

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

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_ ,  
20\_\_\_\_, by and between the COUNTY OF SAN MATEO, hereinafter called  
“County,” and Bitfocus, Inc. hereinafter called “Contractor”;

**W I T N E S S E T H:**

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing a hosted third-party “software as a service” (the “Services,” as further described herein) with respect to certain of its information technology needs;

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO  
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

**2. Services to be performed by Contractor**

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

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth herein and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed One Hundred Eighty Thousand Dollars (\$180,000).

#### **4. Term and Termination**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from April 8, 2014 through July 30, 2016.

This Agreement may be terminated by Contractor or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

#### **5. Availability of Funds**

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

#### **6. 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.

#### **7. Hold Harmless**

7.1 **General Hold Harmless.** Contractor and County shall indemnify and save each other's officers, agents, employees, and servants harmless from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following: (A) injuries to or death of any person, including Contractor or County and each other's employees/officers/agents; (B) damage to any property of any kind whatsoever and to whomsoever belonging; (C) any sanctions, penalties, or claims of damages resulting from Contractor's or County'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) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County or Contractor and/or its officers, agents, employees, or servants. However, 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.

## **7.2 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 ("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.

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; (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

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

**8. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

**9. Insurance**

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

- (1) **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, (a) that 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) that it will comply with such provisions before commencing the performance of work under this Agreement.
- (2) **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 by 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 amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability . . . . . \$1,000,000
- (b) Motor Vehicle Liability Insurance . . . . . \$1,000,000
- (c) Professional Liability. . . . . \$1,000,000

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

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

#### **10. 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 handicap 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 Contractor 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.

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

**11. 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 handicapped individual 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 this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.
- D. *Compliance with County's Equal Benefits Ordinance.* 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.
    - ☐ 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 Contractor shall comply fully with the nondiscrimination requirements of 41 C.F.R. 60-741.5(a), which is incorporated herein as if fully set forth.
- 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. *Violation of Non-discrimination provisions.* 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 bidding on 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 examine Contractor's employment records with respect to compliance with this Section and/or to set off 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.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

**12. Compliance with County Employee Jury Service Ordinance**

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that a contractor shall have and adhere to a written policy providing that its employees, to the extent they 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 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."

**13. Retention of Records, Right to Monitor and Audit**

(a) Contractor shall maintain all required records for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit of County, a Federal grantor agency, and the State of California. Contractor shall deliver a physical copy of County's data in standard HUD CSV format with their final invoice.

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

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

**14. Merger Clause & Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated herein 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.

**15. Controlling Law and Venue**

The validity of this Agreement and of its terms or provisions, 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 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.

**16. 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: Jon Walton, CIO/Director Information Services  
Address 455 County Center, 3<sup>rd</sup> Floor  
Redwood City, CA 94063  
Telephone: 650-363-4548  
Facsimile: 650-363-7800  
Email: [jwalton@smcgov.org](mailto:jwalton@smcgov.org)

**In the case of Contractor, to:**

Name/Title: Robert Herdzik, President  
Address: 9101 W. Sahara Ave. #105-158  
Las Vegas, NV 89117  
Telephone: (702) 605-6870 x200  
Facsimile: (702) 666-9102  
Email: [robh@bitfocus.com](mailto:robh@bitfocus.com)

**17. 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 WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: \_\_\_\_\_  
President, Board of Supervisors, San Mateo  
County

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

BITFOCUS, INC.

