

AGREEMENT FOR SPECIALIZED LEGAL SERVICES

THIS AGREEMENT is made and entered into this 21st day of August 2018 by and between the **COUNTY OF FRESNO**, a political subdivision of the State of California, hereinafter referred to as "**COUNTY**," and Fishman, Larsen & Callister, a Professional Corporation, hereinafter referred to as "**ATTORNEY**."

WITNESSETH:

WHEREAS, COUNTY is in the process of the administration and defense of General Liability, Auto Liability and Medical Malpractice claims against COUNTY employee(s).

WHEREAS, COUNTY needs and wishes to engage appropriate legal counsel, who is skilled and knowledgeable in defense of General Liability claims or other claims that are covered under the County's General Liability and Medical Malpractice Programs, and to advise and represent COUNTY employee(s) in connection with the matters, as provided herein; and

WHEREAS, ATTORNEY states that it is experienced, possesses expertise in such matters, and is willing to perform said services,

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties hereto agree as follows:

SECTION 1**ENGAGEMENT OF ATTORNEY**

1.1 COUNTY hereby engages ATTORNEY as an independent contractor, and any associated staff ATTORNEY and paralegals or other legal support staff as ATTORNEY deems necessary, and whom COUNTY Human Resources Department, Risk Management Division approves pursuant to Section 5 of this Agreement.

1.2 Each claim will be handled by the ATTORNEY to which the assignment is made unless COUNTY approves the handling by another ATTORNEY in the firm. Associated staff may assist the ATTORNEY as deemed necessary.

1.3 Any additional instructions relative to the handling of a claim which are not specified or otherwise alluded to in this Agreement will be included in the letter of engagement

1 for each claim assigned to ATTORNEY. Such instructions will be complied with by ATTORNEY
2 as well as any additional client direction in the management of the claim.

3 **SECTION 2**

4 **SCOPE OF SERVICES**

5 2.1 ATTORNEY shall assist, advise, and represent COUNTY employee(s) in
6 connection with all matters relative to the administration and defense of the claims assigned by
7 Human Resources Department, Risk Management Division staff, as specified by COUNTY and
8 pursuant to the terms set forth in this Agreement.

9 2.2 ATTORNEY shall perform such other similar legal services as requested by
10 COUNTY Risk Management in connection with the matters related to the administration and
11 defense of the assigned claims.

12 **SECTION 3**

13 **PERFORMANCE BY ATTORNEY**

14 3.1 ATTORNEY agrees to avoid unnecessary duplicative efforts by ATTORNEY and
15 any associated counsel and/or staff members of ATTORNEY in the performance of services for
16 COUNTY hereunder.

17 3.2 COUNTY shall not be obligated to compensate ATTORNEY for intra-office
18 conferences between or among ATTORNEY, associate ATTORNEYS, and/or other staff
19 members, unless such intra-office conferences promote efficiency in the performance of
20 ATTORNEY'S work on a matter, or a reduction in the cost of compensation paid or
21 reimbursement made for related, actual, reasonable and necessary, out-of-pocket expenses to
22 ATTORNEY, or both.

23 3.3 In the performance of the tasks identified in Section 2 of this Agreement,
24 ATTORNEY shall provide only those services which are necessary to carry out such tasks in an
25 efficient and effective manner.

26 3.4 COUNTY must approve the retention of all experts, consultants, investigators,
27 and any other unusual expenditures.
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4.5 Notwithstanding anything else stated to the contrary in this Agreement, in no event shall the maximum amount paid by COUNTY to ATTORNEY as compensation, and as reimbursement of related, actual, reasonable and necessary, out-of-pocket expenses, exceed seven hundred and fifty thousand dollars (\$750,000.00) annually.

SECTION 5

PAYMENT AND RECORD-KEEPING

5.1 Subject to Section 4 of this Agreement, payment of compensation for the services provided and reimbursement for related, actual, reasonable and necessary, out-of-pocket expenses incurred which are described herein shall be made by COUNTY after submission of an itemized invoice by ATTORNEY to Human Resources Department, Risk Management Division. ATTORNEY shall submit such invoices no later than the twentieth (20th) day of the month following the month services are completed, unless the bill totals less than one hundred dollars (\$100). The file will not be billed until the total reaches at least one hundred dollars (\$100) or the claim is closed. All payments by COUNTY will be made within forty-five (45) days after receipt, verification and approval of ATTORNEY'S invoices by COUNTY'S Human Resources Department, Risk Management Division.

