by Rightpoint to You nor any software that they provide, will infringe or constitute a misappropriation of any patent, copyright, trademark or other intellectual property right valid in the United States existing at the time of delivery. As Rightpoint's sole obligation and Your exclusive remedy for any breach of the warranty in this Section 8.C, Rightpoint will indemnify and hold You and Your employees, partners, members and affiliates harmless from and against any Claims to the extent arising out of or related to a third party's allegation of infringement and/or misappropriation, which, if true, would evidence a breach of the foregoing warranty, provided: (i) Company promptly notifies Rightpoint of any such Claims

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of which it has knowledge or notice; (ii) accords Rightpoint the right, at its sole option and expense, to handle the defense of such Claims. If such Claims arises, or if Rightpoint becomes aware of the possibility of such a claim, then Rightpoint may, in its discretion (i) furnish Company with non-infringing replacement software; (ii) secure Your right to continued use of the software or services by license or otherwise; or, if neither (i) nor (ii) are commercially practicable, (iii) terminate this Agreement in whole or in part upon written notice to Company. If Company has pre-paid the services fees, Rightpoint shall in the event of such termination, pay Company a termination fee equal to the amount of those prepaid fees. Rightpoint's obligations under this Section 8.C do not apply to the extent that Rightpoint's services or software (including, without limitation, SPARK™) are: (i) modified by anyone other than Rightpoint or its agents, if the alleged infringement relates to that modification; (ii) created according to a plans or specifications created or provided by or on behalf of You; (iii) combined with other products, processes or materials, where the alleged infringement relates to that combination; (iv) used by You after You are notified of the allegedly infringing activity or after being informed of modifications that would have avoided the alleged infringement; (v) not used in accordance with the terms and conditions of this Agreement; or (vi) used by any third-party or by You other than for Your internal business purposes.

9. Confidential Information definition for this Exhibit Only.

- A. You acknowledge that Rightpoint's "Confidential Information" under these Terms of Use includes, without limitation, SPARK™ and any software provided by Rightpoint under the Agreement, any logon identifiers and passwords provided to You, any non-public technical or business information of either party, including without limitation any information relating to a party's techniques, algorithms, know-how, current and future products and services, research, engineering, designs, manufacturing, and any other materials that you are permitted to keep Confidential under the Michigan Freedom of Information Act.
- B. You acknowledge and agree that:
 - i. the Confidential Information constitutes valuable trade secrets of Rightpoint;
 - ii. You will use Confidential Information solely in accordance with the provisions of this Agreement; and
 - iii. You will not disclose, or permit to be disclosed, the Confidential Information to any third party, except employees of contracted firms working on behalf of County, without Rightpoint's prior written consent.
- C. You will take reasonable precautions necessary to safeguard the confidentiality of the Confidential Information including, at a minimum, those precautions taken by you to protect its own Confidential Information, which will in no event be less than a reasonable degree of care.
- D. Confidential Information will not include information that is:
 - i. publicly available;
 - ii. already in your possession and not subject to a confidentiality obligation;
 - iii. obtained by you from any source without any obligation of confidentiality;
 - iv. independently developed by you without reference to the Confidential Information; or
 - v. requested to be disclosed by order of a court or other governmental entity; if notice is permitted, You will use your best efforts to notify Rightpoint of the Order so that Rightpoint may seek to obtain a protective order or other relief.
 - vi. required to be disclosed under the Michigan Freedom of Information Act, in which case County will use its best efforts to notify Rightpoint of the requested disclosure.

10. General

- A. *Assignment.* You may not transfer, assign, or otherwise dispose of the Agreement, or any of Your rights or obligations under the Agreement without the prior written consent of Rightpoint, provided that You may assign this Agreement in its entirety to a successor-in-interest to all or substantially all of your business by way of a merger, acquisition or similar transaction, provided that such assignee assumes all obligations of this Agreement in writing. Any attempted assignment by You in violation of this Section 10(A) will be null and void. SPARK™ is not for resale and You may not resell, license, or otherwise transfer for value, SPARK™ without the prior written consent of Rightpoint.
- B. *Waiver.* Failure by either party to enforce any term of the Agreement will not be deemed a waiver of enforcement of that term or any other term. No waiver of any right, term or condition of the Agreement will be effective unless in a writing that expressly references the right, term or condition waived and the writing is signed by the waiving party.
- C. *Headings and Construction.* The headings used in these Terms of Use are for reference and convenience only and may not enter into the interpretation of these Terms of Use. As used in these Terms of Use, the word “including” means “including but not limited to” and the words “and” and “or” are to be construed to make the context inclusive rather than exclusive.
- D. *Severability.* If any provision of the Agreement, or the application of a provision to any person or circumstances, is held invalid, the remainder of the Agreement, or the application of the provision in all other respects, will not be affected and will nevertheless be enforced to the maximum extent consistent with the original intent of the provision and the Agreement.
- E. *Governing Law.* The Agreement will be construed and governed in accordance with the laws of the United States of America and the State of Michigan, excluding its conflicts of laws principles. Venue and jurisdiction for any litigation arising from the Agreement will be as specified in the Contract. **PURSUANT TO ARTICLE 6 OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (“UN CONVENTION”), YOU AND RIGHTPOINT AGREE THAT THE UN CONVENTION WILL NOT APPLY TO THE AGREEMENT.**
- F. *Force Majeure.* Except for the obligation to make payments, neither party will be liable to the other nor deemed in breach of the Agreement to the extent that performance is rendered impossible or delayed due to events beyond the control of or not due to the negligence of the non-performing party, including acts of war, terrorism, third-party strike, fire, flood, storm, vandalism, cable cut, failure of external telecommunications equipment, power failure, riot, explosions, governmental acts or orders or restrictions, acts of God, failure of suppliers, or any other reason where failure to perform is beyond the control of the non-performing party.
- G. *English Language.* Rightpoint and You have required that the Agreement and all documents related to the Agreement be drawn up in English. For customers resident in Québec, France and other francophone jurisdictions: *Rightpoint et You ont demandé expressément que la présente entente et tous les documents et avis connexes soient rédigés en anglais.*
- H. *Customer Reference.* You agree that, upon your prior written approval, Rightpoint may refer to You as a customer of Rightpoint in sales presentations, marketing vehicles and activities including but not limited to reference on Rightpoint website.
- I. *Injunctive Relief.* Rightpoint has and may cumulatively exercise all rights it might have at law or in equity for the protection of SPARK™, including, without limitation, injunctive relief enjoining the breach or threatened breach of the Agreement. In the event You breach or threaten

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a breach of the Agreement, You agree that Rightpoint will be entitled to injunction and other temporary and permanent equitable relief without requirement of posting bond.

- J. *Survival.* The terms and conditions of Sections 1, 3(E), 4, 6(D), 7, 8, 9, and 10 (excluding subsection 10(F)) of these Terms of Use will survive any termination or expiration of the Agreement.
- K. *U.S. Government Restricted Rights.* SPARK™ is a “commercial” item provided with restricted rights. Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in this Agreement and at DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013 (c)(1)(ii) (Oct. 1988), FAR 12.212(a) (1995), FAR 52.227-19 (June 1987), or FAR 52.227-14 (ALT III), as applicable. Manufacturer is Rightpoint Consulting LLC, 29 North Wacker Drive, 4th Floor, Chicago, IL 60606.
- L. *Entire Agreement.* The Agreement is the entire agreement between You and Rightpoint concerning SPARK™ and it supersedes any prior or contemporaneous written or oral agreements with respect to the subject matter, and may not be amended or modified except by subsequent agreement in writing by You and an officer of Rightpoint. Any purchase order issued by You and accepted by Rightpoint is for convenience only and any terms and conditions on any You purchase order or other You document are agreed to be null and void and of no effect.
- M. *Notices.* All material notices (e.g., breach, etc.) required or desired to be given or made in connection with this Agreement must be in writing, given by certified or registered mail (return receipt requested) or internationally-known overnight courier (e.g. FedEx), charges prepaid, and addressed as follows:

If to Rightpoint Consulting LLC:

Rightpoint Consulting, LLC
Attn: Brad Schneider
29 North Wacker Drive
4th Floor
Chicago, Illinois 60606

If to You:

To the address and positions
specified in the Contract.

Notices will be effective upon the earlier of actual receipt or documented refusal of delivery. All other notices made in connection with this Agreement must be in writing, given either by above methods or by E-mail. Any payments made under this Agreement will be deemed received only when actually received.



EXHIBIT VII

LICENSE FOR USE OF COUNTY SERVICEMARK

County grants to Contractor the non-exclusive right to use its Servicemark (hereinafter "Mark"), described and listed in the Servicemark Guidelines (below), for programs and activities that are related to the governmental services provided by Oakland County, specifically: use on company website and company overview presentations. _____

The Mark may be used on: (Applicable if Checked):

- ☒ Printed materials
- ☒ Electronic materials
- ☒ Contractor's website: <https://www.rightpoint.com>

Contractor shall not use the Mark for any other purpose.

The Mark must be used by Contractor as shown in the Servicemark Guidelines, with no variations of color, font or proportion. Contractor acknowledges that the County has intellectual property rights in the Mark. Nothing in this Contract gives Contractor any right, title, or interest in the Mark. Contractor may not take any action that will interfere with County's rights in the Mark.

The County may terminate Contractor's rights under this Exhibit if County notifies Contractor it has breached the terms of this Exhibit and Contractor fails to cure the breach within ten (10) business days of notice of breach. Following termination of this Exhibit, Contractor shall have ten (10) business days to remove the Mark from the materials and/or website authorized for use above. Contractor shall provide County with written confirmation that such actions have been taken. Upon termination of the Contract, Contractor shall cease all use of the Mark.

OAKLAND COUNTY SERVICEMARK GUIDELINES

The Guidelines for proper use of the Mark provided to the Contractor are as follows:

OAKLAND COUNTY, MICHIGAN

LOGO BRAND STANDARDS

PRIMARY LOGO

Oakland County has two logos that can be used interchangeably. Use the Horizontal Two Trees logo as your default choice. This is our primary logo. The Stacked Logo can be used whenever space or size is a consideration in your publication. Either logo is acceptable for all Oakland County publications.

However, **only one style of logo may be used per publication.** For instance, if you have the horizontal logo on the front of a publication, you can't use the stacked logo elsewhere in the document.

Pick one logo style for each publication and use it throughout, do not mixed styles.

HORIZONTAL "TWO TREES" LOGO



STACKED LOGO



LOGO VARIATIONS

Logos should appear in full color when used in a full color design, whenever possible. However, if the publication requires a single color version of the logo, choose either all-black or all-white. No other color is acceptable.



BRAND COLORS

The primary Oakland County logos use the following brand colors.

PMS	347
CMYK	84.15.78.2
RGB	0.154.102
HEX	#009A66

PMS	Black C
CMYK	0.0.0.100
RGB	0.0.0
HEX	#000000

Accent colors for the brand are pulled from two other major servicemarks for Oakland County. These colors may be used as secondary colors in publications.

Destination Oakland Blue
PMS 2925 | CMYK 85.21.0.0 | RGB 0.156.222

Prosper Orange
PMS 715 | CMYK 0.54.87.0 | RGB 248.141.46

OAKLAND
COUNTY PARKS

PROSPER
Oakland County Michigan

WHITE SPACE

A prescribed amount of space around the logo must be maintained at all times.



QUESTIONS

For questions or clarification on these brand standards, please contact:

Pam Tremble
Graphic Designer
County Executive Administration
(248) 858-8964 | tremblep@oakgov.com



Adobe Swatch Exchange
The official .ase file is available upon request

Do not provide copies to a third-party of any artwork provided to you by County and referenced in this Exhibit without the express consent of County.

G2G MARKET PLACE SERVICEMARK GUIDELINES

The Guidelines for proper use of the Mark provided to the Contractor are as follows:

G2G MARKET PLACE

Standard Logo

The G2G Market Place logo appears to the right. It is the primary element of the G2G Market Place visual identity and must appear on all official documentation or sign involving G2G Market Place.



LOGO USAGE

A prescribed amount of space around the logo should be maintained at all times. The space should be equal to or greater than the width of 1/4".



MINIMUM LOGO SIZE



Minimum logo width 3 inches
and height is 1 inch.

COLORS



CMYK 82.5.97.0

RGB 0.169.80

HEX #00a950



CMYK 0.0.0.100

RGB 0.0.0

HEX #000000

COLOR VARIATIONS

For 1-color print jobs, or when design dictates the logo may be used in all black or all white.



