

# **Sicuro Data Analytics, LLC**

## **Racial Justice Act Statistical Analysis of Criminal Charging and Outcomes**

### **AGREEMENT FOR SERVICES #8299**

**THIS AGREEMENT**, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Sicuro Data Analytics, LLC, a limited liability company duly qualified to conduct business in the State of California, whose principal place of business is 4915 Marlin Way, Oxnard, California 93035 (hereinafter referred to as "Consultant").

### **RECITALS**

**WHEREAS**, County has determined that it is necessary to obtain a consultant to assist its District Attorney's Office (DA) in providing Racial Justice Act (RJA) statistical analysis of criminal charging and outcomes;

**WHEREAS**, Consultant has represented to County that it is specially trained, experienced, is an expert, and competent to perform the special services described in ARTICLE I Scope of Work; that it is an independent and bona fide business operation, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and County relies upon those representations;

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable state and local laws;

**WHEREAS**, County has determined that the provision of such services provided by Consultant are in the public's best interest and that there are specialty skills, qualifications, and equipment not expressly identified in County classifications involved in the performance of the work in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(b), El Dorado County Charter, section 210(b)(6), and/or Government Code section 31000;

**NOW, THEREFORE**, County and Consultant mutually agree as follows:

### **ARTICLE I**

**Scope of Work:** Consultant is engaged in the business of doing the services and tasks required under this Agreement, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Consultant agrees to furnish, at Consultant's own cost and expense, all personnel, equipment, tools, materials, and services necessary to provide RJA statistical analysis of criminal charging and outcomes for the DA.

All deliverables shall be submitted in the format as specified by County's Contract Administrator, or designee, and shall be either electronic portable document format (PDF), Microsoft (MS) Word, MS Excel, or any additional format as deemed necessary.

The deliverable(s) format and schedule for each Phase listed below shall be discussed and agreed upon in advance between Consultant and County's Contract Administrator, or designee.

All Phase services shall be completed chronologically, not simultaneously. Consultant shall not move onto the next Phase until written acceptance of the previously completed Phase services is provided by the County's Contract Administrator, or designee.

Consultant shall perform the following services:

### **Phase 1**

Consultant shall utilize only key data elements from the County's prior Damion case management system (i.e., name, birthdate, case number, court number) back to January 1, 2015, and the data in the County's current Prosecutor by Karpel (PbK) case management system.

Phase 1 of the Racial Justice Act analysis shall involve the ingestion of data from the County. Upon completion of a fully executed Agreement, the Consultant shall participate in a kickoff meeting, and meet with various members of the DA, including the database management team, clerical staff, chief Assistant District Attorneys, and any other pertinent staff. The kickoff meeting will take place either in person at the DA or via Zoom or Teams (or another virtual platform) at the discretion of the County's Contract Administrator, or designee. The list of data elements and fields required to perform the analysis shall be developed. Upon receiving the data housed in the County's PbK case management system, the Consultant shall engage in several steps to ensure full comprehension of the data:

- 1) Convert database files (e.g., Media Descriptor File [MDF], BAK) into flat files (csv)
- 2) Reconstruct case management system with flat files
- 3) Reshape data at the case-defendant level
- 4) Conduct a data audit to identify data gaps

Upon completion of these steps, the Consultant shall develop a plan for backfilling missing components in the existing data files that have been provided, and shall prepare a Phase 1 Data Audit Report that outlines the steps taken to construct an analytically usable database and what will be needed to backfill missing content to develop a comprehensive data set in Phase 2. Consultant shall then work with the County to identify additional, internal databases that could contain the missing data features as well as external locations where missing data are maintained (e.g., court databases).

Phase 1 Expected Completion Time: Three (3) to six (6) months.

**Deliverables:**

- One (1) Phase 1 Data Audit Report
- One (1) Kickoff meeting with DA

**Phase 2**

Based on the findings of the Phase 1 Data Audit Report, Consultant shall devise a plan for backfilling content that is either incorrectly included or altogether omitted in the County's PbK case management system. This typically involves working with the County to provide access to court records where content can be accessed, crawled, extracted, and then backfilled into the case management system that Consultant has reconstructed.

