

Agreement No. \_\_\_\_\_

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND BISCOM, INC.**

This Agreement is entered into this 25 day of June, 2024 (the "Effective Date" of this Agreement), by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Biscom, Inc., 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 to provide digital fax services to County.

**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
- Exhibit C—Cloud Applications Service Level Agreement Schedule
- Exhibit D—FAXCOM Anywhere Hosted Fax Service Additional Terms and Conditions Schedule
- Attachment H—HIPAA Business Associate Requirements
- Attachment IP—Intellectual Property

If either party wishes to change the scope or provision of any of the Services in Exhibit A, such party will submit an Ordering Document addressing the change to the other party for their consideration or request an amendment to the Agreement. No Ordering Document, amendment, or boilerplate language or other additional or different terms and conditions contained on a form provided by either party will have any effect unless and until each party has executed a written Ordering Document or amendment to this Agreement addressing such change(s). All Ordering Documents and written amendments executed by both parties during the Term will constitute part of this Agreement and will be incorporated into the Agreement by reference.

**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 (the "Services").

Contractor reserves the right to modify, change, make design changes, or alter or discontinue features of Contractor's Cloud Services and Software from time to time ("Design Changes"), including without limitation by providing upgrades and updates. Contractor shall not be obligated to make changes to earlier versions of Cloud Services and Software previously purchased. Contractor will use commercially reasonable efforts to notify County of any such Design Changes, which may include by providing release notes or updated documentation or by placing a notice on Contractor's website.

**3. Payments, Invoicing, and Fees**

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 and in this Agreement. County will start incurring subscription fees for Cloud Services upon execution of this Agreement, and consumption fees (page fees) upon County's first use of the Cloud Services to transmit or receive faxes.

Contractor will not be obligated to commence providing Services until all documents have been executed and all actions have been completed that are necessary to obligate County to pay for such Services.

The County estimates the total costs in this Agreement for the Initial Term will be no more than **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)** (the "Initial Budgeted Amount"). The Initial Budgeted Amount is based on the assumptions and initial usage set forth in Exhibit 1. County have informed Contractor that County have available the Initial Budgeted Amount for the purpose of satisfying County's payment obligations for the Initial Term under this Agreement. County will not exceed the Initial Budgeted Amount and will monitor its usage of Contractor's Services. When County has used 80% of the Initial Budgeted Amount, County will notify Contractor, and the parties will negotiate in good faith the terms of an amendment memorializing any additional fees the parties expect County will incur during the Term, and County will promptly seek all necessary approvals for the funding for such additional fees. Contractor has been advised and understands that the continued funding for this Agreement and any amounts in excess of the Initial Budgeted Amount are subject to approval by the County of San Mateo. County has been advised and understands that, in the event an amendment is not executed and/or additional funding is not secured before the Initial Budgeted Amount is exceeded, then Contractor, in its sole discretion, may suspend providing Services to County and/or may terminate this Agreement upon written notice to County, and County will remain obligated to pay for all Services used.

In the event that the County makes any advance payments that result in an over-payment to Contractor, Contractor will credit such over-payments against amounts owed for Services rendered pursuant to this Agreement and agrees to refund any over-payments in excess of the amount owed by County for Services rendered pursuant to this Agreement at the time of contract termination or expiration. Except as set forth in this Agreement, Contractor is not entitled to payment for work not performed as required by this Agreement.

Except as otherwise set forth in an Ordering Document, Contractor will invoice as follows: Contractor will invoice County for one-time fees upon County's execution of this Agreement or, if separate, the applicable Ordering Document. The billing cycle for Cloud Services is on a calendar month basis. Contractor invoices for Cloud Services subscription fees monthly, in advance. The first month's Cloud Services subscription fees will be invoiced upon County's execution of this Agreement or, if separate, the applicable Ordering Document. Partial months (if any) will be pro-rated. Contractor invoices for Cloud Services consumption/usage fees monthly, in arrears. All invoices must be approved by the Health CIO or their designee. Invoices must be sent to: [HS\\_HIT\\_AccountsPayable@smcgov.org](mailto:HS_HIT_AccountsPayable@smcgov.org). Processing time may be delayed if invoices are not submitted electronically. Invoices are processed and paid within 45 days after the invoice date. All amounts must be paid in U.S. Dollars.

#### **4. Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from **June 25, 2024, through June 24, 2029** (the "Term"), unless earlier terminated in accordance with this Agreement. The subscription term for any Services on an Ordering Document will end on the earlier of the date set forth in such Ordering Document or the last day of the Term. The Term, and any subscription term(s) for

Services, may be extended by the mutual written agreement of the parties as expressly provided in an Ordering Document as an amendment to this Agreement or otherwise by amending this Agreement.

**5. Termination**

Contractor shall be entitled to receive payment for work/Services provided prior to termination of the Agreement. In the event of a termination due to Contractor's breach of this 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. In the event of a termination due to County's breach of this Agreement, Contractor shall be entitled to receive an administrative fee of 10% of the Recurring Fees set forth in Exhibit B for the balance of the Term.

County may terminate this Agreement or a portion of the Services set forth in Exhibit A 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 and at least thirty (30) days prior to the effective date of such termination.

County or Contractor may terminate this Agreement for cause. In order to terminate for cause, the non-breaching party must first give the other party notice of the alleged material breach. The breaching party shall have a total of thirty calendar days after receipt of such notice to cure the alleged material breach. If the breaching party fails to cure the material breach within this period, the non-breaching party may immediately terminate this Agreement upon written notice to the breaching party.

Upon any termination of this Agreement for any reason: (a) all rights of either party under this Agreement will immediately terminate, except for rights set forth in provisions that expressly survive the termination of this Agreement; and (b) County's access to all Cloud Services and/or license to all Software shall end; and (c) County shall be responsible for payment of fees due under this Agreement as set forth in this Section.

The following Sections shall survive any termination or expiration of this Agreement and will continue to apply in accordance with their terms: Payments, Invoicing, and Fees (Section 3), Termination (Section 5), Relationship of Parties (Section 7), Hold Harmless (Section 8), Retention of Records; Right to Monitor and Audit (Section 14), Merger Clause; Amendments (Section 15), Controlling Law; Venue (Section 16), Notices (Section 15), Warranty (Section 20), Disentanglement (Section 21), Limitations of Liability (Section 25), Confidentiality (Section 26), County's Representations (Section 27), General Conditions on Use (Section 28), Spam and Unsolicited Fax Policy (Section 29), Export Control (Section 30), No Third Party Beneficiaries (Section 31), Attachment H (Health Insurance Portability and Accountability Act (HIPAA) Business Associate Requirements), and Attachment IP, and any other section, Attachment, or portion thereof that by its nature is intended to survive the termination or expiration of this Agreement.

