

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND GRANICUS LLC

This Agreement is entered into this _____ day of _____, 20____, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Granicus LLC, hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of providing govDelivery Communications Cloud Software-as-a-Service (SaaS) solution, an enterprise digital communications and subscription management platform for managing County communications.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services

Exhibit B—Payments and Rates

Attachment H—HIPAA Business Associate Requirements

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. In no event shall County's total fiscal obligation under this Agreement exceed Four Hundred Fifty-Five Thousand Seven Hundred Eighty-Three Dollars and Fifty-Four Cents (\$455,783.54). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

4. Confidentiality

It is expected that one Party may disclose to the other Party certain information which may be considered confidential or trade secret information ("Confidential Information"). Confidential Information shall include: (i) non-public information if it is clearly and conspicuously marked as "confidential" or with a similar designation at the time of disclosure; (ii) non-public information of a Party if it is identified as confidential or proprietary before, during, or promptly after presentation and (iii) any information that should be reasonably understood to be confidential or proprietary to a Party, given the nature of the information and the context in which disclosed.

Subject to applicable law, each Party agrees to receive and hold any Confidential Information in strict confidence. Each Party also agrees: (i) to protect and safeguard the Confidential Information against unauthorized use, publication or disclosure; (ii) not to reveal, report, publish, disclose, transfer, copy or otherwise use any Confidential Information except as specifically authorized by the other Party; (iii) not to use any Confidential Information for any purpose other than for performance under this Agreement; (iv) to restrict access to Confidential Information to those of its employees, agents, and contractors who have a need to know, who have been advised of the confidential nature thereof, and who are under express written obligations of confidentiality or under obligations of confidentiality imposed by law or rule; and (v) to exercise at least the same standard of care and security to protect the Confidential Information received by it as it protects its own confidential information. If a Party is requested or required in a judicial, administrative, or governmental proceeding to disclose any Confidential Information, it will notify the other Party as promptly as practicable so that such Party may seek a protective order or waiver for that instance.

Confidential Information shall not include information which: (i) is or becomes public knowledge through no fault of either Party; (ii) was in a Party's possession before receipt from the other Party; (iii) is rightfully received by a Party from a third party without any duty of confidentiality; (iv) is independently developed by a Party without use or reference to the other Party's Confidential Information; (v) is disclosable pursuant to law, including, but not limited to, the California Public Records Act, Cal. Gov't Code Section 7920.000 et seq. or (vi) is disclosed with the prior written consent of the Parties.

Each Party shall return or destroy the Confidential Information upon written request by the other Party; provided, however, that each Party may retain one copy of the Confidential Information in order to comply with applicable law. Client understands and agrees that it may not always be possible to completely remove or delete all Confidential Information from Granicus' databases without some residual data.

5. Term

The term of this agreement shall be from November 1, 2023, to October 31, 2026, unless terminated pursuant to Section 6 of this Agreement. Upon expiration of the term, the Agreement may be extended for an additional two (2) years ("Optional Years") for a subscription beginning November 1, 2026, and ending October 31, 2028. The parties shall amend this Agreement to

exercise these “Optional Years” prior to the expiration of the initial term. The County’s right to access or use the SaaS Services will terminate at the end of this Agreement.

6. Termination

This Agreement may be terminated by Contractor or by the Director/Chief Information Officer (CIO) or the CIO’s designee at any time without a requirement of good cause upon thirty (30) days’ advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have ten business days after receipt of such notice to respond and a total of thirty calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

7. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. Indemnification

- a) Contractor will defend, indemnify and hold County harmless from and against all losses, liabilities, damages and expenses including reasonable attorney fees (collectively, “Losses”) arising from any claim or suit by an unaffiliated third party that the Products or Deliverables, as delivered to County and when used in accordance with this Agreement

and the applicable Order or SOW, infringes a valid U.S. copyright or U.S. patent issued as of the date of the applicable Order or SOW (a "Claim").