5.2 All such invoices shall have sufficient detail as may be required by the COUNTY Auditor-Controller/Treasurer-Tax Collector, including, but not limited to:

5.2.1 The plaintiff's name, the date of loss, the COUNTY's claim number and any other identifying information that will indicate the file to which billing is to be assigned.

5.2.2 The specific nature of each task performed as services under this Agreement;

5.2.3 The name of the ATTORNEY or staff member performing each task;

5.2.4 The number of hours worked by each such person for each such task;

5.2.5 The hourly rate per each such person performing each such task;

5.2.6 The related, actual, reasonable and necessary, out-of-pocket expenses incurred, as provided for in Section 4 of this Agreement;

1 5.2.7 A certification by ATTORNEY that each such invoice is true and accurate as to
2 the information and specification contained therein;

3 5.3 In addition to the requirements of Section 5.2, each invoice shall set forth a
4 summary of hours worked by each ATTORNEY and staff member for the applicable billing
5 period. Each invoice shall set forth the product of such summary of hours worked by each
6 person multiplied by each such person's billing rate, as set forth in Attachment A, Schedule of
7 Rates.

8 5.4 In preparing invoices, if requested by COUNTY Human Resources Department,
9 Risk Management Division, ATTORNEY shall segregate each task performed on a daily basis.
10 If so requested by COUNTY, ATTORNEY shall not combine unrelated tasks as a single entry in
11 lieu of setting forth the hours of work performed by an ATTORNEY or staff member on each
12 specific task.

13 5.5 ATTORNEY shall prepare all invoices in an organized manner that facilitates an
14 efficient review of the services performed and the expenses incurred in order to provide
15 COUNTY with a clear and complete picture of how much time was devoted to specific tasks and
16 projects, and the cost associated therewith.

17 5.6 ATTORNEY shall keep complete records of the services provided, as described
18 in this Section 5, together with all related actual, reasonable and necessary, out-of-pocket
19 expenses applicable to the work provided under this Agreement. The County Auditor-
20 Controller/Treasurer-Tax Collector, or his or her duly authorized representatives, shall be given
21 reasonable access to all of these records for the purposes of audit of this Agreement. In
22 addition, ATTORNEY shall be subject to the examination and audit of such records by the State
23 Auditor for a period of three (3) years after final payment under this Agreement, pursuant to
24 Government Code section 8546.7, as applicable.

25 5.7 Attorney shall provide to COUNTY a W-9, 1099 and CA Form 590 as appropriate
26 upon execution of the agreement and annually thereafter.

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1 liable and responsible for providing to, or on behalf of, its employees all legally required
2 employee benefits. In addition, ATTORNEY shall be solely responsible and hold COUNTY
3 harmless from all matters related to payment of ATTORNEY's employees, including compliance
4 with social security, withholding, and all other regulations governing such matters. It is
5 acknowledged that during the term of this Agreement, ATTORNEY may be providing services to
6 others unrelated to the COUNTY or to this Agreement.

7 **SECTION 8**

8 **HOLD HARMLESS**

9 8.1 ATTORNEY shall hold COUNTY, its officers, agents, and employees harmless
10 and indemnify and defend COUNTY, its officers, agents, and employees against payment of
11 any and all costs and expenses (to include legal fees and court costs), claims, suits, losses,
12 damages, and liability alleging any wrongful acts or omissions of ATTORNEY, including its
13 officers, agents, and employees, in performing or failing to perform the services provided herein.
14 COUNTY's receipt of any insurance certificates required herein does not in any way relieve
15 ATTORNEY from the obligations under this Section 8 of the Agreement.

16 **SECTION 9**

17 **INSURANCE**

18 9.1 **Professional Liability**

19 ATTORNEY shall maintain Professional Liability Insurance with limits of not less
20 than one million dollars (\$1,000,000.00) per occurrence and three million dollars
21 (\$3,000,000.00) annual aggregate. ATTORNEY shall provide COUNTY with written evidence of
22 such coverage. This coverage may be issued on a per claim basis. If so, ATTORNEY agrees
23 that it shall maintain, at its sole expense, so-called "tail coverage" in full force and effect for a
24 period of three (3) years following the termination of this Agreement, which shall be one or more
25 policies of professional liability insurance with limits of coverage as specified herein.