**6. Access; Users; Accounts**

**a. License Grant for Software**

Subject to and conditioned on County's payment of any applicable license or subscription fees and compliance with all other terms and conditions of this Agreement, Contractor hereby grants to County a non-exclusive, non-sublicensable, non-transferable and non-assignable, world-wide, enterprise-wide license for the Term stated on the applicable Ordering Document to: (a) access, install (to the extent required for user access) on any model, size, power, or level computer, irrespective of the number of processors, and operate, and for users to use, for County's internal use, the Software (in binary executable form only) solely for County's internal business purposes; (b) use and make a reasonable

number of copies of the Software's accompanying documentation, manuals, and specifications, solely for County's internal business purposes in connection with use of the Software; and (c) make a single copy of the Software solely for back-up, disaster recovery, and testing purposes, which may be retained by County during the Software's Term (including any renewal Terms) and must be destroyed thereafter. Any such copy of the Software: (x) remains Contractor's exclusive property; (y) is subject to the terms and conditions of this Agreement; and (z) must include all copyright or other proprietary rights notices contained in the original.

**b. Provision of Access to Cloud Services.**

Subject to and conditioned on County's payment of applicable fees and compliance with all other terms and conditions of this Agreement, Contractor hereby grants County a non-exclusive, non-transferable, world-wide, right to access and use the Cloud Services set forth in an Ordering Document during the period of time stated on such Ordering Document ("Subscription Term"), solely by authorized users in accordance with the terms and conditions herein. Such use is further limited to County's internal use. Contractor shall provide to County any necessary passwords and network links, connections, or URLs to allow County to access the Cloud Services.

**c. Authorized Users.**

The total number of authorized users during a Subscription Term will not exceed the number identified in the applicable Ordering Document, except as expressly agreed to in writing by the parties and subject to any appropriate adjustment of the fees payable hereunder.

**d. Account Content and Files.**

No County Data that may be processed by Contractor as part of County's use of the Cloud Services, will be monitored, disclosed, or used by Contractor without County's permission unless otherwise permitted by this Agreement, necessary for the performance of the Services, or required by law. For purposes of this Agreement, "Account" means the unique account in Contractor's system that each customer may be required to create and register with Contractor in order to access and use certain Cloud Services and Software. As between County and Contractor, County is responsible for the content and files placed or received by County in County's Account.

**e. Loss or Deletion of Data.**

Although Contractor shall maintain reasonable safeguards to prevent unauthorized use or access to County Data, Contractor shall not be responsible for any loss or corruption of County Data. For County Data that violates the terms of service or of this Agreement, user policies, size limits, transfer frequency limits, or bandwidth limits, Contractor reserves the right to terminate the associated accounts and delete any content that may be in violation of the terms of service or this Agreement. Files or content that are deleted from County's Account cannot be undeleted or retrieved.

**f. Account Security.**

As part of the registration process, County may be required to provide an email address and select a password. County's Account will have a username for the Cloud Services. County is entirely responsible for maintaining the confidentiality of its password and Account information. County agrees to immediately notify Contractor of any unauthorized use of its Account or any other breach of security known to County regarding County's Account.



**g. Storage of Data.**

County acknowledges that for certain Cloud Services, Contractor may store data on computers that are located outside of the jurisdiction in which the County Data originated. Contractor has no control of the destination to which a customer may send data using the Cloud Services and Software.

**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. Hold Harmless**

**a. General Hold Harmless**

Contractor shall save harmless County and its officers, agents, employees, and servants from any third party claims, suits, or actions arising solely from Contractor's acts or omissions in performance of work or Services required of Contractor under this Agreement, for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any claims of damages to the extent resulting from Contractor's failure to comply with applicable requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended;
- (D) Contractor's duty to save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

**b. Intellectual Property**

Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the Cloud Services and Software it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Contractor will defend (at Contractor's expense) County from and against any claims, suits, or proceedings brought by a third party ("Claims") against County contending that County's use of the Services in accordance with the applicable documentation and this Agreement infringes any United States copyright or trade secret rights of a third party ("IP Rights Infringement") and will indemnify County by paying all damages finally awarded by a court of competent jurisdiction or agreed to by Contractor in settlement of the Claim. Contractor's duty to defend and indemnify under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any Claim that is a criminal action, suit,

or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld). Should the Cloud Services or Software provided under this Agreement become, or in Contractor's opinion is likely to become, the subject of an IP Rights infringement claim by a third party, or in the event such a third party claim or threatened claim causes County's reasonable use of the Cloud Services or Software under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the Cloud Services or Software without infringement or (ii) replace or modify the Cloud Services or Software so that it becomes non-infringing but remains functionally equivalent; and if neither (i) nor (ii) is feasible then Contractor may, by written notice to County, terminate this Agreement and/or any licenses to infringing Cloud Services or Software and County will stop using the infringing Cloud Services or Software and return them to Contractor upon Contractor's request, at Contractor's expense. In the event of a termination pursuant to this Section, Contractor will refund to County any pre-paid fees for the unexpired portion of the remaining subscription term for the terminated Cloud Services or Software, calculated on a pro-rated basis.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the Cloud Services or Software under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the Cloud Services or Software under this Agreement which have been used by County in a manner prohibited by this Agreement; and/or (c) the alleged infringement is caused by the combination or utilization of the Cloud Services or Software with equipment, software, or devices not made or furnished by Contractor; and/or (d) an allegation of infringement arising out of or related to the County Data.

The foregoing Section 8 states Contractor's entire liability and County's exclusive remedy for IP Rights Infringement under this Agreement.

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. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide Services required by Contractor under this Agreement without the prior written consent of County; provided, however, that for the purpose of this Section, the County will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that the Contractor remains responsible for its obligations hereunder. The County's consent shall not be unreasonably withheld or delayed. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

## **10. 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.

**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 as may be applicable before commencing the performance of work under this Agreement.

**c. Liability Insurance**

Contractor shall take out and maintain during the term of this Agreement occurrence based insurance policies at not less than the amounts specified below:

- (a) Comprehensive General Liability... \$1,000,000
- (b) Professional Liability..... \$1,000,000
- (c) Cyber Liability..... \$5,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on of the Comprehensive General Liability insurance policy, which shall also contain a provision that the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary and non-contributory insurance to the full limits of liability of this Agreement 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 above the limitations of liability in this Agreement.

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, terminate this Agreement for cause pursuant to Section 5, subject to Contractor’s opportunity to cure.

**11. Compliance with Laws**

All Services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal and State laws, ordinances, and regulations, including but not limited to the applicable regulations of 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. In the event of a conflict between the terms of this Agreement and any applicable State or Federal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

The parties agree that, pursuant to Section 70713 of Title 22 of the California Code of Regulations (“Title 22”), San Mateo Medical Center (SMMC) retains all professional and administrative responsibility for Services rendered under this Agreement to the extent that such Services are subject to Title 22 and are rendered by a “qualified professional person” as used in Section 70713, and the parties further agree in that instance that SMMC is otherwise subject to any applicable requirements of Title 22.

