

NAPA COUNTY AGREEMENT NO. 250384B

CONSULTANT SERVICES AGREEMENT

THIS CONSULTANT SERVICES AGREEMENT ("Agreement") is made and entered into as of October 1st, 2024 ("Effective Date") by and between Napa County Probation Department ("Client"), and Serrano Advisors, LLC ("Consultant") with reference to the following:

- A. Consultant shall furnish services to Client for the projects (collectively "Projects") in accordance with the terms of this Agreement.
- B. This Agreement is intended to and shall govern all services and work furnished by Consultant for the Project.

1. BASIC AGREEMENTS.

1.1 Basic Services. In compliance with all of the terms and conditions of this Agreement, Consultant shall provide those services specified in the "Statement of Work" attached hereto as Exhibit A, which services are referred to herein as the "Basic Services". Consultant shall meet with Client from time to time as requested by Client to discuss the progress of the Basic Services rendered to date and to ensure that Client is satisfied with the scope and quality of the Basic Services. Client may have a representative present at any meeting of Consultant concerning the Project.

1.2 Subconsultants. Consultant may retain subconsultants subject to the prior written approval of Client ("Subconsultants"). The retention of the Subconsultants shall not diminish or reduce the obligations and duties of Consultant hereunder. Client shall be listed as an intended third party beneficiary in each of Consultant's agreements with the Subconsultants to the extent applicable to the Project (the "Subconsultant Agreements"), and the Subconsultant Agreements shall provide that such Subconsultants shall be bound to the same terms and conditions of Consultant under this Agreement. In the event this Agreement is terminated by Client for cause, Client shall have the right, but not the responsibility, to assume the rights and responsibilities of Consultant under all or some of the Subconsultant Agreements that Client in its sole discretion chooses to assume. While this provision shall constitute a present assignment of Consultant's rights with respect to any and all such Subconsultant Agreements that Client so chooses to assume, Consultant, upon request from Client, shall promptly execute and deliver to Client written assignments of such Subconsultant Agreements that Client in its sole discretion so chooses to take by assignment. All Subconsultant Agreements shall provide for this assignment. Unless Client specifically approves in writing, in each instance, that the payment to any Subconsultant is a reimbursable expense, Client shall not have any liability for the cost and expenses of any Subconsultant, and Consultant solely shall be liable for any payment due to such Subconsultants. Consultant shall work with and coordinate its Basic Services with other consultants retained by Client in connection with the design of the Project as a Basic Service hereunder, but Consultant shall not be responsible for the content of their work or the errors or omissions of the Client's other consultants.

1.3 Standard of Performance. As a material inducement to Client to enter into this Agreement, Consultant hereby represents that Consultant has all applicable licenses to perform the Basic Services and is experienced in performing work or services similar to the Basic Services and, in light of such experience, Consultant hereby covenants that it shall exercise the same degree of care, skill, and diligence as is ordinarily possessed and exercised by reputable members of the same profession currently practicing under similar circumstances in the same geographic area in performing the Basic Services and all services required hereunder and using only qualified personnel. Consultant shall comply with all applicable federal, state and local laws, ordinances, regulations and orders in performing the Basic Services and all services hereunder.

1.4 Additional Services. Client shall have the right at any time during the performance of the Basic Services, without invalidating this Agreement, to order extra services beyond that specified in the Statement of Work or make changes by altering, adding to, or deducting from said services ("Additional Services"). No Additional Services may be undertaken unless authorized by Client in advance and in writing, including via email. Additional Services shall be paid for by Client as provided in Section 2.2. All services performed in connection with this Agreement may be referred to herein as the "Services." All terms and conditions under this Agreement applicable to Basic Services shall be applicable to all Services except as otherwise agreed to in writing by Client and Consultant.

2. COMPENSATION. Client shall compensate Consultant for the Services to be performed in accordance with the terms and conditions of this Agreement as follows:

2.1 Basic Services. For Basic Services, as described in the Statement of Work, Client shall compensate Consultant for the Basic Services not to exceed the amount set forth in Exhibit A, without prior written authorization of Client. Said compensation shall be inclusive of all compensation costs, and expenses unless specifically set forth to the contrary in this Section 2.

2.2 Additional Services. For Additional Services, as described in Section 1.4 hereof, except as otherwise set forth in a separate written agreement between Client and Consultant, compensation shall be paid at the rates set forth in Exhibit A attached hereto, plus the actual cost for those out-of-pocket expenses for long-distance calls, fax transmission (not to exceed the cost of the call), photocopies, and delivery charges incurred in connection with the work hereunder. All other costs, expenses, or charges, including, but not limited to, daily working and commuting travel expenses and all compensation and benefits paid to Consultant's employees, incurred by Consultant in connection with the Additional Services, shall be paid by Consultant without reimbursement from Client. Notwithstanding anything in this Agreement to the contrary, Consultant shall not be entitled to reimbursement for such reimbursable expenses unless Client pre-approves such expenses in writing.

2.3 Payment. Payments for Basic Services shall be made monthly in proportion to services performed. Payments for Additional Services of Consultant, and for reimbursable expenses permitted hereunder, shall be made monthly upon presentation of Consultant's statement of services rendered with sufficient supporting data acceptable to Client. Consultant shall submit one complete application for payment per month, rendered on or before the fifth (5th) day of each month based on services completed to date. Each invoice from Consultant shall include an updated

invoice tracking sheet describing the information required therein for all previous invoices related to the Basic Services and Additional Services, if any, and the information related to the most current invoice. Each invoice must include detail of daily hours by individual. Client shall pay Consultant thirty days (30) after receipt of invoice.

(a) Should a bona fide dispute arise with respect to a payment application submitted by Consultant, or to the extent reasonably necessary to protect Client from loss for which Consultant is responsible, Client shall pay the undisputed amount within the time period set forth herein, but shall withhold the disputed amount until the matter is resolved. Notwithstanding anything contained in this Agreement to the contrary, no compensation shall be paid to or claimed by Consultant for services required to correct deficiencies in any documents or materials prepared by or on behalf of Consultant, or attributable to defaults, failures, errors, or omissions of Consultant, any Subconsultant, or anyone for whom Consultant may be liable, or changes in the Project requested by Consultant, any Subconsultant, or anyone for whom Consultant may be liable, unless previously approved in writing by Client. Consultant shall pay its own income taxes, federal, state, or city, and self-employment taxes. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant's performance of the Services required by this Agreement. Consultant will continue to perform its obligations hereunder and pursue prosecution of the Services during any claim, dispute, or proceeding between the parties hereto as if such claim, dispute, or proceeding had not been instituted, provided that Client continues to make payments to Consultant as required under this Agreement for Services that are not the subject of any dispute.