1 9.2 Automobile Liability

2 ATTORNEY shall maintain Comprehensive Automobile Liability Insurance with
3 limits for bodily injury of not less than two hundred fifty thousand dollars (\$250,000.00) per
4 person, five hundred thousand dollars (\$500,000.00) per accident, and for property damages of
5 not less than fifty thousand dollars (\$50,000.00), or such coverage with a combined single limit
6 of five hundred thousand dollars (\$500,000.00). Coverage shall include owned and non-owned
7 vehicles used in connection with this Agreement.

8 9.3 Commercial General Liability

9 ATTORNEY shall maintain Commercial General Liability Insurance with limits of
10 not less than one million dollars (\$1,000,000.00) per occurrence and an annual aggregate of
11 two million dollars (\$2,000,000.00). This policy shall be issued on a per- occurrence basis.
12 COUNTY may require specific coverage including completed operations, product liability,
13 contractual liability, explosion-collapse-underground liability, fire legal liability, or any other
14 liability insurance deemed necessary because of the nature of the contract.

15 9.4 Workers' Compensation

16 ATTORNEY shall maintain a policy of Workers' Compensation insurance as may
17 be required by the California Labor Code.

18 **SECTION 10**

19 **ADDITIONAL INSURANCE TERMS**

20 10.1 ATTORNEY shall obtain endorsements to the Commercial General Liability
21 insurance naming the County of Fresno, its officers, agents, and employees, individually and
22 collectively, as additional insured, but only insofar as the operations under this Agreement are
23 concerned. Such coverage for additional insured shall apply as primary insurance and any
24 other insurance, or self-insurance, maintained by County, its officers, agents and employees
25 shall be excess only and not contributing with insurance provided under ATTORNEY's policies
26 herein. This insurance shall not be cancelled or changed without a minimum of thirty (30) days
27 advance written notice given to COUNTY.

10.2 Within thirty (30) days from the date ATTORNEY executes this Agreement, ATTORNEY shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required in Section 9 herein, to COUNTY, Human Resources Department, Risk Management Division, stating that such insurance coverage has been obtained and is in full force and effect; that COUNTY, its officers, agents and employees, individually and collectively, have been named as additional insured, but only insofar as the operations under this Agreement are concerned.

10.3 In the event ATTORNEY fails to keep in effect at all times insurance coverage as herein provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

10.4 All policies shall be with admitted insurers licensed to do business in the State of California. Insurance purchased shall be purchased from companies possessing a current A.M. Best, Inc. rating of A, FSC VII or better.

SECTION 11

AGREEMENT BINDING ON SUCCESSORS

11.1 This Agreement shall be binding upon COUNTY and ATTORNEY and their successors, executors, administrators, legal representatives, and assigns with respect to all the covenants and conditions set forth herein.

SECTION 12

ASSIGNMENT AND SUBCONTRACTING

12.1 Neither party hereto shall assign, transfer, or sub-contract neither this Agreement nor its rights nor duties hereunder without the written consent of the other. County Risk Manager, or his or her designee, may give such consent on behalf of the COUNTY, provided however, the assignee, transferee or sub-contractor shall carry insurance of a type and in an amount that is acceptable to COUNTY's Risk Manager, or his or her designee.

1 **SECTION 13**

2 **AMENDMENTS**

3 13.1 This Agreement may be amended only in writing signed by the Parties hereto.

4 **SECTION 14**

5 **CONFLICT OF INTEREST**

6 14.1 ATTORNEY promises, covenants, and warrants that the performance of their
7 services and representation of COUNTY under this Agreement do not result in a "conflict of
8 interest" as that term is used in the Rules of Professional Conduct of the State Bar of California.
9 In the event a "conflict of interest" occurs, ATTORNEY will request that COUNTY waive such
10 "conflict of interest" on a case-by-case basis. If the COUNTY does not waive the conflict,
11 ATTORNEY must resolve the conflicting issue in the favor of COUNTY.

12 **SECTION 15**

13 **FURTHER ASSURANCES BY ATTORNEYS**

14 15.1 ATTORNEY represents that it has read and is familiar with Government Code
15 Section 1090 *et seq.* and Section 87100 *et seq.* ATTORNEY promises, covenants, and
16 warrants that the performance of its services under this Agreement shall not result in or cause a
17 violation of Government Code Section 1090 *et seq.* and Section 87100 *et seq.*

18 **SECTION 16**

19 **COMPLIANCE WITH LAWS**

20 16.1 ATTORNEY shall comply with all federal, state, and local laws and regulations
21 applicable to the performance of its obligations under this Agreement and maintain all licenses
22 as required in the performance of its duties.