LOGO VARIATIONS

Below are alternate "stacked" logo options. They are shown in full color, all black, and all white versions.



Do not provide copies to a third party of any artwork provided to you by County and referenced in this Exhibit without the express consent of County.



EXHIBIT VIII

ACKNOWLEDGEMENT OF INDEPENDENT EMPLOYMENT STATUS

I, _____, acknowledge that:

- I am an employee or subcontractor of _____:
Name of Contractor's Company
- At all times during my assignment to Oakland County I will remain an employee or subcontractor
of _____;
Name of Contractor's Company
- I am not an employee of Oakland County; and,
- I may not represent myself as an employee of Oakland County.

I understand that:

- _____ is responsible for establishing the conditions of my
Name of Contractor
assignment to Oakland County;
- _____ is solely responsible for compensating me for my services;
Name of Contractor
and,
- I understand and agree that as an employee or subcontractor of _____
Name of Contractor's Company

I am not eligible to participate in or accrue any benefits under any of Oakland County's employee benefits or benefit plans, including retirement, deferred compensation, insurance (including without limitation: health, disability, dental, and life insurance), vacation pay, and any other similar plans and programs. However, if I am a retired County employee I may receive vested post-employment benefits such as retiree healthcare and pension benefits from Oakland County. I understand that the post-retirement benefits I receive from the County cannot be enhanced by my work for the above Contractor.



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I acknowledge that:

- If I will be given access to the County Network, I will comply with the Oakland County Electronic Communications and Use of Technology Policy.

Signed: _____

Date: _____

Print Name: _____

Witness: _____

Date: _____

Print Name: _____

(Contractor or Contractor Employee must provide a copy of completed form to the Compliance Office-Purchasing Unit – Purchasing@oakgov.com.)

EXHIBIT IX

**Contractor Deliverables/Financial Obligations
for Office 365 Implementation Services**

1. Introduction.
 - 1.1. Contractor shall provide County with implementation services for Office 365 (“Project”) throughout the County following governance directives established by the County. Contractor will assist County with developing comprehensive governance documentation related to Office 365 administration including feature allocation, modification, training and knowledge transfer, configuration and security.
 - 1.2. Contractor shall implement and provide County with the services and deliverables described herein.
2. CONTRACTOR SHALL PROVIDE COUNTY SUPPORT WITH IMPLEMENTATION OF THE FOLLOWING MICROSOFT OFFICE 365 PRODUCTS (FOR G3 LICENSE, WHICH COUNTY HAS):
 - 2.1. OneDrive
 - 2.2. Office Applications
 - 2.3. Office Online
 - 2.4. OneNote
 - 2.5. Office Delve
 - 2.6. Office Graph
 - 2.7. Office 365 Video
 - 2.8. SharePoint Online
 - 2.9. Microsoft Teams
 - 2.10. Security and Compliance Center
3. Project Preparation, Planning
 - 3.1. Phase 1 - Preparation: The purpose of this phase is to introduce the Contractor team, confirm Project scope, and establish the communications protocol.
 - 3.1.1. Contractor will conduct a Project Kickoff meeting in person at County’s location.
 - 3.1.2. County will identify any critical business schedule or deployment considerations that might impact the Project’s timeline.

Contractor shall provide the following Deliverables:

Deliverable	Deliverable Description
Kickoff Deck	Microsoft PowerPoint or similar

- 3.2. Phase 2 – Project Planning.
 - 3.2.1. Contractor shall lead Project planning with County.
 - 3.2.2. Contractor shall create discussions, documenting target milestones and timing.

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- 3.2.3. Contractor shall work with County to establish key milestones.
- 3.2.4. Contractor will refine detailed Project plans, schedules, deployment and training strategies, and begin to refine full Project planning.

Contractor shall provide the following Deliverables:

Deliverable	Deliverable Description
Project Plan	Microsoft Excel or similar

3.3. Phase 3 – Change Management, Communication and Governance

3.3.1 Contractor shall conduct the following tasks:

- 3.3.1.1 Plan and conduct a change management preparation workshop.
- 3.3.1.2 Connect themes, map patterns and conduct trend analysis to uncover the best strategy for successful adoption of the coming change.
- 3.3.1.3 Author Change Management Plan. Write a document that defines the activities or roles that will need to change during the phases of the Project.
- 3.3.1.4 Author Change Management Communications Plan. Write a structured approach to providing stakeholders with information. The plan formally defines who should be given specific information, when that information should be delivered and what communication channels will be used to deliver the information.
- 3.3.1.5 Conduct Executive Presentation. Present change initiative to County leadership for support and execution.
- 3.3.1.6 Plan and conduct Governance workshops.
- 3.3.1.7 Author Technical Governance Directives Document. Write a document that provides a governance structure with specific responsibilities related to Microsoft Office 365 administration including feature allocation, modification, configuration and security. A detailed plan and approach for configuration and implementation for each Office 365 tool identified above and future governance, Train the Trainer, Knowledge Transfer and support model for the County to administer. This document will be updated during future governance review phases.

Contractor shall provide the following Deliverables:

Deliverable	Deliverable Description
Change Workshop Agenda	Microsoft Word or similar
Change Management Plan	Microsoft Word or similar
Communications Plan	Microsoft PowerPoint or similar
Technical Governance Document	Microsoft Word or similar

4. Phase 4 – Technology Design and Execution.

- 4.1. Contractor shall execute a SharePoint Design and Migration Assessment by conducting the following tasks;
 - 4.1.1. Facilitate Technical Requirements Meetings: In a series of up to three 2-hour meetings, Contractor will collaborate with County IT stakeholders through the creation of the Migration Design Document. Contractor shall discuss with County all functional and non-functional requirements that need to be included in the SharePoint and O365 rollout.
 - 4.1.2. Prepare Site Inventory Scripts: Contractor will provide scripts to help scope the full migration effort and create a migration schedule and process.
 - 4.1.3. Conduct Site and Custom Application Analysis and Assessment: Contractor will analyze the current web applications and site collections to assess the level of customization across the various sites and provide a future solution for branding, web parts, workflows and other custom components being utilized within SharePoint.
 - 4.1.4. Create visual design for Team Site Template and Hub Site Landing Page.
 - 4.1.5. Create Technical Design Document: Contractor will document the technical design to capture the following SharePoint Online architecture decisions:
 - 4.1.5.1. Site Hierarchy (site collections, sites and sub sites)
 - 4.1.5.2. Information Architecture (taxonomy, content types, columns, Lists/Libraries)
 - 4.1.5.3. Page Layouts
 - 4.1.5.4. Web Parts
 - 4.1.5.5. Custom solutions and integrations
 - 4.1.5.6. Migration Design:
- 4.2. Contractor shall document a migration design to capture the following details for the migration:
 - 4.2.1. Source files/folders mapped into each destination.
 - 4.2.2. How many machines will be setup for moving data
 - 4.2.3. Process for migrating Shared drives
- 4.3. County shall:
 - 4.3.1. Provide access to the County environment to execute the identified tasks
 - 4.3.2. Procure necessary licenses for Metalogix. Contract is not responsible for any defects in the Metalogix products.
 - 4.3.3. Provide branding guidelines.
- 4.4. Contractor shall not create custom web parts for the Team or Hub Site.
Contractor shall provide the following Deliverables:

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Deliverable	Deliverable Description
Migration Design	Microsoft Word or similar
Migration Schedule	Microsoft Excel or similar
Team Site Design	PDF
Hub Site Design	PDF
SharePoint Design	Microsoft Word or similar

5. Phase 5 - Migration Design and Scope Checkpoint

5.1. Contractor shall:

- 5.1.1. Configure 3rd party tool: Contractor shall set up the Metalogix migration tool based on County requirements.
- 5.1.2. Configure SPARK: With the configuration of the migration tool, Contractor will install and configure SPARK in County environment.
- 5.1.3. Configure Team Site Template and Script Provisioning. Contractor shall not create custom web parts for the Team Site.
- 5.1.4. Configure Hub Site Template and Script Provisioning. Contractor shall not create custom web parts Hub Site.
- 5.1.5. Execute Initial Migration Proof of Concept. Contractor shall execute an initial migration run on a sample site and obtain County feedback.
- 5.1.6. Create Migration Schedule: Based on Site Inventory, Custom Application Requirements, and Proof-of-Concept, Contractor shall provide a migration schedule.
- 5.1.7. Create Migration Automation and Logging: Contractor shall create SharePoint based data structures to allow end users to kickoff various migrations by selecting a template, source, and destination URLs. The SharePoint list will be used to track success/error logs during each migration run.
- 5.1.8. Facilitate Scope Checkpoint: Contractor shall meet with County to review the Project scope and assure it aligns with the remaining time and effort allocated for the project.

5.2. County shall:

- 5.2.1. Provide access to County environment to execute the identified tasks.
- 5.2.2. Procure necessary licenses for Metalogix. Contractor is not responsible for any defects in the Metalogix products.

Contractor shall provide the following Deliverables:

Deliverable	Deliverable Description
Configured Migration Tool	Metalogix in County Environment
Configured SPARK	SPARK in County Environment

6. Phase 6 - Migration Execution

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6.1. Contractor shall:

- 6.1.1. Develop Custom Solutions: Contractor has allocated up to 180 hours to rebuild branding, custom solutions, forms, and workflows. Contractor will work with County to prioritize the use of these hours.
- 6.1.2. Setup Provisioning: Contractor shall deploy a script for County to deploy future SharePoint sites based upon template.
- 6.1.3. Execute Migration Sprint 1: Contractor shall perform the first migration of sites based on the defined schedule.
- 6.1.4. Support Additional Migrations: Contractor has allocated up to 80 hours to support County in executing additional site Migrations. Contractor will work with County to prioritize the use of these hours.

6.2. County shall:

- 6.2.1. Identify participants for Knowledge Transfer sessions and assure their attendance.

Contractor shall provide the following Deliverables:

Deliverable	Deliverable Description
Migrated Sites	Migrated Sites in County environment

7. Phase 7 - Training and Technology Deployment

7.1. Contractor shall:

- 7.1.1. Provide additional support for contingency/scope: Contractor has allocated up to 180 hours to work on items related to the scope and contingency of this Project. Contractor shall work with County to prioritize the use of these hours and document the use of them through the Change Order process defined below.
- 7.1.2. Deploy Other In-Scope Microsoft services: Contractor has allocated up to 80 hours to help County deploy other In-Scope Microsoft Services. Contractor shall work with County to prioritize the use of these hours.
- 7.1.3. Knowledge Transfer Sessions: Contractor shall prepare materials for and facilitate up to 16 hours of training and assistance with IT admins and staff. Materials may include content directly from Microsoft about the deployed services and custom content if needed.

7.2. Contractor has made the following assumptions:

- 7.2.1. County will identify participants for Knowledge Transfer sessions and assure their attendance.

Contractor shall provide the following Deliverables:

Deliverable	Deliverable Description
Deployed Microsoft Services	Services in County environment

Training Documentation	Microsoft Word or similar
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8. **DELIVERABLE REVIEW PROCESS. AFTER COUNTY RECEIVES EACH OF THE DELIVERABLES PROVIDED IN THIS PROJECT: KICKOFF DECK, PROJECT PLAN, CHANGE WORKSHOP AGENDA, CHANGE MANAGEMENT PLAN, COMMUNICATIONS PLAN, TECHNICAL GOVERNANCE DOCUMENT, MIGRATIONS DESIGN, MIGRATION SCHEDULE, TEAM SITE DESIGN, HUB SITE DESIGN, SHAREPOINT DESIGN, CONFIGURED MIGRATION TOOL, CONFIGURED SPARK, MIGRATED SITES, DEPLOYED MICROSOFT SERVICES, AND TRAINING DOCUMENTATION, COUNTY SHALL HAVE FIVE (5) BUSINESS DAYS TO REVIEW THE DELIVERABLE AND NOTIFY CONTRACTOR IF IT IS ACCEPTABLE. IF THE DELIVERABLE REQUIRES MODIFICATIONS, COUNTY SHALL PROVIDE CONTRACTOR WITH A WRITTEN LIST OF THE SECTIONS IN THE DELIVERABLE THAT NEED TO BE MODIFIED. UPON RECEIPT OF THE REVISED DELIVERABLE, COUNTY SHALL HAVE FIVE (5) BUSINESS DAYS TO REVIEW THE DELIVERABLE AND NOTIFY CONTRACTOR IF THE DELIVERABLE IS ACCEPTABLE. THIS PROCESS WILL CONTINUE UNTIL COUNTY PROVIDES WRITTEN NOTICE THAT EACH INDIVIDUAL DELIVERABLE IS ACCEPTABLE.**

9. **ROLES AND RESPONSIBILITIES**

9.1. **CONTRACTOR SHALL:**

- 9.1.1. Be responsible for providing the services and Deliverables outlined in this Contract.
- 9.1.2. Provide a Project Manager as single point of contact.
- 9.1.3. Submit travel itineraries in advance for approval prior to booking any travel. County will be responsible for all travel costs.
- 9.1.4. Provide necessary personnel required to accomplish all deliverables for this Scope of Services.