  
Contractor's Signature

*Robert Herdzik*

Date: MARCH 24/2014

**EXHIBIT A - SERVICES  
AGREEMENT BETWEEN COUNTY OF SAN MATEO  
AND BITFOCUS, INC.**

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

**Services Description:**

Contractor agrees to provide authorized end users ("Users") access to and use of its Clarity Human Services Client and Service Management System ("System") subject to the following terms and conditions:

1. **Purpose; Term.** This Agreement sets forth the terms and conditions under which Contractor agrees to license certain hosted "Software as a Service" and provide all other services, monitoring, support, backup and recovery, change management, technology upgrades, and training necessary for County's productive use of such software (the "Services").
2. **Number of Users.** Internet access will be available to 100 total User Seats. A portion of these licenses will be Administrator Seats (not to exceed 6), and Manager Seats (not to exceed 10). Balance of the Seats will be Enterprise Seats. Access rights to the seats will be transferable to different users by County. Refer to "Exhibit B" for breakdown of user types and additional licensing expansion fees. County and any of its employees, agents, contractors, or suppliers of services that have a need to use the Services for the benefit of County shall have the right to operate and use the same. As a part of the Service, County shall be responsible for all user identification and password change management.
3. **Features and Functionality.** County will have full access to and use of all documented features provided in the most recent version of the Services. Such features will be outlined in the official Contractor Services wiki web site.
4. **Control of Services.** The method and means of providing the Services shall be under the exclusive control, management, and supervision of Contractor, giving due consideration to the requests of County.
5. **Change Control Procedure.** County or Contractor may, upon written notice, request increases to the scope of the Services under an Exhibit A. If County or Contractor requests an increase in the scope, County shall notify Contractor, and, not more than five (5) business days (or other mutually agreed upon period) after receiving the request, Contractor shall notify County whether or not the change has an associated cost impact. If County approves, County shall issue a change control and County amendment if applicable, which will be mutually executed.

### **Support Description:**

1. **Standard Hosting Services.** Contractor will setup hosted Internet access for the above-specified number of users and organizations. The setup will include services and capacities to accommodate configuration.
2. **Standard Support Services.** The standard support services will be provided as specified in the Agreement as part of the fees charged for setup and ongoing service.
3. **User Management of Access Rights.** Contractor is only responsible for the initial, pre-use security and user access settings. Unless specified in writing, County is responsible for the ongoing adjustment and maintenance of data sharing settings, user access, and security rights.
4. **Service Representative and Contract Management.** Contractor will assign a designated staff to be the support liaison and contract manager for County.
5. **Standard System Setup (Initial).** Contractor will provide the following system setup activities:
  - a. *Installation.* The System will be installed for use via the Internet by users authorized by County.
  - b. *Intra-Organization Access.* Contractor will setup intra-organizational access and security settings in accord with written specifications provided by County. Organizational level access rights will include view, edit, add, and delete rights to system features or groups of data, but not field level access. Standard access and security setup will include assignment of users to Access Roles within their respective organizations. Contractor will setup a maximum of six ("6") Access Roles. These Access Roles will be either defined in writing by County or defaults provided by Contractor. Initial Login accounts and passwords will be assigned by Contractor to each user in specified access Roles within their respective organizations.
  - c. *Inter-Organization Access.* Contractor will assign one ("1") data sharing setting for each organization covered by the Agreement. This will enable each organization to define what client or service data will be accessed by staff from other organizations.
  - d. *End-User Access and Security Settings.* End users authorized by County will have ability to adjust and refine user access and security rights. Such end-user adjustments of access and security settings will be the responsibility of County. Contractor will not be responsible for access and security setting adjustments made by County.
  - e. *Default Access and Security Settings.* Access and security rights must be setup before Contractor will provide system access to non-System Manager users.

- f. *Training Data.* System setup will include an alternative database for training and practice. This training database will contain fictional data with no relationship to any real client, organization, or user.
6. **Product Support.** Phone and e-mail support is provided to authorized County Technical Liaison as part of the Agreement Service Fees. This support is provided via the Technical Liaison for the explicit purpose of assisting County to understand and utilize existing system features and capacities. Contractor will not work directly with end-users. This will be the responsibility of the Technical Liaison. Unless otherwise specified in other parts of this Agreement, these services do not include custom system adjustments, development of reports, post-setup system configuration, data conversion and migration, on-site services, or the actual use or application of system features and capacities on behalf of the user. (e.g., users will be assisted concerning use of features and capacities, but Contractor will not actually use them on behalf of the end users). Technical/Product support will not take the place of the County taking advantage of adequate Contractor training. A maximum of 60 hours per year of Help Desk support will be provided to the Technical Liaison. Additional help desk support in excess of these hours will be billed at our consulting fees established in Exhibit 2.