**12. 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. Reserved**

**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. Violation of Non-discrimination Provisions**

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and may subject the Contractor to the following:

- i. termination of this Agreement; and/or
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years.

**h. Compliance with Living Wage Ordinance**

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies that it shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance to the extent applicable to Contractor, including, but not limited to, paying all San Mateo-based Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

**13. 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.

**14. Access and Retention of Books and Records**

Upon written request of the Secretary of Health and Human Services, the Comptroller General, or any of their duly authorized representatives, Contractor shall make available its contracts, books, documents, and records necessary to verify the nature and extent of costs of providing Services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such Services. If Contractor carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with a related individual or organization, Contractor agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the Social Security Act's requirements pertaining to "reasonable costs" set forth in 42 U.S.C. Section 1395x(v)(1)(I) and related regulations. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by County, Contractor, or any Contractor's representative by virtue of this Agreement. To the extent the contracts, books, documents, and records necessary to verify the nature and extent of costs of providing Services to County require the inspection of detail records regarding faxes sent and/or received, County agrees that it will download and maintain such

detail records during the required inspection period. Contractor will make those records available to County for download for 90 days from the date of the fax transmission.

**15. 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 authorized representatives of both parties.

**16. 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.

**17. 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 email to the email address listed below, if any; 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: County of San Mateo / County Health / Health Information Technology  
Attn: Thomas Collins  
Address: 801 Gateway Blvd, 2nd Floor (HLT416)  
South San Francisco, CA 94080

With Copy To: County Attorney's Office  
400 County Center, 6th Floor  
Redwood City, CA 94063  
Facsimile: (650) 363-4034

In the case of Contractor, to:

Name/Title: Concord III, L.L.C.  
Attn: Legal Department  
Address: 2025 First Ave., Suite 800  
Seattle, WA 98121  
Telephone: 206.441.3346  
Email: [generalcounsel@concord.net](mailto:generalcounsel@concord.net)

**18. 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.

**19. 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.

**20. Reserved.**

**21. Disentanglement**

Contractor shall reasonably cooperate with County and County's other contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the timing of the termination. Contractor shall cooperate with County's efforts to effectuate such transition with the goal of minimizing or eliminating any interruption of work required under the Agreement and any adverse impact on the provision of services or the County's activities; provided, however, that County shall pay Contractor on a time and materials basis, at the then-applicable rates, for all additional services performed in connection with such cooperation. Contractor shall deliver to County or its designee, at County's request, all County Data held by Contractor, and after return of same, Contractor shall destroy all copies thereof still in Contractor's possession, at no charge to County. Such data delivery shall be in an electronic format to facilitate archiving or loading into a replacement application. County and Contractor shall mutually agree to the specific electronic format; provided that if such electronic format is other than the data's raw format, then reformatting such data shall constitute additional services pursuant to this paragraph.

Except for termination for cause by Contractor, upon termination of the Agreement, County shall have the right, for up to twelve (12) months (the "Transition Period"), at County's option and request, to continue its subscription to the Cloud Services and Software at the then-applicable fees, however, the subscription fees shall be prorated and paid in advance on a monthly basis during such time, and the amount of such subscription fee shall remain subject to the limitations set forth in the Agreement regarding any increase in such fee. Continuation of the subscription during the Transition Period shall be subject to the terms and conditions of this Agreement, which shall survive until the Transition Period ends.

**22. Disaster and Emergency Response Plan**

Contractor will develop and maintain a Disaster and Emergency Response Plan ("Emergency Plan") that includes all of the elements set forth in this Section, where applicable in providing the contracted Services. The Emergency Plan will also include site-Specific emergency response plan(s) for each of the sites at which Contractor provides Services pursuant to this Agreement ("Site Plans"). The Emergency Plan and associated Site Plans will address Contractor preparations to effectively respond in the immediate aftermath of a national, state or local disaster or emergency ("Emergency Response") and plans for the ongoing continuation of Services under the Agreement during and after a disaster or emergency ("Continuity of Operations").

Contractor will update the Emergency Plan and associated Site Plans as circumstances warrant. Contractor shall train employees on the Emergency Plan and the Emergency Plan will include a description of how employees will be trained.

In the event that the Contractor is required to implement the Emergency Plan during the term of the Agreement, the parties will confer in good faith to ensure Emergency Response and/or Continuity of Operations owing to the particular nature of the emergency, as well as whether the circumstances warrant additional compensation by the County for additional staff, supplies and services needed for such Emergency Response and/or Continuity of Operations.

Contractor shall reasonably cooperate with the County in complying with processes and requirements that may be imposed by State and Federal agencies (including, but not limited to the California Governor's Office of Emergency Services and the Federal Emergency Management Agency) in connection with reimbursement for emergency/disaster related expenditures.

In a declared national, state or local disaster or emergency, Contractor and its employees will be expected to perform Services as set forth in the Agreement, including in the area of Emergency Response and Continuity of Operations, as set forth in the Emergency Plan and each Site Plan.

### **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](http://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](http://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

**25. Limitations of Liability**

- a. Except with respect to liability to the extent it arises from an unauthorized use or disclosure of PHI caused by the acts or omissions of a party or from a claim for which coverage is available under Contractor's Commercial General Liability insurance policy, the liability of each party and its affiliates, directors, officers, employees, and agents (including successors and assigns) for damages to the other party for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate contract price; except that, with respect to a contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the deliverable(s) or service(s) that gave rise to the loss, such that each party will have a separate limitation of liability for each purchase order.
- b. With respect to liability to the extent it arises from an unauthorized use or disclosure of PHI caused by the acts or omissions of a party, in no event shall either party's maximum aggregate liability to the other for any claims, costs, fines, fees, damages, or financial obligations of any kind exceed five million dollars (\$5,000,000).
- c. With respect to liability to the extent it arises from a claim for which coverage is available under Contractor's Commercial General Liability insurance policy, in no event shall Contractor's maximum aggregate liability to County for any claims, costs, fines, fees, damages, or financial obligations of any kind exceed one million dollars (\$1,000,000).
- d. To the maximum extent permitted by law, in no event shall either party, its affiliates, directors, officers, employees, and agents (including successors and assigns) or any Contractor licensor be liable for any consequential damages or for any other indirect damages, such as, but not limited to, special, incidental, exemplary, or punitive damages, even if it has been advised of the possibility of such damages. For clarity, the parties agree that Contractor's lost profits in the event of a termination of the Agreement due to County's breach shall be direct damages.
- e. Nothing herein shall be construed to waive or limit the County's sovereign immunity or any other immunity from suit provided by law.
- f. Subject to applicable statutes of limitations, no action or claim may be instituted more than forty-eight (48) months after the event giving rise to such claim.

