

SERVICE AGREEMENT

This Service Agreement (“Agreement”) is dated June 20, 2023 and is between Realauktion.com LLC, a Florida corporation authorized to do business in California, whose address is 861 SW 78 Ave. # 102 Plantation FL 33324 (“Contractor”), and the County of Fresno, a political subdivision of the State of California (“County”).

Recitals

A. The County periodically conducts sales of tax-defaulted property, under California Revenue and Taxation Code, Division 1, Part 6, Chapter 7 (beginning with section 3691) (“California Tax Sale Law”). The sale of tax-defaulted property is a statutory process.

B. The County wishes to engage the Contractor to conduct online auctions of tax defaulted property on behalf of the Tax Collector for the County’s sales of tax-defaulted property according to the terms of this Agreement and according to the California Tax Sale Law.

The parties therefore agree as follows:

Article 1

Contractor’s Services

1.1 **Scope of Services.** The Contractor shall perform all of the services provided in Exhibit A to this Agreement, titled “Scope of Services.”

1.2 **Representation.** The Contractor represents that it is qualified, ready, willing, and able to perform all of the services provided in this Agreement, according to the terms of this Agreement and according to the provisions of the California Tax Sale Law.

1.3 **Compliance with Laws.** The Contractor shall, at its own cost, comply with all applicable federal, state, and local laws and regulations in the performance of its obligations under this Agreement, including but not limited to the California Tax Sale Law, all applicable e-commerce rules and regulations, and California workers compensation, labor, and confidentiality laws and regulations.

1 **Article 2**

2 **County's Responsibilities**

3 2.1 The County's Tax Collector shall provide the Contractor with tax-defaulted property
4 list and will submit an electronic file(s) containing the necessary information to conduct the
5 auction. Such submission will occur before the Contractor starts advertising the tax sale to
6 Public, the Contractor should stipulate the submission deadline based on the expected sale
7 date, and this date must be consent by the County in writing confirmation.

8 **Article 3**

9 **Compensation, Invoices, and Payments**

10 3.1 The County agrees to pay, and the Contractor agrees to receive, compensation for
11 the performance of its services under this Agreement as described in this section. The per
12 parcel cost for conducting internet auction will be \$75.00 per parcel advertised and redeemed
13 prior to auction or sold at auction. The Contractor will receive a flat fee per each parcel
14 submitted by the County. There is no charge for the County to conduct internet auction. There
15 are no additional costs for installation, licensing, maintenance, software upgrades or client
16 support for the County. There is no hardware for the County to purchase.

17 3.2 **Maximum Compensation.** The maximum compensation payable to the Contractor
18 under this Agreement is sixty-five thousand dollars (\$65,000) for each one-year period,
19 commencing as of the date of this agreement and ending each June 20th, that this Agreement is
20 in effect. If this Agreement is not extended as provided in Section 4.2, the maximum
21 compensation payable to the Contractor under this Agreement is one hundred ninety-five
22 thousand dollars (\$195,000). If this Agreement is extended for the first optional extension
23 period as provided in Section 4.2, the maximum compensation payable to the Contractor under
24 this Agreement is two hundred sixty thousand dollars (\$260,000). If this Agreement is also
25 extended for the second optional extension period as provided in Section 4.2, the maximum
26 compensation payable to the Contractor under this Agreement is three hundred twenty-five
27 thousand dollars (\$325,000). The Contractor acknowledges that the County is a local
28 government entity and does so with notice that the County's powers are limited by the California

1 **Article 5**

2 **Notices**

3 5.1 **Contact Information.** The persons and their addresses having authority to give and
4 receive notices provided for or permitted under this Agreement include the following:

5 **For the County:**

6 Tax Collections Division Chief
7 County of Fresno
8 2281 Tulare St. Room 105
9 Fresno, CA 93721
10 taxcollectorwebmail@fresnocountyca.gov
11 Fax: 559-600-1449

12 **For the Contractor:**

13 Chief Executive Officer
14 Realauction.com LLC
15 861 SW 78 Ave. #102
16 Plantation, FL 33324
17 Lmclendon@realauction.com

18 5.2 **Change of Contact Information.** Either party may change the information in section
19 5.1 by giving notice as provided in section 5.3.

20 5.3 **Method of Delivery.** Each notice between the County and the Contractor provided
21 for or permitted under this Agreement must be in writing, state that it is a notice provided under
22 this Agreement, and be delivered either by personal service, by first-class United States mail, by
23 an overnight commercial courier service, by telephonic facsimile transmission, or by Portable
24 Document Format (PDF) document attached to an email.

25 (A) A notice delivered by personal service is effective upon service to the recipient.

26 (B) A notice delivered by first-class United States mail is effective three County
27 business days after deposit in the United States mail, postage prepaid, addressed to the
28 recipient.

(C) A notice delivered by an overnight commercial courier service is effective one
County business day after deposit with the overnight commercial courier service,
delivery fees prepaid, with delivery instructions given for next day delivery, addressed to
the recipient.

1 (D) A notice delivered by telephonic facsimile transmission or by PDF document
2 attached to an email is effective when transmission to the recipient is completed (but, if
3 such transmission is completed outside of County business hours, then such delivery is
4 deemed to be effective at the next beginning of a County business day), provided that
5 the sender maintains a machine record of the completed transmission.

6 5.4 **Claims Presentation.** For all claims arising from or related to this Agreement,
7 nothing in this Agreement establishes, waives, or modifies any claims presentation
8 requirements or procedures provided by law, including the Government Claims Act (Division 3.6
9 of Title 1 of the Government Code, beginning with section 810).

10 **Article 6**

11 **Termination and Suspension**

12 6.1 **Termination for Non-Allocation of Funds.** The terms of this Agreement are
13 contingent on the approval of funds by the appropriating government agency. If sufficient funds
14 are not allocated, then the County, upon at least 30 days' advance written notice to the
15 Contractor, may:

16 (A) Modify the services provided by the Contractor under this Agreement; or

17 (B) Terminate this Agreement.