### **Service Levels:**

1. **Continuity of Service.** Notwithstanding other provisions in this contract, Contractor will provide continuous service twenty-four ("24") hours a day for seven ("7") days a week, and guaranteed continuous service between the hours of 5 AM and 9 PM PST during the common Monday to Friday workweek. We guarantee, in accord with the remedies stated below, that there would be no outage time in excess of .0075 consecutive hours or no more than .001 percent total outage time per month. Outage time is defined as the length of time elapsed from when Contractor is notified of the problem to the point of time that the problem is remedied. Remedies for outage time longer than these parameters will be a refund or credit equal to one hundred [100] percent of the cost of the percent of outage time (calculated as percent outage out of total charge for month of outage). Requests for such remedies must be made within ten ("10") days of outage time. These remedies will not be available in cases where
  - a. County did not notify Contractor of the inability to transmit or receive data.
  - b. Outage time is caused by acts of omission by our County or their end-users.
  - c. Failure of equipment or applications that are not owned or controlled by Contractor.
  - d. "Acts of war or god" and other circumstances beyond the control of Contractor.
  - e. Scheduled and/or pre-announced service maintenance.

- f. Unavailability of Internet Access at the County Facilities or where users are located. This product is a cloud-based model. As such, availability of Internet Access to the users is assumed.

Enhanced availability standards and guarantees can be arranged for additional cost

2. **Hosting Facilities.** Hosting will be provided at Contractor maintained facilities. The hosting facility will provide state-of-the-art security that provides 24/7 physical and electronic security, including on-site security guards, trap-door entry, keycard and biometric access, and electronic surveillance and alarms. Other capacities of the hosting facility will include fire alerts, gaseous fire suppression, sophisticated security and video camera surveillance system; 24x7 secured, and escorted access. Battery backup, Diesel Generation will be provided to ensure maximum uptime and performance.
3. **Support Response Time.** Contractor will be available during normal business hours for both Operational and Technical support. Normal Business Hours are 8 am – 5 pm Pacific Standard Time Monday – Friday. If specific arrangements are made, after hours and weekend support will be available. These calls may require contacting an on-call representative who will be able to assist you or make arrangements to provide needed assistance.

#### **Backup Requirements:**

1. **Backup Schedule.** External onsite hard drive backups will be made daily.
2. **Backup.** Daily data backups will be stored at the hosting site for seven (“7”) days.
3. **Storage of Backup Data.** After seven (“7”) days, external drive backups will be transferred to an encrypted secure off-site location for one (“1”) year.
4. County will be provided access to download CSV data backups in the form of the standardized HUD HMIS CSV extract annually for purpose of local County archival.

#### **Service Windows:**

1. **System Maintenance and Internet Service Support.** Contractor will install, configure, and test all upgrades and service packs as they become available. Forthcoming upgrades will be announced via e-mail no less than fifteen (“15”) calendar days prior to deployment via hosting services. Contractor will upon request, provide County with opportunities to review and test these upgrades.

## **County and Users Infrastructure Requirements:**

Contractor's product is a Cloud Based hosted and maintained Software as a Service (SaaS) Solution. County will be using this product using a monthly subscription. To utilize this product:

County will be responsible for ensuring that users have the appropriately configured hardware, software, and communication lines required for system use. Minimum requirements are as follows:

1. **System Requirements.** Unless otherwise agreed in writing, County will use or provide equipment compatible with the Services and Contractor's network and facilities. County will bear the cost of any additional protective apparatus reasonably required to be installed because of the use of Contractor's network or facilities by County, lessees or assignees.
2. **Minimum Hardware Requirements.** Intel or AMD dual core processor (or newer) that supports SSE2. 1GB of RAM. 500MB of hard drive space.
3. **Operating System and Browsers.** Windows XP, Windows Vista, Windows 7 or newer, Mac OS X 10.5, Mac OSX 10.6, Mac OS X 10.7 or newer. Firefox 23 or newer. Internet Explorer 9 or newer. Latest up-to-date versions of Chrome or Safari.
4. **Line Bandwidth.** For each user connecting over a given line there must be at least 20kbps of bandwidth available for the user. This means that if a given site has 20 users, there would need to be at least 400kbps of bandwidth available to access Services. This estimate assumes 20 users working on Contractor product concurrently. Although we recommend a dedicated line, be sure to take into account any other traffic that may be using the same connection. Other traffic would include that used by email, web access, and web serving.
5. **Performance.** County acknowledges that the minimum system requirement may result in minimum system performance. Contractor will not be responsible for unreliable or low performance resulting from County technological infrastructure.
6. **Non-Interference with Maintenance and Upgrading of Facilities and Resources.** County use of the Services provided herein and any equipment associated therewith will not:
  - a. Interfere with or impair services over Contractor's network or facilities.
  - b. Cause damage of any nature to Contractor's assets.
  - c. Be used to frighten, abuse, torment or harass another.
  - d. Create hazards to Contractor's offices, directors, employees, sub-contractors, agents or users of the aforementioned network or facilities.

**Non-Disclosure of Confidential Information:**

The County and its authorized users of the Contractor's product are bound by the Public Record Act to provide data to the public in accordance with California Government Code Section 6250, et seq. The terms of this Agreement and the County's work products are exempt from the non-disclosure of confidential information cited below.

The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties.

- 1.1. Meaning of Confidential Information. For the purposes of this Agreement, the term "Confidential Information" shall mean all information and documentation of a party that is not subject to the California Public Records Act, se Government Code Section 6250, et seq., that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such entity; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing entity and marked "confidential" or with words of similar meaning; (c) with respect to information and documentation of Contractor, whether marked "Confidential" or not, consists of Contractor information and documentation included within any of the following categories: (i) policyholder, payroll account, agent, customer, supplier, or contractor lists; (ii) policyholder, payroll account, agent, customer, supplier, or contractor information; (iii) information regarding business plans (strategic and tactical) and operations (including performance); (iv) information regarding administrative, financial, or marketing activities; (v) pricing information; (vi) personnel information; (vii) products and/or and services offerings (including specifications and designs); or, (viii) processes (e.g., technical, logistical, and engineering); or, (d) any Confidential Information derived from information of a party. The term "Confidential Information" does not include any information or documentation that was: (a) already in the possession of the receiving entity without an obligation of confidentiality; (b) developed independently by the receiving entity, as demonstrated by the receiving entity, without violating the disclosing entity's proprietary rights; (c) obtained from a source other than the disclosing entity without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through or on behalf of, the receiving entity).
- 1.2. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective



employees, agents, and subcontractors of their obligations to keep such information confidential.

- 1.3. Cooperation to Prevent Disclosure of Confidential Information. Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- 1.4. The provisions of this Section shall survive the termination of this Agreement.

#### **Limitation of Liability:**

NOTWITHSTANDING ANY OTHER PROVISION SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, AND/OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO DAMAGES INCURRED AS A RESULT OF THE GROSS NEGLIGENCE OR WILFULL MISCONDUCT OF A PARTY. A PARTY SHALL BE LIABLE TO THE OTHER FOR ANY DIRECT DAMAGES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE LIABILITY OF A PARTY, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR PAYABLE UNDER THIS AGREEMENT, AND PROVIDED, FURTHER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO: (A) A PARTY'S OBLIGATIONS OF INDEMNIFICATION, AS FURTHER DESCRIBED IN THIS AGREEMENT; OR (B) DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILFULL MISCONDUCT. This Section shall survive the termination of this Agreement.