**26. Confidentiality**

As used in this Agreement, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. However, Confidential Information will not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party without use of, or reference to, the Disclosing Party's Confidential Information. Except as otherwise permitted in writing by Disclosing Party, Receiving Party will (i) use the same degree

of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care); (ii) not disclose or use any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement; and (iii) limit access to Confidential Information of Disclosing Party to those of its employees, contractors, and agents who need such access for purposes consistent with this Agreement and who are bound by confidentiality obligations at least as stringent to those in this Agreement. For the avoidance of doubt, Receiving Party may disclose Confidential Information of Disclosing Party if it is compelled or required by law, including but not limited to the Freedom of Information Act (5 U.S.C. § 552), the California Public Records Act, California Government Code § 7928.801, or as required by a court order or when requested by the inspector general or law enforcement, to do so, provided that Receiving Party: (A) uses reasonable efforts to minimize any such disclosure and, to the extent permitted by applicable law, and, at Disclosing Party's expense, assists the Disclosing Party in preventing or restricting the disclosure; (B) where practicable and permitted by applicable law, gives the Disclosing Party prompt written notice of such requirement to disclose to enable the Disclosing Party to seek an appropriate protective order; and (C) uses reasonable efforts to require the recipient of such Confidential Information to preserve the confidential nature of the Confidential Information once disclosed.

## **27. County's Representations**

County represents and warrants as follows:

- a. That County possesses the legal right and ability to enter into this Agreement.
- b. That for Cloud Services and/or Software providing for the transfer and storage of data, County has all rights necessary to allow for the data to pass through computers outside of the jurisdiction in which such County Data originated. County further warrants and covenants and agrees that Contractor's pass-through of data on computers located outside of the jurisdiction in which such data originated does not and will not breach any applicable third party right or applicable law, regulation, convention, by-law, ordinance, or treaty. County grants Contractor all such licenses and permissions necessary for Contractor to store such County Data on computers located outside the jurisdiction in which such data originated.
- c. That County is responsible for (i) County's use of Contractor's Cloud Services and Software (including any activities under any Accounts registered in County's name or used by County employees or agents); (ii) breach of this Agreement or violation of applicable law by County or any of the County's end users; (iii) a dispute between County and any third-party over County's use of Contractor's Cloud Services and/or Software; (iv) any hardware or networks that County connects with the Cloud Services and/or Software; and (v) any security settings the County establishes to interact with or on the Cloud Services and/or Software.
- d. County acknowledges and agrees that County's and its users' access and use of the Cloud Services and Software is dependent upon access to Internet services. County will be solely responsible for acquiring Internet services and other hardware and software required to access and use the Cloud Services and Software, including, without limitation, all costs, fees, expenses, and taxes of any kind related to the foregoing. Contractor will not be responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such Internet services or any such hardware or software.

## **28. General Conditions on Use**

- a. As a condition to County's use of and/or access to any Contractor Cloud Services or Software, County agrees not to:
- i. Upload, store, access, or transmit any file that violates copyright that County does not have permission to share, that infringes on any intellectual property rights, patent, or trade secret, that violates the privacy rights of any person or organization, that is defamatory, obscene, offensive, or pornographic, that contains content that is racist, bigoted, defamatory, or harmful to any individual or group, or violates law or regulation or would give rise to civil or criminal liability;
  - ii. Access, tamper with, or use any non-public areas of the Cloud Services or Software or Contractor's servers or computer systems, or any other service providers involved in providing the Cloud Services, Software, and Services to County;
  - iii. Probe, scan, or test (or attempt to do any of the foregoing) the vulnerability of the Cloud Services or Software, or any related Contractor system or network, or breach any security or authentication measures used by Contractor in connection with the Cloud Services and Software and such systems and networks;
  - iv. Decipher, decompile, disassemble, create derivatives of, or reverse engineer (or attempt to do any of the foregoing) the Cloud Services or Software, or take steps to discover Contractor's Confidential Information (as defined in this Agreement) or trade secrets in the Cloud Services or Software;
  - v. Rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Cloud Services, Software, or Documentation;
  - vi. Use the Cloud Services or Software other than for County's internal business use;
  - vii. Remove any proprietary notices from the Cloud Services, Software, or Documentation;
  - viii. Build or assist someone else to build a competitive solution using similar ideas, features, functions, appearance, or graphics of the Cloud Services or Software;
  - ix. Harm or threaten to harm other users in any way, or interfere with, or attempt to interfere with, the access of any user, host, or network, including without limitation, by sending a virus, overloading, flooding, or spamming the Cloud Services or Software;
  - x. Send unsolicited email, junk mail, spam, chain letters, promotions, or advertisements for products or services;
  - xi. Impersonate or misrepresent County's affiliation with any person or entity;
  - xii. Violate any applicable law or regulation; or
  - xiii. Encourage or enable any other individual or organization to do any of the foregoing.

Contractor has the right to investigate suspected violations of any of the foregoing, to the fullest extent permitted by this Agreement and by law. Contractor may involve and cooperate with law enforcement authorities in prosecuting County or users who violate this Agreement. County acknowledges that, although Contractor has no obligation to monitor County's use or access to the Cloud Services or Software, it has the right to do so: (a) for the purposes of operating the Cloud Services and Software, (b) to ensure County's compliance with this Agreement, (c) to comply with applicable law, or the order or other requirement of a court, administrative body, security agency, or other governmental body; and (d) to investigate possible infringement of any intellectual property rights or privacy rights or violation of any privacy or security laws or regulations.

## **29. Suspension.**

Notwithstanding anything to the contrary in this Agreement, Contractor may temporarily suspend County's and any user's access to any portion or all of the Cloud Services and/or Software if: (i) Contractor reasonably determines that (A) there is a threat or attack on any of the Cloud Services or Software or

Contractor IP; (B) County's or any user's use of the Cloud Services or Software, or the County Data, disrupts or poses a security risk to the Cloud Services, Software, or Contractor IP or to any other customer or vendor of Contractor; (C) County, or any user, is using the Cloud Services or Software for fraudulent or illegal activities; or (D) Contractor's provision of the Cloud Services, Software, or Services to County or any user is prohibited by applicable law; or (ii) any vendor of Contractor has suspended or terminated Contractor's access to or use of any third-party services or products required to enable County to access the Cloud Services or Software (any such suspension described in subclauses (i) or (ii), a "Service Suspension"). Contractor shall use commercially reasonable efforts to provide written notice of any Service Suspension to County and to provide updates regarding resumption of access to the Cloud Services and/or Software following any Service Suspension. Contractor shall use commercially reasonable efforts to resume providing access to the Cloud Services and/or Software as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Contractor will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that County or any user may incur as a result of a Service Suspension.

### **30. Spam and Unsolicited Fax Policy.**

Contractor does not permit its customers to use its Cloud Services or Software as a location for responses to email or fax spam offers.