3. PROJECT SCHEDULE.

Consultant shall commence its Services hereunder within five (5) days of the receipt of an authorization to proceed from Client; provided, however, that no such Services shall be commenced until Client has approved the insurance required to be obtained by Consultant pursuant to Section 4.1. Consultant understands and agrees that time is of the essence with respect to Consultant's obligation to provide its Services under this Agreement in a timely manner; it being understood that delays by Consultant in the performance of its duties hereunder may cause substantial damages to Client.

4. INSURANCE AND INDEMNIFICATION.

4.1 Consultant shall, at its sole cost and expense, fully comply with the terms and requirements of this Section. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees. Consultant shall procure and maintain for the duration of the contract insurance against claims arising out of their professional services and including, but not

limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

(a) Commercial General Liability (CGL). Consultant shall have a completed Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(b) Automobile Liability. Consultant shall have completed Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than one million dollars (\$1,000,000) per accident for bodily injury and property damage.

(c) Workers' Compensation and Employers' Insurance. To the extent Consultant has employees, Consultant shall maintain workers' compensation insurance as by the laws of the state of California, with Statutory Limits and employer's liability insurance limits of liability of not less than one million dollars (\$1,000,000) bodily injury by accident (each accident), one million dollars (\$1,000,000) bodily injury by disease (policy limit), and one million dollars (\$1,000,000) bodily injury by disease (each employee), or limits carried, whichever are higher.

(d) Professional Liability (Managed Care Errors and Omissions) Insurance. Insurance with limit no less than two million dollars (\$2,000,000) per claim, five million dollars (\$5,000,000) annual aggregate.

(e) Subcontractors. If Consultant has obtained prior written consent from Client to subcontract any portion of this Agreement, Consultant shall not allow any subcontractor to perform any portion of the Services until Consultant obtains from such subcontractor, and provides to Client, proof of insurance in form and substance identical to that required to be carried by the Consultant pursuant to this Section 4.1 Consultant shall in writing bind each such subcontractor to all of the insurance requirements of this Section 4. Consultant shall also require that that Client is named as an additional insured on insurance requirements for subcontractors.

(f) Neither receipt nor acceptance of policies, endorsements, or certificates, whether indicating reduced or different coverages than required herein, nor any other forbearance or omission by Client with regard to these insurance requirements, shall be deemed a waiver of, or estoppel to assert, any right on the part of Client regarding these insurance requirements. The insurance requirements set forth herein are independent of Client's indemnification obligations and other obligations hereunder. Nothing herein shall be construed to limit or alter any of other obligations of Consultant, under this Agreement or otherwise, including, without limitation, Consultant's indemnification obligations.

(g) Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

(i) Additional Insured Status. Client, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

(ii) Primary Coverage. The Consultant's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the Client, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Client, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

(iii) Notice of Cancellation. Each insurance policy required above shall state that coverage shall not be canceled, except with notice to Client.

(iv) Waiver of Subrogation. Consultant hereby grants to Client a waiver of any right to subrogation which any insurer of Consultant may acquire against Client by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Client has received a waiver of subrogation endorsement from the insurer.

(v) Self-Insured Retentions. Self-insured retentions must be declared to and approved by Client. Client may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Client.

(vi) Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to Client.

(vii) Claims Made Policies. If any of the required policies provide coverage on a claims-made basis:

(A) The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.

(B) Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Agreement.

(C) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

(D) Verification of Coverage. Consultant shall furnish Client with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Client before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. Client reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(E) Special Risks or Circumstances. Client reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

4.2 Indemnification.

(a) Scope. Each Party ("Indemnitor") will defend, indemnify, and hold the other Party ("Indemnatee") harmless from and against all liability, damages, cost and expense (including reasonable attorneys' fees and other costs of defense) arising from third party claims against Indemnatee in connection with this Agreement to the extent caused by the gross negligence, willful misconduct, or unlawful acts of the Indemnitor's agents, contractors and/or employees during the term of this Agreement. The Indemnitor will have the right to control the defense and settlement (to the extent of such indemnification), and the Indemnatee will reasonably cooperate in such defense.

(b) Procedure. The Indemnatee shall provide Indemnitor with prompt written notice of any claims for which it seeks indemnification. No delay in notice shall excuse the Indemnitor's obligations, except to the extent that the Indemnitor has been materially prejudiced by such delay. The Indemnitor shall defend the Indemnatee at Indemnitor's sole expense with legal counsel reasonably acceptable to the Indemnatee. If the Indemnitor fails to provide a timely defense, then the Indemnatee may defend with counsel of its own choosing at the expense of the Indemnitor. Neither the Indemnitor nor the Indemnatee shall enter into any settlement without the prior written consent of the other, which shall not be unreasonably withheld or delayed.

(c) Indemnitor's Rights. Indemnitor's rights of indemnification under this Section 4.2 shall not in any way be limited by, reduced, altered, or diminished as a result of Consultant's obligations to procure and maintain insurance as set forth in Section 4.1, or as the result of the existence or non-existence of any type of insurance coverage benefiting Consultant, or any of Indemnitor. The provisions of this Section 4.2 shall survive termination or expiration of this Agreement.