b) To the extent permitted by applicable law, Contractor will have control of the defense and reserves the right to settle any Claim. County must notify Contractor promptly of any Claim and provide reasonable cooperation to Contractor, upon Contractor's request and at Contractor's cost, to defend such Claim. Contractor will not agree to any settlement which requires acknowledgment of fault or an incurred liability on the part of an indemnified party not otherwise covered by this indemnification without indemnified party's prior consent. County may elect to participate in the defense of any claim with counsel of its choosing at its own expense.

c) If the Products or Deliverables are subject to a claim of infringement or misappropriation, or if Contractor reasonably believes the Products or Deliverables may be subject to such a Claim, Contractor reserves the right, in its sole discretion, to: (i) replace the affected Products or Deliverable with non-infringing functional equivalents; (ii) modify the affected Products or Deliverable to render it non-infringing; or (iii) terminate this Agreement or the applicable Order or SOW with respect to the affected Contractor Product or Deliverable and refund to Client any prepaid fees for the then-remaining portion of the Order or SOW Term.

d) Contractor will have no obligation to indemnify, defend, or hold County harmless from any Claim to the extent it is based upon: (i) a modification to the Contractor Product or Deliverable by anyone other than Contractor; (ii) a modification made by Contractor pursuant to County's required instructions or specifications or in reliance on materials or information provided by County; (iii) combination with the Products or Deliverable with non-Granicus software or data; or (iv) County's (or any authorized user of County) use of any Products or Deliverables other than in accordance with this Agreement.

e) This section sets forth County's sole and exclusive remedy, and Contractor's entire liability, for any Claim that the Products, Deliverables or any other materials provided by Contractor violate or infringe upon the rights of any third party.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Intellectual Property Ownership and Use Rights

a) **Intellectual Property Ownership.** Contractor and its licensors own all IP Rights in the Products. County and its authorized users have no right, title or interest in the Products other than the license rights expressly granted herein. All rights not expressly granted in the Products are reserved by Granicus or its licensors.

b) **License to Products.** Contractor hereby grants County a non-exclusive, non-transferable license to access and use the Products identified in the Order during the Term set forth therein. In addition to the terms of this Agreement and the Order, product-specific license terms applicable to certain of the Products can be found at granicus.com/legal/licensing and are hereby incorporated into this Agreement by reference. Contractor reserves all right, title and

interest in and to all Contractor Products, including all rights not expressly granted to County under this Agreement.

c) **Third Party Contractors.** County may permit its third-party contractors to access and use the Products solely on behalf of and for the benefit of County, so long as: (i) such contractor agrees to comply with this Agreement as if it were Client; (ii) County remains responsible for each contractor's compliance with this Agreement and any breach thereof; and (iii) all volume or transaction-based use of the Products includes use by contractors. All rights granted to any contractor terminate immediately upon conclusion of the Services rendered to County that give rise to such right. Upon termination of such rights, contractor will immediately cease all use of the Products and uninstall and destroy all confidential or proprietary Contractor information in its possession. County will certify compliance with this section in writing upon Contractor's request.

d) **Data Sources.** County may only upload data related to individuals that originates with or is owned by County. County shall not upload data purchased from third parties without Contractor's prior written consent and list cleansing Services provided by Contractor for an additional fee. Contractor will not sell, use, or disclose any personal information provided by County for any purpose other than performing Services subject to this Agreement.

e) **Content.** County can only use Products to share Content that is created by or owned by County and/or Content for affiliated organizations, provided that use by County for affiliated organizations is in support only, and not as a primary communication vehicle for such organizations that do not have their own license to the Products. Contractor is not responsible for any Content used, uploaded or migrated by County or any third party.

f) **Advertising.** County shall not use Products to promote products or services available for sale through County or any third party without Contractor's prior written consent.

g) **Restrictions.** County shall not:

- (i) Use or permit any end user to use the Products to store or display adult content, promote illegal or immoral activities, send or store infringing, obscene, threatening or unlawful or tortious material or disrupt others use of the Products, network services or network equipment, including unsolicited advertising or chain letters, propagation of computer worms and viruses, or use of the Products to make unauthorized entry into any other device accessible via the network or Products;
- (ii) Use the Products as a door or signpost to another server;
- (iii) Disassemble, decompile, reverse engineer or make derivative works of the Products;
- (iv) Rent, lease, lend, or host the Products to or for any third party, or disclose the Products to any third party except as otherwise permitted in this Agreement or an Order or SOW;
- (v) Use the Products in violation of any applicable law, rule, or regulation, including violation of laws regarding the processing, use, or disclosure of personal information, or violation of any United States export control or regulation, United States embargo, or denied or sanctioned parties prohibitions; or
- (vi) Modify, adapt, or use the Products to develop any software application intended for resale which uses or competes with the Products in whole or in part.

10. Assignability and Subcontracting

Neither Party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party (such consent not to be unreasonably withheld), provided that either Party may assign this Agreement with reasonable notice to the other party to an affiliate or to a successor in interest resulting from acquisition of all, or substantially all, of the assigning party's business by means of merger, stock or asset purchase, or otherwise. Any assignment or attempted assignment in violation of this Agreement will be null and void.

11. Limitation of Liability

EXCEPT FOR LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR ANY: (I) SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES; OR (II) LOSS OR DAMAGE TO DATA, LOST PROFITS, SALES, BUSINESS, GOODWILL OR ANTICIPATED SAVINGS, WHETHER AN ACTION IS IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT, EXCEPT FOR COUNTY'S OBLIGATIONS TO PAY AMOUNTS DUE UNDER THE ORDER OR SOW, OR CONTRACTOR'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 10 (INDEMNIFICATION), WILL EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT (IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE) EXCEED THE AMOUNT OF FEES PAID BY COUNTY TO CONTRACTOR IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE THE DAMAGED PARTY NOTIFIES THE OTHER PARTY IN WRITING OF THE CLAIM. HOWEVER, IF COUNTY HAS PAID NO FEES UNDER THE TERMS OF AN ORDER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE INCIDENT GIVING RISE TO THE CLAIM, THE AGGREGATE LIABILITY OF CONTRACTOR TO CUSTOMER FOR SUCH CLAIM SHALL NOT EXCEED FIVE THOUSAND DOLLARS (\$5,000).

12. Warranties:

- (i) Each party warrants that it has the rights necessary to grant to the other party the licenses granted in this Agreement.
- (ii) Contractor warrants that it will perform its obligations in a professional and workmanlike manner in accordance with industry standards.
- (iii) County's sole and exclusive remedy and Contractor's sole obligation for breach of the warranties in this Section are as follows: (i) for a breach of the warranty in Section 7.b.(i), the indemnity in Section 10 of this Agreement; and (ii) for a breach of the warranty in Section 7.b.(ii) reperformance of the non-conforming Services, provided that

County notifies Contractor of a non-conformity in this Section during the thirty (30) day period following Contractor's completion of the applicable Services.

Disclaimers. EXCEPT AS EXPRESSLY STATED IN THIS THIS SECTION, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. GRANICUS DOES NOT WARRANT THAT PRODUCTS OR SERVICES WILL MEET COUNTY'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE.

13. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by

either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- i. Comprehensive General Liability..... \$1,000,000
- ii. Motor Vehicle Liability Insurance..... \$1,000,000
- iii. Professional Liability..... \$1,000,000
- iv. Cyber Liability.....\$5,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

14. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, regulations, and executive orders, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance, as well as any required economic or other sanctions imposed by the United States government or under state law in effect during the term of the Agreement. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law, regulation, or executive order, the requirements of the applicable law, regulation, or executive order will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

15. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s)

of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall also report to the County the filing by any person in any court any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation of allegations of discrimination within seventy-five (75) days of such filing, provided that within such seventy-five (75) days such entity has not notified contractor that such charges are dismissed or otherwise unfounded. Such notification to County shall include a general description of the allegations and the nature of specific claims being asserted. Contractor shall provide County with a statement regarding how it responded to the allegations within sixty (60) days of its response and shall update County regarding the nature of the final resolution of such allegations.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Executive Officer, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Executive Officer.