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SECTION 17

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

17.1 The parties to this Agreement shall be in strict conformance with all applicable Federal and State of California laws and regulations, including, but not limited to Sections 5328, 10850, and 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1 and 431.300 *et seq.* of Title 42, Code of Federal Regulations (CFR), Section 56 *et seq.* of the California Civil Code, Sections 11977 and 11812 of Title 22 of the California Code of Regulations, and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section 1320 D *et seq.* of Title 42, United States Code (USC) and its implementing regulations, including, but not limited to, Title 45, CFR, Sections 142, 160, 162, and 164, The Health Information Technology for Economic and Clinical Health Act (HITECH) regarding the confidentiality and security of patient information, and the Genetic Information Nondiscrimination Act (GINA) of 2008 regarding the confidentiality of genetic information.

Except as otherwise provided in this Agreement, ATTORNEY, as a Business Associate of COUNTY, may use or disclose Protected Health Information (PHI) to perform functions, activities or services for or on behalf of COUNTY, as specified in this Agreement, provided that such use or disclosure shall not violate the Health Insurance Portability and Accountability Act (HIPAA), USC 1320d *et seq.* The uses and disclosures of PHI may not be more expansive than those applicable to COUNTY, as the "Covered Entity" under the HIPAA Privacy Rule (45 CFR 164.500 *et seq.*), except as authorized for management, administrative or legal responsibilities of the Business Associate.

17.2 ATTORNEY, including its subcontractors and employees, shall protect from unauthorized access, use, or disclosure of names and other identifying information, including genetic information, concerning persons receiving services pursuant to this Agreement, except where permitted in order to carry out data aggregation purposes for health care operations [45 CFR Sections 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)]. This pertains to any and all persons receiving services pursuant to a COUNTY funded program. This

1 requirement applies to electronic PHI. ATTORNEY shall not use such identifying information or
2 genetic information for any purpose other than carrying out ATTORNEY's obligations under this
3 Agreement.

4 17.3 ATTORNEY, including its subcontractors and employees, shall not disclose any
5 such identifying information or genetic information to any person or entity, except as otherwise
6 specifically permitted by this Agreement, authorized by Subpart E of 45 CFR Part 164 or other
7 law, required by the Secretary, or authorized by the client/patient in writing. In using or
8 disclosing PHI that is permitted by this Agreement or authorized by law, ATTORNEY shall make
9 reasonable efforts to limit PHI to the minimum necessary to accomplish intended purpose of
10 use, disclosure or request.

11 17.4 For purposes of the above sections, identifying information shall include, but not
12 be limited to, name, identifying number, symbol, or other identifying particular assigned to the
13 individual, such as fingerprint or voiceprint, or photograph.

14 17.5 For purposes of the above sections, genetic information shall include genetic
15 tests of family members of an individual or individual(s), manifestation of disease or disorder of
16 family members of an individual, or any request for or receipt of genetic services by individual or
17 family members. Family member means a dependent or any person who is first, second, third,
18 or fourth degree relative.

19 17.6 ATTORNEY shall provide access, at the request of COUNTY, and in the time
20 and manner designated by COUNTY, to PHI in a designated record set (as defined in 45 CFR
21 Section 164.501), to an individual or to COUNTY in order to meet the requirements of 45 CFR
22 Section 164.524 regarding access by individuals to their PHI. With respect to individual
23 requests, access shall be provided within thirty (30) days from request. Access may be
24 extended if ATTORNEY cannot provide access and provides individual with the reasons for the
25 delay and the date when access may be granted. PHI shall be provided in the form and format
26 requested by the individual or COUNTY.

27 ATTORNEY shall make any amendment(s) to PHI in a designated record set at the
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1 request of COUNTY or individual, and in the time and manner designated by COUNTY in
2 accordance with 45 CFR Section 164.526.

3 ATTORNEY shall provide to COUNTY or to an individual, in a time and manner
4 designated by COUNTY, information collected in accordance with 45 CFR Section 164.528, to
5 permit COUNTY to respond to a request by the individual for an accounting of disclosures of
6 PHI in accordance with 45 CFR Section 164.528.

