

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND ORIGAMI RISK LLC

This Agreement is entered into this _____ day of _____, 2016, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Origami Risk LLC, hereinafter called "Contractor."

* * *

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

Whereas, it is necessary and desirable that Contractor be retained for the purpose of a Risk Management Information System.

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

1. Exhibits and Attachments

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

- Exhibit A—Services
- Exhibit B—Payments and Rates
- Attachment H—HIPAA Business Associate Requirements
- Attachment I—§ 504 Compliance
- Attachment IP – Intellectual Property

Capitalized terms that are not defined in the body of this Agreement shall have the meanings set forth in Exhibit A.

2. Services to be performed by Contractor

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

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. In no event shall County's total fiscal obligation under this Agreement and Statement of Work attached in Exhibit A (and not including any additional statements of work, addenda or other written agreements between the parties after the date of this Agreement) with respect to services performed by Contractor during the Initial Term (as defined below) exceed Two-hundred and eight thousand dollars (\$221,660).

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from February 1st, 2016, through January 31st, 2019 (the "Initial Term"). Contractor has offered an option to extend the contract by two additional years with a 3.5% annual increase in fees. Pursuant to such option, County shall have the right to renew the term for an additional year extension (with an automatic 3.5% annual

increase in the fees for each such renewal) after the end of each of year 3 and year 4 of the term by providing written notice to Contractor at least thirty (30) days prior to such renewal date.

5. Termination; Availability of Funds

This Agreement may be terminated by Contractor or by County at any time if the other party breaches any material term (including, without limitation, County's payment obligations or Contractor's material nonperformance) and fails to cure such breach within 30 days after receipt of written notice thereof. Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement. If County terminates this Agreement for Contractor's breach in accordance with this Section, Contractor shall refund to County, within 45 days of the effective date of such termination, any prepaid but unearned fees paid to Contractor in advance by County. County's failure to cause a User (as defined in Exhibit A) to comply with the terms of this Agreement or any uncured User noncompliance shall constitute a material breach of this Agreement by County.

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

Upon the termination of this Agreement: (i) Contractor shall deactivate the Permissions and cease providing services to County, and County and its Users shall cease use of the services (ii) Contractor shall invoice County for all accrued fees, including the full amount of any implementation fees specified in Exhibit A or Exhibit B, and all reimbursable expenses. County shall pay the invoiced amounts, including from previously issued invoices, within 30 days of County's receipt of such invoice; and (iii) if requested by County no later than 30 days of the termination of this agreement and not more often than annually, and if County has paid all invoiced fees, Contractor will at its expense provide electronic files containing County's data for claims, transactions, locations, policies, values, fleet, contacts, notes, and tasks. Additionally, upon termination of this Agreement, the parties may agree in writing for the provision by Contractor of certain transition services at Contractor's then-prevailing hourly rates. The term and scope of such transition services shall be as set forth in a written agreement between Contractor and County.

Rights and obligations under this Agreement which by their nature should survive shall remain in effect after the termination or expiration of this Agreement.

6. Contract Materials

Except as otherwise set forth in Attachment IP, at the end of this Agreement, or in the event of termination, all County Data (as defined in Exhibit A) shall remain the property of County as set forth in Attachment IP.

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 indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from the performance of any work or services required of Contractor under this Agreement, brought by a third party for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents; or
- (B) damage to any tangible personal property of any kind whatsoever and to whomsoever belonging.
- (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) contractor's duty to indemnify and 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.

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.

b. Intellectual Property Indemnification

Contractor hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services 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 warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless 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 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); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services 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 services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent, or (iii) if none of the foregoing alternatives is reasonably available to Contractor, terminate this Agreement and refund to County any prepaid but unearned fees paid to Contractor in advance by County prior to the effective date of the termination.

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 services 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 services under this Agreement which have been used by County in a manner prohibited by this Agreement, and/or (c) use of any services under this Agreement in combination with a product not supplied by Contractor or use of any services under this Agreement other than in accordance with this Agreement or the Documentation (as defined in Exhibit A).

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

Neither party shall assign this Agreement or any portion of it to a third party (and Contractor shall not subcontract with a third party to provide services required by Contractor under this Agreement) without the prior written consent of the other party. Any such assignment or subcontract without the other party's prior written consent shall give such other party the right to automatically and immediately terminate this Agreement without penalty or advance notice.

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.

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. Contractor shall obtain County's prior written approval (not to be unreasonably withheld) before making any change to the limits or coverage of any insurance policy that would result in a breach of the requirements set forth in this Section. Contractor shall furnish County with certificates of insurance evidencing the required coverage. Contractor shall provide notice, in writing, to County of any pending change in the limits of liability or policy cancellation in violation of the requirements of this Section.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for

workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

Comprehensive General Liability... \$1,000,000

(Applies to all agreements)

Motor Vehicle Liability Insurance... \$1,000,000

(To be checked if motor vehicle used in performing services)

Professional Liability..... \$1,000,000

(To be checked if Contractor is a licensed professional)

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

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

11. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and

applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Further, Contractor certifies that it and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware. Accordingly, Contractor shall not use any non-recyclable plastic disposable food service ware when providing prepared food on property owned or leased by the County and instead shall use biodegradable, compostable, reusable, or recyclable plastic food service ware on property owned or leased by the County.

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

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, and the parties agree that Contractor will not be providing services to members of the public under this Agreement, so this Section and Attachment I shall not be applicable to Contractor.

d. Compliance with County's Equal Benefits Ordinance

With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:

- Contractor complies with Chapter 2.84 by offering the same benefits to its employees with spouses and its employees with domestic partners.
- Contractor complies with Chapter 2.84 by offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
- Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- Contractor does not comply with Chapter 2.84, and a waiver must be sought.

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 must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or Section 11, above. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

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

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

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

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 if this Agreement’s total value listed Section 3, above, is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85’s requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

14. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed.

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

(c) Contractor agrees upon reasonable advance written notice to provide to County, to any Federal or State department having monitoring or review authority, to County’s authorized representative, and/or to any of their respective audit agencies the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations; provided that any such examination shall be subject to appropriate confidentiality restrictions and shall be conducted in a manner that is not materially burdensome to Contractor’s business, and the cost of any such examination shall be borne by the examining party and not Contractor., .

15. CONFIDENTIALITY.

(a) Definition. “Confidential Information” means all confidential and proprietary information of a party, including, without limitation, business plans, strategies, products, software, source code, object code,

clients, data models, discoveries, inventions, developments, know-how, improvements, works of authorship, concepts, or expressions thereof, whether or not subject to patents, copyright, trademark, trade secret protection or other intellectual property right protection. County Data is the Confidential Information of County. Contractor's Confidential Information includes this Agreement and all Proprietary Rights with respect to the Services, Software, Custom Software and Work Product.