**EXHIBIT B- PAYMENTS AND RATES  
AGREEMENT BETWEEN COUNTY OF SAN MATEO  
AND BITFOCUS, INC.**

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

**YEAR 1 (FY 2014-2015)**

	Description	Cost
<b>Enterprise Seats - Setup</b>	One time setup fee for Enterprise Seats (84)	<b>\$14,700</b>
<b>Manager Seats - Setup</b>	One time setup fee for Manager Seats (10)	<b>\$2,500</b>
<b>Administrator Seats - Setup</b>	One time setup fee for Administrator Seats (6)	<b>\$1,800</b>
<b>Implementation</b>	Configuration of Live Environment and Training Environment	<b>\$7,000</b>
<b>Initial Training</b>	Initial System Administrator Training (Clarity Application)	<b>\$4,000</b>
<b>Initial Training</b>	Initial User Training [5 Days]	<b>\$20,000</b>
<b>Clarity Enterprise Seats</b>	Enterprise Seat Licensing (84)	<b>\$40,320</b>
<b>Clarity Manager Seats</b>	Manager Seat Licensing (10)	<b>\$6,000</b>
<b>Clarity Administrator Seats</b>	Administrator Seat Licensing (6)	<b>\$5,400</b>
<b>Clarity Training Site</b>	Training Site License and Maintenance	<b>\$2,500</b>
<b>Clarity VPN</b>	Virtual Private Network Maintenance & Support	<b>\$340</b>
<b>Clarity Data Analysis Tool</b>	Data Analysis Ad-hoc Query Tool	<b>\$4,000</b>
<b>Initial Configuration Support</b>	Initial Implementation Configuration Assistance not to exceed \$8,880.	<b>\$8,880</b>
<b>On-Site Support</b>	One on-site support session including travel expenses not to exceed \$2,000.	<b>\$2,000</b>
<b>Sub-Total:</b>		<b>\$119,440</b>

**YEAR 2 (FY 2015-2016)**

	Description	Cost
<b>Clarity Enterprise Seats</b>	Enterprise Seat Licensing (84)	<b>\$40,320</b>
<b>Clarity Manager Seats</b>	Manager Seat Licensing (10)	<b>\$6,000</b>
<b>Clarity Administrator Seats</b>	Administrator Seat Licensing (6)	<b>\$5,400</b>
<b>Clarity Training Site</b>	Training Site License and Maintenance	<b>\$2,500</b>
<b>Clarity VPN</b>	Virtual Private Network Maintenance & Support	<b>\$340</b>
<b>Clarity Data Analysis Tool</b>	Data Analysis Ad-hoc Query Tool	<b>\$4,000</b>
<b>On-Site Support</b>	One on-site support session including travel expenses not to exceed \$2,000.	<b>\$2,000</b>
<b>Sub-Total:</b>		<b>\$60,560</b>

**2-YEAR TOTAL BUDGET SUMMARY**

<b>Fiscal Year 2014-2015</b>	Year 1 Project Budget	<b>\$119,940</b>
<b>Fiscal Year 2015-2016</b>	Year 2 Project Budget	<b>\$60,560</b>
<b>Grand Total:</b>		<b>\$180,000</b>

**As Needed Service Fees and Rates:**

This Service Fee and Rate table is informational only, for the sole purpose of identifying rates and fees post implementation that can be contracted through a separate Change Control request.

	<b>New License Setup Fees</b>	<b>Cost</b>
<b>Administrative User</b>	Cost Per User	<b>\$300</b>
<b>Manager User</b>	Cost Per User	<b>\$250</b>
<b>Enterprise User</b>	Cost Per User Setup	<b>\$175</b>

	<b>New License Monthly Charges</b>	<b>Cost</b>
<b>Administrative User</b>	Monthly Fee per Administrative User	<b>\$75</b>
<b>Manager User</b>	Monthly Fee per Manager User	<b>\$50</b>
<b>Enterprise User</b>	Monthly Fee per Enterprise User	<b>\$40</b>