9.2. **COUNTY SHALL:**

- 9.2.1. Provide a single point of contact for the Contractor Project Manager.
- 9.2.2. Ensure County Project Manager and decision makers will remain consistent throughout this Project. If, as a result of County delays, the Project is extended beyond the defined schedule in the "Project Plan and Timeline" section below, Contractor may initiate a Change Order per the Change Order process to cover the additional costs associated with the timeline extension.
- 9.2.3. Provide feedback and acceptance authorization at various stages throughout the engagement
- 9.2.4. Provide feedback in a timely manner. In the event County does not provide timely feedback, Contractor may submit a Change Request as provided herein.
- 9.2.5. County shall provide information on:
 - 9.2.5.1. Organization structure
 - 9.2.5.2. Legacy site analytics

9.2.5.3. Implementation strategy work previously completed

10. **OWNERSHIP OF DATA.**

10.1. County Data remains the property of the County at all times. County Data cannot be accessed by any other third party unless prior consent is arranged and approved in writing by County. Access to County Data is required from time to time by the Contractor's staff for the purpose of upgrades to software or fault diagnosis/resolution.

11. **HOSTED ENVIRONMENTS**

11.1. County shall be responsible for providing suitable environments for any necessary development and testing services under this Scope of Services.

Upon payment of all fees, Contractor hereby grants a perpetual, worldwide, royalty-free license for County, for its internal business use only, to use, modify, copy and adapt the Deliverables and Contractor Knowledge Capital (as defined below). Deliverables do not include any Third-Party Materials (defined as software, hardware, content, or other materials owned or licensed by a third party) or any Contractor Knowledge Capital (defined as Contractor's ideas, know-how, approaches, methodologies, concepts, skills, tools, techniques developed prior to or during the term of the Contract and any patent, copyright, trademark, trade secret or other intellectual property rights the Deliverables).

CONTRACTOR'S ONLY WARRANTY TO COUNTY IS THAT THE DELIVERABLES WILL SUBSTANTIALLY CONFORM TO THE MATERIAL SPECIFICATIONS SET FORTH IN THIS SCOPE OF SERVICES. County must provide written notice to Contractor within thirty (30) days of delivery of the Deliverables describing a breach of this warranty or else waives the warranty.

12. **PAYMENT TERMS**

Subject to the terms of this Exhibit, the Deliverables and services provided under this Scope of Services will be provided for the following fixed fee(s): \$400,000, plus actual out-of-pocket expenses including, but not limited to, travel and lodging expenses, and all taxes, as applicable.

Invoice	Invoice Timeline	Amount
Deposit Invoice	Delivered for payment upon delivery of the Technical Governance Document	\$80,000
Invoice 2	Delivered for payment upon delivery of the SharePoint Design	\$80,000
Invoice 3	Delivered for payment at the Scope Checkpoint	\$80,000

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Invoice 4	Delivered for payment after Migration Sprint 1	\$80,000
Invoice 5	Delivered for payment at Knowledge Transfer Sessions	\$80,000

13. Change Order Process: Changes to this Scope of Services will be made only in accordance with the following procedure:
- 13.1. The Party requesting a change to the Scope of Services will submit a written change order (a "Change Order") describing the proposed change to the other Party.
 - 13.2. If County is the requesting Party then Contractor will respond by written notice to County within five (5) business days following receipt of the Change Order, outlining all impacts of the requested change on the deliverables, delivery schedule and pricing, and any other conditions upon which Contractor's willingness to accept the Change Order may depend (collectively, the "Change Order Response"). If Contractor is the requesting Party, then the Change Order will identify such impacts and conditions as proposed by Contractor.
 - 13.3. County will accept, reject or propose modifications to each such Change Order or Change Order Response given by Contractor within five (5) business days following receipt thereof by County. Additional modifications proposed by County as part of such response will be handled in accordance with the provisions of subsections (a) and (b) of this Section above.
 - 13.4. If the Parties agree to the proposed changes, a Contract amendment must be executed as provided in the Contract, prior to Contractor providing any additional services.



EXHIBIT X

PPB MODEL AGREEMENT

CONTRACT NUMBER: XXXXXX

Contract Expiration Date: XX/XX/XXXX

Contract - NOT TO EXCEED AMOUNT \$ XX,XXX.XX

This "Contract" is made between the PARTICIPATING PUBLIC BODY, hereinafter called "PPB" and the "Contractor" as further described in the following Table. This Contract is modeled after Professional Services Contract Number _____, dated _____, between PPB and Contractor, as more fully described herein. In this Contract, either Contractor or the PPB may also be referred to individually as a "Party" or jointly as the "Parties".

<p>PARTICIPATING PUBLIC BODY</p> <p>Contact Person</p> <p>Address</p> <p>(herein, the "PPB")</p>	<p>CONTRACTOR NAME</p> <p>Contact Person</p> <p>Address</p> <p>Vendor I.D. No.</p> <p>(herein the "Contractor")</p>
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This Contract is organized and divided into the following Sections for the convenience of the Parties.

- Section 1. Contract Purpose
- Section 2. Contract Definitions
- Section 3. Contract Term and Renewal
- Section 4. Contract Administration and Amendments
- Section 5. Contract Termination
- Section 6. Scope of Deliverables and Financial/Payment Obligations
- Section 7. Contractor's Warranties and Assurances
- Section 8. Liability
- Section 9. Contractor Provided Insurance
- Section 10. Intellectual Property
- Section 11. Confidential Information

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Section 12. PPB Data

Section 13. Information Technology Standards

Section 14. General Terms and Conditions

In consideration of the mutual promises, obligations, representations, and assurances in this Contract, the Parties agree to the following:

§1. CONTRACT PURPOSE

- 1.1. After a competitive bidding and selection process by Oakland County, Contractor was chosen to provide services, described more fully in the Scope of Services Exhibits, to Oakland County. Contractor desires to extend the terms and conditions in this Contract to PPB, to enable it to make purchases from Contractor according to the terms herein.
- 1.2. Oakland County shall not be a party to a contract between Contractor and a PPB. Oakland County shall not have any liability, of any sort, for any harm or action that may arise from purchases made by any PPB pursuant to the terms of this Contract.
- 1.3. PPB must deal directly with Contractor for any transactions such as purchases, invoices, price questions, disputes, etc. that relate to their individual agreement with Contractor. Contractor must respond timely to PPB inquiries.

§2. CONTRACT DEFINITIONS

The following words when printed with the first letter capitalized shall be defined and interpreted as follows, whether used in the singular or plural, nominative or possessive case, and with or without quotation marks:

- 2.1. **"Amendment"** means any change, clarification, or modification to this Contract.
- 2.2. **"Business Day"** means Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding PPB designated holidays.
- 2.3. **"Claims"** means any loss; complaint; demand for relief or damages; lawsuit; cause of action; proceeding; judgment; penalty; costs or other liability of any kind which is imposed on, incurred by, or asserted against the PPB or for which the PPB may become legally or contractually obligated to pay or defend against, whether commenced or threatened, including, but not limited to, reimbursement for reasonable attorney fees, mediation, facilitation, arbitration fees, witness fees, court costs, investigation expenses, litigation expenses, or amounts paid in settlement.
- 2.4. **"Confidential Information"** means all information and data that the PPB is required or permitted by law to keep confidential.
- 2.5. **"Contract"** means this document and any other documents expressly incorporated herein.

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- 2.6. **“Contractor”** means the entity or person listed under “Contractor” on the first page of this Contract.
- 2.7. **“Contractor Employee”** means any employee; officer; director; member; manager; trustee; volunteer; attorney; licensee; contractor; subcontractor; independent contractor; subsidiary; joint venture; partner or agent of Contractor; and any persons acting by, through, under, or in concert with any of the above, whether acting in their personal, representative, or official capacities. Contractor Employee shall also include any person who was a Contractor Employee at any time during the term of this Contract but, for any reason, is no longer employed, appointed, or elected in that capacity.
- 2.8. **“Contract Documents”** mean the following documents, which this Contract includes and incorporates:
- Exhibits (Applicable if Checked)**
- 2.8.1. ☒ Exhibit I: Contractor Insurance Requirements
- 2.8.2. ☒ Exhibit II: Business Associate Agreement (Health Insurance Portability and Accountability Act Requirements)
- 2.8.3. ☒ Exhibit III: Requirements for Contractors with Access to PPB PII (Personally Identifiable Information)
- 2.8.4. ☐ Exhibit IV: Requirements for Contractors with Access to Criminal Justice Information
- 2.8.5. ☐ Exhibit V: Federally Funded Contract Requirements
- 2.8.6. ☐ Exhibit VI: Software License(s)
- 2.8.7. ☐ Exhibit VII: Scope of Contractor’s Deliverables/Financial Obligations to be negotiated between Contractor and PPB
- 2.9. **“Oakland County”** means the County of Oakland, a Municipal and Constitutional Corporation, its departments, divisions, authorities, boards, committees.
- 2.10. **“PPB Agent”** means any elected and appointed officials; directors; board members; council members; commissioners; employees; and volunteers of the PPB; whether acting in their personal, representative, or official capacities. “PPB Agent” shall also include any person who was a “PPB Agent” anytime during the term of this Contract but, for any reason, is no longer employed, appointed, or elected and in that capacity.
- 2.11. **“PPB Data”** means information or data collected, used, processed, stored, or generated in any format, by or on behalf of the PPB, in connection with the Deliverables, which shall include, but not be limited to: (a) personal health information (PHI) as defined under the Health Insurance Portability Act (HIPPA) and Exhibit II, (b) personally identifiable information (PII) as defined in Exhibit III, and (c) Criminal Justice Information defined in Exhibit IV if the Exhibit(s) are incorporated into the Contract. PPB Data includes Confidential Information as defined in this Contract.

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- 2.12. **"PPB Network:** means PPB owned, leased, or licensed equipment, hardware, and software that is interconnected via fiber optic, wireless, or other communication mediums for the purposes of PPB hosting, processing, using, sharing, and/or transporting data, video, voice, or any other form of information.
- 2.13. **"Day"** means any calendar day, which shall begin at 12:00:00 a.m. and end at 11:59:59 p.m.
- 2.14. **"Deliverables"** means goods and/or services expressly identified in Exhibit VII, or any Amendments to this Contract, where such goods and/or services are to be more specifically described in the Exhibits or Amendments and provided by Contractor to PPB (excluding all Third-Party Materials) and originally created by Contractor during performance of Contractor's obligations under such documents.
- 2.15. **"Effective Date"** means midnight on the date listed on the first page of this Contract.
- 2.16. **"Expiration Date"** means 11:59.59 p.m. on the date listed on the first page of this Contract.
- 2.17. **"E-Verify"** means an Internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees. Information and the registration process are found at the E-Verify website: <https://e-verify.uscis.gov/enroll>.
- 2.18. **"G2G MarketPlace Website"** means an Internet site used by Oakland County to provide information to PPBs about businesses providing services to Oakland County and agreements used by PPB and available to PPBs to procure services.
- 2.19. **"Intellectual Property"** means any developments, improvements, designs, innovation, and materials that may be the subject of a trademark/servicemark, copyright, patent, trade secret, which includes ideas, concepts, inventions, and processes related to the development and operation of computer software and systems.
- 2.20. **"Iran-Linked Business"** is defined in the Michigan Compiled Laws (MCL), specifically MCL 129.312, being Section 2 of Public Act 517 of 2012. This applies only to Michigan PPBs.
- 2.21. **"Not to Exceed Amount"** means the dollar amount listed on the first page of this Contract, unless amended. The "Not to Exceed Amount" is not the PPB's financial obligation under this Contract, but the maximum amount that can be paid to Contractor during the term of this Contract.
- 2.22. **"PPB"** which stands for Participating Public Body, means an entity created by state or Federal law which is primarily funded by or through a governmental authority and which registers to access Oakland County's G2G MarketPlace Website.
- 2.23. **"Proposal"** means Contractor's response or bid to the PPB's Request for Proposal, Request for Qualifications, or Request for Quotes.