5. RIGHTS AND REMEDIES.

5.1 Default by Consultant. In the event (i) Consultant fails to perform the Services in a skilled and expeditious manner; or (ii) Consultant, or any employee, Subconsultant, or agent of Consultant, shall wrongfully file or record a lien against any property of Client or any agent or employee of Client; or (iii) any representation or certification made by Consultant to Client shall prove to be false or misleading on the date said representation or certification is made; or (iv) Consultant commits a material breach of this Agreement in the observance or performance of any covenant, agreement, or condition contained in this Agreement required to be kept, performed or observed by Consultant; or (v) Consultant violates any laws, ordinances, rules, regulations, or orders of any governmental agencies or courts in the performance of its duties hereunder; or (vi) Consultant suffers bankruptcy; then, provided the event as described above is not cured within thirty (30) days after written notice from Client to Consultant, Client may declare Consultant to be in default hereunder. If Consultant commits any acts of default specified in this Section, Client may, by giving notice in writing to Consultant, without prejudice to any other rights or remedies given Client by law or by this Agreement, (i) terminate the services of Consultant under this Agreement; (ii) take possession of all materials and (iii) complete the Basic Services (and Additional Services, if any) by whatever method Client may deem expedient. "Bankruptcy" shall be deemed to occur when Consultant makes an assignment for the benefit of creditor, files a petition in bankruptcy court, voluntarily takes advantage of any bankruptcy or insolvency laws, or is adjudicated bankrupt or judicially insolvent, or if a petition or an answer is filed proposing the adjudication of such Consultant as bankrupt.

5.2 Default by Client. In the event Client shall fail to perform its obligations pursuant to this Agreement after thirty (30) days' written notice from Consultant to Client, Consultant may declare Client to be in default hereunder and exercise any remedies available to it. Should Client default in its obligations hereunder, Consultant may terminate this Agreement. Upon such a termination, Consultant may recover from Client full payment for all Services performed to the date of such termination and for all reimbursable amounts. Notwithstanding the foregoing, Client shall not be responsible for delays or damages or declared to be in default by reason of delays in performance or by reason of strikes, lockouts, accidents, acts of God, and other delays unavoidable or beyond Client's reasonable control, delays in approval by governmental agencies, or delays in work of other consultants performing services on behalf of Client.

5.3 Termination by Client Without Fault of Consultant. Client shall have the right to cancel and terminate this Agreement upon providing sixty (60) days' written notice whether or not a default exists hereunder, and Client shall incur no liability to Consultant or any other person by reason of such cancellation. If the cancellation is for no fault of Consultant hereunder, Client shall

pay to Consultant all amounts due under this Agreement for Services rendered by Consultant as of the date of termination, plus approved reimbursable expenses consistent with this Agreement.

5.4 Transfers on Termination. In the event of termination of this Agreement, Consultant and Client shall forthwith return to the other all papers, materials, and other properties of the other held by each for purposes of execution of this Agreement. In addition, each party will assist the other party in orderly termination of this Agreement and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each party.

6. DISPUTE RESOLUTION.

6.1 Mediation. At Client's sole election, any action, dispute, claim, or controversy between the parties, whether sounding in contract, tort, or otherwise, including all disputes arising out of or in connection with this Agreement and any related agreements or instruments and any transaction contemplated hereby ("Dispute" or "Disputes") shall be attempted to be settled in good faith by nonbinding mediation as a condition precedent to arbitration by either party. The parties shall endeavor to resolve the Dispute by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Rules of the Judicial Arbitration and Mediation Service ("JAMS") currently in effect. In the event of any inconsistency between such rules and these mediation provisions, these provisions shall supersede such rules. All statutes of limitation that would otherwise be applicable shall apply to any mediation proceeding under this Section. Request for mediation shall be filed in writing with the other party to the Agreement and with JAMS. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 30 (thirty) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. Any mediator selected under this Section shall be knowledgeable in the subject matter of the Dispute. Qualified retired judges with at least five (5) years mediation experience shall be selected through panels maintained by JAMS or any private organization providing such services. The mediation shall be held within thirty (30) days of the date the demand for mediation is served on a party, unless the parties agree otherwise. The parties understand and agree that a representative from each side with full settlement authority will be present at the mediation conference. The mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views, and opinions, oral or written, made during the mediation by any party or a party's agent, employee, or attorney shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation, arbitration, or other proceeding involving the parties. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the County of El Dorado, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Where applicable to a mediation, the provisions of Section 6.2 below shall also apply to the mediation.

6.2 Arbitration. If the Dispute is not resolved by agreement or mediation pursuant to Section 6.1 above, the Dispute shall be resolved by arbitration as set forth in this Section. Such

disputes shall be resolved by binding arbitration in accordance with Title 9 of the California Code of Civil Procedure, Section 1280 *et seq.* In the event of any inconsistency between such rules and these arbitration provisions, these provisions shall supersede such rules. All statutes of limitation that would otherwise be applicable, including any limitations periods under the Government Claims Act (Government Code, Section 810 *et seq.*), shall apply to any arbitration proceeding under this Section. No limitations periods shall be tolled for any reason absent a writing signed by both parties. In any arbitration proceeding subject to these provisions, the arbitrator is specifically empowered to decide (by documents only, or with a hearing, at the arbitrator's sole discretion) pre-hearing motions that are substantially similar to pre-hearing motions to dismiss and motions for summary adjudication. Judgment upon the award rendered may be entered in any court having jurisdiction. Qualified retired judges with at least five (5) years arbitration experience shall be selected through panels maintained by the JAMS or any private organization providing such services. If the parties are unable to mutually agree upon a retired judge to hear their arbitration, the arbitration service shall provide a list of three (3) available judges and each party may strike one (1). The remaining judge will serve as the arbitrator. Notices of demand for arbitration shall be served in writing by registered or certified mail to all parties to this Agreement. Demand will be made within a reasonable time after the dispute or other matter in question has arisen. In no event shall a demand for arbitration be made after the date when the institution of legal proceedings based on such dispute or other matter in question would be barred by the applicable statute of limitations. The applicable statute of limitation shall be tolled during the period such arbitration proceedings are pending. Except as otherwise provided herein, the California Code of Civil Procedure and California Evidence Code shall apply to and govern the conduct of discovery. The arbitrator shall issue a statement of decision not later than twenty (20) days after the testimony is closed. Judgment may be entered into in accordance with a statement of decision as provided in the California Code of Civil Procedure. Any memorandum of costs shall be submitted to the arbitrator and the arbitrator shall determine the amount of the costs to be awarded to any prevailing party. Any motion for attorneys' fees as an element of costs under California Civil Code section 1717 shall be served and filed with the arbitrator before or at the time the memorandum of costs is served and filed. Except as otherwise provided in Section 7.17 below, the arbitrator's fees and charges shall be born equally by the parties to the dispute. Notwithstanding anything contained herein to the contrary, if a third person or entity not a party to this Agreement brings an action in which Consultant and Client become a party, by cross-claim or otherwise, and said party or entity is not bound by the provisions of this Section regarding arbitration, the provisions of this Section shall not be applicable to such dispute.