18 6.2 **Termination for Breach.**

19 (A) Upon determining that a breach (as defined in paragraph (C) below) has
20 occurred, the County may give written notice of the breach to the Contractor. The written
21 notice may suspend performance under this Agreement and must provide at least 30
22 days for the Contractor to cure the breach.

23 (B) If the Contractor fails to cure the breach to the County's satisfaction within the
24 time stated in the written notice, the County may terminate this Agreement immediately.

25 (C) For purposes of this section, a breach occurs when, in the determination of the
26 County, the Contractor has:

27 (1) Obtained or used funds illegally or improperly;

28 (2) Failed to comply with any part of this Agreement;

- 1 (3) Submitted a substantially incorrect or incomplete report to the County; or
2 (4) Improperly performed any of its obligations under this Agreement.

3 6.3 **Termination without Cause.** In circumstances other than those set forth above, the
4 County may terminate this Agreement by giving at least 30 days advance written notice to the
5 Contractor.

6 6.4 **No Penalty or Further Obligation.** Any termination of this Agreement by the County
7 under this Article 6 is without penalty to or further obligation of the County.

8 6.5 **County's Rights upon Termination.** Upon termination for breach under this Article
9 6, the County may demand repayment by the Contractor of any monies disbursed to the
10 Contractor under this Agreement that, in the County's sole judgment, were not expended in
11 compliance with this Agreement. The Contractor shall promptly refund all such monies upon
12 demand. This section survives the termination of this Agreement.

13 **Article 7**

14 **Independent Contractor**

15 7.1 **Status.** In performing under this Agreement, the Contractor, including its officers,
16 agents, employees, and volunteers, is at all times acting and performing as an independent
17 contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint
18 venturer, partner, or associate of the County.

19 7.2 **Verifying Performance.** The County has no right to control, supervise, or direct the
20 manner or method of the Contractor's performance under this Agreement, but the County may
21 verify that the Contractor is performing according to the terms of this Agreement.

22 7.3 **Benefits.** Because of its status as an independent contractor, the Contractor has no
23 right to employment rights or benefits available to County employees. The Contractor is solely
24 responsible for providing to its own employees all employee benefits required by law. The
25 Contractor shall save the County harmless from all matters relating to the payment of
26 Contractor's employees, including compliance with Social Security withholding and all related
27 regulations.
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1 years after final payment under this Agreement. This section survives the termination of this
2 Agreement.

3 **10.3 Public Records.** The County is not limited in any manner with respect to its public
4 disclosure of this Agreement or any record or data that the Contractor may provide to the
5 County. The County’s public disclosure of this Agreement or any record or data that the
6 Contractor may provide to the County may include but is not limited to the following:

7 (A) The County may voluntarily, or upon request by any member of the public or
8 governmental agency, disclose this Agreement to the public or such governmental
9 agency.

10 (B) The County may voluntarily, or upon request by any member of the public or
11 governmental agency, disclose to the public or such governmental agency any record or
12 data that the Contractor may provide to the County, unless such disclosure is prohibited
13 by court order.

14 (C) This Agreement, and any record or data that the Contractor may provide to the
15 County, is subject to public disclosure under the Ralph M. Brown Act (California
16 Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).

17 (D) This Agreement, and any record or data that the Contractor may provide to the
18 County, is subject to public disclosure as a public record under the California Public
19 Records Act (California Government Code, Title 1, Division 7, Chapter 3.5, beginning
20 with section 6250) (“CPRA”).

21 (E) This Agreement, and any record or data that the Contractor may provide to the
22 County, is subject to public disclosure as information concerning the conduct of the
23 people’s business of the State of California under California Constitution, Article 1,
24 section 3, subdivision (b).

25 (F) Any marking of confidentiality or restricted access upon or otherwise made with
26 respect to any record or data that the Contractor may provide to the County shall be
27 disregarded and have no effect on the County’s right or duty to disclose to the public or
28 governmental agency any such record or data.

1 “Self-Dealing Transaction Disclosure Form” (Exhibit B to this Agreement) and submitting it to the
2 County before commencing the transaction or immediately after.

3 11.3 **Definition.** “Self-dealing transaction” means a transaction to which the Contractor is
4 a party and in which one or more of its directors, as an individual, has a material financial
5 interest.

6 **Article 12**

7 **General Terms**

8 12.1 **Modification.** Except as provided in Article 6, “Termination and Suspension,” this
9 Agreement may not be modified, and no waiver is effective, except by written agreement signed
10 by both parties. The Contractor acknowledges that County employees have no authority to
11 modify this Agreement except as expressly provided in this Agreement.

12 12.2 **Non-Assignment.** Neither party may assign its rights or delegate its obligations
13 under this Agreement without the prior written consent of the other party.

14 12.3 **Governing Law.** The laws of the State of California govern all matters arising from
15 or related to this Agreement.

16 12.4 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno
17 County, California. Contractor consents to California jurisdiction for actions arising from or
18 related to this Agreement, and, subject to the Government Claims Act, all such actions must be
19 brought and maintained in Fresno County.

20 12.5 **Construction.** The final form of this Agreement is the result of the parties’ combined
21 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be
22 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement
23 against either party.

24 12.6 **Days.** Unless otherwise specified, “days” means calendar days.

25 12.7 **Headings.** The headings and section titles in this Agreement are for convenience
26 only and are not part of this Agreement.

27 12.8 **Severability.** If anything in this Agreement is found by a court of competent
28 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in

1 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of
2 this Agreement with lawful and enforceable terms intended to accomplish the parties' original
3 intent.