Based on the format of the data accessed from the courts, Consultant shall construct a set of code to access and harvest the court content. Once the content has been saved locally, Consultant shall construct another set of code to extract pertinent information from the court records. These data shall then be merged with the reconstructed case management system.

A Phase 2 Data Audit Report describing the completeness of the data that has been updated as a result of the court crawling and content extraction effort shall then be produced.

Phase 2 Expected Completion Time: Four (4) to six (6) months.

**Deliverables:**

- One (1) Phase 2 Data Audit Report

**Phase 3**

Once the reconstructed case management system has been determined to be complete and restructured at the case-defendant level, Consultant shall begin the process of conducting the empirical analysis of the Racial Justice Act. Consultant shall then provide additional analyses and projects to be determined by the County.

The first step in conducting the empirical analysis shall involve conducting an Average Outcomes Analysis. This analysis shall identify different raced, but otherwise identical, defendants to determine whether disparities exist in charging practices (e.g., press any charge, charge a felony) and case outcomes (e.g., guilty outcome, sentence length). To conduct this analysis, Consultant shall identify as many observable features of a case as possible (e.g., requested charges from law enforcement agency, type of crime, division within the DA where the charges have been filed, census tract where the incident occurred, etc.), and control for criminal behavior and charging practices that have historically been associated with these geographic regions, types of crimes, and law enforcement agency. Upon completion of this analysis, a visual construction of any

disparities shall be produced for ease of readability. However, a full technical appendix and corresponding regression tables shall also be produced, which are the support for any graphics that are produced.

In the second step of the empirical analysis, Consultant shall conduct an Outlier Analysis at both the case and Deputy District Attorney level. The outlier analysis shall generate a “norm” for the DA with regards to charging and sentencing practices, accounting for the differences that arise due to crime type, requested charges, defendant age, and criminal history. Consultant shall then identify instances where specific cases deviate from the DA-wide norm at such a level that they are both statistically significantly and materially different from the norm of the DA. A similar analysis shall be conducted at the Deputy District Attorney level, where the prosecuting behavior of each Deputy District Attorney shall be compared to the norm of the entire DA. Note that this analysis shall be conducted for a Deputy District Attorney’s charging behavior within each type of crime, or top charge. Thus, Consultant shall produce instances where specific cases or specific Deputy District Attorney charging practices within a type of crime significantly and materially differ from the norm within the DA.

Consultant shall present the Average Outcomes Analysis and Outlier Analysis results to the County to obtain feedback and then implement this feedback into the analysis to ensure that the report accurately reflects practices within the DA and ensures fairness in the representation of the findings. Once a final set of results have been agreed upon between the Consultant and the County, a final report of the findings will be produced. The report will contain two (2) sections. The first will be intended for a general audience, using language that is understandable by non-technical readers. The second section will contain all of the technical assumptions and details utilized in supporting the figures and tables that are presented in both the first and second sections of the report.

Additionally, Consultant shall provide the County with the updated content, which can be ingested and incorporated into the County’s production case management system, should the County be interested in updating their records. Upon completion of the backfill Consultant shall create code that will streamline the backfilling process.

Phase 3 Expected Completion Time: Six (6) to (10) months.

**Deliverables:**

- Visual construction of any analysis disparities
- Full technical appendix and corresponding regression tables
- Average Outcomes Analysis and Outlier Analysis results
- One (1) Final report of the findings

**Additional Services:**

A fully executed amendment is required to add additional scope of work items and additional services, including on-going support services, that may be requested by the County.