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- 2.24. **"Purchase Order"** means the PPB's written request to Contractor for Deliverables pursuant to this Contract. The Purchase Order may include terms regarding delivery schedule, payment, and transportation.
- 2.25. "Third Party Materials" means software, hardware, content, or other materials owned or licensed by a third party.

§3. CONTRACT TERM AND RENEWAL

- 3.1. **Contract Term.** This Contract shall begin on the Effective Date and shall end on the Expiration Date.
- 3.2. **Contract Renewal.** Unless otherwise provided herein, the Parties are under no obligation to renew or extend this Contract after the Expiration Date. This Contract may only be extended by an Amendment.
- 3.3. **Legal Effect.** This Contract shall be effective and binding when all of the following occur: (a) this Contract is signed by a Contractor Employee, legally authorized to bind Contractor; (b) this Contract is signed by an authorized PPB Agent; (c) all Contractor certificates of insurance, required by this Contract, are submitted and accepted by Purchasing; and (d) any other conditions precedent to this Contract have been met.

§4. CONTRACT ADMINISTRATION AND AMENDMENTS

- 4.1. **Contract and Purchase Order Issuance.** PPB shall issue this Contract and any Purchase Orders that may be required.
- 4.2. **Purchase Orders.** Purchase Orders issued under this Contract are governed by the terms and conditions of this Contract and are included and incorporated herein.
- 4.3. **Project Managers.** Each Party may designate an employee or agent to act as a Project Manager. If Project Managers are selected, they shall be listed, along with their duties, in Exhibit VII. Unless otherwise stated in Exhibit VII, the PPB's Project Manager has no authority to amend this Contract.
- 4.4. **Contract Administrators.** The PPB may designate an employee or agent to act as Contract Administrator(s). Contractor may designate its employee or agent to act as Contract Administrator(s). The Contract Administrators shall be listed on the signature page of this Contract. The PPB's Contract Administrator(s) shall be responsible for monitoring and coordinating day-to-day activities under this Contract, reviewing Deliverables and invoices, and submitting requests for Amendments to Purchasing. The PPB's Contract Administrator(s) have no authority to amend this Contract.
- 4.5. **Contract Amendments.** All Amendments to this Contract must be in writing. This Contract shall not be amended by any packing slip, Purchase Order, invoice, click through license agreement, or Contractor policies or agreements published on Contractor's website or otherwise. Amendments to this Contract shall be issued only by Purchasing. The Amendment

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shall be effective when signed by an authorized Contractor Employee and an authorized PPB Agent.

- 4.6. **Unauthorized Changes.** Contract changes shall not be effective until an Amendment containing the change is executed according to the procedures described in this Contract. Contractor will have no obligation to perform additional work outside what was previously agreed to in the Contract without such an Amendment. If the Contractor is directed to perform work that Contractor believes is a change in the Contract/Deliverables, then Contractor must notify Purchasing that it believes the requested work is a change to the Contract before performing the requested work. If Contractor fails to notify Purchasing before beginning the requested work, then Contractor waives any claims for additional compensation for performing the requested work. If Contractor begins work that is outside the scope of this Contract or begins work before an Amendment is executed and then stops performing that work, Contractor must, at the request of the PPB, undo any out-of-scope work that the PPB believes would adversely affect the PPB.
- 4.7. **Precedence of Contract Documents.** In the event of a conflict, the terms and conditions contained in Sections 1 through 14 of this Contract shall prevail and take precedence over any allegedly conflicting provisions in all Contract Documents, Exhibits, Purchase Orders, Amendments, and other documents expressly incorporated herein. Terms and conditions contained in Contractor invoices, packing slips, receipts, acknowledgments, click-through licenses, and similar documents shall not change the terms and conditions of this Contract.
- 4.8. **PPB Responsibilities.** In connection with Contractor's provision of the Deliverables, PPB will perform the tasks and assume the responsibilities agreed to in the Contract ("PPB Responsibilities"). PPB understands that Contractor's performance depends on PPB's timely and effective performance of the PPB Responsibilities, timely decisions and approvals by PPB and the accuracy of the assumptions set forth in any document agreed between the Parties. Contractor may rely on all PPB decisions and approvals in connection with the Contract; any changes by PPB of its decisions or approvals are subject to Section 4.6. Contractor shall not be responsible for delays in delivery caused by PPB.
- 4.9. **Performance.** Contractor shall determine the method, details and means of performing the work and providing the Deliverables to PPB hereunder.

§5. CONTRACT TERMINATION

- 5.1. **PPB Termination.** In addition to any other legal rights the PPB may have to terminate or cancel this Contract, the PPB may terminate the Contract as follows:
- 5.1.1. **Immediate Termination.** The PPB may terminate or cancel this Contract, in whole or in part, immediately, upon notice to Contractor, if any of the following occur: (a) Contractor, officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense; or (b) if any third-party funding for this Contract is reduced or terminated.

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- 5.1.2. **Termination for Convenience.** The PPB may terminate or cancel this Contract, in whole or part, at any time, upon ninety (90) Days' notice to Contractor, for any reason, including convenience without incurring obligation or penalty of any kind. The effective date for termination or cancellation shall be clearly stated in the notice.
- 5.2. **Contractor Termination.** Contractor may terminate or cancel this Contract, in whole or part, upon ninety (90) Days' notice to the PPB, if the PPB breaches any duty or obligation contained herein and within such notice period has failed to cure the breach. The effective date of termination or cancellation and the specific alleged default shall be clearly stated in the notice to the PPB. In addition, except for disputed amounts subject to section 6.4, PPB's failure to pay fees when due constitutes a material breach and, in addition to any other remedies available to Contractor, PPB agrees that Contractor may cease performance of the work until full payment of fees is received.
- 5.3. **PPB's Obligations Upon Termination.** In the event of termination or cancellation of this Contract PPB must pay for the actual Deliverables provided to the PPB before the effective date of termination. Any Contractor materials provided by Contractor to PPB must be returned by PPB. Under no circumstances shall the PPB be liable for any future loss of income, profits, any consequential damages, any loss of business opportunities, revenues, or any other economic benefit Contractor may have realized but for the termination or cancellation of this Contract. The PPB shall not be obligated to pay Contractor any cancellation or termination fee if this Contract is cancelled or terminated as provided herein. If the PPB chooses to terminate the Contract in part, then the charges payable under this Contract must be equitably adjusted to reflect those Deliverables that are terminated.
- 5.4. **Contractor's Obligations Upon Termination.** If the PPB terminates this Contract, for any reason, then Contractor must do the following: (a) cease providing all Deliverables as specified at the time stated in the notice of termination; (b) take any action necessary, or as the PPB may direct, to preserve and protect Deliverables or other property derived or resulting from the Contract that is in Contractor's possession; (c) return all materials, and property provided to Contractor by the PPB; (d) unless otherwise directed by the PPB, transfer title in and deliver to the PPB all Deliverables for which Contractor has been paid in the possession of Contractor or Contractor Employees (which Deliverables are transferred to the PPB "As-Is", except to the extent the amounts paid by the PPB for these Deliverables include warranties or warranty services and, in that situation, the Deliverables will be transferred with the warranty or warranty services and not "As-Is"); and (e) take any action to mitigate and limit any potential damages, including terminate or limit, as applicable, those subcontracts and outstanding orders for materials and supplies connected with or related to this Contract.
- 5.5. **Assumption of Subcontracts.** If Contractor is in breach of this Contract and the PPB terminates this Contract, then the PPB may pursue completion of the Deliverables by replacement Contract or otherwise as the PPB, in its sole judgment, deems expedient.

§6. SCOPE OF DELIVERABLES AND FINANCIAL/PAYMENT OBLIGATIONS

- 6.1. **Performance of Deliverables.** Contractor shall provide all Deliverables identified in and as set forth in Exhibit VII, any Purchase Orders, or any Amendments to this Contract. If less than all Scopes of Services are selected when the Contract is executed, an amendment to the Contract is required to add additional Exhibits (and their associated services).
- 6.2. **Software License(s).** If this Contract includes a Software License(s) as described in Exhibit VI, then the Parties shall follow the terms and conditions therein. Unless specifically agreed to by PPB, if PPB Agents are required to accept click through license terms to access any of the Deliverables in this Contract, the terms and conditions of those click through licenses are without force and effect.
- 6.3. **Financial Obligations.** Except as otherwise set forth in this Contract, the PPB's sole financial obligation under this Contract shall be set forth in Exhibit VII. This is a fixed-fee transaction. The amount and manner of payment of the financial obligation shall be set forth in Exhibit VII and may be in the Software License Exhibit VI, if applicable, or a Purchase Order. If the Parties agree to have additional services provided, the Contract will be amended to describe the additional services and the associated costs.
- 6.4. **Payment Obligations.** Except as otherwise set forth in the Exhibits, Contractor shall submit an invoice to the PPB's Contract Administrator itemizing amounts due and owing under this Contract, as of the date of the invoice. Invoices shall contain the following information: (a) PPB Contract Number; (b) dates of Deliverables; (c) itemized list of Deliverables; (d) Contractor Tax ID Number (federal and State); (e) licenses; and (f) any other information requested by Purchasing. The PPB shall have no obligation to make a payment under this Contract until an invoice is submitted in the form set forth herein and shall have no obligation to pay for Deliverables, which have not been invoiced (as required herein) within ninety (90) Days of Contractor's performance. Unless otherwise set forth in the Exhibits, the PPB shall only pay Contractor for Deliverables under this Contract and not any subcontractors or assignees of Contractor. PPB will notify Contractor in writing of any disputed invoiced amount by no later than the due date for the applicable invoice, in sufficient detail to permit Contractor to investigate the dispute; otherwise such invoice will be deemed accepted. PPB shall pay the undisputed amount by the due date for the applicable invoice.
- 6.5. **Not to Exceed Amount.** The amount due and owing to Contractor, under this Contract, shall not exceed the "Not to Exceed Amount." If Contractor can reasonably foresee that the total financial obligation for the Contract will exceed the "Not to Exceed Amount," then Contractor shall provide Purchasing with notice of this fact at least ten (10) Days before this event.
- 6.6. **No Obligation for Penalties/Costs/Fines.** The PPB shall not be responsible for any cost; fee; fine; penalty; or direct, indirect, special, incidental, or consequential damages incurred or suffered by Contractor in connection with or resulting from the performance of this Contract.

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- 6.7. **In-Kind Services.** Unless expressly provided herein, this Contract does not authorize any in-kind services by either Party.

§7. CONTRACTOR'S WARRANTIES AND ASSURANCES

- 7.1. **Full Knowledge of Contract Expectations.** Contractor warrants that before submitting its Proposal and/or entering into this Contract, it had a full opportunity to review all PPB requirements and/or expectations for this Contract. Contractor is responsible for being adequately and properly prepared to execute this Contract. Contractor has satisfied itself in all material respects that it will be able to perform the Contract as specified herein.
- 7.2. **Access to Contractor Policies.** If the Parties agree in this Contract to follow any Contractor policies, such as acceptable use or privacy policies, then Contractor shall retain each version of such policy with the effective dates and shall promptly provide such to the PPB, if requested.
- 7.3. **Grant Compliance.** If any part of this Contract is supported or paid for with any State, federal, or other third-party funds granted to the PPB, then Contractor shall comply with all applicable grant requirements. Upon request of Contractor, the PPB shall provide Contractor with a copy of the applicable grant requirements.
- 7.4. **Contractor Incidental Expenses.** Except as otherwise expressly provided in this Contract, Contractor shall be solely responsible and liable for all costs and expenses associated or needed to perform this Contract, including, but not limited to, any professional dues, association fees, license fees, fines, taxes, and penalties.
- 7.5. **Equipment and Supplies.** Contractor is responsible for providing all equipment and supplies to perform this Contract, which are not expressly required to be provided by the PPB. PPB will supply Contractor Employees working on PPB's premises with reasonable access to necessary office equipment and support including computer resources, network access, building access, telephone services, and general office supplies and services in connection with Contractor's performance of the work.
- 7.6. **Contractor Employees.**
- 7.6.1. **Number and Qualifications of Contractor Employees.** Contractor shall employ and assign qualified Contractor Employees as necessary and appropriate to perform this Contract. Contractor shall ensure all Contractor Employees have the knowledge, skill, and qualifications to perform this Contract and possess any necessary licenses, permits, certificates, and governmental authorizations as may be required by law.
- 7.6.2. **Control and Supervision of Contractor Employees.** Contractor shall solely control, direct, and supervise all Contractor Employees with respect to all Contractor obligations under this Contract. Contractor will be solely responsible for and fully liable for the conduct and supervision of any Contractor Employees.