- a. If County believes it is in receipt of email or fax spam that uses a facsimile number as a location for responses, County should take the following steps:
  - i. If the email or fax contains an email address, telephone number, fax number, or other contact information to "unsubscribe" from receipt of additional messages, County should affirmatively unsubscribe;
  - ii. If County receives an unsolicited fax from another customer of Contractor's Cloud Services or Software, County should contact the sender to request removal from all lists. County may additionally email support@biscom.com to request to have the outbound transmission to County's Biscom fax numbers blocked. Notwithstanding the above, Contractor assumes no responsibility or liability for unsolicited faxes, including unsolicited faxes sent from another customer of Contractor's Cloud Services or Software.
- b. At Contractor's option and without further notice, Contractor may use reasonable technologies and procedures, such as filters, that may terminate the transmission of such unsolicited faxes without delivering them. Contractor is not responsible for blocking or filtering unsolicited faxes sent to customers. The transmission of unsolicited fax advertisements is illegal in the United States under the Telephone Consumer Protection Act of 1991 (47 USC 227) (see <https://www.fcc.gov/general/telemarketing-and-robocalls>) and is also illegal under the laws of a number of other countries, states, and provinces. Distribution of unsolicited fax advertisements through Contractor's Cloud Services or Software is prohibited.
- c. County hereby acknowledges and agrees that Contractor, as owner of all facsimile numbers associated with Contractor's Cloud Services and Software, has any and all rights to assert any and all legal claims available against any third party as a result of County's receipt of any unsolicited faxes on Contractor's facsimile numbers, including but not limited to claims under the Telephone Consumer Protection Act of 1991 ("TCPA"), as amended by the Junk Fax Prevention Act ("JFPA"). To the extent County does have any rights to bring any such claims, County hereby assigns any and all such rights to Contractor, to the greatest extent permitted by law.

### **31. Export Control.**

*Template Version May 2021*

Certain Software uses Commercial Computer Software under Federal Government Acquisition Regulations and Agency supplements to them. The export of the Software is governed by the U.S. Department of Commerce under its export administration regulations. County may not remove or export from the United States or to any prohibited country, entity, or person for which a United States export license or other United States governmental approval is required, or allow the export or re-export of any part of the Software or applicable Documentation incorporated in the Software, if any, or any direct product thereof, in violation of any restrictions, laws, or regulations of the United States Department of Commerce, the United States Department of Treasury, Office of Foreign Assets Control, or any other United States or foreign agency or authority.

**32. No Third Party Beneficiaries.**

Nothing in this Agreement will confer any rights upon any person other than the parties hereto and their respective successors and permitted assigns.

**33. Definitions.**

“Account” means the unique account that County may be required to create and register with Contractor to access and use certain Cloud Services and/or Software.

“Cloud Services” means all cloud software-as-a-service (“SaaS”) provided to County by Contractor pursuant to this Agreement (including all future upgrades, versions, and other modifications thereof), including but not limited to FAXCOM Anywhere, Biscom 123, Biscom SecureMail, Biscom Cloud, Transit, and Biscom Digital Fax.

“County Data” means data provided by or on behalf of County for processing by or through County’s use of the Cloud Services and/or Software.

“Documentation” means Contractor’s user manuals, handbooks, guides, and other end-user and training documentation relating to the Cloud Services, Software, or Services, provided by Contractor to County either electronically or in hard copy form, that are used, provided, accessed, or downloaded in connection with the Cloud Services, Software, or Services.

“Ordering Document” means quotes, purchase orders, sales orders, quotations or order forms, work orders, statements of work (“SOW”), and similar agreements entered into between Contractor and County for the purpose of ordering and providing Services, pursuant to this Agreement. Exhibit B to this Agreement is the initial Ordering Document.

“Services” means the products and services provided to County by Contractor pursuant to this Agreement and set forth on an Ordering Document. Services may include Cloud Services, professional services, and/or Software.

“Software” means on-premises software, in object code format, licensed by County from Contractor pursuant to this Agreement for a limited Term or subscription period as described in an Ordering Document, including any and all future updates, versions, and upgrades to such software.

\* \* \*

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

For Contractor: Biscom Inc.

<p style="font-size: small;">DocuSigned by: <i>William Cavanaugh</i></p> <p style="font-size: x-small;">454A76B83CB6493...</p>	<p>6/5/2024</p>	<p>William Cavanaugh</p>
Contractor Signature	Date	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 and subject to the terms and conditions set forth in this Agreement, Contractor shall provide the following services (the “Services”):

Access during the subscription term as set forth in Exhibit B and as otherwise may be set forth in this Agreement to the Cloud Services described in the table below.

A license, as more fully described in the Agreement, to use the Software described in the table below during the subscription term as set forth in Exhibit B and as otherwise may be set forth in this Agreement.

Professional services described in the table below.

<b>Service Name</b>	<b>Service Category</b>	<b>Service Description</b>
Standard Account Activation	Professional Services	Fee associated with activation of the Hybrid Cloud Account.
Biscom Fax SSO Connection	Software	Gives users the ability to leverage Single Sign On capabilities from the Queue.
Biscom Fax REST API	Software	Rest based API that can be used to send faxes, receive faxes, and check on fax status.
Biscom Fax Outlook Plug-In	Software	Plug in for Outlook that allows for easier sending of faxes.
Biscom Fax Multi-Functional Device SMTP Plug In	Software	Ability to send from MFP devices to the fax server via SMTP.
Biscom Fax Active Directory Connector	Software	Active Directory option which enables the Hybrid Queue to enable authentication via Active Directory.
Biscom Telephony Service: Fax Pages	Cloud Services	Pages that are transmitted and received via the cloud fax services.
Monthly Fax Number Fee - Toll Free, Local & Ported	Cloud Services	Monthly fax number management fee for all types of fax numbers.
Biscom Hybrid Fax Suite (Subscription)	Cloud Services	Monthly subscription for access to the hybrid cloud fax services and to use the FAXCOM Suite software.
Porting Fees: Standard Numbers	Professional Services	Fees associated with the porting of fax numbers from the customer to Biscom.
Epic Enhanced Subscription	Software	Software that enables the sending and receiving of faxes from Epic via fax. The enhanced Epic integration also extends and includes the pre processing of statuses.
Epic Enhanced Implementation	Professional Services	Implementation fees associated with the installation of the Epic Enhanced features.