To effectuate the provisions of this Section, the County Executive Officer shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

h. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

16. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply unless this Agreement's total value listed in the Section titled "Payments", exceeds two-hundred thousand dollars (\$200,000); Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value exceeds that threshold amount.

17. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

18. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or

representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

19. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

20. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Michael Wentworth, Director/Chief Information Officer
Address: 455 County Center, 3rd FL, Redwood City, CA 94063
Telephone: 650-363-4945
Facsimile: 650-363-7800
Email: mwentworth@smcgov.org

In the case of Contractor, to:

Name/Title: Granicus, LLC
Address: 408 St. Peter St., Suite 600, St. Paul, MN 55102

Email: Contracts@granicus.com

21. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

22. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

23. Reimbursable Travel Expenses

To the extent that this Agreement authorizes reimbursements to Contractor for travel, lodging, and other related expenses as defined in this section, the Contractor must comply with all the terms of this section in order to be reimbursed for travel.

- a. Estimated travel expenses must be submitted to authorized County personnel for advanced written authorization before such expenses are incurred. Significant differences between estimated and actual travel expenses may be grounds for denial of full reimbursement of actual travel expenses.
- b. Itemized receipts (copies accepted) for all reimbursable travel expenses are required to be provided as supporting documentation with all invoices submitted to the County.
- c. Unless otherwise specified in this section, the County will reimburse Contractor for reimbursable travel expenses for days when services were provided to the County. Contractor must substantiate in writing to the County the actual services rendered and the specific dates. The County will reimburse for travel at 75% of the maximum reimbursement amount for the actual costs of meals and incidental expenses on the day preceding and/or the day following days when services were provided to the County, provided that such reimbursement is reasonable, in light of travel time and other relevant factors, and is approved in writing by authorized County personnel.
- d. Unless otherwise specified within the contract, reimbursable travel expenses shall not include Local Travel. "Local Travel" means travel entirely within a fifty-mile radius of the Contractor's office and travel entirely within a fifty-mile radius of San Mateo County. Any mileage reimbursements for a Contractor's use of a personal car for reimbursable travel shall be reimbursed based on the Federal mileage reimbursement rate.
- e. The maximum reimbursement amount for the actual lodging, meal and incidental expenses is limited to the then-current Continental United States ("CONUS") rate for the location of the work being done (i.e., Redwood City for work done in Redwood City, San Mateo for work done at San Mateo Medical Center) as set forth in the Code of Federal Regulations and as listed by the website of the U.S. General Services Administration (available online at <http://www.gsa.gov/portal/content/104877> or by searching www.gsa.gov for the term 'CONUS'). County policy limits the reimbursement of lodging in designated high cost of living metropolitan areas to a maximum of double the then-current

CONUS rate; for work being done outside of a designated high cost of living metropolitan area, the maximum reimbursement amount for lodging is the then-current CONUS rate.

- f. The maximum reimbursement amount for the actual cost of airfare shall be limited to fares for Economy Class or below. Air travel fares will not be reimbursed for first class, business class, "economy-plus," or other such classes. Reimbursable car rental rates are restricted to the mid-level size range or below (i.e. standard size, intermediate, compact, or subcompact); costs for specialty, luxury, premium, SUV, or similar category vehicles are not reimbursable. Reimbursable ride-shares are restricted to standard or basic size vehicles (i.e., non-premium vehicles unless it results in a cost-saving to the County). Exceptions may be allowed under certain circumstances, such as unavailability of the foregoing options, with written approval from authorized County personnel. Other related travel expenses such as taxi fares, ride-shares, parking costs, train or subway costs, etc. shall be reimbursable on an actual-cost basis. Reimbursement of tips for taxi fare, or ride-share are limited to no more than 15% of the fare amount.
- g. Travel-related expenses are limited to: airfare, lodging, car rental, taxi/ride-share plus tips, tolls, incidentals (e.g. porters, baggage carriers or hotel staff), breakfast, lunch, dinner, mileage reimbursement based on Federal reimbursement rate. The County will not reimburse for alcohol.
- h. Reimbursement of tips are limited to no more than 15 percent. Non-reimbursement items (i.e., alcohol) shall be excluded when calculating the amount of the tip that is reimbursable.