(b) Confidential Information. Each party acknowledges and agrees that during the term of this Agreement it may be furnished with or otherwise have access to Confidential Information of the other party. The party that has received Confidential Information (the "Receiving Party"), in fulfilling its obligations under this Section, shall exercise the same degree of care and protection with respect to the Confidential Information of the party that has disclosed Confidential Information to the Receiving Party (the "Disclosing Party") that it exercises with respect to its own Confidential Information, but in no event shall the Receiving Party exercise less than a reasonable standard of care. The Receiving Party shall only use, access and disclose Confidential Information as necessary to fulfill its obligations under this Agreement or in exercise of its rights expressly granted hereunder. Receiving Party shall not directly or indirectly disclose, sell, copy, distribute, republish, create derivative works from, demonstrate or allow any third party to have access to any of Disclosing Party's Confidential Information; provided that: (i) Receiving Party may disclose the Disclosing Party's Confidential Information to its Affiliates who have a need to know; (ii) Contractor shall have a right to disclose County's Confidential Information to County's Affiliates and Service Providers, and Contractor's employees and other agents; and (iii) all use of the Disclosing Party's Confidential Information shall be subject to all the restrictions set forth in this Agreement.

(c) Exclusions. The following information shall not be considered Confidential Information subject to this Section: (i) information that is publicly available or later becomes available other than through a breach of this Agreement; (ii) information that is known to the Receiving Party or its employees, agents or representatives prior to such disclosure or is independently developed by the Receiving Party or its employees, agents or representatives subsequent to such disclosure; or (iii) information that is subsequently lawfully obtained by the Receiving Party or its employees, agents or representatives from a third party without obligations of confidentiality. If the Receiving Party is required by law to disclose any portion of the Disclosing Party's Confidential Information, Receiving Party shall give prior timely notice of such disclosure to Disclosing Party to permit Disclosing Party to seek a protective or similar order, and, absent the entry of such an order, Receiving Party shall disclose only such Confidential Information as is necessary be disclosed in response to such subpoena, court order or other similar document.

(d) Survival. The obligations set forth in this Section shall expire two years after termination of this Agreement; provided that the confidentiality obligations for Confidential Information constituting trade secrets shall survive the termination of this Agreement.

16. INDEMNIFICATION BY COUNTY.

County agrees to indemnify, defend and hold harmless Contractor, its Affiliates, and all their officers, directors, members, managers, shareholders, employees and other agents for and against any damage, cost, liability, expense, claim, suit, action or other proceeding, to the extent based on or arising in connection with: (a) any breach of this Agreement by a County Party; (b) a County Party's violation of any Federal, state or local law, rule or regulation relating to its use of the Service or the conduct of such County Party's business, including such County Party's collection and use of any County Data; (c) a claim, which, if true, would constitute a breach of County's representations and warranties under this Agreement.

17. LIMITATION OF LIABILITY.

(a) Disclaimer of Damages. IN NO EVENT WILL CONTRACTOR BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN ANY ACTION ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT, INTENDED CONDUCT OR OTHERWISE, INCLUDING WITHOUT LIMITATION, DAMAGES RELATING TO THE LOSS OF PROFITS, INCOME, GOODWILL OR REVENUE, COSTS INCURRED AS A RESULT OF DECISIONS MADE IN RELIANCE ON THE SERVICE, LOSS OF USE OF THE SERVICE OR ANY OTHER SOFTWARE OR OTHER PROPERTY, LOSS OF DATA, THE COSTS OF RECOVERING OR RECONSTRUCTING SUCH DATA OR THE COST OF SUBSTITUTE SOFTWARE, SERVICES OR DATA, OR FOR CLAIMS BY THIRD PARTIES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) Limitation of Liability. UNDER NO CIRCUMSTANCES SHALL CONTRACTOR'S AGGREGATE MAXIMUM LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE PAYMENTS ACTUALLY MADE TO CONTRACTOR HEREUNDER DURING THE 12 MONTHS PRECEDING THE DATE ON WHICH ANY CLAIM IS MADE AGAINST CONTRACTOR; PROVIDED THAT (I) ANY CLAIM CAUSED BY CONTRACTOR'S NEGLIGENCE IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE PAYMENTS ACTUALLY MADE TO CONTRACTOR HEREUNDER DURING THE 24 MONTHS PRECEDING THE DATE ON WHICH SUCH CLAIM IS MADE AGAINST CONTRACTOR AND (II) ANY INDEMNIFICATION CLAIM UNDER SECTION 8 OF THIS AGREEMENT SHALL INSTEAD BE LIMITED TO THE AMOUNT OF THE APPLICABLE INSURANCE POLICY LIMIT AS REQUIRED BY SECTION 10 OF THIS AGREEMENT. THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 17(b) SHALL NOT APPLY TO ANY INDEMNIFICATION OBLIGATION OF CONTRACTOR SET FORTH IN SECTION 8 CAUSED BY THE WILLFUL MISCONDUCT OF CONTRACTOR OR ANY BREACH OF THE CONFIDENTIALITY OBLIGATIONS OF CONTRACTOR SET FORTH IN SECTION 15 OF THIS AGREEMENT DUE TO THE WILLFUL MISCONDUCT OF CONTRACTOR.

18. EXPORT CONTROL.

(a) Export. County shall not export or re-export any Software, Custom Software or Services without the prior written authorization of Contractor and, as may be required under United States laws and regulations, the prior written authorization of the United States Department of Commerce or other relevant agency of the United States Government. County also agrees that it will not knowingly export or re-export, directly or indirectly, any Software, Custom Software or Services (i) that it knows will directly assist in the design, development, production, stockpiling or use of missiles, nuclear weapons or chemical/biological weapons; (ii) to any entity on the Department of Commerce Entity List, currently available on the Internet at <http://www.bis.doc.gov>; (iii) to any person or entity on the Department of Commerce Denied Persons List, currently available on the Internet at <http://www.bis.doc.gov>; (iv) to any country subject to sanctions administered by the Department of the Treasury's Office of Foreign Assets Control (currently Angola (UNITA faction), Burma (Myanmar), Cuba, Iran, Iraq, Liberia, Libya, North Korea, Sierra Leone, Sudan, and areas of Afghanistan controlled by Taliban); or (v) to any entity or individual contained in the lists of prohibited entities and persons maintained by the Office of Foreign Assets Control, including the Specially Designated Nationals and Blocked Persons List and certain individuals in the former Republic of Yugoslavia listed in the Annex to Executive Order 13192, currently available on the Internet at <http://www.ustras.gov/ofac>.

(b) Disclaimer. Contractor makes no representation that the Service is appropriate or available for use in other locations. If County uses the Service from outside the United States of America and/or the European Union, County is solely responsible for compliance with all applicable laws, including export and import regulations of other countries. Any diversion of the Service contrary to United States or European Union (including European Union Member States) law is prohibited.