	<b>Training and Special Support Services</b>	<b>Cost</b>
<b>On-Site Support</b>	Contractor staff provide on site service to assist technical setup, system adjustment, implementation planning and training. On Site service requires completion of pre-visit checklist. The maximum number of training attendees at any point in time is fifteen ("15") per trainer. Travel time charged at same rate. Training charges do not cover travel expenses.	
<b>Hourly Fee</b>	Cost Per Hour	<b>\$120</b>
<b>Training</b>	1 Staff for 1 Day, includes Preparation	<b>\$1,250</b>
<b>Custom Software</b>	Cost Per Hour	<b>\$135</b>
<b>Report Specification</b>	Cost Per Hour	<b>\$120</b>
<b>Other Support</b>	Cost Per Hour	<b>\$120</b>

Travel time, cost, and expenses will be invoiced directly to County and paid within thirty ("30") days of the emailed invoice. One (1) On-Site Support session, including travel time and expenses, is included per year in the Budget.

1. **Special Services.** Additional services will be provided only by mutual written agreement. None of the following additional services, which are not otherwise already provided as default to the system, are provided unless specified in separate written agreement. Services provided by such special agreement include:
  - a. Implementation Planning and Consultation
  - b. Data Conversion and Migration
  - c. Custom Configuration or Software Development

- d. New Special Security Setup
- e. New Custom Screen Development
- f. New Edit Checks, Display Constraints and Calculations
- g. New Templates
- h. New Custom Fields
- i. New Outcome Measures
- j. New Reports
- k. New Logos
- l. New Screen and Form Printouts
- m. New Eligibility Screens
- n. New Data Extracts

2. **Special Backup.** Additional Backup services will be provided only by mutual written agreement. None of the following Backup services are provided unless specified in separate written agreement. Backup Services provided by such special agreement include:

- a. *Augmented Backup Schedules.* Backups made more frequently than those specified in our standard Backup Schedule.
- b. *“Hot Backup” Mirroring.* “Hot Backup” provides a spare of each “type” of server configured and set aside to be on call at a moments notice. This would add the cost of one Database Server and one Application Server. This option would use an ongoing replication process to keep mirrored data up-to-date for rapid redundancy in case of a Database Server data failure.
- c. *Off-Site Data Mirroring via Replication.* Contractor can supply software to replicate the data to one or more off-site facilities. With this option the data will be mirrored to a safe off-site server where it can be used to restore a bad dataset or to configure a new system in the event of a disaster.

3. **Recovery Services.** Contractor will give the highest priority to the reinstatement of services for the County impacted by system failure disasters. Contractor will perform data recovery services without charge for data loss or damage resulting only from failures of software and equipment provided by Contractor. Loss due to County error will be charged to the County. In the event of a disaster related system failure, Contractor will be prepared to provide the following recovery services:

- a. *Secure and Assess Data.* Immediate priority will be to secure the most recent version of data, consult to determine guidelines for assessing quality, and running tests to determine the status of data.
- b. *Restore Data as Necessary.* If necessary, backup data will be used to restore all or part of the most recent data.
- c. *Reinstate or Setup New Hosting Site.* Pending options and needs, a functioning system will be reinstated at the original or a new host site.

4. **Training and Special Support Services.** Training and special support services are available as specified by work orders or inclusion in the Agreement. Unless otherwise agrees in writing, special support services include: Custom Configuration, Data Conversion and Migration, Data Audits, Reconciliation Assessments, Data Entry, On-Site Support, Training and Training Workshops, Data Recovery Due to User Error, Specification of System Changes, Custom Development, and any and all services not confirmed in other parts of this Agreement. Unless otherwise agreed to in writing, the prices for these services are referenced in the Training and Special Support Services schedule.

**Terms of Payment:**

County will make payments for the specified Services in accord with the following conditions.