6.3 Survival; Applicability. The provisions of this Article shall survive any termination, amendment, or expiration of this Agreement in which this Section is contained, unless the parties otherwise expressly agree in writing. Should an action, dispute, claim, or controversy be brought against Client and/or Consultant by a third party who is not bound by a mediation or binding arbitration provision similar to the mediation and arbitration provisions contained herein, the terms of this Article shall not apply to such action, dispute, claim, or controversy.

7. MISCELLANEOUS.

7.1 Certifications. Consultant shall, from time to time, make such certifications and statements to Client and to others as Client shall reasonably request provided that Consultant determines that such certifications are true and correct based upon the Services performed by Consultant hereunder.

7.2 Liens. Provided Client has paid Consultant the amounts owing hereunder when such sums are owed to Consultant, should Consultant or any Subconsultant, employee, supplier, or vendor of Consultant make, record or file, or maintain any action on or respecting a claim of mechanic's or materialmen's lien, stop-notice, equitable lien, payment or performance bond, or *lis pendens*, Consultant shall immediately and at its own expense procure, furnish, and record appropriate statutory release bonds of bonding companies acceptable to Client which will extinguish or expunge said claim, stop-notice, or *lis pendens*. If Consultant fails to do so, Client will have the right to cause such lien to be removed and Consultant shall indemnify, defend, and hold harmless Client against all liability, cost, and expense incurred by Client in causing such lien to be removed. Client may retain out of any payment due Consultant amounts sufficient to reimburse Client for any such liability, cost, and expense.

7.3 Independent Contractor. Neither Client nor any of its employees shall have any control over the manner, mode, or means by which Consultant or its agents or employees, perform the services required herein, except as otherwise set forth herein. Consultant shall perform all services required herein as an independent contractor of Client and shall remain at all times as to Client a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of Client. Client shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venture or a member of any joint enterprise with Consultant. Consultant is free to pursue and accept other business opportunities so long as Consultant's business ventures do not conflict with the provisions of this Agreement.

7.4 Assignment. The experience, knowledge, capability, and reputation of Consultant, its principals and employees were a substantial inducement for Client to enter into this Agreement. Therefore, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered, voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Client. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, this Agreement shall be void. No approved transfer shall release Consultant of any liability hereunder without the express consent of Client. Client, in its sole and absolute discretion, may assign this Agreement to any of its Affiliates. "Affiliates" means (a) Client's partners, co-members, or joint venturers, (b) any corporation or other entity that is a parent or subsidiary of Client, or (c) any corporation or other entity that is controlled by or under common control of any of the parties listed in (a) or (b). Upon any such assignment by Client, Client shall be released from all obligations and liability under this Agreement that accrue after the effective date of such assignment.

7.5 Information. Client shall provide information regarding its requirements for the Services to be provided by Consultant. Consultant shall notify Client immediately in writing if Consultant is aware or becomes aware of any omissions or deficiencies in the data or information supplied to Consultant in its performance of its Services pursuant to this Agreement.

7.6 Client's Approval. Whenever provision is made herein for the approval or consent of Client, or that any matter be to Client's satisfaction, unless specifically stated to the contrary, such approval or consent shall be made by Client in its sole discretion and determination.

7.7 Notices. Any notice which either party may desire to give to the other party must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case, postage fully prepaid and addressed to the respective parties as set forth on the first page of this Agreement or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto.

If notice to Client:

Napa County Probation Department
Attn: Amanda Gibbs, Probation Chief
212 Walnut Street
Napa, CA 94559
(707) 253-4431
amanda.gibbs@countyofnapa.org

If notice to Consultant:

Serrano Advisors LLC
Scott Coffin, President
7240 Crystal Blvd.
El Dorado, CA 95623
scott@serranoadvisors.com

Copy to:

Napa County Probation Department
212 Walnut Street
Napa, CA 94559

7.8 Books and Records. Consultant shall keep complete and detailed books and records relating to reimbursable expenses, and Services performed on the basis of a fixed rate on the basis of generally recognized accounting principles, consistently applied. These books and records shall be retained by Consultant at its head office for a period of at least ten (10) years after the date of completion of the performance of this Agreement. Client shall have the right at all reasonable times to audit the books and records. If such audit discloses that Consultant has charged and received more than it was entitled hereunder, Consultant shall immediately reimburse to Client the excess amount received together with interest thereon at ten percent (10%) per annum from the date such excess amount was received until repayment thereof.

7.9 Confidentiality. Consultant, for itself and its employees and personnel, acknowledges, confirms, and agrees that all information learned in the course of the performance of Service under this Agreement and all data furnished by Client, all plans, drawings, computer programs, specifications, and other documents relating to the Project, Client's business, and the terms of this Agreement are and shall remain of a confidential nature. Any publicity or press releases with respect to the Project or the services hereunder shall be under the sole discretion and control of Client. Consultant shall not divulge to any unauthorized person any confidential information concerning observations, conversations, discussions, correspondence, personnel records, business records, or proprietary records. All matters concerning Client and its business operations, including, but not limited to, the identity of persons with whom it conducts business such as customers, vendors, manufacturers and suppliers, its research and development, its projects and contemplated projects, its financial affairs, its pricing structure and strategies and its procedures and practices shall be considered confidential. Such information remains the property of Client. Moreover, Consultant shall not employ confidential business information in performing Services for Client that it has obtained by virtue of its relationship with any other Client or entity.

7.10 Conflict of Interest. Consultant shall not have any business or financial interest outside Client which in any way conflicts with the interests of Client or places Consultant in a position where it can use the association with Client for direct or indirect gain to the possible detriment or embarrassment of Client. A conflict of interest may arise in a wide variety of circumstances and may be direct or indirect. A conflict of interest arises whenever Consultant's outside interests might affect or might reasonably be thought by others to affect Consultant's judgment or conduct in matters which involve Client. Consultant agrees not to engage in such activity. Consultant assumes any and all liability should any allegation of conflict of interest arise from the conduct of Consultant and Consultant agrees to indemnify Client for any allegation of conflict of interest arising from the conduct of Consultant.