19. Publicity.

Contractor may publicize the fact that County has procured a license for the Service. Contractor will not state or imply that County endorses or recommends the Service without the written permission of County. From time to time Contractor may compile and sell databases of risk management information. Subject to Contractor's confidentiality obligations set forth above, County agrees that Contractor may use de-identified and/or aggregated County Data for these purposes: provided that Contractor shall not publicize any identifiable information that can be tracked specifically to County, and Contractor shall otherwise comply with the confidentiality requirements set forth in Section 15.

20. Merger Clause; Amendments; Waiver; Severability

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties. The parties may waive any provision in this Agreement only by a writing executed by the party against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition, under this Agreement, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver once given is not to be construed as a waiver on any future occasion or against any other person. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

21. Force Majeure.

Contractor shall have no liability for any failure or delay in performance of its obligations under this Agreement because of circumstances beyond its reasonable control, including without limitation, acts of God, fires, floods, earthquakes, wars, civil disturbances, terrorism, sabotage, accidents, unusually severe weather, labor disputes, governmental actions, power failures, viruses that are not preventable through generally available retail products, inability to obtain labor, material or equipment, catastrophic hardware failures, usage spikes, attacks on Contractor's server, or any inability to transmit or receive information over the Internet, (each, a "Force Majeure Event") nor shall any such failure or delay give County the right to terminate this Agreement.

22. Certain Remedies.

Each party acknowledges and agrees that (i) it would be extremely difficult, if not impossible, to calculate the actual damages in the event of Contractor's breach of any provision of Section 15 (Confidentiality) or Section 3(b) of Exhibit A of this Agreement or County's breach of any provision of Section 15 (Confidentiality) or Sections 2 or 3 of Exhibit A of this Agreement with respect to the Service or Contractor's Proprietary Rights or Confidential Information; and (ii) breach of any such provision would result in ongoing damages to the non-breaching party that could not be adequately compensated by monetary damages. Accordingly, each party agrees that in the event of any actual or threatened breach of any of the aforementioned provisions, the non-breaching party shall be entitled, in addition to all other rights and remedies existing in its favor at law, in equity or otherwise, to obtain injunctive or other equitable relief (including without limitation a temporary restraining order, a preliminary injunction and a final injunction) against the other party to prevent any actual or threatened breach of any such provision and to enforce this Agreement specifically, without the necessity of posting a bond or other security or of proving actual damages. **Counterparts.**

This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together shall constitute one and the same Agreement.

23. 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.

24. Notices

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

In the case of County, to:

Name/Title: Scott Johnson, Deputy Director, Human Resources
Address: 455 County Center, 5th Floor Redwood City, CA 94063
Telephone: (650) 363 4387
Facsimile: (650) 363 4864
Email: sjohnson@smcgov.org

In the case of Contractor, to:

Name/Title: Legal Department
Address: 444 N. Orleans Street, Chicago, IL 60654 USA
Telephone: (312) 546-6515

Email: legal@origamirisk.com

25. Electronic Signature

If 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, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Contractor: If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

* * *

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

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

Origami Risk LLC

Contractor's Signature

Aaron Shapiro
A Shapiro

Date:

1/25/2016

(April 1, 2015 CCC issued contract template version)

Exhibit A

Service Terms and Conditions

1. DEFINITIONS.

“Affiliate” means, with respect to a party, its parent company and subsidiaries and/or controlled corporations or entities which are directly or indirectly controlled.

“County Data” means the data provided or inputted by or on behalf of County, any User or Affiliate of County or any Third Party User for use with the Service.

“County Party” means County and each of its Affiliates and Users.

“Custom Software” means specifically modified reports, dashboard panels, or other features or modules of the Software created by Contractor for County described in a Statement of Work or other written agreement between the parties.

“Documentation” means all user guides, videos, embedded help text, and other reference materials generally furnished with respect to the Service, whether in printed or electronic format.

“Downtime” means one or more Service Interruptions together totaling more than 60 minutes in any one day (12 a.m. – 11:59 p.m.).

“Fees” means the fees payable pursuant to this Agreement as set forth in any Statement of Work.

“Non-Contractor Events” means any (i) act or omission of any County Party, including any delays in their performance or cooperation with respect to the obligations set forth in Section 2(j) below or any Statement of Work; (ii) failure of any County Party’s equipment or software (other than the Service); or (iii) Force Majeure Event.

“Permissions” means the username and password provided to County by Contractor or by County to Users for each User, as the same may be modified under the Service.

“Proprietary Rights” means worldwide intellectual and proprietary property owned or properly licensed by a party and all intellectual or proprietary property rights subsumed therein, including copyright, patent, trademark (including goodwill), trade dress, trade secret and know-how rights.

“Service” means the Software and Custom Software identified in the Statement of Work, together with any Updates thereto. The Service is accessible by County via <https://live.OrigamiRisk.com> or another designated web site or IP address, rendered to County by Contractor.

“Service Interruption” means County is unable to access the Service as provided herein, excluding (i) scheduled maintenance windows of which County is notified at least 24 hours in advance and which occur outside of normal business hours; (ii) scheduled repairs of not more than two hours duration in any one week period of which County is notified at least four hours in advance and which occur outside of normal business hours; (iii) critical repairs including security updates where advance notice cannot be reasonably provided and (iv) interruptions caused by transmission errors, Internet service providers,

vandalism, User error or other factors beyond Contractor's or its direct service providers' reasonable control.

"Service Provider" means a third-party service provider of County and/or its Affiliates.

"Software" means the object code version of the software products set forth in the deliverables section of any applicable Statement of Work hereto and made available to County under this Agreement by Contractor.

"Statement of Work" means any statement of work entered into and mutually approved in writing by the parties pursuant to this Agreement from time to time and attached hereto in Exhibit A.

"Third Party Technology" means proprietary technology of third parties that Contractor provides, or enables access to, as part of the Service.

"Third Party User" means any customer, consultant or Service Provider of County that is using or accessing the Service on behalf of the County.

"Third Party User Agreement" means the user agreement between a Third Party User and Contractor, as the same may be amended from time to time.

"Updates" means maintenance revisions, improvements, modifications, bug fixes, patches, corrections and enhancements to the Service that are provided by Contractor generally to its customers. The term "Updates" shall not include custom reports or enhancements for which Contractor charges a separate or additional fee.

"User" means any single employee, contractor, agent, customer, investor, consultant or Third Party User of County or any of County's Affiliates who uses or accesses the Service.

"Work Product" means software, programming, tools, documentation, and materials that are used, created, developed, or delivered by Contractor to County in connection with Custom Software, and all Proprietary Rights subsumed therein.