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- 7.6.3. **Removal or Reassignment of Personnel at the PPB's Request.** Contractor shall remove a Contractor Employee performing work under this Contract at the PPB's request provided that the PPB's request is based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the removal of a Contractor Employee results in an unanticipated delay, which is attributable to the PPB, then this delay shall not be considered a breach of the Contract and the terms and conditions of this Contract effected by the removal will be adjusted accordingly.
- 7.6.4. **Contractor Employee Identification.** If requested by the PPB, Contractor Employees shall wear and display a PPB-provided identification badge at all times while working on PPB premises. Contractor shall return all PPB-provided identification(s) upon completion of Contractor's obligations under this Contract.
- 7.6.5. **Background Checks.** At the PPB's request, Contractor Employees performing work under this Contract shall be subject to a background check by the PPB. The scope of the background check is at the discretion of the PPB and the results will be used to determine Contractor Employee's eligibility to perform work under this Contract. Any request for background checks will be initiated by the PPB and will be reasonably related to the type of work requested. Contractor and Contractor Employees shall provide all information or documents necessary to perform the background check.
- 7.6.6. **Compliance with PPB Security Policies and Use Policies.** Contractor shall require all Contractor Employees to comply with the PPB's security and acceptable use policies for PPB property (tangible and intangible), equipment, resources, facilities, and systems. Upon request, the PPB shall provide such policies to Contractor.
- 7.6.7. **Contractor Employee Expenses.** All Contractor Employees shall be employed at the Contractor's sole expense (including employment-related taxes and insurance). Contractor warrants that all Contractor Employees shall fully comply with and adhere to the terms of this Contract. Contractor shall be solely liable for all applicable Contractor Employees' federal, state, or local payment withholdings or contributions and/or all Contractor Employee related pension or welfare benefits plan contributions under federal or state law. Contractor shall indemnify and hold the PPB harmless for all Claims against the PPB by any Contractor Employee, arising out of any contract for hire or employer-employee relationship between Contractor and any Contractor Employee including, but not limited to, Worker's Compensation, disability pay, or other insurance of any kind.
- 7.6.8. **Contractor's Compliance with the Patient Protection and Affordable Care Act.** If Contractor is subject to the Patient Protection and Affordable Care Act ("ACA"), PL 111-148, 124 Stat 119, then Contractor shall ensure that all Contractor Employees, under assignment to the PPB, and their dependents, as defined by the ACA, are provided with or have access to insurance as required by the ACA. If Contractor is subject to the ACA, Contractor warrants it offers group health coverage to Contractor Employees and their dependents that is affordable, that provides minimum essential coverage and value, and that each offer of coverage meets the

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timing requirements of the ACA. Contractor warrants, whether or not it is subject to the ACA, that it will pay all applicable fees, taxes, or fines, as set forth in the employer mandates of the ACA under Tax Code §4980H and related regulations for any Contractor Employee, whether the fee, tax, or fine is assessed against the Contractor or the PPB.

7.7. **Acknowledgment of Independent Contractor Status.**

7.7.1. **Independent Contractor.** Nothing in this Contract is intended to establish an employer-employee relationship between the PPB and Contractor or any Contractor Employee. In no event, shall Contractor Employees be deemed employees, agents, volunteers, or subcontractors of the PPB. Contractor shall ensure that Contractor Employees are apprised of their status and the limitations independent contractors have of this status.

7.7.2. **Contractor/Contractor Employee Representations.** Contractor and/or Contractor Employees shall not represent themselves as PPB employees. Contractor shall ensure that Contractor Employees do not represent themselves as PPB employees.

7.7.3. **PPB Benefits and Plans.** Contractor and Contractor Employees shall not be entitled to participate in any PPB employee benefit plans and programs, including but not limited to, retirement, deferred compensation, insurance (including without limitation, health, disability, dental, and life), and vacation pay. This limitation includes access to benefit plans and programs that are not described by a written plan.

7.7.4. **PPB Reliance.** The PPB entered into this Contract in reliance of the representations made by Contractor regarding its understanding of the role of independent contractors, its stated relationship to Contractor Employees, and other representations Contractor has made regarding the management and performance oversights of Contractor Employees.

7.8. **Permits and Licenses.** Contractor shall be responsible for obtaining and maintaining, throughout the term of this Contract, all licenses, permits, certificates, governmental authorizations, and business/professional licenses necessary to perform this Contract. Upon request by the PPB, Contractor shall furnish copies of any permit, license, certificate, or governmental authorization necessary to perform this Contract.

7.9. **E-Verify.** Contractors who wish to contract with the PPB to provide services must first certify they have registered with, will participate in, and continue to utilize, once registered, the E-Verify Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the Contractor. Breach of this term or condition is considered a material breach of this Contract. Contractor's execution of this Contract constitutes a certification that they are authorized to certify on behalf of Contractor and do hereby certify on behalf of Contractor that the Contractor has registered with, has and will participate in, and does and will continue to utilize once registered and throughout the term of this Contract and any permissible extension hereof, the E-Verify Program (or any successor program implemented by the

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federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the Contractor.

- 7.10. **Iran-Linked Business Certification.** For Michigan PPB's only: Contractor certifies that it is not an Iran-Linked Business. Contractor further certifies that it was not an Iran-Linked Business at the time it submitted its Proposal for this Contract. Contractor must promptly notify the PPB, if Contractor becomes an Iran-Linked Business at any time during this Contract.
- 7.11. **Taxes.**
- 7.11.1. **Contractor Taxes.** Contractor shall collect and pay its local, state, and federal taxes, including but not limited to, all employment taxes, sales taxes, personal property taxes, and real property taxes. The PPB shall not be liable to or required to reimburse Contractor for any local, state, or federal tax of any kind.
- 7.11.2. **PPB Tax-Exempt.** The PPB is exempt from state and local sales tax, personal property tax, and real property tax. Prices under this Contract shall not include taxes, unless the PPB is not tax-exempt for a specific Deliverable. Exemption certificates for sales tax will be furnished upon request.
- 7.12. **Warranty for Services.** Contractor warrants that all Deliverables that are services shall be performed in compliance with all applicable laws, statutes, regulations, ordinances, and professional standards.
- 7.13. **Warranty for Goods.** All Deliverables that are goods shall be subject to the following warranties:
- 7.13.1. **Warranty of Merchantability.** Goods provided by Contractor pursuant to this Contract shall substantially conform to the specifications and descriptions contained in this Contract.
- 7.13.2. **Warranty of Title.** All goods conveyed to the PPB shall be conveyed and transferred free from any security interest, lien, or encumbrance that the PPB did not have knowledge of when the Contract was executed.
- 7.14. **ADA and Section 508 Compliance.** If Contractor is providing a Deliverable that requires PPB Agents or the public to use a software application or to access a website, Contractor warrants that end users can utilize the software or access the website in accordance with the accessibility requirements of the ADA and the Rehabilitation Act of 1973. Contractor's Deliverable will conform, where relevant, to level AA of the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines (WCAG) 2.0. Contractor may provide a description of conformance with the above-mentioned specifications by means of a completed Voluntary Product Accessibility Template for WCAG 2.0 (WCAG 2.0 VPAT) or another comparable document. Any additional compliance requirements shall be specified in the Scope of Contractor's Deliverables Exhibit VII.

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- 7.15. **Price Warranty.** Contractor warrants that it will provide PPBs with the lowest and best price available for the same level of services and products offered to other similarly situated public bodies.
- 7.16. **Warranty Period.** PPB must provide a written notice to Contractor within thirty (30) days of delivery of the Deliverables (“Warranty Period”) describing any breach of the warranties in Section 7.13 and 7.14 in sufficient detail to allow Contractor to correct and redeliver those Deliverables.
- 7.17. **Remedies.** Contractor shall, as its sole obligation and PPB’s exclusive remedy for any breach of the foregoing warranties in Sections 7.13 and 7.14, correct any non-compliance with such warranty reported to Contractor by PPB in writing during the Warranty Period or, if Contractor determines that it is unable to correct the non-conformity, Contractor shall refund to PPB the fees actually paid to Contractor for the Deliverables containing such non-conformity, in which case, PPB’s ownership interest in or other right to use such Deliverables shall immediately terminate.
- 7.18. **Exclusions.** Contractor shall have no warranty obligations to the extent that: (a) any non-conformity is not material; (b) any non-conformity is not reproducible; or (c) any entity other than Contractor has modified any Deliverables, unless PPB obtains Contractor’s prior written approval of such modification. If no specifications are agreed in writing by the Parties, then the Deliverables shall be deemed irrevocably accepted upon delivery to PPB. If PPB does not provide a written notice of non-conformity within the Warranty Period, PPB agrees that the relevant Deliverables are deemed irrevocably accepted by PPB.
- 7.19. **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES STATED ABOVE, CONTRACTOR MAKES NO ADDITIONAL WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR THAT THE DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE OR COMPATIBLE WITH SUBSEQUENT VERSIONS OF RELEVANT SOFTWARE.

§8. LIABILITY

- 8.1. **Contractor Indemnification.** Contractor shall indemnify, defend, and hold the PPB harmless from all third party Claims, incurred by or asserted against the PPB by any person or entity, based on the acts or omissions of Contractor or Contractor’s Employees working on site at the PPB as well as for the infringement of a U.S. patent or copyright by PPB’s authorized and proper use of the Deliverables, as delivered by Contractor to PPB (an “IP Claim”), provided that PPB agrees that Contractor will have sole control of the investigation, defense and settlement of any IP Claim. PPB agrees to provide Contractor prompt notice of any IP Claim so as to not materially prejudice the defense of the IP Claim. PPB agrees to provide Contractor

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with reasonable cooperation and assistance in defense of the claim at Contractor's expense. Contractor's obligations under this Section 8.1 do not apply to Deliverables (or portions of them) that are: (i) modified by anyone other than Contractor or its agents, if the alleged infringement relates to that modification; (ii) created according to a plans or specifications created or provided by or on behalf of PPB; (iii) combined with other products, processes or materials, where the alleged infringement relates to that combination; (iv) used by PPB after PPB was notified of the allegedly infringing activity or after being informed of modifications that would have avoided the alleged infringement; (v) not used in accordance with the terms and conditions of this Contract; or (vi) used by any third-party or by PPB other than for PPB's internal purposes.. The PPB's right to indemnification is in excess and above any insurance rights/policies required by this Contract. This Section 8 sets forth the entire liability of Contractor and the sole remedies of PPB with respect to any alleged violation, infringement or misappropriation of third party rights by the Deliverables or any part of them.

- 8.2. **No Indemnification from the PPB.** Contractor shall have no rights against the PPB for indemnification, contribution, subrogation, or any other right to be reimbursed by the PPB, except as expressly provided herein.
- 8.3. **LIMITATIONS ON DAMAGES.** CONTRACTOR WILL NOT BE LIABLE OR OBLIGATED IN ANY MANNER FOR ANY EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS AND LOST DATA) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF CONTRACTOR HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CONTRACTOR'S OBLIGATIONS UNDER SECTION 8.1, CONTRACTOR'S AGGREGATE LIABILITY UNDER (OR FOR BREACH OF) THIS CONTRACT WILL NOT EXCEED THE FEES PAID OR PAYABLE TO CONTRACTOR FOR THE PORTION OF THE SERVICES OR DELIVERABLES GIVING RISE TO SUCH LIABILITY. THE PARTIES AGREE THAT THE TERMS IN THIS LIMITATION OF LIABILITY SECTION REPRESENT A REASONABLE ALLOCATION OF RISK AND WILL APPLY EVEN IN THE EVENT OF THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

§9. CONTRACTOR PROVIDED INSURANCE

At all times during this Contract, Contractor shall obtain and maintain insurance according to the requirements listed in Exhibit I.

§10. INTELLECTUAL PROPERTY

- 10.1. **Contractor Use of PPB Licensed Software.** In order for Contractor to perform this Contract, the PPB may permit Contractor or Contractor Employees to access certain Software licensed to the PPB. Contractor or Contractor Employees shall not transfer, remove, use, copy, or otherwise provide or make available such Software or documentation to any other person or entity, for any purpose, without the prior written consent of the PPB and/or the licensor. Furthermore, neither Contractor nor Contractor Employee shall produce a source listing,

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decompile, disassemble, or otherwise reverse engineer any Software. Neither Contractor nor Contractor Employee shall use any Software contrary to the provisions of any applicable Software license agreement or state or federal law.