7 17.7 ATTORNEY shall report to COUNTY, in writing, any knowledge or reasonable
8 belief that there has been unauthorized access, viewing, use, disclosure, security incident, or
9 breach of unsecured PHI not permitted by this Agreement of which it becomes aware,
10 immediately and without reasonable delay and in no case later than two (2) business days of
11 discovery. Immediate notification shall be made to COUNTY's Information Security Officer and
12 Privacy Officer and COUNTY's DPH HIPAA Representative, within two (2) business days of
13 discovery. The notification shall include, to the extent possible, the identification of each
14 individual whose unsecured PHI has been, or is reasonably believed to have been, accessed,
15 acquired, used, disclosed, or breached. ATTORNEY shall take prompt corrective action to cure
16 any deficiencies and any action pertaining to such unauthorized disclosure required by
17 applicable Federal and State laws and regulations. ATTORNEY shall investigate such breach
18 and is responsible for all notifications required by law and regulation or deemed necessary by
19 COUNTY and shall provide a written report of the investigation and reporting required to
20 COUNTY's Information Security Officer and Privacy Officer and COUNTY's DPH HIPAA
21 Representative.

22 This written investigation and description of any reporting necessary shall be
23 postmarked within the thirty (30) working days of the discovery of the breach to the addresses
24 below:

County of Fresno
Dept. of Public Health Svcs.
HIPAA Representative
(559) 600-6439
P.O. Box 11867
Fresno, CA 93775

County of Fresno
Dept. of Public Health
Privacy Officer
(559) 600-6405
P.O. Box 11867
Fresno, CA 93775

County of Fresno
Information Technology
Information Security Officer
(559) 600-5800
2048 N. Fine Street
Fresno, CA 93727

17.8 ATTORNEY shall make its internal practices, books, and records relating to the use and disclosure of PHI received from COUNTY, or created or received by the ATTORNEY on behalf of COUNTY, in compliance with HIPAA's Privacy Rule, including, but not limited to, the requirements set forth in Title 45, CFR, Sections 160 and 164. ATTORNEY shall make its internal practices, books, and records relating to the use and disclosure of PHI received from COUNTY, or created or received by the ATTORNEY on behalf of COUNTY, available to the United States Department of Health and Human Services (Secretary) upon demand.

ATTORNEY shall cooperate with the compliance and investigation reviews conducted by the Secretary. PHI access to the Secretary must be provided during the ATTORNEY's normal business hours; however, upon exigent circumstances access at any time must be granted. Upon the Secretary's compliance or investigation review, if PHI is unavailable to ATTORNEY and in possession of a Subcontractor, it must certify efforts to obtain the information to the Secretary.

17.9 Safeguards

ATTORNEY shall implement administrative, physical, and technical safeguards as required by the HIPAA Security Rule, Subpart C of 45 CFR 164, that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI, including electronic PHI, that it creates, receives, maintains or transmits on behalf of COUNTY and to prevent unauthorized access, viewing, use, disclosure, or breach of PHI other than as provided for by this Agreement. ATTORNEY shall conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity and availability of electronic PHI. ATTORNEY shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of ATTORNEY's operations and the nature and scope of its activities. Upon

COUNTY's request, ATTORNEY shall provide COUNTY with information concerning such safeguards.

ATTORNEY shall implement strong access controls and other security safeguards and precautions in order to restrict logical and physical access to confidential, personal (e.g., PHI) or sensitive data to authorized users only. Said safeguards and precautions shall include the following administrative and technical password controls for all systems used to process or store confidential, personal, or sensitive data:

1. Passwords must not be:

a. Shared or written down where they are accessible or recognizable by anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;

b. A dictionary word; or

c. Stored in clear text

2. Passwords must be:

a. Eight (8) characters or more in length;

b. Changed every ninety (90) days;

c. Changed immediately if revealed or compromised; and

d. Composed of characters from at least three (3) of the following four (4) groups from the standard keyboard:

1) Upper case letters (A-Z);

2) Lowercase letters (a-z);

3) Arabic numerals (0 through 9); and

4) Non-alphanumeric characters (punctuation symbols).

ATTORNEY shall implement the following security controls on each workstation or portable computing device (e.g., laptop computer) containing confidential, personal, or sensitive data:

- 1 1. Network-based firewall and/or personal firewall;
- 2 2. Continuously updated anti-virus software; and
- 3 3. Patch management process including installation of all operating
- 4 system/software vendor security patches.