2. SERVICE.

(a) **Service.** Subject to the terms and conditions of this Agreement, during the term of this Agreement, Contractor shall grant County a non-exclusive right to permit its Users to access the Service, including all Updates, via the Internet. County, its Affiliates and Users may use the Service solely for internal business of County, its Affiliates and Users. Users shall use the Service in accordance with this Agreement and the applicable Statement of Work or the Third Party User Agreement and Documentation. *If Contractor offers County additional features ("Premium Features") that are not Updates or part of its Service offering, and if County chooses to accept such Premium Features, County and Contractor shall enter into an amended Statement of Work reflecting the Premium Features and the fees ("Premium Fees") for such Premium Features.*

(b) **Storage.** County may store County Data through the Service up to the amount set forth on the Statement of Work. If the amount of storage used exceeds this limit, County will be charged, on a monthly basis, the excess storage fees pursuant to the Statement of Work. Contractor will use commercially reasonable efforts to notify County when it has used approximately 80% of its included storage space; and County shall not be liable for any excess storage fees incurred prior to being notified that it has

exceeded the amount of included storage space set forth above. Contractor reserves the right to establish or modify its general practices and limits relating to storage of County Data, provided that the minimum amount of storage included without additional charge and any security or privacy measures relating to County Data may not be modified without County's prior written consent.

(c) **Restrictions.** Nothing in this Agreement shall be construed as a grant to County of any right to, and County shall not, and shall not permit any County User or any other third party to: (i) reproduce, license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or any portion thereof; (ii) distribute, disclose or allow use of any of the Service, or any portion thereof, in any format, through any timesharing service, service bureau, network or by any other means, to or by any third party; (iii) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms of the Service in any manner; (iv) create derivative works from, modify or alter any of the Service in any manner whatsoever; (v) use or access the Service in a manner that could damage, disable, overburden, or impair any Contractor servers or the networks connected to any Contractor server; (vi) interfere with any third party's use and enjoyment of the Service; (vii) attempt to gain unauthorized access to the Service, accounts, computer systems, or networks connected to any Contractor server; (viii) use any robot, spider or other automatic device or manual process to monitor or copy portions of the Service; (ix) use the Service in a manner intended to abuse or violate the privacy or property rights of others; or (x) access the Service in order to (A) build a competitive product or service, or (B) build a product using similar unique and confidential ideas, features, functions or graphics of the Service.

(d) **Users.** County may license the Service to the number of authorized Users as set forth on the Statement of Work. Each authorized User shall access and use the Service (i) in accordance with the terms of this Agreement and the applicable Statement of Work, Third Party User Agreement and Documentation, and, (ii) when applicable, through a unique and reasonably secure username and password as further described in the applicable Statement of Work, Third Party User Agreement or Documentation. The Service allows County to grant different levels of access to County Data, to different Users, as described in more detail in the Statement of Work. It is County's responsibility to designate the applicable access to be granted to each User. County shall cause all Users to comply with all obligations of County hereunder, to the extent applicable to Users. Except for County's and its Affiliates' system administrators where reasonably necessary for administrative or security purposes, no User may use the username/user identification or password of any other User.

(e) **Third Party Access.** County shall also have the right for County and its Affiliates to permit Third Party Users to access or use the Service in accordance with the terms and conditions of this Agreement and the applicable Statement of Work, provided that Third Party User has agreed in writing in advance to be bound by at least the same restrictions with respect to the Service as County or has entered into a Third Party User Agreement with Contractor. Any rights granted hereunder with respect to the Service to Third Party Users shall expire or terminate immediately upon the termination of the Agreement in accordance with its terms. County shall be fully responsible for (i) ensuring the compliance of each County Party with the terms and conditions of this Agreement and the applicable Statement of Work, Third Party User Agreement and Documentation and (ii) all violations of the terms or conditions of this Agreement and the applicable Statement of Work, Third Party User Agreement and Documentation by each County Party.

(f) **Professional Services.** During the term of this Agreement, Contractor will make available to County certain professional services to the extent set forth on the Statement of Work. County may also contract for expanded services for additional days and hours in accordance with Contractor's then-current

policies and prices. Notwithstanding the foregoing, Contractor will not be obligated to provide any support required as a result of, or with respect to, County's operating systems, networks, hardware, or other related equipment of County or County's or any of its Users', use of the Service other than in accordance with the applicable Statement of Work and Documentation and as permitted under this Agreement.

(g) Service Level. Downtime and other Service Interruptions shall not constitute a breach of this Agreement.

(h) Security. Contractor shall provide County with the ability to create, modify and assign Permissions required for each User to access the Service. County shall be solely responsible for safeguarding the Permissions and otherwise complying with the password and security procedures that Contractor may establish from time to time. County assumes full legal and financial responsibility for all instructions of any nature that are reasonably accepted and acted upon by Contractor in accordance with such Permissions. County shall promptly notify Contractor if it becomes aware that the security of its Permissions has been compromised.

(i) County Obligations. County shall: (i) provide Contractor with reasonable access to County's premises as appropriate to enable Contractor to perform its obligations hereunder; (ii) provide adequate resources to participate in or facilitate the performance of the Service; (iii) timely participate in meetings relating to the Service; (iv) assign personnel with relevant training and experience to work in consultation with Contractor; (v) provide the equipment required (<http://www.origamirisk.com/index.php/support/equipment>) to operate the Service; (vi) safeguard the user ID's, passwords and other security data, methods and devices furnished to County in connection with the Service and prevent unauthorized access to or use of the Service; (vii) be responsible for County networks, equipment and system security required or appropriate in connection with the Service; (viii) have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all County Data; (ix) transmit County Data only in an encrypted format, to be mutually agreed by the parties; and (x) take such other actions as are required of County pursuant to this Agreement, including any Statement of Work.

(j) County Warranty. The parties acknowledge and agree that during the term of this Agreement a County Party or other third parties may disclose certain County Data, including personally identifiable data regarding employees or other individuals, to Contractor for the benefit of a County Party. County represents and warrants to Contractor that: (i) each such County Party, and such other third parties are authorized to collect, use and disclose the County Data to Contractor for use and storage pursuant to this Agreement; (ii) such disclosure, use or storage does not and shall not violate applicable law or, if applicable, such County Party's agreements with or privacy notices to individuals with respect to whom the County Data relates; and (iii) County shall not request Contractor to use, store, disclose or otherwise process County Data in any manner that would not be permissible under applicable law or, if applicable, such County Party's agreements with or privacy notices to individuals with respect to whom the County Data relates, if done by County.

(k) Non-Contractor Events. County acknowledges and agrees that Contractor shall not be responsible or liable for any delay or failure in its performance of any duties or obligations pursuant to this Agreement, including any Statement of Work, if such delays or failures result or arise from any Non-Contractor Events.

3. LIMITED WARRANTY.

(a) **Software Warranty.** Contractor warrants that the Service will perform in all material respects in accordance with the Documentation when used in accordance with the terms of this Agreement on the hardware and with the third-party software specified by Contractor from time to time. County's sole remedy for any breach by Contractor of the warranty provided in this Section shall be replacement of the nonconforming Service, at Contractor's sole expense, as described herein. Contractor shall deliver to County replacement Service, a work-around and/or an error/bug fix as may be necessary to correct the nonconformity. In the event that County gives Contractor notice of an apparent nonconformity that Contractor reasonably determines is not due to any fault or failure of the Service to conform to the warranty provided herein, all time spent by Contractor resulting in such determination, including time spent attempting to correct the problem, shall be charged against County's client service hours, or, if client service hours have been exhausted, charged to County at Contractor's then current hourly rate for such services.