- 10.2. **Assignment of Rights.** In consideration for the performance of this Contract and the fees paid to Contractor, Contractor agrees to the following: (a) Contractor shall have no copyright, patent, trademark, or trade secret rights in PPB Intellectual Property; (b) all Deliverables delivered to the PPB and for which Contractor has been paid are works made for hire, created for, and owned exclusively by the PPB, unless otherwise specified in the Contract; and (c) Contractor and its applicable Contractor Employees shall sign any documents necessary for the PPB to register patents, copyrights, or trademarks with federal or state agencies. Contractor shall ensure Contractor Employees assign their rights and interests in PPB Intellectual Property to the County.
- 10.3. **Third Party Materials.** To the extent that any Deliverables contain or require for their use any Third-Party Materials, Contractor will assist PPB with obtaining the license rights for those Third-Party Materials. The fees for Third Party Materials are not included in the fees for the Deliverables, unless Contractor expressly agrees otherwise. Contractor is not responsible for the performance of any Third-Party Materials.
- 10.4. **Knowledge Capital.** Contractor will retain all right, title and interest in all of Contractor's ideas, know-how, approaches, methodologies, concepts, skills, tools, techniques, expressions, processes, including, without limitation, generally-applicable software and code (and related components), independently-developed software and code (and related components), and any patent, copyright, trademark, trade secret or other Intellectual Property rights in any of the foregoing (collectively, "Knowledge Capital"), whether possessed by Contractor prior to, or acquired, developed, or refined by Contractor (either independently or in concert with PPB but excluding PPB's Confidential Information) during performance of this Contract. To the extent that any Knowledge Capital is delivered in connection with Deliverables, or PPB requires that Knowledge Capital to exercise its rights to the Deliverables, Contractor grants to PPB, upon payment of all applicable fees, a perpetual, non-exclusive, royalty-free license to use Contractor Knowledge Capital solely to exercise its rights to the Deliverables for PPB's internal use only.
- 10.5. **Infringement Remedies.** If, in either Party's opinion, any of the Deliverables supplied by Contractor or Contractor Employees is likely to become the subject of an IP Claim, Contractor may at its own expense and option: (a) procure for PPB the right to continue using the services or Deliverables; (b) replace or modify the same so that it becomes non-infringing; or if neither of these options is reasonably available to Contractor; (c) accept its return by PPB with

appropriate credits to PPB less a reasonable amount for use of such Deliverables prior to such termination.

§11. CONFIDENTIAL INFORMATION

11.1. **Contractor Use of Confidential Information.** PPB and Contractor (including Contractor Employees) shall use appropriate safeguards to protect the confidentiality and integrity of the other's Confidential Information. A receiving Party shall not reproduce, provide, disclose, or give access of Confidential Information to any third-party (or in the case of Contractor, to a Contractor Employee) not having a legitimate need to know. The receiving Party shall only use the Confidential Information for performance of this Contract. Notwithstanding the foregoing, the Receiving may disclose the Confidential Information, if required by law, statute, or other legal process; provided that the receiving Party uses reasonable efforts to give the disclosing Party prompt written notice of the impending disclosure. This Contract imposes no obligation upon the receiving Party with respect to any Confidential Information which receiving Party can establish by legally sufficient evidence: (a) was in possession of or was known by the receiving Party, prior to its receipt from the disclosing Party, without any obligation to maintain its confidentiality; or (b) is obtained by the receiving Party from a third party having the right to disclose it, without an obligation to keep such information confidential.

§12. PPB DATA. If Contractor uses or possesses PPB Data in the performance of this Contract, then the following provisions contained in this section apply:

12.1. **Use of PPB Data.** Contractor and Contractor Employees shall have a limited license to PPB Data, including a license to collect, process, store, generate and display PPB Data but only to the extent necessary to provide services under this Contract. Contractor and Contractor Employees may not use, sell, rent, transfer, distribute, or otherwise disclose or make available PPB Data for Contractor's own purposes or for the benefit of anyone other than the PPB, without the PPB's prior written consent, unless otherwise provided for within an Exhibit to this Contract.

12.2. **Unauthorized Access/Disclosure or Theft of PPB Data.** Contractor or Contractor Employees shall notify the PPB's Chief Information Officer as soon as practicable but no later than forty-eight (48) hours of "Discovery" of suspected unauthorized access, acquisition, disclosure, or theft of PPB Data (a "Security Breach"). "Discovery" means the first day on which the Security Breach is known to Contractor or Contractor Employees or should have been known by exercising reasonable diligence. Upon Discovery of a Security Breach, Contractor shall do the following: (a) take reasonable measures to promptly cure the deficiencies relating to the Security Breach in order to secure PPB Data; (b) cooperate with the PPB in investigating the occurrence, including making available all relevant records, logs, files, and data reporting materials required upon request by the PPB; and (c) comply with any applicable federal or state laws and regulations pertaining to unauthorized disclosures or as otherwise directed by the PPB. If Contractor uses or possesses PPB Data described in in Exhibit II (HIPPA), Exhibit III

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(PII), or Exhibit IV (CJIS), Contractor shall follow the procedures in the applicable Exhibits governing the unauthorized access/disclosure or theft of PPB Data.

- 12.3. **Storage of PPB Data.** Contractor shall only store and process PPB Data at and from data centers located within the United States. Contractor shall not permit Contractor Employees to store PPB Data on portable devices, including personal computers, except for portable devices that encrypt data at rest and are used and kept within the U.S. Contractor shall permit its Contractor Employees to access PPB Data remotely only as required to provide technical support.
- 12.4. **Requirements for PCI Data.** If Contractor agrees in writing to possess, store, process, or transmit PPB Data that is considered Payment Card Industry (PCI) Data by the PCI Security Standards Council, Contractor shall comply with PCI Data Security Standard (DSS) and shall provide the PPB with a copy of its PCI DSS Attestation of Compliance and its Certificate of Compliance with PCI Data Security Standard. Contractor warrants that it will keep its Certification of Compliance with PCI Data Security Standard current.
- 12.5. **Response to Legal Request for PPB Data.** If the PPB receives a Court Order, a Freedom of Information Act (FOIA) request, or other legal request to provide PPB Data held by Contractor, then at PPB's expense Contractor shall provide PPB Data to the PPB, in a format directed by the PPB, within the time frame required by law.
- 12.6. **Obligations upon Expiration, Termination or Cancellation of Contract.** At the PPB's sole discretion, upon expiration, termination, or cancellation of this Contract, Contractor shall return PPB Data in a mutually agreeable format in a prompt and orderly manner or provide for the secure disposal of PPB Data as directed by PPB.
- §13. INFORMATION TECHNOLOGY STANDARDS** If Contractor provides a technology application or requires the use of the Internet to access a Deliverable, the following sections apply:
- 13.1. **PPB Standards.** If Contractor and Contractor Employees that will be given access to the PPB Network, Contractor and Contractor Employees shall comply with the PPB's technology use policies.
- 13.2. **Implementation of Security Measures.** Contractor shall implement and maintain appropriate administrative, technical, and organizational security measures to safeguard against unauthorized access to the PPB Network and PPB Data. Such measures shall be in accordance with security industry best practice and not less stringent than the measures Contractor applies to protect its own data of a similar kind.
- §14. GENERAL TERMS AND CONDITIONS**
- 14.1. **Access to PPB Property or Facilities.** As set forth in this Contract, Contractor has access to and the right to use PPB property and facilities necessary to perform this Contract. Unless otherwise provided in this Contract or Contractor receives prior written permission from the

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PPB, Contractor may only access and use PPB property and facilities for performance of this Contract on Business Days.

- 14.2. **Signs on PPB Property or Facilities.** Contractor shall not place any signs or advertisements on PPB property or facilities without the prior written permission of the PPB.
- 14.3. **Use of PPB Property or Facilities.** While performing this Contract, Contractor shall keep PPB property or facilities and anything stored thereon in a clean, safe, and healthful condition and shall keep the property and facilities in a manner that will not prevent or interfere with the PPB's performance of its functions.
- 14.4. **Removal of Contractor Personal Property.** At the expiration or termination of this Contract, Contractor shall leave PPB property or facilities in the same condition that Contractor found them and clean of all rubbish, reasonable wear and tear excepted. Contractor shall remove all of its personal property within thirty (30) Days of expiration or termination of this Contract. If Contractor does not remove its personal property within the thirty (30) Day period, then the PPB shall dispose of it and bill Contractor for any costs associated with the removal and disposal.
- 14.5. **Damage to PPB Property or Facilities.** Contractor shall be responsible for any damage to any PPB property or a facility that is caused by Contractor or Contractor Employees. If damage occurs, the PPB shall make the necessary repairs and/or replacements or cause a third party to make the necessary repairs or replacements, provided, however, that Contractor shall reimburse the PPB for all costs associated with repairing and/or replacing the damaged property or facilities.
- 14.6. **Damage to Contractor's Property.** Contractor shall be solely liable and responsible for any property loss or damage resulting from fire, theft, or other means to Contractor's personal property located, kept, or stored on or at PPB property or facilities during performance of this Contract.
- 14.7. **PPB's Right to Suspend Contract Performance.** Upon written notice, the PPB may require Contractor to suspend performance of this Contract if Contractor has failed to comply with federal, state, or local laws or any requirements contained in this Contract. The right to suspend performance of this Contract is in addition to the PPB's right to terminate and/or cancel this Contract. The PPB shall incur no penalty, expense, or liability to Contractor if the PPB suspends performance of this Contract under this Section.
- 14.8. **Discrimination.** Contractor shall not discriminate against any employee or applicant for employment in violation of state or federal law. Contractor shall promptly notify the PPB of any complaint or charge filed and/or of any determination by any court or administrative agency of illegal discrimination by Contractor.
- 14.9. **Conflict of Interest.** No contracts shall be entered into between the PPB and any PPB Agent. To avoid any real or perceived conflict of interest, Contractor shall identify any Contractor Employee or relative of Contractor's Employees who are presently employed by the PPB.

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Contractor shall give the PPB notice if there are any PPB Agents or relatives of PPB Agents who are presently employed by Contractor.

- 14.10. **Access and Records.** Contractor will maintain accurate books and records in connection with performance of this Contract for thirty-six (36) months after the end of this Contract and Contractor shall provide the PPB with reasonable access to such books and records, upon request.
- 14.11. **Audit.** The PPB or an independent auditor hired by the PPB (provided such third-party auditor executes a confidentiality agreement reasonably acceptable to Contractor) may perform contract audits (in its sole discretion) and shall have the authority to access all pertinent records and data and to interview any Contractor Employee during the term of this Contract and for a period of three years after final payment. Contractor shall explain any audit findings, questioned costs, or other Contract compliance deficiencies to the PPB within thirty (30) Business Days of receiving the draft audit report. Contractor's written response shall include all necessary documents and information that refute the draft audit report and an action plan to resolve the audit findings. A copy of Contractor's response will be included in the final report. Failure by Contractor to respond in writing within thirty (30) Business Days shall be deemed acceptance of the draft audit report and will be noted in the final report. PPB will provide at least thirty (30) days' notice before commencing any audit. No more than one audit in any twelve-month period may be conducted. No audits and inspections will be conducted onsite at any Contractor location, unless otherwise agreed to by Contractor. PPB will conduct such audits during Contractor's normal business hours and in a manner that does not interfere unreasonably with Contractor's normal business operations. Except to the extent necessary to enforce its rights or comply with applicable law or requests of regulatory authorities, PPB and its representatives will hold the results of the audit in confidence.
- 14.12. **Assignments/Delegations/Subcontracts.**
- 14.12.1. **Prior Written Consent Required.** Except by operation of law, neither Party may assign or delegate any of its duties, obligations, or rights under this Contract without the prior written consent of the other Party; provided, however, Contractor may assign or delegate this Contract to an affiliate or subsidiary as long as the affiliate or subsidiary is adequately capitalized and can provide adequate written assurances to the PPB that the affiliate or subsidiary can perform this Contract. The PPB may withhold consent, if the PPB determines that the assignment or delegation would impair performance of this Contract or the PPB's ability to recover damages under this Contract. Contractor shall also provide the PPB with adequate information to allow the PPB to make a determination regarding the assignment or delegation. Notwithstanding the foregoing, Contractor may subcontract any part of the work to independent contractors selected by Contractor (who will be Contractor Employees), in which case Contractor will be responsible to PPB for their performance. In addition, Contractor may assign this Contract in its entirety without consent in connection with a

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merger, acquisition, sale of substantially all of its assets, or other recapitalization or reorganization. PPB may terminate for convenience in the case of such an assignment.