4 **12.9 Nondiscrimination.** During the performance of this Agreement, the Contractor shall
5 not unlawfully discriminate against any employee or applicant for employment, or recipient of
6 services, because of race, religious creed, color, national origin, ancestry, physical disability,
7 mental disability, medical condition, genetic information, marital status, sex, gender, gender
8 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to
9 all applicable State of California and federal statutes and regulation.

10 **12.10 No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation
11 of the Contractor under this Agreement on any one or more occasions is not a waiver of
12 performance of any continuing or other obligation of the Contractor and does not prohibit
13 enforcement by the County of any obligation on any other occasion.

14 **12.11 Entire Agreement.** This Agreement, including its exhibits, is the entire agreement
15 between the Contractor and the County with respect to the subject matter of this Agreement,
16 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,
17 publications, and understandings of any nature unless those things are expressly included in
18 this Agreement. If there is any inconsistency between the terms of this Agreement without its
19 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving
20 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the
21 exhibits.

22 **12.12 No Third-Party Beneficiaries.** This Agreement does not and is not intended to
23 create any rights or obligations for any person or entity except for the parties.

24 **12.13 Authorized Signature.** The Contractor represents and warrants to the County that:

25 (A) The Contractor is duly authorized and empowered to sign and perform its
26 obligations under this Agreement.

1 (B) The individual signing this Agreement on behalf of the Contractor is duly
2 authorized to do so and their signature on this Agreement legally binds the Contractor to
3 the terms of this Agreement.

4 12.14 **Electronic Signatures.** The parties agree that this Agreement may be executed by
5 electronic signature as provided in this section.

6 (A) An “electronic signature” means any symbol or process intended by an individual
7 signing this Agreement to represent their signature, including but not limited to (1) a
8 digital signature; (2) a faxed version of an original handwritten signature; or (3) an
9 electronically scanned and transmitted (for example by PDF document) version of an
10 original handwritten signature.

11 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed
12 equivalent to a valid original handwritten signature of the person signing this Agreement
13 for all purposes, including but not limited to evidentiary proof in any administrative or
14 judicial proceeding, and (2) has the same force and effect as the valid original
15 handwritten signature of that person.

16 (C) The provisions of this section satisfy the requirements of Civil Code section
17 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,
18 Part 2, Title 2.5, beginning with section 1633.1).

19 (D) Each party using a digital signature represents that it has undertaken and
20 satisfied the requirements of Government Code section 16.5, subdivision (a),
21 paragraphs (1) through (5), and agrees that each other party may rely upon that
22 representation.

23 (E) This Agreement is not conditioned upon the parties conducting the transactions
24 under it by electronic means and either party may sign this Agreement with an original
25 handwritten signature.

26 12.15 **Counterparts.** This Agreement may be signed in counterparts, each of which is an
27 original, and all of which together constitute this Agreement.


28 [SIGNATURE PAGE FOLLOWS]

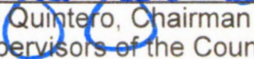
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The parties are signing this Agreement on the date stated in the introductory clause.

Realauction.com LLC

COUNTY OF FRESNO


Lloyd E. McClendon, Chief Executive Officer


Sal Quintero, Chairman of the Board of Supervisors of the County of Fresno

861 SW 78 Ave. #102
Plantation, FL 33324

Attest:
Bernice Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: 
Deputy

For accounting use only:

Org No.: 04100500
Account No.: 7295
Fund No.: 0001
Subclass No.: 10000

Exhibit A

Scope of Services

1
2 1. The Contractor shall provide online property tax sale auction services to the County
3 according to the terms of this Agreement and the California Tax Sale Law, specifically
4 including but not limited to California Revenue and Taxation Code section 3692.2, for tax-
5 defaulted properties in Fresno County. Such services must be completed to the
6 satisfaction of the Tax Collector such that the Tax Collector may commence and complete
7 the process to conduct auction in accordance with the provisions of the California Tax
8 Sale Law.

9 a. The Contractor shall provide online property tax sale auction services, including
10 but not limited to the following:

11 i. The Contractor shall advertise and host all e-commerce transactions for
12 the County's online auction sale of tax-defaulted properties.

13 ii. The Contractor shall create and maintain the County's auction advertising
14 website, on which the auction advertising is to be conducted, and on which
15 the auction is to be conducted;

16 iii. The Contractor shall structure the County's auction advertising website to
17 inform potential bidder of certain relevant information and warnings
18 concerning California property tax sales, including a citation to Revenue
19 and Taxation Code section 3962.3, and any other information that the Tax
20 Collector, in their sole discretion, may determine to include. The County's
21 auction advertising website must set forth the following information:

22 1. The sale of tax-defaulted property is a statutory process, and
23 bidders are charged with knowledge of all applicable statutory
24 provisions

25 2. All sales are where is, as is, and final

26 3. You must be 18 years of age to bid

27 4. The minimum price for each parcel

28 5. Auction start date and time

Exhibit A

- 1 6. Auction ending date and time
- 2 7. The County's method of pre-qualifying buyers
- 3 8. The County's right to reject bids for any reason whatsoever
- 4 9. The County's right to withdraw bids for any reason whatsoever
- 5 10. No bid will be accepted for less than the minimum bid amount
- 6 posted
- 7 11. Successful bidders will be required to pay a county transfer tax of
- 8 \$.55 per every \$500 of the sale price and cities may impose an
- 9 additional tax (Revenue & Taxation Code § 11911)
- 10 12. Bidding will start with the published minimum bid and will increase
- 11 in increments determined by the Contractor (Revenue & Taxation
- 12 Code § 3706)
- 13 13. Bidding will conclude when no bid is offered that is higher than the
- 14 last bid acknowledged by the Contractor
- 15 14. Bidders not completing payment may be pursued for collection and
- 16 may be prohibited from participating in future sales for up to five
- 17 years (Revenue & Taxation Code § 3456)
- 18 15. If it is determined that a property sold at a county tax sale should
- 19 not have been sold, pursuant to conditions defined in Revenue &
- 20 Taxation Code § 3731, the board of supervisors may rescind the
- 21 sale with or without consent from the purchaser
- 22 16. If the highest bidder refuses or neglects to consummate the
- 23 purchase then the sale is void and the bidder forfeits their down
- 24 payment, as well as any rights to the property
- 25 17. The County's right to offer a property to the next highest bidder at
- 26 their price, if the property qualifies under California Revenue and
- 27 Taxation Code § 3693 and if the highest bidder fails to
- 28