(b) **Service.** Contractor represents and warrants that the Service shall be performed in a professional and commercially reasonable manner consistent with the standard of care exercised by Contractor in performing similar services for other clients. County's sole remedy for breach of this warranty shall be re-performance of the nonconforming Service, provided that Contractor must have received written notice of the nonconformity from County no later than 30 days after the original performance of the Service by Contractor.

(c) **Disclaimers.**

(i) EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, CONTRACTOR MAKES NO WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SOFTWARE, CUSTOM SOFTWARE, WORK PRODUCT, THE SERVICES OR ANY OTHER SERVICES PROVIDED HEREUNDER OR THE USE THEREOF BY COUNTY AND ITS USERS, INCLUDING QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND CONTRACTOR HEREBY DISCLAIMS THE SAME. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, CONTRACTOR AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT: (a) THE USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE; OR (b) THE SERVICE, WILL MEET COUNTY'S REQUIREMENTS OR EXPECTATIONS; OR (c) ALL ERRORS OR DEFECTS IN THE SERVICE WILL BE CORRECTED.

(ii) COUNTY ACKNOWLEDGES AND AGREES THAT THE SERVICE IS A TOOL TO BE USED BY COUNTY IN THE COURSE OF EXERCISING ITS PROFESSIONAL JUDGMENT. THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. CONTRACTOR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS OUTSIDE OF ITS REASONABLE CONTROL. NO CONTRACTOR AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY EXPANSION, MODIFICATION OR ADDITION TO THIS LIMITATION AND EXCLUSION OF WARRANTIES IN THIS AGREEMENT.

(iii) Contractor shall not be responsible for: (A) any non-conformities of the Service with Documentation, omissions, delays, inaccuracies or any other failure caused by a County Party's

computer systems, hardware or software (other than the Service), including by interfaces with such third party software, or any inaccuracies that such systems may cause within the Service; or (B) any data that Contractor receives from a County Party or third party sources and including the data's accuracy or completeness, or County's claim handling or other decisions. Contractor disclaims any liability for interception of any such data or communications, including of encrypted data. County agrees that Contractor shall have no responsibility or liability for any damages arising in connection with access to or use of the Service by any County Party, other than as authorized by this Agreement.

4. FINANCIAL TERMS.

(a) Fees. County shall pay to Contractor the Fees as set forth in Exhibit B or as otherwise agreed in writing by the parties.

(b) Expenses. County shall reimburse Contractor for all pre-authorized in writing, reasonable, documented out of pocket travel, lodging, meal and other expenses reasonably incurred by Contractor in the course of performing the Service.

(c) Taxes. County shall be liable for any taxes, charges, tariffs, and duties and any interest and penalties arising under this Agreement, excluding taxes based upon Contractor's income. All such taxes shall be included in amounts invoiced by Contractor to County.

(d) Payments. All Fees under this Agreement shall be payable by County in accordance with Exhibit B or as otherwise agreed by the parties. Fees shall be due within 30 days of invoice date. Payments remitted after 30 days shall bear interest at one percent per month. Except as provided in Section 5 and Section 8(b) of the Agreement, all Fees paid hereunder are non-refundable. If County does not pay an invoice 15 days after notice that Contractor intends to terminate this Agreement for nonpayment, then this Agreement and all of County's rights hereunder will terminate without further notice.

Statement of Work

PROJECT SCOPE

Provide and implement Contractor's Risk Management Information System (RMIS) to County's Risk Management team to ensure accurate and consistent tracking and reporting of County's claims, policies, locations and exposures.

Project Priorities: The immediate priorities focus on 5 areas: (i) Convert and load data from spreadsheet sources, and County's TPA data source, (ii) Configure Locations Hierarchy, (iii) Configure Policy Management Features, (iv) Configure Claims, Transactions, and Notes TPA Data Feed from Northern Claims, and (v) Configure Employee Data Feed from Workday HR system

County plans to also utilize certificate tracking, and allocations. However, these items are lower priority and should be addressed after Go-Live.

(i) Convert and load data from spreadsheet sources, and County's TPA data source
Contractor will convert the County's previous Claims, Location, and Policy data and import into Origami Risk. This process requires the receipt of timely and accurate data from the County, and requires collaboration between Contractor and County to evaluate and resolve data anomalies uncovered throughout the conversion process.

(ii) Configure Locations Hierarchy

Contractor will work with County to configure and deploy the standard Locations and related features of Origami Risk to manage Location attributes for specific sets of RMIS users. Contractor and County will collaborate on the layout of the data sets for Locations and Values Collections along with any workflows, which may be triggered by the creation or edit of such records.

(iii) Configure Policy Management Features

Contractor will work with County to configure and deploy the standard Policy features of Origami Risk to manage Insurance Policies for specific sets of RMIS users. Contractor and County will collaborate on the layout of the data sets for Policies along with any workflows, which may be triggered by the creation or edit of such records.

(iv) Configure Claims, Transactions, and Notes TPA Data Feed from Northern Claims

Contractor will work with County to import WC Claims, Transaction, and Notes data from Northern Claims as part of the implementation project.

(v) Configure Employee Data Feed from Workday HR system

Contractor will work with County to implement one (1) interface for employee/HR data from County's Workday HR system as part of the implementation project.

COUNTY ROLES

County will identify a System Administrator ("County SA") who will be responsible for working with Contractor to implement Origami Risk and to provide ongoing production support to County's Users. The County SA and, from time to time, other County employees will be available to provide timely direction and feedback as needed by Contractor to complete the Contractor tasks in this Statement of Work. The County SA will also be responsible for setting up, assigning security rights, and maintaining user ids for all Users.

LICENSES

User Licenses

Light User: (6) Six.

These licenses have access to the dashboard, reports pre-configured for them, and read-only access to other areas of the system. Lite Users do not have access to the Administration features, and do not have access to those features listed within the Extended Functionality Licenses section below.

HR/Case Management Users: (8) Eight.

These licenses have access to Incident and Case Entry Screens in Origami, as well as to list views, dashboards and reports pertaining cases managed by the various Human Resources teams. HR/Case Management Users do not have access to the Administration features, and do not have access to those features listed within the Extended Functionality Licenses section below.

Full User: (12) Twelve.

These licenses have access to all the capabilities and features of Origami Risk, except those features utilized for adjusting claims such as check writing, setting reserves and calculating indemnity benefits, and except for those features listed within the Extended Functionality Licenses section below.

Claims Adjusting User: (0) Zero.

These licenses have access to all the features and capabilities of Origami Risk, except those features listed within the Extended Functionality Licenses section below.

Extended Functionality Licenses

Enterprise Portal Data Entry License:

Up to (500) records added per year. These licenses are not named licenses (and do not count toward the Light User and Full User licenses specified above) and have access only to enter records into an Anonymous Collection Portal, by clicking an Anonymous Collection Link generated via Origami Risk's Administration features.