7.11 Waiver. No waiver of any default hereunder shall be construed as a waiver of any subsequent breach.

7.12 Successors and Assigns. Client and Consultant each binds itself, its partners, successors, permitted assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement.

7.13 Governing Law. This Agreement shall be construed in accordance with the laws of California.

7.14 Full Agreement. Each party acknowledges its full understanding of this Agreement and that there are no verbal promises, undertakings or agreements in connection herewith and that this Agreement may be modified only by a written agreement signed by all parties hereto. All previous negotiations and agreements between the parties hereto, with respect to the transaction set forth herein, are merged in this instrument which fully and completely express the parties' rights and obligations, and the covenants herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

7.15 Partial Invalidity; Counterparts. If any term or provision of this Agreement shall be found to be illegal, unenforceable or in violation of the laws, statutes, ordinances, or regulations of any governmental agency having jurisdiction thereof by a court of competent jurisdiction, then, notwithstanding such term or provision, this Agreement shall be and remain in full force and effect and such term shall be deemed stricken; provided, however, this Agreement shall be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. In order to facilitate the transaction contemplated herein, electronically mailed or facsimile signatures may be used in place of original signatures on this Agreement. Each party intends to be bound by the signatures on the electronically mailed or facsimiled document, are aware that the other party will rely on such signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

7.16 Survival. The terms, provisions, representations, and certification contained in this Agreement, or inferable therefrom, shall survive the termination of this Agreement and the payment of the remuneration hereinabove provided.

7.17 Attorneys' Fees and Expenses. In any action between the parties hereto seeking enforcement of any of the terms and provisions of this Agreement or in connection with the performance of the Services hereunder, the prevailing party in such action shall be entitled to have and to recover from the other party its reasonable attorneys' fees, expert witness fees, arbitrator's fees, statutory costs, court costs, and other expenses (including cost of collection) in connection with such action or proceeding.

7.18 Authority. Each individual executing this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the party to this Agreement.

7.19 Exhibits. Exhibit A is attached hereto, are incorporated herein by this reference. In the event of any conflict or inconsistency between the terms and conditions of the body of this Agreement and the Exhibit(s) attached hereto, the terms and conditions contained in the body of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SERRANO ADVSORS, LLC

By _____
Scott Coffin, President

NAPA COUNTY, a political subdivision of
the State of California

By _____
ANNE COTTRELL, Chair of the Board of
Supervisors

APPROVED AS TO FORM Office of County Counsel By: <u>Douglas Parker (via e-sign)</u> Deputy County Counsel Date: <u>April 1, 2025</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____
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EXHIBIT A

STATEMENT OF WORK

This Statement of Work ("SOW") outlines the Basic Services to be performed by Consultant for the Executive Advisory Services ("Project").

SOW DEFINITIONS

- A. **Client** shall mean Napa County Probation Department (NCPD).
- B. **Client Contact** shall mean the individual assigned by Client to provide project oversight and manage Client deliverables as outlined in this Exhibit A. Client Contact shall be the focal point for any escalation issues, coordinate SOW amendments, and any other items that require Client stakeholder engagement.
- C. **Consultant** shall mean Serrano Advisors, LLC.
- D. **Consultant Contact** shall mean the individual assigned by Consultant to be the focal point responsible for issues relating to the Project.
- E. **Project** shall mean the engagement and purpose for which the parties entered into the Agreement and which services and work to be performed by Consultant are governed by this SOW.
- F. **Written Deliverables** shall mean any deliverable which Consultant shall provide in a written format that includes, but is not limited to, assessments, reports, and summaries.

TERM

- A. The term of the Agreement ("**Term**") shall commence on the Effective Date and continue until the earlier of: (i) completion of the Basic Services as described herein, (ii) terminated in accordance with Section 5 of the Agreement, or (iii) June 30, 2025 ("**Termination Date**"), unless extended by mutual agreement or terminated earlier pursuant to the Agreement. Notwithstanding anything to the contrary in this SOW or in the Agreement, the parties agree that Consultant shall not begin any work hereunder unless and until this SOW is executed by the authorized representatives of the parties hereto. The Client maintains the right to extend the term of the Agreement for two (2) additional fiscal years, in one-year increments. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

PROJECT OBJECTIVES

A. Consultant is responsible for the following overall Project objectives:

1. Oversee the application for PATH 3 funding and develop the implementation plan and budget for the Napa County Probation Department.
2. Support vendor management evaluations for embedded health and billing related to CalAIM pre-release services.
3. Coordinate meetings with Napa County Counsel and other agencies to develop a universal release of information and data sharing solution for the CalAIM reentry initiative.

B. Consultant is responsible for the timeliness and quality of all deliverables produced and services provided hereunder.

SERVICES TO BE PERFORMED

Part One: Program Management

PATH 3 Planning and Implementation

Activities:

1. Develop and maintain a detailed project plan for the Napa County Probation Department (NCPD) specific to CalAIM enhanced care management, pre-release, and post-release services; project plan tracks the ownership, status, and completion of milestones.
2. Prepare and submit the PATH 3 application to the California Department of Health Care Services (DHCS).
3. Develop the PATH implementation plan for NCPD and manage the submission process with state regulators.
3. Report status to NCPD staff, leaders, and executives on a periodic basis.
4. Develop financial pro-forma for staffing and other ongoing administrative costs.
5. Development of NCPD workflows, procedures, and job aides to assist the sworn staff with implementation of justice involved services.
6. Facilitate meetings with NCPD and other agency staff as needed to complete project deliverables.
8. Coordinate activities with NCPD's embedded health provider (Wellpath), and other county agencies, that screen, diagnose, and treat inmates residing in the Napa County Juvenile Justice Center and Jail.

Part Two: Interagency Collaboration

Strategic Planning and Coordination for PATH 3 and CalAIM implementation.