**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:

**One-Time Fees:**

Item #	Product Description	Unit Price - Actual	Unit Quantity	Price Basis	Total
20701002	Standard Account Activation	\$ 440.00	1		\$ 440.00
12991010	Biscom Fax SSO Connection	INCLUDED	1		\$ -
12991006	Biscom Fax REST API	INCLUDED	1		\$ -
12991007	Biscom Fax Outlook Plug-In	INCLUDED	1		\$ -
12991008	Biscom Fax Multi-Functional Device SMTP Plug In	INCLUDED	1		\$ -
12991009	Biscom Fax Active Directory Connector	INCLUDED	1		\$ -
23601006	Porting Fees: Standard Number	\$ 825.00	1	50 lines	\$ 825.00
12701032	Epic Enhanced Implementation	\$ 2,705.58	1	25K Pages Estimated	\$ 2,705.58
<b>Total - One-Time Fees:</b>					<b>\$ 3,970.58</b>

**Payment Schedule:**

Standard Account Activation – Due at signing  
 Porting Fees: Standard Numbers – Due at porting, \$16.50 each line.  
 Epic Enhanced Implementation – Due at signing

**Recurring Fees:**

Item #	Product Description	Unit Price - Actual	Price Basis	Recurring Monthly Fees	Recurring Annual Fees	Total Contract Value
23600004	Biscom Telephony Services: Fax Pages **	\$ 0.05040	25K Pages Estimated	\$ 1,260.00	\$ 15,120.00	\$ 75,600.00
23600009	Monthly Fax Number Fee - Toll Free, Local & Ported	\$1.65 per month, per line	50 Lines Estimated	\$ 82.50	\$ 990.00	\$ 4,950.00
20300001	Biscom Hybrid Fax Suite (Subscription)	\$ 538.32		\$ 538.32	\$ 6,459.84	\$ 32,299.20
12300031	Epic Enhanced Subscription	\$ 737.41		\$ 737.41	\$ 8,848.96	\$ 44,244.82
<b>Recurring Fees Totals:</b>				<b>\$ 2,618.23</b>	<b>\$ 31,418.80</b>	<b>\$ 157,094.02</b>

**Other Fees:**

Item #	Product Description	Total
SMC-1	Additional for Overage for subscriptions and Usage	\$175,000.00
SMC-2	Contingency Funds	\$63,935.40
Total - Additional Usage/Contingency:		\$238,935.40

**Summary of fees:**

Fee Description	Total
One-Time Fees	\$3,970.58
Recurring Fees	\$157,094.02
Other Fees	\$238,935.40
Total:	\$400,000.00

**\*\* NOTE:** The line item for Biscom Telephony Service: Fax Pages reflects an estimate based on a per-page fee based on County's estimated volume multiplied by County's estimated page volume; however, County will be billed based on actual volume used.

**Product-Specific Terms and Conditions:**

- a. The subscription term for the Cloud Services and Software set forth in this Exhibit B is 60 months.
- b. The billing cycle for Cloud Services is on a calendar month basis. Contractor invoices for Cloud Services subscription fees monthly, in advance. The first month's Cloud Services subscription fees will be invoiced upon County's execution of the applicable Ordering Document. Partial months (if any) will be pro-rated. Contractor invoices for Cloud Services consumption/usage fees monthly, in arrears.

## Exhibit C

### Service Level Agreement Schedule

This Service Level Agreement Schedule (“SLA”) defines Contractor’s commitments to provide support and maintenance for the Cloud Services and Software. Capitalized terms used but not otherwise defined herein shall have the same meanings assigned to them in the Agreement.

#### 1. **Definitions.**

a. “**Services Availability**” or “**Available**” will mean, with respect to any particular calendar month and any particular Cloud Services application, the ratio obtained by subtracting Unscheduled Downtime for such application during such month from the Total Time during such month, and thereafter dividing the difference so obtained by the Total Time during such month.

b. “**Emergency Maintenance**” will mean Contractor’s efforts to correct conditions that are likely to cause a material service outage and that require immediate action. Emergency Maintenance may temporarily degrade the quality of the Cloud Services, including the possibility of outages not to exceed sixty (60) minutes in duration. Contractor may undertake Emergency Maintenance at any time deemed necessary to prevent or repair an issue and shall use commercially reasonable efforts to provide a notice of Emergency Maintenance to County as soon as is practicable.

c. “**Excused Downtime**” will mean the total amount of time during any calendar month, measured in minutes, during which County is unable to access and use the Cloud Services due to Scheduled Downtime, due to a force majeure event outside Contractor’s reasonable control, or due in whole or in part to: County’s breach of the Agreement, including but not limited to County’s non-compliance with limitations and restrictions applicable to County’s use of the Cloud Services; incompatibility of County’s equipment or software with the Cloud Services or failure of County’s equipment or software to meet applicable technology requirements as further described in Section 7; County’s network and/or Internet service, Emergency Maintenance, County-caused outages or disruptions, interconnections to or from and within Internet Service Provider (ISP) networks not contracted by Contractor, or interruptions caused by telecom carriers or Internet Service Providers.

d. “**Scheduled Downtime**” will mean the total amount of time during any calendar month, measured in minutes, during which County and authorized users are unable to access and use the Cloud Services due to planned maintenance and upgrades to the Cloud Services performed by Contractor. Contractor will use commercially reasonable efforts to provide a notice to County and users ahead of any scheduled maintenance or upgrade that Contractor expects will have an impact on the Cloud Services’ availability. Contractor will use commercially reasonable efforts to perform maintenance and upgrades that Contractor anticipates will impact the application between 11:00 P.M. to 5:00 A.M. ET Monday through Friday and all day Saturday, Sunday, and Contractor holidays. Contractor Holidays include: New Year’s Day, Martin Luther King Jr. Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Indigenous Peoples’ Day, U.S. Presidential Election Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve, and Christmas Day.

e. “**Total Time**” will mean the total amount of time during any calendar month, measured in minutes, during which County is intended to be able to access and use the Cloud Services, calculated by subtracting Scheduled Downtime from the total number of minutes in the month.

f. “**Unscheduled Downtime**” will mean the total amount of time during any calendar month, measured in minutes, during which a Severity Level 1 problem causes the Cloud Services to be unavailable to County to access and/or use, other than Excused Downtime; provided that Unscheduled Downtime for a Severity Level 1 problem (as classified by Contractor) will commence on the earlier of (i) Contractor’s receipt of County’s notification via a support request, and (ii) Contractor’s otherwise becoming aware of the Severity Level 1 problem.

2. **Services Availability.** The Cloud Services will be Available at levels at or above 99.5% as measured each calendar month.

3. **Service Credits.** Service credits for Contractor’s failure to achieve the Services Availability level defined in Section 2, above, as measured by Contractor each calendar month, will be available as follows. For each hour of Services Availability below 99.5% for a Cloud Services application, the service credit shall be equal to 1/30th of the current monthly (or prorated monthly, if recurring fees are annual)

recurring service fees (Monthly Charge, Line Charges, User Fee, Site Fee) for the affected Cloud Services. Upon County's request within 30 days after the end of the calendar month in which the Cloud Services Availability failure occurred, Contractor will apply Service credits for such failure as a credit on County's next invoice or bill. If County does not timely request that Contractor apply the Service credit, then such service credit will be waived. The maximum service credit in any month shall not exceed that month's recurring service fees.