Enterprise Grant Access License:

Up to (500) grants sent from Origami Risk per year. These licenses are not named licenses and the URL is sent from Origami Risk as a Data Entry Event email notification, giving time limited access to a single record.

Secure Email License:

Up to (0) Secure Emails sent per month. This license enables Origami Risk's secure email functionality, which provides password protected hosting for email communications from and to Origami Risk.

Automated EDI FROI/SROI State Reporting via ISO:

Up to (0) Open Claims annually. This license gives access to Origami Risk's interface with ISO for the purpose of EDI State WC reporting. Origami Risk will export a nightly file to ISO of all new and changed WC Claims to be processed by ISO and FROI/SROI's transmitted by ISO to individual states. ISO then delivers a file back to Origami Risk with any exceptions, driving adjuster notifications and workflow.

NOTE: In the event this option is added, the exhibit "Subcontractors" must be executed by County, a copy of which can be provided by Contractor upon request.

Enterprise Values Collection:

0 Zero. These licenses allow County's representatives in the field to enter data through Origami Risk's online platform pertaining to information necessary for renewal submissions, such as TIV, Square Footage, COPE information, or other such asset and exposure data as required by County.

ODG Integration User:

(0) Zero. This license enables Origami Risk's integration with ODG's Return to Work guidelines. This feature may only be utilized by those named users in the Claims Adjuster User or Full User License categories above. This feature queries ODG's RTW and treatment guidelines based on WC claim diagnosis codes.

NOTE: In the event this option is added, the exhibit "Subcontractors" must be executed by County, a copy of which can be provided by Contractor upon request.

Certificates License:

(0) Zero Insureds over initial 100. This license allows County to utilize Origami Risk's Certificate of Insurance tracking for third party Insureds, such as tenants, contractors or customers. The first 100 Insureds are provided at no additional cost, and this license provides the ability to track certificates for more than 100 Insureds.

* Features that require a third party agreement, usually for an additional fee, to be enabled in Origami Risk include:

- CMS 111 when using a third party provider.
- Advisen policy benchmarking.
- Predictive analytics via 3rd Parties
- EDI FROI/SROI via 3rd Parties

License Notes:

1. Origami Risk adds generally available features from time to time that may require configuration prior to use. If County requests Contractor's assistance in this configuration, Professional Services hours may be applied for any such configuration.

2. In addition to the generally available features, Origami Risk may occasionally deploy new functionality that will require an Extended Functionality License similar to those listed in the Extended Functionality License section above. These features may require additional fees based on record volume, number of additional users accessing the new features, or some other incremental cost driver. In such cases, additional fees will apply.

HOSTING

Contractor will host the application and data in a secure internet accessible environment. Contractor will backup County data at periodic intervals each day.

Hosting fees are based on:

Record count estimates provided by County as follows:

1. 21,000 claims
2. 50 GB for File Attachment storage

IMPLEMENTATION PROCESS

Implementation is the process of configuring Origami Risk for use by County including system settings, supporting the County in loading data, training users, and other work identified in this section of the Statement of Work. The implementation phase is completed when the County is able to utilize the Origami Risk platform for the above defined business purposes, referred to by Origami Risk as being Live in the system. Contractor will manage the overall implementation process, including scheduling and leading meetings, communicating with the team, follow up documentation, and maintaining the project schedule through the Go-Live date. County's provision of timely and accurate specifications, direction and feedback is essential to the implementation.

System Configuration

Contractor will:

- Develop the incident, claim, and HR case forms for Workers' Compensation Claims, Auto Losses, Property Losses, General Liability Claims, ADA/FEHA Cases, EEO cases, EEOC/ FEHA cases, ER/Labor, FMLA/CFRA, Leaves of Absences, Long Term Disability, Medical Malpractice Claims, Safety Programs/Reporting, and Occupational Health Records..
- Configure up to [2] default dashboards using standard Origami Risk dashboard widgets.
- Configure up to [10] reports using standard Origami Risk RMIS templates and/or the custom template design tool.
- Configure up to [2] report distribution lists.
- Configure claim form layouts for up to five lines of coverage
- Configure [1] Location form layout
- Configure up to [4] Contact form layouts
- Configure [1] Policy form layout
- Configure up to [5] data entry events with corresponding system actions
- Configure [0] values collection workflow
- Configure up to [0] Certificate Insured Profiles
- Configure up to [3] User Security Profiles
- Configure [0] Cost of Risk Allocation

County will:

- Provide specifications, direction, and feedback as needed by Contractor in a timely manner.
- Configure additional default dashboards, fields, forms, user roles, distribution lists, reports and other features as needed by County.

Convert Historical Data from San Mateo spreadsheets:

Contractor will:

- Convert the Legacy data and import into Origami Risk. Legacy data will include:
- Claims
- Incidents
- Transactions
- Notes
- Tasks
- Contacts
- Values
- Locations
- File attachments
- Certificates
- Profiles for certificate requirements
- List of "Insureds" (Tenants, Vendors, etc.)
- Fleet records
- HR Case records from Workday
- HR Case records from CaseTrak

County will:

Provide access to spreadsheets to Contractor in a timely manner.

Loading Other Supported Risk Data via Data Import Center

Contractor will:

- Provide training and support to County as needed for following import activities.

County will:

- Provide, or arrange to provide, spreadsheets containing County's risk data in the format supported by Origami Risk's Data Import Center.
- Utilize Origami Risk's standard Data Import Center tools to import the above risk data.

Loading TPA Claims Data for Data Processing

Contractor will:

- Provide County with text for data request letters suitable for requesting necessary data from each of the sources named above.
- Convert and load the initial system data from the sources named below

County will:

- Arrange for claims, transactions, and notes data to be sent to Contractor from Northern Claims.

Configuring Automated Interfaces, Imports & Extracts To / From 3rd party systems

Contractor will:

- Implement import routines and schedules required to accommodate imports listed below.

County will:

- Arrange for data to be delivered in the agreed upon format, on the agreed upon schedule from Workday HR System.

Training

Contractor will:

- Provide [24] hours of training to County in year 1 and provide additional training each subsequent year as needed. Professional Service hours will be eroded for training in Years 2 and 3. Training will be provided at County offices or online at the County's request. Training can be provided in one session or several on mutual agreement between County and Contractor. Travel & Expenses associated with any on-site training will be pre-approved by County and billed as incurred.

County will:

- Provide Contractor with guidance about the employees to be trained and any training requirements or a preferred approach.
- If training is to be provided in County office, provide appropriate meeting space and internet access so Contractor can perform the training and also provide for transportation and other expenses for County employees who attend the training.

Standard Project Management

Contractor will:

- Lead status calls twice per month
- Maintain schedule with key deliverables and expected dates
- Maintain project status document containing priority list, open items and changes which may impact timeline
- Coordinate all activity within Contractor to complete Contractor's tasks on the project schedule
- Origami Risk's administrative tools and screens are by their nature self-documenting and serve as documentation of the implementation for County's System Administrator to reference.