1. **Startup Fees.** Fees required for the initiation of services include advance payment of Fixed Charges for three ("3") months of services and standard setup fees for the number of Users specified in the Agreement. Contractor must receive startup fees before startup activities will be initiated. Unless otherwise specified in writing, Contractor will deliver system access within two ("2") weeks of payment and basic configuration within four ("4") weeks.
2. **Monthly Charges.** Contractor will send an email invoice to County on the first day of each Quarter (January 1<sup>st</sup>, April 1<sup>st</sup>, July 1<sup>st</sup>, October 1<sup>st</sup>), to be paid within thirty ("30") days
3. **Pro-Rated Standard Charges.** In cases where services are initiated or terminated on dates other than the first day of the month, County will pay pro-rated Fixed and Variable charges.
4. **Special Services.** Invoices and payments for special services beyond those specified in this Agreement will be managed separately from those of standard monthly services.
5. **Payment Deadline.** County will make payments on quarterly invoices within thirty ("30") calendar days from the date of email invoice.
6. **Adjustment of Fees.** Unless agreed in writing by all parties, Contractor will not change the fee structure for County for two years ("24 months") following the execution date of this Agreement. Following the first two years of service, any fee changes by Contractor will be sent via email at least thirty ("30") days prior to implementation of fee change. Contractor will not raise prices over fifteen percent ("15%") per year in current dollars as measured by the Department of Commerce current price index, subject to renegotiation due to dramatic increases in the cost of services.

7. **Tariff Applications.** County acknowledges that the services may be subject, in whole or in part, to one or more provisions of state or federal tariffs filed by County. In the event of any conflict between any provision of this Agreement and any provision of such tariff, the provision of such tariff will control. This Agreement and the Services will be subject to such modifications as may be required or authorized by a regulatory agency in the exercise of its lawful jurisdiction.

## Attachment H

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

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#### 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 Contractor.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164.
- 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 164.501 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. Unless an exception applies, an impermissible use or disclosure of PHI is *presumed* to be a breach, unless it can be demonstrated there is a low probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:

1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
  2. Identity of the unauthorized person or to whom impermissible disclosure was made;
  3. Whether PHI was actually viewed or only the opportunity to do so existed;
  4. The extent to which the risk has been mitigated.
- l. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
  - m. **Unsecured PHI.** "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.
  - n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

#### **OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE**

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for protected health information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164 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 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 contract or required by law.
- r. Business Associate shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary and, at County's request, to the County for

purposes of the Secretary determining County's compliance with the HIPAA privacy and security regulations.

#### **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 Protected 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 IP

### Intellectual Property Rights

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1. Bitfocus, Inc. ("Contractor"), as owner and operator of the Cloud-based Software as a Service (SaaS) shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively "Vendors") for the County under this Agreement. Work Products developed or commissioned by County for use by County shall be licensed to County for duration of this Agreement. Work Products shall remain the sole ownership of Contractor.
2. "Work Products" are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.
3. County acknowledges that, in the course of performing the Services, Contractor may use publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, marks, logos, graphic designs, notes, and related processes, instructions, methods, and techniques that have been previously developed by Contractor (collectively, the "Work Products") and that same shall remain the sole and exclusive property of Contractor.
4. "County Data". County's information, or any derivatives thereof, contained in any Contractor repository (the "County Data," which shall also be known and treated by Contractor as Confidential Information) shall be and remain the sole and exclusive property of County. Contractor is provided a license to Customer Data hereunder for the sole and exclusive purpose of providing the Services, including a license to store, record, transmit, maintain, and display Customer Data only to the extent necessary in the provisioning of the Services.
5. County shall not dispute or contest, directly or indirectly, the Contractor's exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. County hereby assigns, and if later required by the Contractor, shall assign to the Contractor all titles, rights and interests in all Work Products. County shall cooperate and cause subcontractors to cooperate in perfecting Contractor's titles, rights or interests in any Work Product, including prompt execution of documents as presented by the Contractor.
6. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the County commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the benefit of the County and the copyright of which is vested in the Contractor.
7. No License. Except as expressly set forth herein, no license is granted by either party to the other with respect the Confidential Information, Work

Products, or Customer Data. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information, Work Products, or Customer Data, except as may be provided under a license specifically applicable to such Confidential Information, Work Products, or Customer Data.

8. Contractor and County agree that before commencement of any subcontract work it will incorporate this **ATTACHMENT IP** to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the County's titles, rights, and interests in Work Products are preserved and protected as intended herein.
9. The provisions of this Section shall survive the termination of this Agreement.