Activities:

1. Convene and facilitate collaboration with other county agencies through regularly scheduled meetings, and ad hoc work groups for the purpose of strategic planning and coordination of PATH 3 and CalAIM implementation. This collaborative process will include scheduling, agenda setting, facilitation, and may include Napa County Probation Department (NCPD), participating agencies should include Napa County Public Health, Napa County Behavioral Health Care Services, Napa County Probation Department, Napa County Information Technology Department, Napa County Social Services Agency, Wellpath, judges and local judicial system agencies (e.g., Collaborative Courts, District Attorney, Public Defender, etc.), and other County and external agencies as needed.
2. Convene and facilitate meetings, as needed, with key community-based partners, such as community health centers, managed care health plans, community-based organizations that serve the justice-involved population, programs that serve individuals experiencing homelessness, housing providers, police, hospitals, and other community stakeholders who mutually serve this population.
3. Liaison with State Department of Health Services on PATH 3 issues and attend briefings and work groups as appropriate to access updated guidance or policy clarification.
4. Facilitate and/or attend a formal Executive Steering Committee with key decision-makers from Napa County Probation Department, Napa County Sheriff's Office, Napa County Behavioral Health, Napa County Health and Human Services, and Napa County Information Technology Department.

Part Three: Operations Readiness for Pre-Release Services

CalAIM Facility Assessment and Readiness for the Napa County Juvenile Justice Center and Jail.

Activities:

1. Oversee preparation and delivery of regulatory filings for the reentry initiative to the California Department of Health Care Services.
2. Support the project management in the preparation of readiness deliverables, and report status to Napa County Probation Department (NCPD) management on a routine basis, and as requested.
3. Develop of Operational Reporting, ranging from jail operations to executive dashboards for NCPD Staff.

4. Update and revise to existing standard operating procedures, modifying applicable documents that pertain to reentry protocols and maintaining current practices.
5. Develop staff training materials for new NCPD sworn and administrative staff on reentry procedures, and conduct refresher training for existing staff.

Part Four: Vendor Management

Contract management support for embedded health services and billing

Activities:

1. Develop a Medi-Cal billing evaluation checklist for the Napa County Probation Department (NCPD) and selection committee members. The checklist would include a combination of features, such as coding, workflow management, auditing, technology, administration, total cost of ownership, analytics, reporting, maintenance and support, and collaboration capabilities.
2. Collaborate with Napa County Develop a scoring matrix for the selection committee to prioritize Medi-Cal billing vendors and their service offerings. Vendor assessment forms would weight the criteria and result in a scoring to support the selection process.
3. Support NCPD with advisory services to renegotiate contract terms with embedded health provider to meet regulatory compliance.

Part Five: Data Sharing and Release of Information

Data sharing for continuity of care between embedded, in-reach, and community-based partners.

Activities:

1. Coordinate with Napa County agency partners, community-based organizations, in-reach providers, and embedded health providers to develop a reentry care plan.
2. Collaborate with community partners to define the essential data elements to share for purposes of warm handoffs between pre-release and post-release, including embedded providers, in-reach providers, managed care health plans, and community-based organizations.
3. Facilitate working sessions with Napa County's Legal Counsel on the applicability of State Law (AB 133) to the CalAIM justice involved pre-release services, and to create a universal, multi-agency, release of information.
4. Identify the intersections of federal substance use disorder regulators in 42 C.F.R. Part 2, and to navigate potential workarounds to share patient history data for purposes of care management under the State Law.
5. Development of a multi-agency data sharing agreement to facilitate the pre-release and post-release warm handoffs.

DELIVERABLES

A. For the Term of this Agreement, Consultant shall deliver to Client the deliverables listed in the table below.

	Deliverables	
Item #	Deliverables/Milestones	Due Date
1	Develop the PATH 3 implementation plan and budget for the Napa County Probation Department (NCPD) for submission to the California Department of Health Care Services.	2/1/2025
2	Complete the preliminary NCPD facility readiness assessment.	2/28/2025
3	Develop the multi-agency integrated workplan.	3/15/2025
4	Complete the DHCS regulatory readiness gap analysis.	3/31/2025

1. Written Deliverables. As applicable, Consultant shall provide Written Deliverables in an unprotected, editable Microsoft Word format to allow Client to provide feedback as outlined in Acceptance of Deliverables below. Should Microsoft Word not be feasible, Consultant shall provide Written Deliverables in a format customary to industry standard. Deliverables include operational readiness, governance, operational workflows, data exchange, and reporting documentation.

CLIENT RESPONSIBILITIES

A. Client will assign an individual to be the focal point for Consultant communications relative to this Project. The Client Contact will engage Client parties with the authority to act for Client. Client Contact's responsibilities include the following:

1. Manage Client's obligations and personnel for this Project.
2. Serve as the interface between Consultant and all Client departments participating in this Project.

3. Administer amendment requests in collaboration with the Consultant project manager and internal Client departments for any SOW modification requests.
 4. Participate in Project status meetings.
 5. Obtain and provide information, data, and decisions as well as resolve action items and answer questions.
 6. Help resolve Project issues and escalate issues within Client, as necessary.
 7. Review with the Consultant project manager any Client invoice or billing requirements.
- B. If applicable and contingent upon Consultant's agreement to comply with Client policies, Client will facilitate the provision of: (i) access to the Client communication network and communication tools; and (ii) any accommodations for work to be performed on-site, including office space and security badge access.

LOCATION WHERE SERVICES ARE TO BE PERFORMED

- A. Off-Site Exceptions. Consultant shall provide all services remotely. Consultant does not require on-site access to Client offices.
- B. Remote Access Requirements. Client Contact to establish system/account credentials e.g., email/calendar and other access as may be required to complete the requirements and deliverables of this SOW.

PROJECT OVERSIGHT

- A. Consultant Contact. Consultant shall designate a single point of contact ("Consultant Contact") responsible for issues relating to quality, completion of deliverables, issue management, accuracy and timeliness of time reporting and invoicing. The Consultant Contact for this Project is: Scott Coffin, President, Serrano Advisors LLC.
- B. Client Contact. Client will designate a Client Contact responsible for monitoring Consultant's performance with regard to the completion of deliverables and compliance. The Client Contact for this Project is: Chief Amanda Gibbs, Napa County Probation Department.