5 ATTORNEY shall utilize a commercial encryption solution that has received FIPS 140-2
6 validation to encrypt all confidential, personal, or sensitive data stored on portable electronic
7 media (including, but not limited to, compact disks and thumb drives) and on portable computing
8 devices (including, but not limited to, laptop and notebook computers).

9 ATTORNEY shall not transmit confidential, personal, or sensitive data via e-mail or other
10 internet transport protocol unless the data is encrypted by a solution that has been validated by
11 the National Institute of Standards and Technology (NIST) as conforming to the Advanced
12 Encryption Standard (AES) Algorithm. ATTORNEY must apply appropriate sanctions against its
13 employees who fail to comply with these safeguards. ATTORNEY must adopt procedures for
14 terminating access to PHI when employment of employee ends.

15 17.10 Mitigation of Harmful Effects

16 ATTORNEY shall mitigate, to the extent practicable, any harmful effect that is suspected
17 or known to ATTORNEY of an unauthorized access, viewing, use, disclosure, or breach of PHI
18 by ATTORNEY or its subcontractors in violation of the requirements of these provisions.
19 ATTORNEY must document suspected or known harmful effects and the outcome.

20 17.11 ATTORNEY's Subcontractors

21 ATTORNEY shall ensure that any of its contractors, including subcontractors, if
22 applicable, to whom ATTORNEY provides PHI received from or created or received by
23 ATTORNEY on behalf of COUNTY, agree to the same restrictions, safeguards, and conditions
24 that apply to ATTORNEY with respect to such PHI and to incorporate, when applicable, the
25 relevant provisions of these provisions into each subcontract or sub-award to such agents or
26 subcontractors.

1 17.12 Employee Training and Discipline

2 ATTORNEY shall train and use reasonable measures to ensure compliance with the
3 requirements of these provisions by employees who assist in the performance of functions or
4 activities on behalf of COUNTY under this Agreement and use or disclose PHI, and discipline
5 such employees who intentionally violate any provisions of these provisions, including
6 termination of employment.

7 17.13 Termination for Cause

8 Upon COUNTY's knowledge of a material breach of these provisions by ATTORNEY,
9 COUNTY shall either:

10 1. Provide an opportunity for ATTORNEY to cure the breach or end the
11 violation and terminate this Agreement if ATTORNEY does not cure the breach or end the
12 violation within the time specified by COUNTY; or

13 2. Immediately terminate this Agreement if ATTORNEY has breached a
14 material term of these provisions and cure is not possible.

15 3. If neither cure nor termination is feasible, the COUNTY's Privacy Officer
16 shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

17 17.14 Judicial or Administrative Proceedings

18 COUNTY may terminate this Agreement in accordance with the terms and conditions of
19 this Agreement as written hereinabove, if: (1) ATTORNEY is found guilty in a criminal
20 proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) a
21 finding or stipulation that the ATTORNEY has violated a privacy or security standard or
22 requirement of the HITECH Act, HIPAA or other security or privacy laws in an administrative or
23 civil proceeding in which the ATTORNEY is a party.

24 17.15 Effect of Termination

25 Upon termination or expiration of this Agreement for any reason, ATTORNEY shall
26 return or destroy all PHI received from COUNTY (or created or received by ATTORNEY on
27 behalf of COUNTY) that ATTORNEY still maintains in any form, and shall retain no copies of
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1 such PHI. If return or destruction of PHI is not feasible, it shall continue to extend the
2 protections of these provisions to such information, and limit further use of such PHI to those
3 purposes that make the return or destruction of such PHI infeasible. This provision shall apply
4 to PHI that is in the possession of subcontractors or agents, if applicable, of ATTORNEY. If
5 ATTORNEY destroys the PHI data, a certification of date and time of destruction shall be
6 provided to the COUNTY by ATTORNEY.

7 17.16 Disclaimer

8 COUNTY makes no warranty or representation that compliance by ATTORNEY with
9 these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be adequate or
10 satisfactory for ATTORNEY's own purposes or that any information in ATTORNEY's possession
11 or control, or transmitted or received by ATTORNEY, is or will be secure from unauthorized
12 access, viewing, use, disclosure, or breach. ATTORNEY is solely responsible for all decisions
13 made by ATTORNEY regarding the safeguarding of PHI.