Exhibit A

1 consummate the sale by paying the amount due within the time
2 specified

- 3 iv. The Contractor shall provide the Tax Collector with a link, via email, to the
4 County's auction advertising website for quality control and review before
5 opening the auction advertising website to the public.
- 6 v. The Contractor shall require potential buyers to acknowledge the receipt of
7 the information described above as a precondition to bidding on properties.
8 The auction advertising website must be developed and maintained by the
9 Contractor to accommodate all necessary aspects of auction advertising
10 acceptable to the Tax Collector including sale result advertising.
- 11 vi. The Contractor shall collect a qualifying non-refundable deposit
12 demonstrating the bidder's ability to consummate the sale as a
13 precondition to bidding on any tax-defaulted tax sale property. The
14 required deposit amount will be set annually by the Tax Collector. Each
15 bidder shall only be required to submit one deposit in order to bid on all
16 parcels to be auctioned. If a bidder becomes the successful bidder on any
17 parcel, their deposit becomes a non-refundable security deposit. This non-
18 refundable security deposit shall be applied to the balance due and the net
19 amount of the final purchase price will be due to the Contractor from the
20 successful bidder. At the sole discretion of the Tax Collector, a qualifying
21 deposit may be waived, and other bidder qualification may be imposed.
- 22 vii. The Contractor shall structure the auction advertising website in a manner
23 that permits the Tax Collector to withdraw single or multiple properties from
24 the on-going auction advertising for any reason whatsoever. The
25 Contractor shall also structure the online auction in a manner that permits
26 the Tax Collector to reject a bid for tax-defaulted properties for any reason
27 whatsoever. The Contractor shall fulfill each withdrawal or rejection
28

Exhibit A

1 request from the Tax Collector within twenty-four (24) hours of receiving
2 the request.

3 viii. The Contractor shall provide a component that authorizes the Tax
4 Collector to accept bids for as long as he or she deems necessary.

5 b. The Contractor shall manage the bidding process and shall provide all of the
6 following services to prospective and successful bidders on tax-defaulted
7 properties:

8 i. The Contractor shall respond to interested bidders' inquiries regarding
9 operation of the bidding and providing technical assistance to potential
10 bidders regarding operation of the auction advertising website.

11 ii. The Contractor shall inform each successful bidder of their status
12 immediately after each auction.

13 iii. The Contractor shall disclose on the County's auction advertising website
14 all fees and charges of any kind for which online bidders will be
15 responsible. The Contractor must clearly state on the County's auction
16 advertising website when and how each of the fees and charges will be
17 applied to the bidder and provide a clear disclosure that the Contractor is
18 imposing and fees and charges. In addition, the Contractor shall disclose
19 on the County's auction advertising website if any or all of the fees and
20 charges are refundable along with terms of any refund.

21 c. The Contractor shall structure the County's auction advertising website to require
22 the bidder's tender of payment to the Contractor within seventy-two (72) hours of
23 notification that they are the successful bidder. The Contractor must settle
24 accounts and remit the proceeds of the sale to the County within ten (10) business
25 days following the close of the sale. Proceeds must be wired to the County as
26 directed by the Tax Collector in writing on County letterhead. The Contractor shall
27 provide a settlement report to the County. The settlement report shall include two
28 sections: (1) a sales report showing the name and contact information for each

Exhibit A

1 successful bidder (including each bidder that has failed to consummate the
2 purchase) and their winning bid amount; and (2) a detail settlement report for
3 each transaction per each parcel stating the amount received from each bid, the
4 fee applied by the Contractor, the amount to be distributed to the County, and the
5 amount due to the Contractor.

6 2. The Contractor shall provide relevant information and data to the Tax Collector. Relevant
7 information and data includes, but is not limited to:

8 a. The Contractor shall provide a support team contact to coordinate the County's
9 online auction sale of tax-defaulted properties. The duties of the Contractor to
10 provide support to the County including:

11 i. Providing Tax Collector staff with a tutorial on the parcel information
12 transmission process, including supplying an upload template for asset
13 data. The Contractor shall provide a special access for Tax Collector staff
14 to view on-line bidding as it is occurring.

15 ii. Managing the collection of all parcel information from the County prior to
16 posting for advertising and auction of the parcels online.

17 iii. Coordinating the creation of, and data upload for, the County's auction
18 advertising website and individual parcels' comprehensive listing pages
19 online.

20 iv. Publishing terms for auction advertising (including the length of the
21 auction, minimum price, and procedures for settlement of purchase) and
22 bidder's instructions, as established by the Tax Collector.

23 b. During each tax sale, the Contractor shall provide the Tax Collector with online
24 administrative access to monitor all sales data for each parcel in real time,
25 including the Assessor's Parcel Number, minimum bid, sales price, and excess
26 proceeds. The Contractor shall provide a way for the Tax Collector to generate
27 reports from live data at any time during the tax sale, as frequently as the Tax
28 Collector wishes. The Contractor shall ensure that the Tax Collector is able to

Exhibit A

1 generate the following reports, including current data at the time of each report
2 generation, at any time during and after each tax sale:

- 3 i. Bid monitor report that includes information of all bidders who have
4 submitted deposits;
- 5 ii. Post sales summary report for the tax sale including, but not limited to, the
6 number of parcels offered, the number of parcels sold, the number of
7 parcels withdrawn, the number of deposits and the total amount of
8 deposits received, and the locations of winning bidders;
- 9 iii. Sale report with results for each parcel sold including, but not limited to the
10 winning bidder's name, address, and phone number, the winning bid
11 amount, and the total amount due from the winning bidder;
- 12 iv. A deed wizard report to generate the vesting information to be listed on the
13 deeds including, but not limited to, name, address, and the form of title;
- 14 v. Page views report that displays the number of website page views per
15 each parcel in the auction.