- 14.12.2. **Flow Down Clause Required.** Any assignment or delegation by Contractor must include a requirement that the assignee or delegee will comply with the terms and conditions of this Contract. The assignment or delegation shall in no way diminish or impair performance of any term or condition of this Contract.
- 14.12.3. **Contractor Responsibility for Assigns/Delegates/Subcontractors.** If Contractor assigns, delegates, or subcontracts this Contract, in whole or in part, Contractor shall remain the sole point of contact regarding all matters under this Contract and shall remain liable for performance of this Contract. Contractor is solely responsible for the management of assignees, delegees, and subcontractors.
- 14.12.4. **Performance Required.** If an assignee, delegee, or subcontractor materially fails to perform as required under this Contract, Contractor shall contract with another entity for such performance. Any additional costs associated with securing another assignee, delegee, or subcontractor shall be the sole responsibility of Contractor.
- 14.13. **Non-Exclusive Contract.** This Contract is a non-exclusive agreement. No provision in this Contract limits or is intended to limit, in any way, Contractor's right to offer and provide its services to the general public, other business entities, municipalities, or governmental agencies during or after the term of this Contract. Similarly, the PPB may freely engage other persons to perform the same work that Contractor performs. Except as provided in this Contract, this Contract shall not be construed to guarantee Contractor or any Contractor Employee any fixed or certain number of Deliverables.
- 14.14. **No Third-Party Beneficiaries.** Except as provided for the benefit of the Parties, this Contract does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to be indemnified, right to be subrogated to the Parties' right in this Contract, or any other right in favor of any other person or entity.
- 14.14.1. **Survival of Terms and Conditions.** The following terms and conditions shall survive and continue in full force beyond the termination or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their nature: **Section 1.** Contract Purpose, **Section 2.** Contract Definitions, **Section 6.** Scope of Deliverables and Financial/Payment Obligations, **Section 7.** Contractor's Warranties and Assurances, **Section 8.** Liability, **Section 9.** Contractor Provided Insurance, **Section 10.** Intellectual Property, **Section 11.** Confidential Information, **Section 12.** PPB Data, **Section 14.** General Terms and Conditions; and if incorporated into this Contract, Exhibit II: Business Associate Agreement (Health Insurance Portability and Accountability Act Requirements), Exhibit III: Requirements for Contractors with Access to PPB PII (Personally Identifiable Information) and Exhibit IV: Requirements for Contractors with Access to CJIS Data (Criminal Justice Information Security).

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- 14.15. **Reservation of Rights.** This Contract does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, or other legal right, privilege, power, obligation, duty, or immunity of the PPB.
- 14.16. **Compliance with Laws.** Each Party shall comply with all federal, state, and local laws, statutes, ordinances, regulations, insurance policy requirements, and requirements applicable to its activities under this Contract.
- 14.17. **Force Majeure.** Notwithstanding any other term or condition of this Contract, neither Party shall be liable for failure to perform contractual duties or obligations (excluding payment obligations) caused by events beyond their reasonable control, including but not limited to: (a) acts of public enemies; (b) natural disasters; (c) terrorism; (d) war; (e) insurrection or riot; (f) natural disasters; (g) strikes, lockouts, work stoppages, or other labor difficulties; or (h) compliance with law. Reasonable notice shall be given to the affected Party of such event. Contractor is expected, through insurance or alternative temporary or emergency service arrangements, to continue its contractual duties or obligations if a reasonably anticipated, insurable business risk, such as business interruption or any insurable casualty or loss occurs.
- 14.18. **Notices.**
- 14.18.1. **Written Notice.** All notices required under this Contract shall be in writing. Notices shall be effective: (a) the next Business Day, if personally delivered; (b) the third Business Day, if sent by U.S. mail, postage prepaid, return receipt requested; (c) the next Business Day, if sent by a nationally recognized overnight express courier with a reliable tracking system; or (d) the next Business Day with a receipt of confirmation, if sent by e-mail or fax.
- 14.18.2. **Notice to Contractor.** Unless otherwise specified, Notice to Contractor shall be addressed to the Contract Administrator listed on the signature page of this Contract.
- 14.18.3. **Notice to PPB.** Unless otherwise specified herein, Notice to the PPB shall be addressed to Purchasing, the PPB Project Manager (if applicable), and the PPB Contract Administrator(s) listed on the signature page of this Contract.
- 14.19. **Captions.** Section and subsection numbers, captions, and any index to sections or subsections contained in this Contract are intended for the convenience of the reader and are not intended to have any substantive meaning and shall not be interpreted to limit or modify any substantive provisions of this Contract. In this Contract, for any noun or pronoun, use of the singular or plural form, use of the nominative, possessive, or objective case, and any reference to gender (masculine, feminine, and neuter) shall mean the appropriate form, case, or gender as the context requires.
- 14.20. **Waiver.** Waiver of any term or condition under this Contract must be in writing and notice given pursuant to this Contract. No written waiver, in one or more instances, shall be deemed or construed as a continuing waiver of any term or condition of this Contract. No waiver by either Party shall subsequently affect its right to require strict performance of this Contract.

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- 14.21. **Cumulative Remedies.** A Party's exercise of any remedy shall not preclude the exercise of any other remedies, all of which shall be cumulative. A Party shall have the right, in its sole discretion, to determine which remedies are to be exercised and in which order.
- 14.22. **Severability.** If a court of competent jurisdiction finds a term or condition of this Contract to be illegal or invalid, then the term or condition shall be deemed severed from this Contract. All other terms or conditions shall remain in full force and effect. Notwithstanding the above, if Contractor's promise to indemnify or hold the PPB harmless is found illegal or invalid, Contractor shall contribute the maximum it is permitted to pay by law toward the payment and satisfaction of any Claims against the PPB.
- 14.23. **Dispute Resolution.** All disputes arising under or relating to the execution, interpretation, performance, or nonperformance of this Contract involving or affecting the Parties may first be submitted to the respective Project Manager (if applicable) and Contract Administrators for possible resolution.
- 14.24. **Governing Laws/Consent to Jurisdiction and Venue.** This Contract shall be governed, interpreted, and enforced by the laws of the state of the PPB. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Contract shall be brought in the state Court or the United States District Court located in the state of the PPB, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the court set forth above. The choice of forum set forth above shall not be deemed to preclude the enforcement of any judgment obtained in such forum or taking action under this Contract to enforce such judgment in any appropriate jurisdiction.
- 14.25. **Entire Contract.** This Contract represents the entire agreement and understanding between the Parties. This Contract supersedes all other prior oral or written understandings, communications, agreements, or contracts between the Parties. The language of this Contract shall be construed as a whole according to its fair meaning.

EXHIBIT I

INSURANCE REQUIREMENTS

During this Contract, the Contractor shall provide and maintain, at their own expense, all insurance as set forth and marked below, protecting the PPB against any Claims, as defined in this Contract. The insurance shall be written for not less than any minimum coverage herein specified.

Primary Coverages

Commercial General Liability Occurrence Form including: (a) Premises and Operations; (b) Products and Completed Operations (including On and Off Premises Coverage); (c) Personal and Advertising Injury; (d) Broad Form Property Damage; (e) Independent Contractors; (f) Broad Form Contractual including coverage for obligations assumed in this Contract;

\$1,000,000 – Each Occurrence Limit

\$1,000,000 – Personal & Advertising Injury

\$2,000,000 – Products & Completed Operations Aggregate Limit

\$2,000,000 – General Aggregate Limit

\$ 100,000 – Damage to Premises Rented to You (formally known as Fire Legal Liability)

Workers' Compensation Insurance with limits statutorily required by any applicable Federal or State Law and Employers Liability insurance with limits of no less than \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit.

1. ☐ Fully Insured or State approved self-insurer.
2. ☐ Sole Proprietors must submit a signed Sole Proprietor form.
3. ☐ Exempt entities, Partnerships, LLC, etc., must submit a State of Michigan form WC-337 Certificate of Exemption.

Commercial Automobile Liability Insurance covering bodily injury or property damage arising out of the use of any owned, hired, or non-owned automobile with a combined single limit of \$1,000,000 each accident. This requirement is waived if there are no company owned, hired or non-owned automobiles utilized in the performance of this Contract.

Commercial Umbrella/Excess Liability Insurance with minimum limits of \$2,000,000 each occurrence. Umbrella or Excess Liability coverage shall be no less than following form of primary coverages or broader. This Umbrella/Excess requirement may be met by increasing the primary Commercial General Liability limits to meet the combined limit requirement.



Supplemental Coverages (Required as Checked)

1. ☐ **Professional Liability/Errors & Omissions Insurance** (Consultants, Technology Vendors, Architects, Engineers, Real Estate Agents, Insurance Agents, Attorneys, etc.) with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate.
2. ☐ **Commercial Property Insurance.** The Contractor shall be responsible for obtaining and maintaining insurance covering their equipment and personal property against all physical damage.
3. ☐ **Cyber Liability Insurance** with minimum limits of \$1,000,000 per claim and \$1,000,000 aggregate.
4. ☐ **Other Insurance Coverages** as may be dictated by the provided product/service and deemed appropriate by the PPB.

General Insurance Conditions

The aforementioned insurance shall be endorsed, as applicable, and shall contain the following terms, conditions, and/or endorsements. All certificates of insurance shall provide evidence of compliance with all required terms, conditions and/or endorsements.

1. All policies of insurance shall be on a primary, non-contributory basis with any other insurance or self-insurance carried by the PPB;
2. The insurance company(s) issuing the policy(s) shall have no recourse against the PPB for subrogation (policy endorsed written waiver), premiums, deductibles, or assessments under any form. All policies shall be endorsed to provide a written waiver of subrogation in favor of the PPB;
3. Any and all deductibles or self-insured retentions shall be assumed by and be at the sole risk of the Contractor;
4. Contractors shall be responsible for their own property insurance for all equipment and personal property used and/or stored on PPB property;
5. The Commercial General Liability and Commercial Automobile Liability policies along with any required supplemental coverages shall be endorsed to name the PPB of Oakland and its officers, directors, employees, appointees and commissioners as additional insured where permitted by law and policy form;
6. The Contractor shall require its contractors or sub-contractors, not protected under the Contractor's insurance policies, to procure and maintain insurance with coverages, limits, provisions, and/or clauses equal to those required in this Contract;
7. Certificates of insurance must be provided no less than ten (10) Business Days prior to the PPB's execution of the Contract and must bear evidence of all required terms, conditions and endorsements; and
8. All insurance carriers must be licensed and approved to do business in the State of the PPB and shall have and maintain a minimum A.M. Best's rating of A- unless otherwise approved by the PPB.

EXHIBIT II

**BUSINESS ASSOCIATE AGREEMENT
(Health Insurance Portability and Accountability Act Requirements)**

Exhibit II is a Business Associate Agreement between Contractor ("Business Associate") and the PPB ("Covered Entity"). This Exhibit is incorporated into the Contract and shall be hereinafter referred to as "Agreement." The purpose of this Agreement is to facilitate compliance with the Privacy and Security Rules and to facilitate compliance with HIPAA and the HITECH Amendment to HIPAA.

- §1. DEFINITIONS.** The following terms have the meanings set forth below for purposes of the Agreement, unless the context clearly indicates another meaning. Terms used but not otherwise defined in this Agreement have the same meaning as those terms in the Privacy Rule.
- 1.1 **Business Associate.** "Business Associate" means the Contractor.
 - 1.2 **CFR.** "CFR" means the Code of Federal Regulations.
 - 1.3 **Contract.** "Contract" means the document with the Purchasing Contract Number.
 - 1.4 **Contractor.** "Contractor" means the entity or individual defined in the Contract and listed on the first page of this Contract.
 - 1.5 **Covered Entity.** "Covered Entity" means the County of Oakland as defined in the Contract.
 - 1.6 **Designated Record Set.** "Designated Record Set" is defined in 45 CFR 164.501.
 - 1.7 **Electronic Health Record.** "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
 - 1.8 **HIPAA.** "HIPAA" means the Health Insurance Portability and Accountability Act of 1996.
 - 1.9 **HITECH Amendment.** "HITECH Amendment" means the changes to HIPAA made by the Health Information Technology for Economic and Clinical Health Act.
 - 1.10 **Individual.** "Individual" is defined in 45 CFR 160.103 and includes a person who qualifies as a personal representative in 45 CFR 164.502(g).
 - 1.11 **Privacy Rule.** "Privacy Rule" means the privacy rule of HIPAA as set forth in the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
 - 1.12 **Protected Health Information.** "Protected Health Information" or "PHI" is defined in 45 CFR 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - 1.13 **Required By Law.** "Required By Law" is defined in 45 CFR 164.103.