Deliverables shall be submitted via electronic file and Consultant shall produce the file using MS 365 applications (specifically, MS Word, MS PowerPoint, and MS Excel). Signed reports shall be submitted in Adobe PDF. All deliverables shall be submitted in the language, format and design that are compatible with and completely transferable to County's computer, and that are acceptable to County's Contract Administrator, or designee. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator, or designee. Consultant shall submit all deliverables to County's Contract Administrator, or designee, in accordance with completion time schedules pursuant to this Agreement. Failure to submit the required deliverables in the format required may be grounds for termination of the Agreement, as provided in ARTICLE XIII, Default, Termination, and Cancellation, herein.

Consultant represents that its professional credentials are such that it can legally provide the services, and agrees to perform said services, without subcontracting, to the satisfaction of County and to Consultant's best professional efforts, which shall at least meet industry standards. Consultant shall comply with all Federal, state, and local laws that are applicable to provision of these services.

Consultant shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Consultant is responsible for ensuring that its employees, as well as any subconsultant if applicable, perform the services and tasks required under this Agreement accordingly. All of the services included in the Scope of Work are the responsibility of Consultant unless specifically described as a task or item of work to be provided by County.

## **ARTICLE II**

**Term:** This Agreement shall become effective upon final execution by both parties hereto and shall expire three (3) years thereafter.

## **ARTICLE III**

**Compensation for Services:** For services provided herein, including any deliverables that may be identified herein, County agrees to pay Consultant upon the satisfactory completion and County's acceptance of work, in arrears. Payment shall be made within forty-five (45) days following County's receipt and approval of itemized invoices identifying the service dates, number of hours worked, description of work and notation of what Phase the work is related to.

For the purposes hereof, the hourly billing rate for all services rendered is \$300. Each invoice will include a ten percent (10%) overhead fee.

The total amount of this Agreement shall not exceed \$275,000, inclusive of all costs, taxes, and expenses.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices.

Invoices shall be mailed to County at the following address:

County of El Dorado  
District Attorney's Office  
778 Pacific Street  
Placerville, California 95667

Attn.: Vern Pierson  
District Attorney

or to such other location as County directs.

In the event that Consultant fails to deliver, in the format specified, the deliverables required by this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the required deliverables are received, or proceed as set forth below in ARTICLE XIII, Default, Termination, and Cancellation, herein.

#### **ARTICLE IV**

**Taxes:** Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Consultant agrees that it shall not default on any obligations to County during the term of this Agreement.

#### **ARTICLE V**

**Ownership of Data:** Upon completion or earlier termination of all services under this Agreement, ownership and title to all reports, documents, plans, maps, specifications, estimates, compilations, photographs, videos, and any and all other materials or data produced or obtained as part of this Agreement will automatically be vested in County without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to County. Copies may be made for Consultant's records, but shall not be furnished to others without prior written authorization from County's Contract Administrator, or designee. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by County. Consultant shall furnish County all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the services and deliverables provided under this Agreement.

#### **ARTICLE VI**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

#### **ARTICLE VII**

**Consultant to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Consultant, and Consultant may perform similar work or services for others.

However, Consultant shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Consultant's responsibilities or hinder Consultant's performance of services hereunder, unless County's Contract Administrator, or designee, in writing, authorizes that agreement or sharing of information.

#### **ARTICLE VIII**

**Confidentiality:** Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's District Attorney's Office for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

#### **ARTICLE IX**

**Assignment and Delegation:** Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

#### **ARTICLE X**

**Independent Contractor:** The parties intend that an independent consultant relationship will be created by this contract. Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, agents, affiliates, and subconsultants, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Consultant. Those persons will be entirely and exclusively under the direction, supervision, and control of Consultant.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Consultant performs the work or services for accomplishing the results. Consultant understands and agrees that Consultant lacks the authority to bind County or incur any obligations on behalf of County.

Consultant, including any subconsultant or employees of Consultant, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Consultant shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Consultant. Consultant

shall not be subject to the work schedules or vacation periods that apply to County employees.

Consultant shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Consultant provides for its employees.