- 16 3. The Contractor shall provide a secure online environment to protect the confidentiality of
17 the personal and financial data exchanged between bidders and the Contractor and
18 between the County and the Contractor. The County's auction advertising website must
19 be hosted on a secure server. The Contractor shall provide a complete audit trail of all
20 transactions in a Microsoft Excel workbook (XLS) or a Portable Document Format (PDF)
21 document. The Contractor shall not require any hardware or software interface with the
22 County's internal database or information technology systems. All auctions must be
23 hosted on the Contractor's own platform. The Contractor shall comply with all
24 requirements of Exhibit D to this Agreement, titled "Data Security."

Exhibit B

Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest."

The definition above will be used for purposes of completing this disclosure form.

Instructions

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit B

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code § 5233 (a)			
(5) Authorized Signature			
Signature:		Date:	

Exhibit C

Insurance Requirements

1. Required Policies

Without limiting the County's right to obtain indemnification from the Contractor or any third parties, Contractor, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- (A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. The Contractor shall obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the Contractor's policy.
- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.
- (C) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **Employer's Liability.** Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.
- (E) **Professional Liability.** Professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000). If this is a claims-made policy, then (1) the retroactive date must be prior to the date on which services began under this Agreement; (2) the Contractor shall maintain the policy and provide to the County annual evidence of insurance for not less than five years after completion of services under this Agreement; and (3) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under this Agreement, then the Contractor shall purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under this Agreement.
- (F) **Technology Professional Liability (Errors and Omissions).** Technology professional liability (errors and omissions) insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and in the aggregate. Coverage must encompass all of the Contractor's obligations under this Agreement, including but not limited to claims involving Cyber Risks.
- (G) **Cyber Liability.** Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage must include claims involving Cyber Risks. The cyber liability policy must be endorsed to cover the full replacement value of damage to,

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alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of the Contractor.

Definition of Cyber Risks. “Cyber Risks” include but are not limited to (i) Security Breach, which may include Disclosure of Personal Information to an Unauthorized Third Party; (ii) data breach; (iii) breach of any of the Contractor’s obligations under Exhibit D to this Agreement, titled “Data Security”; (iv) system failure; (v) data recovery; (vi) failure to timely disclose data breach or Security Breach; (vii) failure to comply with privacy policy; (viii) payment card liabilities and costs; (ix) infringement of intellectual property, including but not limited to infringement of copyright, trademark, and trade dress; (x) invasion of privacy, including release of private information; (xi) information theft; (xii) damage to or destruction or alteration of electronic information; (xiii) cyber extortion; (xiv) extortion related to the Contractor’s obligations under this Agreement regarding electronic information, including Personal Information; (xv) fraudulent instruction; (xvi) funds transfer fraud; (xvii) telephone fraud; (xviii) network security; (xix) data breach response costs, including Security Breach response costs; (xx) regulatory fines and penalties related to the Contractor’s obligations under this Agreement regarding electronic information, including Personal Information; and (xxi) credit monitoring expenses.

2. Additional Requirements

(A) **Verification of Coverage.** Within 30 days after the Contractor signs this Agreement, and at any time during the term of this Agreement as requested by the County’s Risk Manager or the County Administrative Office, the Contractor shall deliver, or cause its broker or producer to deliver, to the County Risk Manager, at 2220 Tulare Street, 16th Floor, Fresno, California 93721, or HRRiskManagement@fresnocountyca.gov, and by mail or email to the person identified to receive notices under this Agreement, certificates of insurance and endorsements for all of the coverages required under this Agreement.

- (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; (2) the County, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) the Contractor has waived its right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
- (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County shall be excess only and not contributing with insurance provided under the Contractor’s policy.

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- (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.
 - (iv) The professional liability insurance certificate, if it is a claims-made policy, must also state the retroactive date of the policy, which must be prior to the date on which services began under this Agreement.
 - (v) The technology professional liability insurance certificate must also state that coverage encompasses all of the Contractor's obligations under this Agreement, including but not limited to claims involving Cyber Risks, as that term is defined in this Agreement.
 - (vi) The cyber liability insurance certificate must also state that it is endorsed, and include an endorsement, to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of the Contractor.
- (B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.
- (C) **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, the Contractor shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 30 days in advance of cancellation or change. The County in its sole discretion may determine that the failure of the Contractor or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.
- (D) **County's Entitlement to Greater Coverage.** If the Contractor has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, the Contractor shall deliver, or cause its broker or producer to deliver, to the County's Risk Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.
- (E) **Waiver of Subrogation.** The Contractor waives any right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. The Contractor is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the Contractor's waiver of subrogation under this paragraph is effective whether or not the Contractor obtains such an endorsement.

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- (F) **County's Remedy for Contractor's Failure to Maintain.** If the Contractor fails to keep in effect at all times any insurance coverage required under this Agreement, the County may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Contractor. The County may offset such charges against any amounts owed by the County to the Contractor under this Agreement.
- (G) **Subcontractors.** The Contractor shall require and verify that all subcontractors used by the Contractor to provide services under this Agreement maintain insurance meeting all insurance requirements provided in this Agreement. This paragraph does not authorize the Contractor to provide services under this Agreement using subcontractors.