24. Prevailing Wage

When applicable, Contractor hereby agrees to pay not less than prevailing rates of wages and be responsible for compliance with all the provisions of the California Labor Code, Article 2- Wages, Chapter 1, Part 7, Division 2, Section 1770 et seq. A copy of the prevailing wage scale established by the Department of Industrial Relations is on file in the office of the Director of Public Works, and available at www.dir.ca.gov/DLSR or by phone at 415-703-4774. California Labor Code Section 1776(a) requires each contractor and subcontractor keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.

Additionally,

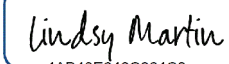
- No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: GRANICUS LLC

DocuSigned by:

4AB40E646C664C8...

Contractor Signature

9/29/2023

Date

Lindsay Martin Contracts Manager and Counsel

Contractor Name (please print)

COUNTY OF SAN MATEO

By:
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:
Clerk of Said Board

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

The Contractor shall provide the County with Contractor's govDelivery Communications Cloud Software-as-a-Service (SaaS) solution, an enterprise digital communications and subscription management platform for managing County communications. The County maintains over 100 subscription topics and related subscriber lists for email newsletters, bulletins, and SMS notices. The County uses email and SMS subscription lists and newsletter templates for a wide variety of audiences and targeted campaigns, including:

- Internal communication: Internal email communications for County workforce members
- Public communication: Email notices, bulletins, newsletters, and SMS messages for the general public
- Client communications: Communications and targeted messages for clients of County services
- Partner communication: Private communications with partner agencies

Product Descriptions

Solution	Description
Communications Cloud	The Cloud is a Software-as-a-Service (SaaS) solution that will enable the County to utilize a number of different outreach mediums, including email, SMS/text messages, RSS feeds, and social media integration to connect with its target audiences. The Cloud includes: • Up to 2,999,999 Potential Users • Unlimited email sends with industry-leading delivery and management of all bounces • Support to upload and migrate existing email lists • Access to participate in the GovDelivery Network • Ability to send mass notifications to multiple devices • 24/7 system monitoring, email and phone support during business hours, auto-response to inbound messages from end users, and emergency support • Text-to-subscribe functionality • Up to 2 Web-hosted training sessions annually • Unlimited administrators • Up to 1 GovDelivery account(s) • Access to a complete archive of all data created by the County for 18 months (rolling) • Up to 3 hours of message template and integration development • Unlimited subscription topics • Up to 100,000 SMS/text messages per year from a shared short code within the United States* *International numbers are not supported. SMS/text messages not used in the period of performance will not carry over to the following year.
Additional SMS – 150,000	Additional SMS/Text Messaging includes: • Access to the selected volume of additional SMS/text messages per year from a unique standard toll-free number within the United States*

	• Use of responsively designed sign-up pages that allow the public to subscribe to communication updates from various devices <i>*International numbers are not supported. SMS/text messages not used in the period of performance will not carry over to the following year. The County must have explicit opt-in for all destinations sent to and adhere to all CTIA guidelines for the duration of its use.</i>
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Communications Cloud Tier	For up to 274,107 subscribers
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Help Desk Services and Availability

Contractor will provide complete help desk support for administrators and customers of the County. Regular support will be available during regular business hours, Monday-Friday, via email or toll-free telephone.

Customer Support Contact

Hours: 8:00 am – 10:00 pm ET
Emergency Support is available 24/7

The County shall submit support requests via:

- Portal: support.granicus.com
- Email: support@granicus.com
- Phone: 1-800-314-0147 USA

The County shall submit govDelivery Communications Cloud subscriber support only requests to:

- Portal: subscriberhelp.granicus.com
- Email: subscriberhelp@granicus.com
- Phone: 1-800-439-1420 USA

Communication Service Level Agreement

Granicus response to support and service requests will be based on four (4) Severity Levels:

Severity Level	Description	Examples	Initial Customer Response Time
Level 1	Emergency. Incident represents a total outage; the product is unavailable or not accessible for use	govDelivery's admin.govdelivery.com is down or all sending is significantly delayed	Within one (1) hour of notification by the customer of occurrence
Level 2	Severely Impaired. Incident occurs when a major feature of the product is not working and there is no workaround available, or the work around is not acceptable and impacts the primary usability of the product	govDelivery PageWatch sending is delayed by more than 20-30 minutes, or sudden and significant deliverability issues or intermittent errors or low performance issues for some or many customers	Within four (4) hours of notification by the customer of occurrence

Level 3	Impaired. Incident occurs when a primary feature of the product is not working as expected and an acceptable workaround is available – does not impact the basic usability of the product	govDelivery system not connecting to social media, single customer app/feature help, or database requests	Within one (1) business day of notification by the customer of occurrence
Level 4	Low Impact. Incident that has a limited business impact and requests can be scheduled.	• Programmatic change to back-end or front-end to improve efficiency • Distribution of all patches and upgrades	Within three (3) business days of notification of customer of occurrence

Resolution time will be based on the service or support request and regular follow-ups will be communicated with the County on final resolution. Contractor shall use commercially reasonable efforts to resolve errors affecting non-essential components of the Contractor's solution, or errors that can be reasonably circumvented but errors that require debugging of programming code may need to be corrected during the next regular update cycle.

Availability

Availability is defined as the ability of users to access to the Contractor's solutions services via the internet. Contractor represents an up-time guarantee of 99% per calendar quarter for its hosted services. Notifications for the Contractor's solution of any system-wide outages will occur within one hour from the time the issues are first recognized by the Contractor.

Downtime is defined as any time that the Contractor's solutions services are unavailable.

A **Site Outage** is defined as continuous Downtime, as determined through URL monitoring (HTTP). Downtime reporting is limited to a Site Outage. Site Outage monitoring is conducted by the Contractor utilizing industry-standard monitoring tools. Reports of Site Outages will be provided on an as-requested basis up to once per calendar quarter.

A Site Outage does not include Downtime that falls into one or several of the exclusions below:

- Scheduled or routine maintenance
- Caused by force majeure (which shall include any circumstances beyond the Contractor's reasonable control, including but not limited to, acts of God, labor strikes and other labor disturbances, power surges or failures).
- The first four (4) Site Outages in any given quarter that are corrected within fifteen (15) minutes of their start.
- The first five (5) minutes of any Site Outage is a grace period and will not be considered Downtime under any circumstances.
 - Example: A Site Outage of fourteen (14) minutes in duration that is one of the first four (4) such outages in a given quarter would not result in any Downtime, while a Site Outage of sixteen (16) minutes would result in eleven (11) minutes of Downtime. After four (4) Site Outages of between five (5) and fifteen (15) minutes in a quarter, all Site Outage time over five (5) minutes for any one instance will count as Downtime.

Scheduled Maintenance

govDelivery. Scheduled maintenance typically occurs every thirty (30) days with average Downtime required being less than thirty (30) minutes. Planned or routine maintenance is limited to two (2) hours per week. Total scheduled Downtime for the year will not typically exceed twenty (20) hours.

- Note: Communications Cloud and EHQ are included under the govDelivery products.

Notifications and additional scheduled maintenance will be posted on status.granicusops.com. Email notifications for these products can be subscribed to from that page.

GRANICUS ADVANCED NETWORK AND SUBSCRIBER INFORMATION

Granicus Communications Suite Subscriber Information

- Data provided by the County and contact information gathered through the County's own web properties or activities will remain the property of the County ('Direct Subscriber'), including any and all personally identifiable information (PII). The Contractor will not release the data without the express written permission of the County, unless required by law.
- The Contractor shall: (i) not disclose the County's data except to any third parties as necessary to operate the Contractor's Products and Services (provided that the County hereby grants to the Contractor a perpetual, non-cancelable, worldwide, non-exclusive license to utilize any data, on an anonymous or aggregate basis only, that arises from the use of the Contractor's Products by the County, whether disclosed on, subsequent to, or prior to the Effective Date, to improve the functionality of the Contractor's Products and any other legitimate business purpose, including the right to sublicense such data to third parties, subject to all legal restrictions regarding the use and disclosure of such information). Contractor could gather information in the aggregate or anonymous basis to improve the functionality of the Contractor's products, such as Client feedback or tickets. Such information will not incorporate any identifiable Client or Client's Confidential Information.