Consultant acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

## **ARTICLE XI**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## **ARTICLE XII**

**Audit by California State Auditor:** Consultant acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.



## **ARTICLE XIII**

### **Default, Termination, and Cancellation:**

- A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:
1. The alleged default and the applicable Agreement provision.
  2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Consultant shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Consultant, the excess costs to procure from an alternate source.
2. County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.
3. County may require Consultant to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
2. A representation or warranty made by Consultant in this Agreement proves to have been false or misleading in any respect.
3. Consultant fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
4. A violation of ARTICLE XXI, Conflict of Interest.

- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event Consultant ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Consultant, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

**ARTICLE XIV**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

With a copy to:

County of El Dorado  
 District Attorney's Office  
 778 Pacific Street  
 Placerville, California 95667

County of El Dorado  
 Chief Administrative Office  
 330 Fair Lane  
 Placerville, California 95667

Attn.: Vern Pierson  
 District Attorney

Attn.: Michele Weimer  
 Procurement and Contracts Manager

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Sicuro Data Analytics, LLC  
 4915 Marlin Way  
 Oxnard, California 93035

Attn.: Gregory DeAngelo, President

or to such other location as Consultant directs.

## **ARTICLE XV**

**Change of Address:** In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify County in writing as provided in ARTICLE XIV, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, or designee, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

## **ARTICLE XVI**

**Indemnity:** To the fullest extent permitted by law, Consultant shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Consultant or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

The insurance obligations of Consultant are separate, independent obligations under the Agreement, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Agreement.

Nothing herein shall be construed to seek indemnity in excess of that permitted by Civil Code section 2782, et seq. In the event any portion of this Article is found invalid, the Parties agree that this Article shall survive and be interpreted consistent with the provisions of Civil Code section 2782, et seq.

## **ARTICLE XVII**

**Intellectual Property Indemnification:** Consultant hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Consultant warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall defend, indemnify, and hold harmless County from

and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Consultant's duty to defend, indemnify, and hold harmless under this Section applies only provided that:

- (a) County notifies Consultant promptly in writing of any notice of any such third-party claim:
- (b) County cooperates with Consultant, at Consultant's expense, in all reasonable respects in connection with the investigation and defense of any such third party claim;
- (c) Consultant retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Consultant shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and
- (d) Should services under this Agreement become, or in Consultant's opinion be likely to become, the subject of such a claim, or in the event such a third-party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Consultant shall, at Consultant's option and expense, either:
  - (i) Procure for County the right to continue using the services without infringement or;
  - (ii) Replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Consultant will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon:

- (a) Any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Consultant) in such a way as to cause the alleged infringement at issue; and/or
- (b) Any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

## **ARTICLE XVIII**

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit. County, including, without limitation, its officers, officials, employees, and volunteers shall be named as an additional insured on ISO form CG 2010 1185, or its equivalent.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Cyber Liability Insurance with limits not less than One Million Dollars (\$1,000,000) per occurrence or claim, One Million Dollars (\$1,000,000) aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
- F. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- G. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- H. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance

are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- I. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County; and
  - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- J. Consultant's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- K. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- L. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- M. The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- N. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- O. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- P. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

## **ARTICLE XIX**

**Force Majeure:** Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

## **ARTICLE XX**

**Waiver:** No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

## **ARTICLE XXI**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Consultant and performing work for County and who are considered to be consultant within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Consultant covenants that during the term of this Agreement neither it, or any officer or employee of Consultant, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.

2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Consultant becomes aware of a conflict of interest related to this Agreement, Consultant shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in ARTICLE XIII, Default, Termination, or Cancellation.

Pursuant to Government Code section 84308 (SB 1439, the Levine Act), Consultant shall complete and sign the attached Exhibit A, marked "California Levine Act Statement," incorporated herein and made by reference a part hereof, regarding campaign contributions by Consultant, if any, to any officer of County.

## **ARTICLE XXII**

### **Nondiscrimination:**

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and Title 2, California Code of Regulations, Section 11102.