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1. Definitions

Capitalized terms used in this Exhibit D have the meanings set forth in this section 1.

- (A) **“Authorized Employees”** means the Contractor’s employees who have access to Personal Information.
- (B) **“Authorized Persons”** means: (i) any and all Authorized Employees; and (ii) any and all of the Contractor’s subcontractors, representatives, agents, outsourcers, and consultants, and providers of professional services to the Contractor, who have access to Personal Information and are bound by law or in writing by confidentiality obligations sufficient to protect Personal Information in accordance with the terms of this Exhibit D.
- (C) **“Director”** means the County’s Director of Internal Services/Chief Information Officer or their designee.
- (D) **“Disclose”** or any derivative of that word means to disclose, release, transfer, disseminate, or otherwise provide access to or communicate all or any part of any Personal Information orally, in writing, or by electronic or any other means to any person.
- (E) **“Person”** means any natural person, corporation, partnership, limited liability company, firm, or association.
- (F) **“Personal Information”** means any and all information, including any data, provided, or to which access is provided, to the Contractor by or upon the authorization of the County, under this Agreement, including but not limited to vital records, that: (i) identifies, describes, or relates to, or is associated with, or is capable of being used to identify, describe, or relate to, or associate with, a person (including, without limitation, names, physical descriptions, signatures, addresses, telephone numbers, e-mail addresses, education, financial matters, employment history, and other unique identifiers, as well as statements made by or attributable to the person); (ii) is used or is capable of being used to authenticate a person (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or personal identification numbers (PINs), financial account numbers, credit report information, answers to security questions, and other personal identifiers); or (iii) is personal information within the meaning of California Civil Code section 1798.3, subdivision (a), or 1798.80, subdivision (e). Personal Information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.
- (G) **“Privacy Practices Complaint”** means a complaint received by the County relating to the Contractor’s (or any Authorized Person’s) privacy practices, or alleging a Security Breach. Such complaint shall have sufficient detail to enable the Contractor to promptly investigate and take remedial action under this Exhibit D.
- (H) **“Security Safeguards”** means physical, technical, administrative or organizational security procedures and practices put in place by the Contractor (or any Authorized Persons) that relate to the protection of the security, confidentiality, value, or integrity of Personal Information. Security Safeguards shall satisfy the minimal requirements set forth in section 3(C) of this Exhibit D.

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- (I) **“Security Breach”** means (i) any act or omission that compromises either the security, confidentiality, value, or integrity of any Personal Information or the Security Safeguards, or (ii) any unauthorized Use, Disclosure, or modification of, or any loss or destruction of, or any corruption of or damage to, any Personal Information.
- (J) **“Use”** or any derivative of that word means to receive, acquire, collect, apply, manipulate, employ, process, transmit, disseminate, access, store, disclose, or dispose of Personal Information.

2. Standard of Care

- (A) The Contractor acknowledges that, in the course of its engagement by the County under this Agreement, the Contractor, or any Authorized Persons, may Use Personal Information only as permitted in this Agreement.
- (B) The Contractor acknowledges that Personal Information is deemed to be confidential information of, or owned by, the County (or persons from whom the County receives or has received Personal Information) and is not confidential information of, or owned or by, the Contractor, or any Authorized Persons. The Contractor further acknowledges that all right, title, and interest in or to the Personal Information remains in the County (or persons from whom the County receives or has received Personal Information) regardless of the Contractor’s, or any Authorized Person’s, Use of that Personal Information.
- (C) The Contractor agrees and covenants in favor of the County that the Contractor shall:
 - (i) keep and maintain all Personal Information in strict confidence, using such degree of care under this section 2 as is reasonable and appropriate to avoid a Security Breach;
 - (ii) Use Personal Information exclusively for the purposes for which the Personal Information is made accessible to the Contractor pursuant to the terms of this Exhibit D;
 - (iii) not Use, Disclose, sell, rent, license, or otherwise make available Personal Information for the Contractor’s own purposes or for the benefit of anyone other than the County, without the County’s express prior written consent, which the County may give or withhold in its sole and absolute discretion; and
 - (iv) not, directly or indirectly, Disclose Personal Information to any person (an “Unauthorized Third Party”) other than Authorized Persons pursuant to this Agreement, without the Director’s express prior written consent.
- (D) Notwithstanding the foregoing paragraph, in any case in which the Contractor believes it, or any Authorized Person, is required to disclose Personal Information to government regulatory authorities, or pursuant to a legal proceeding, or otherwise as may be required by applicable law, Contractor shall (i) immediately notify the County of the specific demand for, and legal authority for the disclosure, including providing County with a copy of any notice, discovery demand, subpoena, or order, as applicable, received by the Contractor, or any Authorized Person, from any government regulatory

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authorities, or in relation to any legal proceeding, and (ii) promptly notify the County before such Personal Information is offered by the Contractor for such disclosure so that the County may have sufficient time to obtain a court order or take any other action the County may deem necessary to protect the Personal Information from such disclosure, and the Contractor shall cooperate with the County to minimize the scope of such disclosure of such Personal Information.

- (E) The Contractor shall remain liable to the County for the actions and omissions of any Unauthorized Third Party concerning its Use of such Personal Information as if they were the Contractor's own actions and omissions.
- (F) The Contractor shall provide the County access to the Contractor's incident response plan.