14 17.17 Amendment

15 The parties acknowledge that Federal and State laws relating to electronic data security
16 and privacy are rapidly evolving and that amendment of these provisions may be required to
17 provide for procedures to ensure compliance with such developments. The parties specifically
18 agree to take such action as is necessary to amend this agreement in order to implement the
19 standards and requirements of HIPAA, the HIPAA regulations, the HITECH Act and other
20 applicable laws relating to the security or privacy of PHI. COUNTY may terminate this
21 Agreement upon thirty (30) days written notice in the event that ATTORNEY does not enter into
22 an amendment providing assurances regarding the safeguarding of PHI that COUNTY in its
23 sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA
24 regulations and the HITECH Act.

25 17.18 No Third-Party Beneficiaries

26 Nothing expressed or implied in the terms and conditions of these provisions is intended
27 to confer, nor shall anything herein confer, upon any person other than COUNTY or
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1 ATTORNEY and their respective successors or assignees, any rights, remedies, obligations or
2 liabilities whatsoever.

3 17.19 Interpretation

4 The terms and conditions in these provisions shall be interpreted as broadly as
5 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State
6 laws. The parties agree that any ambiguity in the terms and conditions of these provisions shall
7 be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA
8 regulations.

9 17.20 Regulatory References

10 A reference in the terms and conditions of these provisions to a section in the HIPAA
11 regulations means the section as in effect or as amended.

12 17.21 Survival

13 The respective rights and obligations of ATTORNEY as stated in this Section shall
14 survive the termination or expiration of this Agreement.

15 17.22 No Waiver of Obligation

16 No change, waiver or discharge of any liability or obligation hereunder on any one or
17 more occasions shall be deemed a waiver of performance of any continuing or other obligation,
18 or shall prohibit enforcement of any obligation on any other occasion.

19 **SECTION 18**

20 **GOVERNING LAW**

21 18.1 The rights and obligations of the parties and all interpretations and performance
22 of this Agreement shall be governed in all respects by the laws of the State of California.

23 18.2 Venue for any action arising out of or related to this Agreement shall only be in
24 Fresno County, California.

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1 delivered by an overnight commercial courier service is effective one COUNTY business day
2 after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery
3 instructions given for next day delivery, addressed to the recipient. A notice delivered by
4 telephonic facsimile is effective when transmission to the recipient is completed (but, if such
5 transmission is completed outside of COUNTY business hours, then such delivery shall be
6 deemed to be effective at the next beginning of a COUNTY business day), provided that the
7 sender maintains a machine record of the completed transmission. For all claims arising out of
8 or related to this Agreement, nothing in this section establishes, waives, or modifies any claims
9 presentation requirement or procedures provided by law, including but not limited to the
10 Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section
11 810).

12 **SECTION 21**

13 **ENTIRE AGREEMENT**

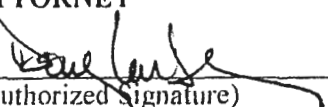
14 21.1 This Agreement, and any and all documents referred to or otherwise
15 incorporated by reference herein, constitutes the entire Agreement between COUNTY and
16 ATTORNEY with respect to the specialized legal services to be provided herein and supersedes
17 any previous Agreement concerning the subject matter hereof, negotiations, proposals,
18 commitments, writings, or understandings of any nature whatsoever unless expressly included
19 in this Agreement.

20 21.2 If any part of this Agreement is found violative of any law or is found to be
21 otherwise legally defective, ATTORNEY and COUNTY shall use their best efforts to replace that
22 part of this Agreement with legal terms and conditions most readily approximating the original
23 intent of the parties.

1 **Agreements**

2 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of
3 the day and year first hereinabove written.

4 **ATTORNEY**

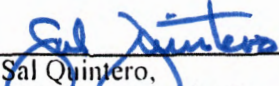
5 
6 (Authorized Signature)

7 Doug Larsen, President
8 Print Name & Title
9 Fishman Larsen & Callister
10 7112 N. Fresno St. Suite 450

11 Fresno CA 93720

12 Mailing Address

COUNTY OF FRESNO

13 
14 Sal Quintero,
15 Chairperson of the Board of Supervisors of
16 the County of Fresno

ATTEST:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

17 By: Susan Bishop
18 Deputy

19 FOR ACCOUNTING USE ONLY:

20 Org 89250100
21 Account No.: 7100
22 Requisition No.: 8921600196
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5 **ATTACHMENT A**
6 **SCHEDULE OF RATES**
7 **FISHMAN, LARSEN & CALLISTER**
8

9 Partners: \$300.00 per hour
10 Associates: \$200.00 per hour
11 Paralegals: \$145.00 per hour
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