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- 1.14 **Secretary.** “Secretary” means the Secretary of the Department of Health and Human Services or his or her designee.
- 1.15 **Security Incident.** “Security Incident” is defined in 45 CFR 164.304.
- 1.16 **Security Rule.** “Security Rule” means the security standards and implementation specifications at 45 CFR part 160 and part 164, subpart C.
- §2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.** Business Associate agrees to perform the obligations and activities described in this Section.
- 2.1 Business Associate understands that pursuant to the HITECH Amendment, it is subject to the HIPAA Privacy and Security Rules in a similar manner as the rules apply to Covered Entity. As a result, Business Associate shall take all actions necessary to comply with the HIPAA Privacy and Security Rules for business associates as revised by the HITECH Amendment, including, but not limited to, the following: (a) Business Associate shall appoint a HIPAA privacy officer and a HIPAA security officer; (b) Business Associate shall establish policies and procedures to ensure compliance with the Privacy and Security Rules; (c) Business Associate shall train its workforce regarding the Privacy and Security Rules; (d) Business Associate shall enter into a privacy/security agreement with Covered Entity; (e) Business Associate shall enter into privacy/security agreements with its subcontractors that perform functions relating to Covered Entity involving PHI; (f) Business Associate shall conduct a security risk analysis; and (g) Business Associate shall provide documentation upon request in relation to performance under this Section.
- 2.2 Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as required by law.
- 2.3 Business Associate shall use appropriate safeguards to prevent use or disclosure of the PHI. Business Associate shall implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule.
- 2.4 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of law or this Agreement.
- 2.5 Business Associate shall report to Covered Entity any known Security Incident or any known use or disclosure of PHI not permitted by this Agreement.
- 2.6 Effective September 23, 2009 or the date this Agreement is signed, if later, Business Associate shall do the following in connection with the breach notification requirements of the HITECH Amendment:
- 2.6.1 If Business Associate discovers a breach of unsecured PHI, as those terms are defined by 45 CFR 164.402, Business Associate shall notify Covered Entity without unreasonable delay but no later

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than ten (10) calendar days after discovery. For this purpose, “discovery” means the first day on which the breach is known to Business Associate or should have been known by exercising reasonable diligence. Business Associate shall be deemed to have knowledge of a breach if the breach is known or should have been known by exercising reasonable diligence, to any person, other than the person committing the breach, who is an employee, officer, subcontractor, or other agent of Business Associate. The notification to Covered Entity shall include the following: (a) identification of each individual whose unsecured PHI has been breached or has reasonably believed to have been breached, and (b) any other available information in Business Associate’s possession that the Covered Entity is required to include in the individual notice contemplated by 45 CFR 164.404.

- 2.6.2 Notwithstanding the immediate preceding subsection, Business Associate shall assume the individual notice obligation specified in 45 CFR 164.404 on behalf of Covered Entity where a breach of unsecured PHI was committed by Business Associate or its employee, officer, subcontractor, or other agent of Business Associate or is within the unique knowledge of Business Associate as opposed to Covered Entity. In such case, Business Associate shall prepare the notice and shall provide it to Covered Entity for review and approval at least five (5) calendar days before it is required to be sent to the affected individual(s). Covered Entity shall promptly review the notice and shall not unreasonably withhold its approval.
- 2.6.3 Where a breach of unsecured PHI involves more than five hundred (500) individuals and was committed by the Business Associate or its employee, officer, subcontractor, or other agent or is within the unique knowledge of Business Associate as opposed to Covered Entity, Business Associate shall provide notice to the media pursuant to 45 CFR 164.406. Business Associate shall prepare the notice and shall provide it to Covered Entity for review and approval at least five (5) calendar days before it is required to be sent to the media. Covered Entity shall promptly review the notice and shall not unreasonably withhold its approval.
- 2.6.4 Business Associate shall maintain a log of breaches of unsecured PHI with respect to Covered Entity and shall submit the log to Covered Entity within thirty (30) calendar days following the end of each calendar year, so that the Covered Entity may report breaches to the Secretary in accordance with 45 CFR 164.408. This requirement shall take effect with respect to breaches occurring on or after September 23, 2009.
- 2.7 Business Associate shall ensure that any agent or subcontractor to whom it provides PHI, received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions and conditions that apply to Business Associate with respect to such information. Business Associate shall ensure that any such agent or subcontractor implements reasonable and appropriate safeguards to protect Covered Entity’s PHI.
- 2.8 Business Associate shall provide reasonable access, at the written request of Covered Entity, to PHI in a Designated Record Set to Covered Entity or, as directed in writing by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.

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- 2.9 Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs in writing or agrees to pursuant to 45 CFR 164.526.
- 2.10 Following receipt of a written request by Covered Entity, Business Associate shall make internal practices, books, and records reasonably available to the Secretary in order to determine Covered Entity's compliance with the Privacy Rule. The afore mentioned materials include policies and procedures and PHI relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity.
- 2.11 Business Associate shall document disclosures of PHI and information related to such disclosures, to permit Covered Entity to respond to a request by an Individual for: (a) an accounting of disclosures of PHI in accordance with 45 CFR 164.528 or (b) effective January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures PHI from an Electronic Health Record in accordance with the HITECH Amendment.
- 2.12 Following receipt of a written request by Covered Entity, Business Associate shall provide to Covered Entity or an Individual information collected in accordance with Section 2 to permit Covered Entity to respond to a request by an Individual for: (a) an accounting of disclosures of PHI in accordance with 45 CFR 164.528 or (b) effective as of January 1, 2011 or such later effective date prescribed by regulations issued by the U.S. Department of Health and Human Services, an accounting of disclosures of Protected Health Information from an Electronic Health Record in accordance with the HITECH Amendment.

§3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE. Business Associate may use and disclose PHI as set forth in this Section.

- 3.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity as specified in the underlying service agreement between Covered Entity and Business Associate, provided that such use or disclosure shall not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. If no underlying service agreement exists between Covered Entity and Business Associate, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity for the purposes of payment, treatment, or health care operations as those terms are defined in the Privacy Rule, provided that such use or disclosure shall not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- 3.2 Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law or

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Business Associate obtains reasonable assurances in writing from the person to whom the information is disclosed that: (a) the disclosed PHI will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and (b) the person notifies the Business Associate of any known instances in which the confidentiality of the information has been breached.

- 3.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- 3.5 Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

§4. OBLIGATIONS OF COVERED ENTITY.

- 4.1 Covered Entity shall notify Business Associate of any limitation(s) of Covered Entity in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.2 Covered Entity shall notify Business Associate of any changes in or revocation of permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- 4.3 Covered Entity shall use appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to this Agreement, the Contract, and the Privacy Rule, until such PHI is received by Business Associate, pursuant to any specifications set forth in any attachment to the Contract.
- 4.4 Covered Entity shall manage all users of the services including its qualified access, password restrictions, inactivity timeouts, downloads, and its ability to download and otherwise process PHI.
- 4.5 The Parties acknowledge that Covered Entity owns and controls its data.
- 4.6 Covered Entity shall provide Business Associate with a copy of its notice of privacy practices produced in accordance with 45 CFR Section 164.520, as well as any subsequent changes or limitation(s) to such notice, to the extent such changes or limitations may affect Business Associate's use or disclosure of PHI. Covered Entity shall provide Business Associate with any changes in or revocation of permission to use or disclose PHI, to the extent the changes or revocation may affect Business Associate's permitted or required uses or disclosures. To the extent that the changes or revocations may affect Business Associate's permitted use or disclosure of PHI, Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR Section 164.522. Covered Entity may effectuate any and all such notices of non-private information via posting on Covered Entity's web site.

§5. EFFECT OF TERMINATION.

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- 5.1 Except as provided in Section 5, upon termination of this Agreement or the Contract, for any reason, Business Associate shall return or destroy (at Covered Entity's request) all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI.
- 5.2 If Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. Upon receipt of written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and shall limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI, which shall be for a period of at least six (6) years.

§6 MISCELLANEOUS.

- 6.1 This Agreement is effective when the Contract is executed or when Business Associate becomes a Business Associate of Covered Entity and both Parties sign this Agreement, if later. However, certain provisions have special effective dates, as set forth herein or as set forth in HIPAA or the HITECH Amendment.
- 6.2 **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- 6.3 **Amendment.** The Parties agree to take action to amend this Agreement as necessary for Covered Entity to comply with the Privacy and Security requirements of HIPAA. If the Business Associate refuses to sign such an amendment, this Agreement shall automatically terminate.
- 6.4 **Survival.** The respective rights and obligations of Business Associate and Covered Entity under this Agreement shall survive the termination of this Agreement and/or the Contract.

EXHIBIT III

**REQUIREMENTS FOR CONTRACTORS WITH ACCESS TO PPB PII
(Personally Identifiable Information)**

Exhibit III governs the requirements for Contractors with Access to Personally Identifiable Information (PII).

1. DEFINITIONS

- 1.1 **Security Breach** means the unauthorized access, acquisition, theft, or disclosure of PII.
- 1.2 **PII** (Personally Identifiable Information) means a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including, but not limited to, a person's name, address, telephone number, driver's license or state personal identification card number, social security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother's maiden name, demand deposit account number, savings account number, financial transaction device account number or the person's account password, any other account password in combination with sufficient information to identify and access the account, automated or electronic signature, biometrics, stock or other security certificate or account number, credit card number, vital record, or medical records or information as well as the first name or first initial and last name linked to a social security number, driver's license or state personal identification card or financial account number in combination with a code or password that would permit access to a person's financial account(s) and as otherwise may be defined by state or federal laws governing the unauthorized access to personal information.

2. OBLIGATIONS

- 2.1 Contractor shall not use or disclose PII other than as permitted or required by this Contract or as required by law.
- 2.2 Contractor shall implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of PII that it creates, receives, maintains or transmits on behalf of the PPB.
- 2.3 Contractor shall mitigate, to the extent practicable, any harmful effect known to Contractor of the use or disclosure of PII in violation of law or this Contract.
- 2.4 If Contractor or Contractor Employees discover a Security Breach, Contractor shall notify the PPB without unreasonable delay, but no later than within forty-eight (48) hours of discovery. For this purpose, "discovery" means the first day on which the Security Breach is known to Contractor or Contractor Employee or should have been known by exercising reasonable diligence. Contractor shall be deemed to have knowledge of a Security Breach if the Security

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Breach is known or should have been known by exercising reasonable diligence by any person, other than the person committing the Security Breach. The notification to the PPB shall include the following: (a) describe the Security Breach in general terms; (b) describe the type of personal information that is the subject of the Security Breach; (c) identify each individual whose PII has been breached or has reasonably believed to have been breached; (d) describe in general terms, what Contractor has done to prevent additional Security Breaches; and (e) provide any other available information in Contractor or subcontractor's possession that may be necessary to comply with Security Breach notification laws.

- 2.5 If the PPB determines it will provide the notice of the Security Breach to the affected individuals and/or to governmental authorities, Contractor shall reimburse the PPB for: (a) its costs in notifying the affected individuals; (b) the cost of third-party credit and identify monitoring services to each of the affected individuals with compromised PII for no less than twenty-four (24) months following the date of notification to each individual; and (c) costs associated with the Security Breach, including but not limited to any costs incurred by the PPB in investigating and resolving the Security Breach, including reasonable fees associated with such investigation and resolution. Without limiting Contractor's obligations of indemnification as described in the Contract, Contractor shall indemnify, defend, and hold harmless the PPB for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the PPB in connection with the Security Breach. Contractor shall reimburse PPB for the applicable costs described above within thirty (30) days of receipt of an itemization of costs incurred by the PPB because of the Security Breach.
- 2.6 Within ten (10) calendar days of its discovery of the Security Breach, Contractor shall provide the PPB with a detailed plan describing the measures Contractor will undertake to prevent a future Security Breach. The PPB shall have the right to audit, inspect and test Contractor's new safeguards put in place because of the Security Breach. Contractor shall be responsible for recreating lost PPB Data in the manner and on the schedule set by the PPB without charge to the PPB.