3. Information Security

- (A) The Contractor covenants, represents and warrants to the County that the Contractor's Use of Personal Information under this Agreement does and will at all times comply with all applicable federal, state, and local, privacy and data protection laws, as well as all other applicable regulations and directives, including but not limited to California Civil Code, Division 3, Part 4, Title 1.81 (beginning with section 1798.80), and the Song-Beverly Credit Card Act of 1971 (California Civil Code, Division 3, Part 4, Title 1.3, beginning with section 1747). If the Contractor Uses credit, debit or other payment cardholder information, the Contractor shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing and maintaining all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the Contractor's sole cost and expense.
- (B) The Contractor covenants, represents and warrants to the County that, as of the effective date of this Agreement, the Contractor has not received notice of any violation of any privacy or data protection laws, as well as any other applicable regulations or directives, and is not the subject of any pending legal action or investigation by, any government regulatory authority regarding same.
- (C) Without limiting the Contractor's obligations under section 3(A) of this Exhibit D, the Contractor's (or Authorized Person's) Security Safeguards shall be no less rigorous than accepted industry practices and, at a minimum, include the following:
 - (i) limiting Use of Personal Information strictly to the Contractor's and Authorized Persons' technical and administrative personnel who are necessary for the Contractor's, or Authorized Persons', Use of the Personal Information pursuant to this Agreement;
 - (ii) ensuring that all of the Contractor's connectivity to County computing systems will only be through the County's security gateways and firewalls, and only through security procedures approved upon the express prior written consent of the Director;

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- (iii) to the extent that they contain or provide access to Personal Information, (a) securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, operating systems, and software applications, including, but not limited to, all mobile devices and other equipment, operating systems, and software applications with information storage capability; (b) employing adequate controls and data security measures, both internally and externally, to protect (1) the Personal Information from potential loss or misappropriation, or unauthorized Use, and (2) the County's operations from disruption and abuse; (c) having and maintaining network, device application, database and platform security; (d) maintaining authentication and access controls within media, computing equipment, operating systems, and software applications; and (e) installing and maintaining in all mobile, wireless, or handheld devices a secure internet connection, having continuously updated anti-virus software protection and a remote wipe feature always enabled, all of which is subject to express prior written consent of the Director;
 - (iv) encrypting all Personal Information at advance encryption standards of Advanced Encryption Standards (AES) of 128 bit or higher (a) stored on any mobile devices, including but not limited to hard disks, portable storage devices, or remote installation, or (b) transmitted over public or wireless networks (the encrypted Personal Information must be subject to password or pass phrase, and be stored on a secure server and transferred by means of a Virtual Private Network (VPN) connection, or another type of secure connection, all of which is subject to express prior written consent of the Director);
 - (v) strictly segregating Personal Information from all other information of the Contractor, including any Authorized Person, or anyone with whom the Contractor or any Authorized Person deals so that Personal Information is not commingled with any other types of information;
 - (vi) having a patch management process including installation of all operating system and software vendor security patches;
 - (vii) maintaining appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks of Authorized Employees consistent with applicable law; and
 - (viii) providing appropriate privacy and information security training to Authorized Employees.
- (D) During the term of each Authorized Employee's employment by the Contractor, the Contractor shall cause such Authorized Employees to abide strictly by the Contractor's obligations under this Exhibit D. The Contractor shall maintain a disciplinary process to address any unauthorized Use of Personal Information by any Authorized Employees.
- (E) The Contractor shall, in a secure manner, backup daily, or more frequently if it is the Contractor's practice to do so more frequently, Personal Information received from the County, and the County shall have immediate, real time access, at all times, to such

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backups via a secure, remote access connection provided by the Contractor, through the Internet.

- (F) The Contractor shall provide the County with the name and contact information for each Authorized Employee (including such Authorized Employee's work shift, and at least one alternate Authorized Employee for each Authorized Employee during such work shift) who shall serve as the County's primary security contact with the Contractor and shall be available to assist the County twenty-four (24) hours per day, seven (7) days per week as a contact in resolving the Contractor's and any Authorized Persons' obligations associated with a Security Breach or a Privacy Practices Complaint.
- (G) The Contractor shall not knowingly include or authorize any Trojan Horse, back door, time bomb, drop dead device, worm, virus, or other code of any kind that may disable, erase, display any unauthorized message within, or otherwise impair any County computing system, with or without the intent to cause harm.

4. Security Breach Procedures

- (A) Immediately upon the Contractor's awareness or reasonable belief of a Security Breach, the Contractor shall (i) notify the Director of the Security Breach, such notice to be given first by telephone at the following telephone number, followed promptly by email at the following email address: (559) 600-6200 / servicedesk@fresnocountyca.gov (which telephone number and email address the County may update by providing notice to the Contractor), and (ii) preserve all relevant evidence (and cause any affected Authorized Person to preserve all relevant evidence) relating to the Security Breach. The notification shall include, to the extent reasonably possible, the identification of each type and the extent of Personal Information that has been, or is reasonably believed to have been, breached, including but not limited to, compromised, or subjected to unauthorized Use, Disclosure, or modification, or any loss or destruction, corruption, or damage.
- (B) Immediately following the Contractor's notification to the County of a Security Breach, as provided pursuant to section 4(A) of this Exhibit D, the Parties shall coordinate with each other to investigate the Security Breach. The Contractor agrees to fully cooperate with the County, including, without limitation:
 - (i) assisting the County in conducting any investigation;
 - (ii) providing the County with physical access to the facilities and operations affected;
 - (iii) facilitating interviews with Authorized Persons and any of the Contractor's other employees knowledgeable of the matter; and
 - (iv) making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards, or as otherwise reasonably required by the County.

To that end, the Contractor shall, with respect to a Security Breach, be solely responsible, at its cost, for all notifications required by law and regulation, or deemed

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reasonably necessary by the County, and the Contractor shall provide a written report of the investigation and reporting required to the Director within 30 days after the Contractor's discovery of the Security Breach.