4. **Notification of Outages/Services Status.** Customer notifications are provided via a posted message on the Contractor Cloud Application status page (<https://status.biscomcloud.com/>). Customers may subscribe to receive updates when status changes are posted and updated on the site. Contractor will use commercially reasonable efforts to notify customers within thirty (30) minutes of Contractor's becoming aware of a Severity Level 1 problem, or as soon thereafter as is reasonable. Notification updates including expected resolution times will be posted as and when available.

5. **Customer Support Hours.** For problems not classified by Contractor as Severity Level 1 problems ("Non-Emergency Problems"), Contractor will respond to support requests based on the Severity Levels Chart, below. Contractor standard support is available from 8:30 AM to 7:00 PM ET, Monday through Friday, excluding Contractor company holidays ("normal business hours"). Contractor Holidays include: New Year's Day, Martin Luther King Jr. Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Indigenous Peoples' Day, U.S. Presidential Election Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve, and Christmas Day. County may pay an additional fee, set forth on an Ordering Document or other order form, for 24/7 support.

6. **Reporting Problems.** County will use best efforts to report problems it identifies as Severity Level 1 to Contractor immediately, and Non-Emergency Problems within one (1) business day. Severity Level 1 problems can be reported during normal business hours via telephone, email to [support@biscom.com](mailto:support@biscom.com), and/or via the Support Portal. For customers with 24/7 support, Severity Level 1 problems occurring outside normal business hours must be reported using the telephone hotline number provided by Contractor. County reports of Severity Level 1 problems submitted to Contractor after hours for customers with standard support, or submitted to Contractor after hours via any method other than the hotline for customers with 24/7 support, will be received by Contractor at 8:30 AM on the next business day. Notwithstanding the Severity Level classification selected by County, Contractor shall determine the Severity Level applicable to a problem in its sole discretion.

7. **Technology Requirements.** County shall provide the internet access, firewall rules, technology and equipment reasonably identified by Contractor to support the Cloud Services and/or Software. County shall communicate, as needed, to its users the requirements for accessing and using the Cloud Services.

#### Severity Levels Chart

Severity Level	Description	Response Target
1	The complete loss of the ability to send and receive messages from multiple methods resulting in majority of Contractor customers unable to perform their normal functions using the Cloud Services.	30 Minutes
2	Critical loss of application functionality for multiple customers which includes one of: unable to transmit, unable to receive, loss of receive to certain types of numbers, and direct delays of over 30 minutes.	1 Hour
3	Moderate loss of application functionality including items such as cover pages, OCR,	4 Hours

	intermittent translation issues, higher than expected error rate for one customer, or critical loss for one customer.	
4	No loss of application functionality. Includes standard support request for configuration or installation help.	1 Business Day

## Exhibit D

### **FAXCOM Anywhere Hosted Fax Service Additional Terms and Conditions Schedule**

This FAXCOM Anywhere Hosted Fax Service Additional Terms and Conditions Schedule (these “Terms and Conditions”), sets forth additional terms and conditions of County’s use of the Biscom Fax FAXCOM Anywhere Hosted Fax service (the “FAXCOM Anywhere Service”) in addition to and in connection with the provisions of the Agreement. Capitalized terms used but not otherwise defined herein shall have the same meanings assigned to them in the Agreement. These Terms and Conditions constitute part of the Agreement. In the event the parties enter into an agreement that supersedes the Agreement, these Terms and Conditions will be incorporated into, and constitute part of, such superseding agreement.

#### **1. Definitions.**

1.1. “Account” shall mean either an Enterprise Account or an Office Account.

1.2. “Enterprise Account” shall mean FAXCOM Anywhere Enterprise Cloud Faxing services that make use of Contractor’s FAXCOM Suite software and FAXCOM Suite documentation which permits the customer to fax from their entire domain. Contractor’s enterprise customers connect their organization to Contractor’s cloud-based FAXCOM Servers where they perform transmission, reception, and translation of faxes. FAXCOM Suite supports a number of interfaces for sending and receiving faxes, including: email, mobile clients, web and desktop clients, and APIs.

1.3. “Office Account” shall mean the Office edition of Contractor’s Hosted Fax service which enables small-to-medium sized businesses to outsource faxing to the cloud while still keeping fax service management in-house. Office Accounts will have access to sending and receiving faxes from an email account, a web client or web services API.

2. **Description of FAXCOM Service.** Contractor offers the FAXCOM Anywhere Service at its website <https://www.faxcomanywhere.com/> (together with other websites owned and operated by Contractor, the “Website”). Provided that the Agreement is not terminated and County’s payments to Contractor are current, except as otherwise set forth in this Agreement Contractor will provide County with access to the FAXCOM Anywhere Service. The FAXCOM Anywhere Service provides County with access to standard fax numbers or, for an additional fee, “toll-free” fax numbers. An Ordering Document will set forth County’s Account type, class of FAXCOM Anywhere Service and features and service support level. The FAXCOM Anywhere Service is provided in the form of Office Accounts and Enterprise Accounts, as detailed in Section 1.

#### **3. Fax Storage.**

3.1. **Enterprise Account Storage.** If County is subscribed to an Enterprise Account, Contractor does not store any faxes on its hosted sites, and the service is a transient service, meaning once faxes are received at Contractor’s data centers, they are immediately sent to County’s site for distribution and storage.

3.2. **Office Account Storage.** If County is subscribed to an Office Account, its faxes are either delivered via email (SMTP), or County will access its faxes through a web client or programmatically through a web service. Faxes delivered through email are transient and immediately sent to the user without delay. Web client and web service users access faxes that are stored by Contractor. Faxes that are stored with Contractor will be limited to 90 days of storage and may be removed after that.

3.3. **Storage Generally.** Regardless of County's level of service, County acknowledges that Contractor may cease offering this storage feature or change its practices and/or limitations concerning this feature at any time, including, without limitation, changing the maximum number of days that fax messages will be retained, the maximum number of messages stored at any one time, and the maximum storage space allotted on Contractor's servers on your behalf. County further agrees that Contractor has no responsibility or liability whatsoever for any failure or malfunction of this feature, whether or not such failure prevents County from utilizing the feature, including but not limited to the storage or deletion of any faxes.

4. **Fax Numbers.** County understands and agrees that it is not the owner of any fax number ("Number") assigned to you by Contractor or in connection with the FAXCOM Anywhere Service. Ownership of any such number is vested solely in Contractor (which will assign such number to you for your use during the term of the Agreement). County understands and agrees that following the termination of its Account with the FAXCOM Anywhere Service for any reason, such Number may be re-assigned immediately to another Contractor customer, and to the maximum extent permitted by law, County agrees that Contractor will not be liable for damages (including consequential or special damages) arising out of any such re-assignment, and County hereby waives any claims with respect to any such re-assignment, whether based on contractual, tort, or other grounds, even if Contractor has been advised of the possibility of damages. Contractor may from time to time need to change the Number assigned to County (whether due to an area code split or any other reason whether outside or within Contractor's control). County agrees that Contractor will not be liable for damages (including consequential or special damages) arising out of any such change in the Number assigned to County, and to the maximum extent permitted by law, County hereby waives any claims with respect to any such change, whether based on contractual, tort, or other grounds, even if Contractor has been advised of the possibility of damages.