Data obtained through the Granicus Advanced Network

- The Contractor offers a SaaS product, known as the Communications Cloud, that offers Direct Subscribers recommendations to subscribe to other Contractor's Client's digital communication (the 'Advanced Network'). When a Direct Subscriber signs up through one of the recommendations of the Advanced Network, that subscriber is a 'Network Subscriber' to the agency it subscribed to through the Advanced Network.
- Network Subscribers are available for use while the County is under an active subscription with the Contractor. Network Subscribers will not transfer to the County upon termination of any Contractor Order, SOW, or Exhibit. The County shall not use or transfer any of the Network Subscribers after termination of its Order, SOW, or Exhibit placed under this agreement. All information related to Network Subscribers must be destroyed by the County within fifteen (15) calendar days of the Order, SOW, or Exhibit placed under this agreement terminating.
- Opt-In. During the last ten (10) calendar days of the County's subscription, the County may send an opt-in email to Network Subscribers that shall include an explanation of the County's relationship with the Contractor terminating and that the Network Subscribers may visit the County's website to subscribe to further updates from the County in the future. Any Network

Subscriber that does not opt-in will not be transferred with the subscriber list provided to the County upon termination.

Updates To Shared Short Codes for SMS/Text Messaging

- Contractor will be migrating all clients with SMS/Text Messaging Solutions using a shared short code option to a unique standard toll-free number within the United States (International numbers not supported). Short Codes are recommended for Text-to-Subscribe functionalities, if enabled where available, for an additional fee.
- The County must have explicit opt-in for all destinations sent to and adhere to all Cellular Telephone Industries Association (CTIA) guidelines for the duration of its use.

Optional Solutions

During the term of the agreement, the County may purchase any of the following optional solutions by executing an amendment with the Contractor for the rates outlined in Exhibit B.

Optional Solutions	Description
Custom Short Code	• Lease of a unique custom short code for SMS sending. This allows the use of dedicated a short code other than the standard shared 468311 short code. • County must have explicit opt-in for all destinations sent to and adhere to all CTIA guidelines for the duration of its use. • County assistance may be required in the event any carrier audit is opened due to sending activity.
Communications Cloud Advanced Package	The Advanced Cloud Module gives government communicators better insight into the needs of citizens and improves their ability to enhance online transactions, promote behavior change through public awareness, and improve citizen engagement. The Advanced Cloud Module adds streamlined marketing capabilities that incorporate greater degrees of audience segmentation, personalization, message testing, and mobile engagement. The Advanced Cloud Module includes: • Dynamic segmentation around bulletins, engagement, and question (e.g., zip code) • Canned campaigns for re-engagement and new subscriber onboarding • Testing: Simple (A/B, 10/10/80) A subscription for the Advanced Cloud Module is dependent on an active license for the GovDelivery Communications Cloud.
Custom Short Code - Setup and Configuration	• Both obtaining and configuring a custom SMS short code for a single client and single account use. • Timeline for securing and provisioning each short code takes a minimum of 12 weeks and all approvals are at the discretion of SMS carriers.

Advanced Package - Setup and Configuration	Implementation includes: • Access to an implementation consultant for up to 90 days • Access to online training documentation around advanced account functions and capabilities • Up to 2 Web-hosted training sessions within 180 days of kickoff • Up to 5 hours of message template and integration development within 90 days of kickoff The implementation process takes four to six weeks, on average, depending on the availability of stakeholders and/or current GovDelivery Communications Cloud experience.
Advanced Package - Online Training	Provides a balance of Product knowledge and industry best practices to a specific audience. Sessions are delivered by product experts via videoconferencing technology.
Enhanced Security	Enhanced Security includes two-factor authentication, IP restrictions, password complexity/age/re-use configuration, a security message flag upon login, Administrator security controls and configuration, and a system security report. A subscription for Enhanced Security is dependent on an active license for the Communications Cloud.
Enhanced Security - Online Training	Provides balance of product knowledge and industry best practices to specific audience. Sessions are delivered by product experts via videoconferencing technology.
Enhanced Security - Setup and Configuration	Covers the consultative PM/Implementation time required to get the County fully up and running on new security configuration of product with access to an implementation consultant for up to 90 days.

Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

Pricing

Subscription Fees Year 1			
Solution	Billing Frequency	Quantity/ Unit	Annual Fee
Communications Cloud	Annual	1 Each	\$80,000.00
Additional SMS- 150,000	Annual	1 Each	\$4,150.00
Subtotal			\$84,150.00

Communications Cloud Tier
For up to 27,4107 subscribers

Optional Solutions			
Solution	Billing Frequency	Quantity/ Unit	Annual Fee
Custom Short Code	Annual	1 Each	\$18,000.00
Communications Cloud Advanced Package	Annual	1 Each	\$15,500.00
Custom Short Code - Setup and Configuration	One-Time	1 Each	\$10,800.00
Advanced Package - Setup and Configuration	One-Time	1 Each	\$5,500.00
Advanced Package - Online Training	One-Time	1 Each	\$500.00
Enhanced Security	Annual	1 Each	\$12,000.00
Enhanced Security - Online Training	One-Time	1 Each	\$0.00
Enhanced Security - Setup and Configuration	One-Time	1 Each	\$0.00
Subtotal for Optional Solutions			\$62,300.00

Solution	Period of Performance			
	Year 2	Year 3	Optional Year 4	Optional Year 5
Communications Cloud	\$83,200.00	\$86,528.00	\$89,989.12	\$93,588.68
Additional SMS- 150,000	\$4,316.00	\$4,488.64	\$4,668.19	\$4,854.91
Subtotal	\$87,516.00	\$91,016.64	\$94,657.31	\$98,443.59

Optional Solutions	Period of Performance			
	Year 2	Year 3	Optional Year 4	Optional Year 5
Custom Short Code	\$18,720.00	\$19,468.80	\$20,247.55	\$21,057.45
Communications Cloud Advanced Package	\$16,120.00	\$16,764.80	\$17,435.39	\$18,132.81
Enhanced Security	\$12,480.00	\$16,764.80	\$17,435.39	\$18,132.81

INVOICING

The County shall submit payment within net thirty (30) days of receipt of undisputed invoice, for services rendered conditioned upon the approval of services performed during the billing cycle. Costs for Annual subscription fees are prepaid yearly based on the Term start date of this Agreement. Costs for Optional Solutions are paid according to the billing frequency as specified above.

Each invoice submitted must include the following information, at a minimum:

- Invoice Number and Date
- Agreement Number and/or Purchase Order Number
- Detailed statement of billed services, including Period of Performance
- Breakdown of labor, materials, and taxes (when applicable)
- Total amount of invoice

Invoices shall be sent to ISD-Vendor-Invoices@smcgov.org.

Attachment H

Health Insurance Portability and Accountability Act (HIPAA) Business Associate Requirements

DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.
- b. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (EPHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- g. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- h. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 160.103 and is limited to the information created or received by Business Associate from or on behalf of County.
- i. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.
- j. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- k. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:
 - 1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
 - 2. Identity of the unauthorized person or to whom impermissible disclosure was made;
 - 3. Whether PHI was actually viewed or only the opportunity to do so existed;
 - 4. The extent to which the risk has been mitigated.
- l. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

- m. **Unsecured PHI.** "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.
- n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.

- n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.
- q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

OBLIGATIONS OF COUNTY

- a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

PERMISSIBLE REQUESTS BY COUNTY

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so requested by County, unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

DUTIES UPON TERMINATION OF AGREEMENT

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or

destruction infeasible, for so long as Business Associate maintains such Protection Health Information.

MISCELLANEOUS

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.