- (C) County shall promptly notify the Contractor of the Director's knowledge, or reasonable belief, of any Privacy Practices Complaint, and upon the Contractor's receipt of that notification, the Contractor shall promptly address such Privacy Practices Complaint, including taking any corrective action under this Exhibit D, all at the Contractor's sole expense, in accordance with applicable privacy rights, laws, regulations and standards. In the event the Contractor discovers a Security Breach, the Contractor shall treat the Privacy Practices Complaint as a Security Breach. Within 24 hours of the Contractor's receipt of notification of such Privacy Practices Complaint, the Contractor shall notify the County whether the matter is a Security Breach, or otherwise has been corrected and the manner of correction, or determined not to require corrective action and the reason for that determination.
- (D) The Contractor shall take prompt corrective action to respond to and remedy any Security Breach and take mitigating actions, including but not limiting to, preventing any reoccurrence of the Security Breach and correcting any deficiency in Security Safeguards as a result of such incident, all at the Contractor's sole expense, in accordance with applicable privacy rights, laws, regulations and standards. The Contractor shall reimburse the County for all reasonable costs incurred by the County in responding to, and mitigating damages caused by, any Security Breach, including all costs of the County incurred relation to any litigation or other action described section 4(E) of this Exhibit D.
- (E) The Contractor agrees to cooperate, at its sole expense, with the County in any litigation or other action to protect the County's rights relating to Personal Information, including the rights of persons from whom the County receives Personal Information.

5. Oversight of Security Compliance

- (A) The Contractor shall have and maintain a written information security policy that specifies Security Safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities.
- (B) Upon the County's written request, to confirm the Contractor's compliance with this Exhibit D, as well as any applicable laws, regulations and industry standards, the Contractor grants the County or, upon the County's election, a third party on the County's behalf, permission to perform an assessment, audit, examination or review of all controls in the Contractor's physical and technical environment in relation to all Personal Information that is Used by the Contractor pursuant to this Agreement. The Contractor shall fully cooperate with such assessment, audit or examination, as applicable, by providing the County or the third party on the County's behalf, access to all Authorized Employees and other knowledgeable personnel, physical premises, documentation, infrastructure and application software that is Used by the Contractor for Personal Information pursuant to this Agreement. In addition, the Contractor shall

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provide the County with the results of any audit by or on behalf of the Contractor that assesses the effectiveness of the Contractor's information security program as relevant to the security and confidentiality of Personal Information Used by the Contractor or Authorized Persons during the course of this Agreement under this Exhibit D.

- (C) The Contractor shall ensure that all Authorized Persons who Use Personal Information agree to the same restrictions and conditions in this Exhibit D. that apply to the Contractor with respect to such Personal Information by incorporating the relevant provisions of these provisions into a valid and binding written agreement between the Contractor and such Authorized Persons, or amending any written agreements to provide same.

6. **Return or Destruction of Personal Information.** Upon the termination of this Agreement, the Contractor shall, and shall instruct all Authorized Persons to, promptly return to the County all Personal Information, whether in written, electronic or other form or media, in its possession or the possession of such Authorized Persons, in a machine readable form used by the County at the time of such return, or upon the express prior written consent of the Director, securely destroy all such Personal Information, and certify in writing to the County that such Personal Information have been returned to the County or disposed of securely, as applicable. If the Contractor is authorized to dispose of any such Personal Information, as provided in this Exhibit D, such certification shall state the date, time, and manner (including standard) of disposal and by whom, specifying the title of the individual. The Contractor shall comply with all reasonable directions provided by the Director with respect to the return or disposal of Personal Information and copies of Personal Information. If return or disposal of such Personal Information or copies of Personal Information is not feasible, the Contractor shall notify the County accordingly, specifying the reason, and continue to extend the protections of this Exhibit D to all such Personal Information and copies of Personal Information. The Contractor shall not retain any copy of any Personal Information after returning or disposing of Personal Information as required by this section 6. The Contractor's obligations under this section 6 survive the termination of this Agreement and apply to all Personal Information that the Contractor retains if return or disposal is not feasible and to all Personal Information that the Contractor may later discover.

7. **Equitable Relief.** The Contractor acknowledges that any breach of its covenants or obligations set forth in this Exhibit D may cause the County irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the County is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the County may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available to the County at law or in equity or under this Agreement.

8. **Indemnity.** The Contractor shall defend, indemnify and hold harmless the County, its officers, employees, and agents, (each, a "**County Indemnitee**") from and against any and all infringement of intellectual property including, but not limited to infringement of copyright, trademark, and trade dress, invasion of privacy, information theft, and extortion, unauthorized Use, Disclosure, or modification of, or any loss or destruction of, or any corruption of or damage to, Personal Information, Security Breach response and remedy costs, credit monitoring

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expenses, forfeitures, losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, fines and penalties (including regulatory fines and penalties), costs or expenses of whatever kind, including attorneys' fees and costs, the cost of enforcing any right to indemnification or defense under this Exhibit D and the cost of pursuing any insurance providers, arising out of or resulting from any third party claim or action against any County Indemnitee in relation to the Contractor's, its officers, employees, or agents, or any Authorized Employee's or Authorized Person's, performance or failure to perform under this Exhibit D or arising out of or resulting from the Contractor's failure to comply with any of its obligations under this section 8. The provisions of this section 8 do not apply to the acts or omissions of the County. The provisions of this section 8 are cumulative to any other obligation of the Contractor to, defend, indemnify, or hold harmless any County Indemnitee under this Agreement. The provisions of this section 8 shall survive the termination of this Agreement.

9. **Survival.** The respective rights and obligations of the Contractor and the County as stated in this Exhibit D shall survive the termination of this Agreement.

10. **No Third Party Beneficiary.** Nothing express or implied in the provisions of in this Exhibit D is intended to confer, nor shall anything in this Exhibit D confer, upon any person other than the County or the Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

11. **No County Warranty.** The County does not make any warranty or representation whether any Personal Information in the Contractor's (or any Authorized Person's) possession or control, or Use by the Contractor (or any Authorized Person), pursuant to the terms of this Agreement is or will be secure from unauthorized Use, or a Security Breach or Privacy Practices Complaint.