County will:

- Participate in status calls and working meetings
- Coordinate all activity within County's organization to complete County's tasks on the project schedule
- Coordinate all activity of County's 3rd party providers required to complete tasks on the project schedule

ONGOING SUPPORT

After the Implementation is completed or County is using the System in production for greater than 30 days, this section of the Statement of Work describes Contractor services through the remainder of the term of this Statement of Work.

Carrier / TPA Claims Data ongoing Processing

Contractor will:

Process the claim data updates received from County data providers as follows:

- Northern Claims: Claims, Financial Transactions, and Notes processed Monthly

County will:

- Use Origami Risk tools to resolve exceptions, if any, such as missing locations, incomplete code maps, and other exceptions, which may occur in the update as a result of data errors or missing data from data providers.
- Notify Carrier / TPA of data exceptions when appropriate to have data corrected at source.

Maintenance of automated Interfaces, Imports & Extracts To / From 3rd party systems

Contractor will:

- Maintain import routines and schedules required to accommodate imports from third party systems listed below:
 - ☞ Workday
- Maintain export routines and schedules required to accommodate exports to third party systems listed below:
 - ☞ Workday

County will:

- Ensure the ongoing performance of import and export responsibilities of each 3rd party system.

Professional Services

This Statement of Work includes up to [24] hours of Professional Services in the first year, up to [28] hours in the second year, and up to [28] hours in the third year. Professional Services include any work performed by Contractor professionals on behalf of County. Examples include:

- Helpdesk support for users
- User Training
- General assistance utilizing The System
- Configuration of features for County's use
- Maintenance of screens and system configurations as workflows evolve
- Configuration of customized reports
- Maintenance or modification of any import or export scripts
- Attendance in meetings
- Project management tasks and administration

Service Level Agreement

SYSTEM AVAILABILITY

Origami Risk will be available 99.5% of the time. This includes holidays, weekends, and nonbusiness hours. It does not include planned downtime. In normal circumstances, Origami Risk will schedule downtime between 8:00 PM CT and 7:00 AM CT. Origami Risk will post system availability statistics quarterly.

BACKUP AND RECOVERY

Origami currently backs up transactions every 15 minutes. An incremental database backup is performed nightly and a full backup is performed weekly. Backups are stored off site via Amazon S3, which has

multiple redundancy and 99.99999999% durability and 99.99% availability of objects over a given year. Periodic database restore tests are performed to validate that backups are valid.

NOTICES

Two email subscription options are available to each Origami Risk user. These determine the type of communication that they will receive from Origami Risk.

- Emergency: Receive emails concerning outages and other system problems
- Maintenance: Receive emails concerning scheduled maintenance on the system.

SERVICE REQUESTS

Origami Risk will respond to service related incidents or issues within the following time frames:

Urgent Requests

An urgent request for service concerns a new development that significantly affects a major business task with no workaround. County will request urgent support by sending an email to support@origamirisk.com with the word "Urgent" in the subject line. An urgent request made between 7:00 AM CT and 8:00 PM CT will typically be responded to immediately but in no case in more than 2 hours from notice. The target resolution time for an urgent issue is as soon as possible.

County may also call any member of the Origami Risk support team directly.

Normal Requests

A normal request for service is any service request that is not urgent. A normal service request will typically be responded to within one business day. County will request support by sending an email to support@origamirisk.com. County may also call or email any member of the Origami Risk support team directly.

SECURITY

Any access to Origami Risk requires a unique user id and password. Passwords must adhere to standard password security rules including minimum length and complexity. Origami Risk uses a role-based security model. County is responsible for assigning and maintaining role, location, and coverage security for users. County System Administrators can use the tools in Origami Risk to review and change security rights, edit the user profile, and reset the password. User passwords are encrypted in the Origami database using a one-way SHA-1 hash algorithm. System locks out user after 5 login attempts with an incorrect password. An administrative user must then reset the user's password and unlock the user account. Origami Risk uses SSL with 128-bit encryption for all communications over http. Production Origami databases are fully encrypted using 256 bit AES encryption. Claim, Transaction, and Notes data sent to the Origami Risk FTP site must be encrypted using at least 128 bits. Origami uses Open PGP for file encryption and can provide an encryption key to be used by the County. Origami Risk will keep the files on a secured files system in encrypted format except during the import process. When the import process is completed, unencrypted files are removed from the system.

DATA UPDATES

Claim data updates configured for straight through processing and are received by the Origami Risk FTP server will be uploaded, converted and available for exception handling within 8 hours.

Claim data must be in a consistent and agreed upon format, encrypted, and named properly.

Exhibit B

Pricing and Invoicing Schedule

The price for the Licenses and Services listed above in this statement of work is \$105,020 for the first year, \$ 58,320 for year two, and \$58,320 for year three of the contract. A detailed breakdown of the components of the price is provided at the end of this Exhibit B.

Payment for Year 1 will be invoiced and due upon commencement of this Agreement. Payments for Year 2 and 3 are due on the anniversary date of the contract.

If needed, additional services can be purchased through an addendum to this Agreement. All fees are subject to State Sales Tax, where applicable.

All Travel Costs and Expenses will be pre-approved by County in writing and billed to County as incurred.

ADDITIONAL PRICING OPTIONS:

1. Pricing for data storage includes storage of up to 25,000 Claims and Incidents. If County requires additional storage during the term of this agreement, additional fees will apply as follows:

- Annual fee for additional file attachment storage \$2,000 per 100 GB
- Annual fee for storage of 5,001-10,000 Claims / Incidents = \$7,500
- Current annual fee for storage of 10,001-25,000 Claims / Incidents = \$15,000
- Annual fee for storage of 25,001-50,000 Claims / Incidents = \$25,000

2. Additional Professional Service hours will be invoiced as incurred at Contractor's unbundled rates. Bundled Hours may be added prior to the start of each contract year.

3. Additional users, additional licenses or additional use beyond that which is listed above in the LICENSES section of the Statement of Work in Exhibit A shall require additional fees.