5. **Ported Fax Numbers.**

5.1. If County "ported in" any telephone number(s) in connection with County's use of the FAXCOM Anywhere Service, County is entitled to "port out" in connection with terminating its Account only if County satisfies, and subject to, the following requirements and conditions:

(a) County provides written notice to Contractor of its intention to "port out" such telephone number(s) no later than sixty (60) days after the date of termination of County's Account (the "porting notice period");

(b) County's new telephone carrier provides Contractor's telephone carrier with a duly executed porting request prior to the expiration of the porting notice period;

(c) County has paid Contractor for all Services provided to County prior to the date County provides notice of its intent to terminate its Account; and

(d) Prior to the expiration of the porting notice period, Contractor has received an administrative fee to cover its reasonable costs in the amount of U.S. \$40 per telephone number. County hereby authorizes Contractor to charge its account in the applicable amount for such administrative fees.

5.2. The porting process can be lengthy; if County would like to maintain its FAXCOM Anywhere Services during the porting process, County must maintain its Account in an active status and not terminate its Account until the porting out is complete. Regardless of when the port out is complete, County will continue to be responsible to pay all applicable Fees with respect to the telephone numbers until County formally terminates its FAXCOM Service. If County fails to satisfy any of the foregoing requirements set forth in Section 5.1, Contractor shall remain the customer of record of the Number(s) and County is expressly prohibited from causing or attempting to cause such number(s) to be transferred to any other service provider, telephone carrier, or any other person or entity. Contractor also retains the right to reclaim the number(s) from County after the number(s) are ported out in contravention with these requirements and to seek equitable relief and damages. County understands and agrees that even if it satisfies the requirements set forth in this Section 5, technical or procedural difficulties or interruptions may occur, including difficulties and interruptions caused by third party carriers and outside of Contractor's control, when attempting to port out these Numbers and such difficulties or interruptions may prevent County's new carrier from porting the numbers. Contractor is not responsible for such technical or procedural difficulties or interruptions, and County will receive no refund of administrative fees paid.

## **6. Unsolicited Fax Advertisement.**

6.1. County acknowledges that technologies and procedures such as filters, that Contractor, in its sole discretion, may use in order to attempt to terminate unsolicited fax advertisements without delivering them, may work imperfectly. County releases Contractor from any claims arising out of the imperfect filtering of same.

6.2. Because Contractor's Numbers may be reassigned to other customers in the event County's Account is terminated or canceled, and to ensure the best possible service for all customers, County is not permitted to "opt in" to receive spam faxes on the Number(s) provided for County's use under the terms of this Agreement.



## 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 (i) as permitted or required by the Agreement, (ii) as directed by County in writing, or (iii) 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 perform the Services pursuant to this Agreement consistent with the minimum necessary rule under HIPAA.
- 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, except that Business Associate may disclose PHI for the proper business management and administration of Business Associate or to carry out its legal responsibilities, if required by law, or if Business Associate has obtained reasonable assurances that the recipient will (A) hold such PHI in confidence, (B) use or further disclose it only for the purpose for which it was received or as required by law, and (C) notify Business Associate of any instance of which the recipient becomes aware in which the confidentiality of such PHI has been breached; and as otherwise required by law.
- 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 restrictions and conditions as least as restrictive 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 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.
- 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 Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- k. As applicable to the Services, 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 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 meet 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 five (5) 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.

## **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 and any other written agreement between the Parties; provided that such use or disclosure would not violate the Privacy Rule if done by County.

## **OBLIGATIONS OF COUNTY**

- a. County shall notify Business Associate of any limitation(s) in the notice of privacy practices that County produces in accordance with Section 164.520, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI.
- b. County shall inform Business Associate of 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 Business Associate is required to abide by pursuant to Section 164.522, to the extent that such restriction may impact the use and/or disclosure of PHI by the Business Associate under this Agreement.
- d. County shall comply with the minimum necessary requirements under the HIPAA Rules in its use of Business Associate's Services.

## **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. In the event that the Parties are unable to reach agreement on applicable terms necessary to comply with changes in HIPAA, then either Party may provide the other with at least 60 days advance written notice of termination of this Agreement and neither Party shall have any further obligation hereunder except for (i) obligations occurring prior to the date of termination; and (ii) obligations, promises or covenants contained herein which are expressly made and intended to extend beyond the term of this Agreement.
- 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.

## **Attachment IP Intellectual Property Rights**

---

1. The County of San Mateo (“County”), shall and does own all titles, rights and interests in all County Data. Contractor makes no claim to any right of ownership in County Data. Contractor may not sell, transfer, or permit the use of any County Data, other than to provide the Services under the Agreement, without the express written consent of the County.
2. By transmitting or permitting County Data to be transmitted, County represents and warrants to Contractor that County is the owner of all rights to that County Data, or that County otherwise has the right to reproduce and distribute it.
3. Contractor shall and does own all titles, rights and interests in all of Contractor’s proprietary information, materials, prototypes, themes, inventions, computer software, programs, files, databases and compilations, specifications, descriptions, flow charts, design specifications, screens, user interfaces, report formats, development tools, templates, menus, buttons, and icons, and other work products used to design, plan, organize, and develop any of the foregoing or any document related thereto that were known or possessed by Contractor relating to the Cloud Services and/or Software hereunder and any change/enhancements to the foregoing made by or on behalf of Contractor during the term of this Agreement including, but not limited to the Cloud Services and Software and any and all related updates, revisions, extensions, derivative works thereof and corrections to the Cloud Services and Software or that add additional features, functionality or capabilities to such Cloud Services and Software (the “Contractor IP”), even if the intellectual property is enhanced or improved by Contractor utilizing County’s feedback or suggestions.
4. Contractor IP will remain the sole and exclusive property of Contractor; and Contractor IP will be considered and treated as Confidential Information of Contractor. County shall not unbundle any embedded Contractor IP and shall not use or disclose or resell Contractor IP in any manner. County shall not have the right to assign, except as permitted in this Agreement, or sublicense the rights in the Contractor IP granted under this Section. County Data and County’s confidential information will remain the sole and exclusive property of County; and County Data and County’s confidential information will be considered and treated as Confidential Information of County.
5. Biscom, the Biscom logo, and all other Contractor trademarks, service marks, product names, and trade names of Contractor are owned by Contractor. All other trademarks, service marks, products names, and logos appearing on the Cloud Services and/or Software are the property of their respective owners. County may not, without Contractor’s prior written consent in each instance, use or display, apart from any use or display through County’s use of or access to the Cloud Services and Software or the outputs generated therefrom, any trademark, service mark, product name, trade name, or logo appearing on or from any Contractor Cloud Services, Software, or server.