ACCEPTANCE OF DELIVERABLES

- A. Except as otherwise indicated, Client shall have a minimum period of thirty (30) business days (the "**Acceptance Period**") to determine the acceptability of a deliverable to Client provided by Consultant hereunder. Within thirty (30) business days following the end of the Acceptance Period (the "**Notice Period**"), Client shall (a) provide written notification of acceptance to Consultant, or (b) provide written notice of non-acceptance with reasonable written comments to Consultant regarding the deficiencies of the deliverable(s). If changes or modifications are required by Client as evidenced by the notice of non-acceptance, Consultant shall have thirty (30) days to correct the deficiency noted therein and resubmit the deliverable to Client beginning a new Acceptance Period. This process shall continue until Consultant has corrected all deficiencies and Client accepts the deliverable.

- B. If Client does not give notice of non-acceptance or request a revision of the deliverable within ten (10) business days of the completion of an Acceptance Period, deliverables shall be considered accepted by Client.

COMPENSATION

- A. Client shall pay invoices in accordance with Section 2.3 of the Agreement and as outlined herein.

In consideration of Consultant's performance of the Basic Services, Client shall pay to Consultant the Fee in the amounts or at the rates and manner specified below, not to exceed the Fee Schedule Sum outlined in Section 2.1 of the Agreement. The Fee(s) outlined below is inclusive of all professional costs and expenses for the Project duration. In no event shall Consultant invoice, nor shall Client be responsible for the payment of any amount in excess of the Fee Schedule Sum amount unless mutually agreed to in writing via an amendment.

1. **Hourly Fee.** Client to charge \$450 per hour for time and materials. Invoices shall be provided monthly in accordance with Section 2.3 of the Agreement.

Client has the option to extend the term of the Agreement by two (2) fiscal years through June 30, 2027, in one-year increments. Total contract maximum is \$500,000.

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EXHIBIT B

SANCTIONED PERSONS ATTACHMENT

Serrano Advisors, LLC hereby certifies that neither entity, nor any of its officer, director or managing employee, employee or staff working under this Agreement as part of Serrano Advisors, LLC, is a Sanctioned Person (as defined below), and Serrano Advisors, LLC (the "Notifying Party") further covenants and agrees that it shall notify Client (the "Notified Party") immediately in the event that any officer, director or managing employee of the Notifying Party, becomes a Sanctioned Person, which change in status may, at the option of the Notified Party, be deemed to be sufficient cause for termination of this Agreement. For purposes hereof, "Sanctioned Person" shall mean a person or entity that:

- i. Is currently under indictment or prosecution for, or has been convicted of (a) any offense related to the delivery of an item or service under the Medicare or Medicaid programs or any state health care programs, (b) a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service, (c) fraud, theft, embezzlement, or other financial misconduct in connection with the delivery of a health care item or service, (d) obstructing an investigation of any crime referred to in (a) through (c) above, or (e) unlawful manufacture, distribution, prescription, or dispensing of a controlled substance;
- ii. Has been required to pay any civil monetary penalty under 42 U.S.C. § 1128A regarding false, fraudulent, or impermissible claims under, or payments to induce a reduction or limitation of health care services to beneficiaries of, any state or federal health care program, or is currently the subject of any investigation or proceeding which may result in such payment; or
- iii. Has been excluded from participation in the Medicare, Medicaid, or any state health care program.
- iv. Has been debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued under Executive Order No. 12549 or guidelines implementing Executive Order No. 12549.

EXHIBIT C

DATA PROCESSING ADDENDUM

This Data Processing Addendum (“**Addendum**”) forms part of the Consultant Services Agreement (“**Agreement**”) between Napa County Probation Department (“**Client**”) and Serrano Advisors, LLC (“**Consultant**”) sometimes hereinafter referred to collectively as the “**Parties**” and each individually as a “**Party**.”

When used throughout this Addendum, capitalized terms, whether in the singular or in the plural form, not otherwise defined herein, shall have the meanings given to them in the Agreement.

The Parties hereby agree that the terms and conditions set forth below shall be added as an addendum to the Agreement. In the event of any conflict or inconsistency between this Addendum and the Agreement, the terms and definitions of this Addendum shall prevail.

1. DEFINITIONS.

1.1 In this Addendum, the following terms shall have the meanings set forth below:

(a) “**Confidential Private Information**” means any information Consultant processes or gains access to on behalf of Client that:

(i) identifies or relates to an individual including Client’s employees, members, or others who can be identified directly or indirectly from that data alone or in combination with other information in Consultant’s possession or control or that Consultant is likely to have access to, or

(ii) other data otherwise defined by applicable laws or regulations as protected personal information.

(iii) other confidential information that both Parties may at times share, including but not limited to: (1) information concerning or related to a Party’s business, products, services, content, finances, cost and customer pricing information, historical information, intellectual property, development designs and plans, capital sources, healthcare providers, potential healthcare providers, marketing information, term sheets, contracts, business methods, information about executives and employees, and any and all other unpublished information, whether disclosed in written, oral, electronic or other form, which information is marked confidential or bears a marking of like import, or which information each Party states to be considered confidential at time of disclosure; and (2) all summaries, reports and analyses prepared by one

Party which reflect or contain any such information as provided by the other Party.

(b) **“Disclosing Party”** means the party disclosing Confidential Private Information under the Agreement.

(c) **“Recipient Party”** means the party receiving Confidential Private Information under the Agreement.

(d) **“Security Breach”** means (i) any unauthorized use of, loss of, access to, or disclosure of Client’s information that compromises the security, confidentiality, or integrity of Client’s information, except that an incidental disclosure of Client’s information to an authorized party, or incidental access to Client’s information by an authorized party, where no reasonable suspicion exists that such disclosure or access involves theft or is fraudulent, criminal, or malicious in nature, will not be considered a Security Breach for purposes of this definition, unless such incidental disclosure or incidental access triggers notification obligations under any applicable law, and (ii) any Security Breach (or substantially similar term) as defined by applicable law.

2. CONFIDENTIALITY.

2.1 **Overview:** Except as otherwise provided herein, as necessary to fulfill the purposes set forth in the Agreement, or as required by applicable law, the Parties understand and agree that they will not distribute, use, or rely upon Confidential Private Information received from the other without the permission of the Disclosing Party.