Client may elect to expand use of the System to include the following items in the future. If Client elects to add these items during the term of this Agreement, Pricing for these additions shall be as follows:

Optional Item 1.: HR/Case Management Licenses, as described above, \$300 Annually Per User

Pricing Detail:

PRICE QUOTE				ORIGAMI RISK			
Prepared for the County of San Mateo				January 25, 2016			
LICENSES AND HOSTING							
	Qty.		Year 1	Year 2	Year 3	Comments	
ORIGAMI SOFTWARE LICENSE			5,000	5,000	5,000		
Claims Administrator Users	0		0	0	0	\$3,000 each user 1-5, \$2,250 each user 6-25, \$1,500 each user > 25	
Full Users	12		20,500	20,500	20,500	\$2,000 each user 1-5, \$1,500 each user 6-25, \$1,000 each user > 25	
Light Users	6		2,400	2,400	2,400	\$400 each user 1-25, \$300 each user > 25	
HR/Case Management Users	8		2,400	2,400	2,400	\$300 each user	
Additional Usage Charges							
Enterprise Incident Entry License	500	# of incidents per year	3,000	3,000	3,000	License for Enterprise wide users	
Enterprise Grant Access License	500	# of Grant Links per year	0	0	0	\$5K/1,000 grants, \$10K/5,000 grants, \$15K/10,000 grants	
Values Collection RM User License	0	# of Users	0	0	0	\$5K/25 Users, \$10K/100 Users, \$20K/100 Users	
Certificates	0	# of Additional Certificates	0	0	0	\$1K per 500 Certificates; First 100 free	
ISO FROI/SROI Automation	0	1=yes, 0=no	0	0	0	Annual license for FROI/SROI Submissions via ISO	
Hosting, Data Storage and Backup							
Hosting, Network, and Storage	25,000	Combined claims & incidents	15,000	15,000	15,000	See SOW for further details	
Additional File Attachment Storage	0	# of (100GB) File Attachments	0	0	0	\$2K per 100GB; 50 GB free per 100,000 Combined claims & incidents	
			48,300	48,300	48,300		
DATA PROCESSING							
	Volume	Type	Update Frequency	Year 1	Year 2	Year 3	Comments
TPA Feed - Northern Claims (WC)	700	Claims, Trans, Notes	Weekly	7,000	7,000	7,000	
				0	0	0	
				0	0	0	
Origami is not responsible for any fees charged by the above data sources							
Interfaces, Imports & Extracts							
Workday HR Data Feed				2,500	500	500	Weekly
Company Nurse Incident Notification				2,500	500	500	Daily
Northern Claims Employee Status Export				2,500	500	500	
				14,500	8,500	8,500	
PROFESSIONAL SERVICES							
	Professional Service Hours			Professional Service Fee			Comments
	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3	
System Implementation							
Project Mgt and Administration	24			4,440			
Historical Data Conversion	68			12,580			Multiple spreadsheet sources
System / Needs Analysis	20			3,700			
Fields, Labels, and Forms	12			2,220			
Security Configuration	4			740			
Location Structure Design	4			740			
Code Table Design	4			740			
Values Collection	0			0			
Cost of Risk Allocation	0			0			
Certificates	0			0			
Incident Entry Workflows	16			2,960			
Injury Investigation Workflows	12			2,220			
Grant Access Configurations	0			0			
Interfaced Configuration	0			0			
Standard Report Configuration	16			2,960			Reports configured using existing templates
Custom Report Design	8			1,480			Report templates customized for Client
Documentation	16			2,960			
Training	24			4,440			
TOTAL Implementation Prof. Services	228			42,180			
Ongoing Professional Services							
Ongoing Prof. Services	24	32	32				
TOTAL PROFESSIONAL SERVICES	252	32	32	46,620	5,920	5,920	See SOW for applicable work
Additional Fees							
Bundled Travel & Expense				0	0	0	
Bundled Client Conference Registration				600	600	600	\$900 per attendee for 2 conferences
TOTAL QUOTE							
Total Charges				110,020	63,320	63,320	
Discounts				5,800	5,000	5,000	
Grand Total				105,020	58,320	58,320	
* Quote Valid Until: 4/24/16							
** Any travel expenses and other expenses not listed above shall be billed as incurred							
*** Current Professional Services Rate: (\$225/hr unbundled) or (\$185/hr bundled)							

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 164.503 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 164.501.
- 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 ACTIVITES OF CONTRACTOR AS BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.

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

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

PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE

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

OBLIGATIONS OF COUNTY

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

PERMISSABLE REQUESTS BY COUNTY

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

DUTIES UPON TERMINATION OF AGREEMENT

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

MISCELLANEOUS

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.

ATTACHMENT I

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

NOT APPLICABLE TO CONTRACTOR

Attachment IP

Intellectual Property Rights

1. **Contractor Proprietary Rights.** Notwithstanding anything to the contrary set forth above, as between Contractor and County, Contractor owns all right, title and interest, including all related Proprietary Rights in and to, or related to the Software, Custom Software, Work Product and Service, including all software programs contained therein. To the extent that any such Proprietary Rights do not otherwise vest in Contractor or its licensors, County hereby agrees to promptly assign such Proprietary Rights to Contractor or its licensors, and to do all other acts reasonably necessary to perfect Contractor's or its licensors' ownership thereof, without additional consideration of any kind. Contractor's name, logos, and the product names associated with the Service are trademarks of Contractor or third parties, and no right or license is granted with respect to their use. The Service may contain intellectual property belonging to third parties. All such intellectual property is and shall remain the property of its respective owners. Except for the limited rights expressly granted herein, all right, title and interest in and to the Software, Custom Software, Work Product, and Service are reserved by Contractor, and, except as expressly granted herein, nothing contained in this Agreement shall be construed as conferring any right, title, interest or license with respect to the Software, Custom Software, Work Product or Service upon County, by implication, estoppel or otherwise. In addition, County agrees and acknowledges that Contractor shall have an unlimited right to incorporate into any updates, upgrades, or modifications to the Software, Custom Software and the Service rendered through use thereof all suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by County or any User relating to the Service. Such Software, Custom Software and Service, as updated, upgraded, or modified, shall be owned by Contractor as provided in this Section. Nothing in this Section shall affect the ownership by County of all County Data as provided below or other County proprietary information.
2. **County Data.** County shall own all right, title and interest in and to the County Data, which shall never be deemed to be Software, Custom Software, or Service, even if delivered or incorporated therewith. Contractor shall have no responsibility, whatsoever, for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of County Data, and Contractor shall not review, monitor or check the County Data except as necessary to provide the Service to County. Contractor shall not be responsible or liable, in any way, for the deletion, destruction, damage or loss of any County Data through no fault of Contractor or its providers without limiting Contractor's liability to maintain backup data as set forth in the Statement of Work.
3. **Custom Software.** As between Contractor and County, Contractor shall be the sole and exclusive owner of all right, title, and interest in and to all Work Product and all Proprietary Rights subsumed therein. County expressly acknowledges and agrees that the Work Product shall not constitute work made-for-hire under the United States Copyright Act, and that Contractor shall have the exclusive right to protect the Work Product by patent, copyright, or any other means. Work Product shall be made available to County as part of the Service to the extent set forth in the Statement of Work, and County shall have no other right to use any Work Product.
4. **Notices of Infringement.** In the event County discovers or is notified of an actual or suspected infringement of the rights of Contractor or its licensors in or to the Service or any unauthorized access to or use of the Service (each, an "Infringement"), County shall immediately notify Contractor of such known or suspected Infringement and terminate such Infringement to the extent within

County's control. County agrees to reasonably cooperate with and assist Contractor (at Contractor's sole expense) in protecting, enforcing and defending Contractor's rights in and to the Service.