2.2 **Ownership:** Except as otherwise provided in the Agreement, Confidential Private Information is and remains the absolute and exclusive property of the Disclosing Party and/or its affiliates, and is its unique and variable asset. Unless otherwise authorized by the Agreement, no copies of Confidential Private Information shall be made without the written permission of the Disclosing Party. The Parties agree that, except as otherwise provided herein, they will not directly or indirectly communicate, divulge, or otherwise disclose any of the other’s Confidential Private Information to any unauthorized person, firm, or corporation, and shall prevent, to the best of their ability, the unauthorized disclosure of such Confidential Private Information to others.

2.3 **Unauthorized Use - Safeguards:** The Recipient Party shall at all times use appropriate safeguards to prevent the unauthorized use or disclosure of Confidential Private Information provided under the Agreement.

The Recipient Party shall specifically implement administrative, physical, and technical safeguards which reasonably and appropriately protect the confidentiality, integrity, and availability of any records stored, maintained or transmitted under the Agreement.

With respect to Confidential Private Information, such safeguards shall consist of privacy and information security controls which shall at all times meet or exceed such standards imposed under the HIPAA Security Rule [45 CFR Part 164, Subpart C] and Title XIII of the American Recovery and Reinvestment Act of 2009 (the "HITECH Act").

2.4 Exclusions: The following types of information shall not be considered confidential:

- (a) Information in the public domain or that becomes a part of the public domain, other than as a result of a breach of the confidentiality provisions of the Agreement;
- (b) Information that is independently developed by either Party as demonstrated by the Party's records; or
- (c) Any item or data forming part of the Confidential Private Information that is lawfully known by the Recipient Party, without any obligation of confidentiality or other restriction on use or disclosure, prior to the provision of such information by Disclosing Party.

2.5 Return of Confidential Information: Except as required for archival or data storage practices or requirements, upon termination of the Agreement, or earlier upon the Disclosing Party's request, the Recipient Party shall promptly return all of Disclosing Party's Confidential Private Information, including all copies, that was received in a non-electronic form, and shall destroy all such information received electronically. Notwithstanding anything to the contrary herein, and subject to the confidentiality obligations herein, a Recipient Party may retain on a confidential basis copies of Disclosing Party's Confidential Private Information in order to comply with legal or regulatory requirements, as well as any and all (a) emails and any attachments, except for those that contain Confidential Private Information that are subject to destruction by legal requirements, and (b) any electronic files, each of which are automatically saved pursuant to legal or regulatory requirements.

2.6 Permitted Disclosures: Recipient Party may disclose the Confidential Private Information to its officers, directors, employees, consultants, advisors and counsel (its "Representatives") who need to know such information in connection with the Recipient Party's performance, provided that each Representative shall be bound to maintain the confidentiality of such information and provided that the Confidential Private Information shall be used only by the Parties and such Representatives for the limited purposes of carrying out its obligations under the Agreement.

2.7 Compelled Release of Information: Either Party is entitled to release Confidential Private Information as required to prosecute or defend any claim under the Agreement; provided however, that the Party seeking to enforce the Agreement shall take all reasonable steps necessary to avoid disclosing such information, including filing documents and papers under seal. A Recipient Party may disclose Confidential Private Information

pursuant to a valid order of a court or governmental agency with proper jurisdiction, or if such disclosure is required by law or regulation provided that the information is disclosed only to the minimum extent necessary, and provided that, to the extent allowed by law, the releasing Party shall give Disclosing Party sufficient advance notice so that it may seek a protective order or employ other lawful means to avoid or limit disclosure.

2.8 **Transfer:** Consultant will not transfer any Confidential Private Information to another country outside of the United States of America.

3. INCIDENT MANAGEMENT.

3.1 **Security Incident Procedures:** During the term of the Agreement, Consultant shall maintain a security incident response plan that includes procedures to be followed in the event of any Security Breach of Client's information or any Security Breach of any application, software, or system directly associated with the accessing, processing, storage, communication, or transmission of Client's information.

3.2 **Notice of Unauthorized Disclosure/Breach:** Consultant must notify Client of any Security Breach within twenty-one (21) days of Consultant becoming aware of any suspected or potential Security Breach involving data subject to the Agreement or this Addendum.

(a) Consultant shall coordinate with Client to investigate the matter and reasonably assist Client in mitigating any potential damage stemming from the Security Breach.

(b) As soon as reasonably practicable and in good faith, upon Client's request, Consultant and Client will consult and strategize regarding the root cause analysis and remediation efforts as necessary.

3.3 **Security Breach Assessment:** If Consultant becomes aware of a Security Breach, or a breach of any of its obligations under this Addendum or of any privacy and data protection requirements, Consultant will:

(a) Within twenty-one (21) days of becoming aware of the breach, conduct its own audit to determine the cause;

(b) Upon request by Client, engage a third-party security firm to reasonably investigate and conduct an assessment of Consultant's security vulnerabilities;

(c) Produce a written report that includes detailed plans to remedy any deficiencies identified by the investigation;

(d) Provide Client with a summary of Consultant's investigative findings, copy of the written audit report; and

(e) To the extent commercially feasible, remedy any deficiencies identified by the investigations within forty-five (45) days.

3.4 **Security Protocols:** At Client's written request, Consultant will provide policies and procedures evidencing proper security protocols and infrastructure as is applicable to subject data governed by this Addendum.

4. AUDIT.

4.1 **Overview:** Consultant will permit Client and its third-party representatives to audit Consultant's compliance with its Agreement obligations, upon at least thirty (30) days' notice, during the term of the Agreement and for ten (10) years after the Agreement terminates. Consultant will give Client and its third-party representatives all necessary assistance to conduct such audits, but such audit will be reasonable in scope and will not adversely impact Consultant's business operations. The assistance may include, but is not limited to:

(a) Physical access to, remote electronic access to, and copies of Confidential Private Information held at or stored on Consultant's premises or systems;

(b) Access to and meetings with any of Consultant's personnel reasonably necessary to provide all explanations and perform the audit effectively; and

(c) Inspection of infrastructure, electronic data systems, facilities, equipment, or application software used to store, process, or transport Confidential Private Information.

5. SURVIVAL.

5.1 **Obligations:** The Parties agree that the obligations contained in this section shall survive the termination of the Agreement, for a period of ten (10) years, or longer to the extent required by law. Nothing in this section limits or otherwise diminishes the protections afforded to trade secret information or otherwise conferred by applicable law.