### **ARTICLE XXIII**

**California Residency (Form 590):** If Consultant is a California resident, Consultant must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. Consultant will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Consultant during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

### **ARTICLE XXIV**

**County Payee Data Record Form:** All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

### **ARTICLE XXV**

**Business License:** County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

### **ARTICLE XXVI**

**Licenses:** Consultant hereby represents and warrants that Consultant and any of its subconsultants employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Consultant and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Consultant and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

### **ARTICLE XXVII**

**California Forum and Law:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

### **ARTICLE XXVIII**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Vern Pierson, District Attorney, District Attorney's Office, or successor.

## **ARTICLE XXIX**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

## **ARTICLE XXX**

**Electronic Signatures:** Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

## **ARTICLE XXXI**

**Partial Invalidity:** If any provision, sentence, or phrase of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, sentences, and phrases will continue in full force and effect without being impaired or invalidated in any way.

## **ARTICLE XXXII**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

## **ARTICLE XXXIII**

**Mandated Reporter Requirements:** Consultant acknowledges and agrees to comply with mandated reporter requirements pursuant to the provisions of Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the California Penal Code, also known as "The Child Abuse and Neglect Reporting Act," and the Welfare and Institutions Code Section 15630 et seq., related to elder and dependent adults, as applicable.

## **ARTICLE XXXIV**

**HIPAA Compliance:** As a condition of Consultant performing services for the County of El Dorado, Consultant shall execute that Business Associate Agreement which is attached hereto as Exhibit B, which is incorporated herein for all intents and purposes.

## **ARTICLE XXXV**

**Information Technology Security Requirements:** Consultant agrees to comply with the requirements listed in the Information Technology Security Addendum which is attached hereto as Exhibit C, which is incorporated herein for all intents and purposes. Additionally, Consultant shall adhere to at all times the terms and conditions as set forth in the Criminal Justice Information Services (CJIS) Security Policy a copy which may be found at: [https://www.fbi.gov/file-repository/cjis\\_security\\_policy\\_v5-9-1\\_20221001.pdf/view](https://www.fbi.gov/file-repository/cjis_security_policy_v5-9-1_20221001.pdf/view)

**ARTICLE XXXVI**

**Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

**ARTICLE XXXVII**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates indicated below.

**-- COUNTY OF EL DORADO --**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Board of Supervisors  
"County"

Attest:  
Kim Dawson  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_

**-- SICURO DATA ANALYTICS, LLC --**

By: *Gregory DeAngelo*  
Gregory DeAngelo (Feb 16, 2024 10:37 PST)

Dated: 02/16/2024

Gregory DeAngelo  
President  
"Consultant"

# Sicuro Data Analytics, LLC

## Exhibit A

### California Levine Act Statement

#### California Levine Act Statement

California Government Code section 84308, commonly referred to as the "Levine Act," prohibits any officer of El Dorado County from participating in any action related to a contract if he or she accepts, solicits, or directs any political contributions totaling more than two hundred and fifty dollars (\$250) within the previous twelve (12) months, and for twelve (12) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclosure of such contribution by a party to be awarded a specific contract. An officer of El Dorado County includes the Board of Supervisors, any elected official, and the chief administrative officer (collectively "Officer"). It is the Consultant's responsibility to confirm the appropriate "Officer" and name the individual(s) in their disclosure.

Have you or your company, or any agent on behalf of you or your company, made any political contribution(s), or been solicited to make a contribution by an Officer or had an Officer direct you to make a contribution of more than \$250 to an Officer of the County of El Dorado in the twelve months preceding the date of the submission of your proposals or the anticipated date of any Officer action related to this contract?

\_\_\_\_\_ YES  NO

If yes, please identify the person(s) by name:

Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution(s) of more than \$250 to an Officer of the County of El Dorado in the twelve months following any Officer action related to this contract?

\_\_\_\_\_ YES  NO

If yes, please identify the person(s) by name:

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Officer(s) from participating in any actions related to this contract.

2/1/2024

Date

Sicuro Data Analytics

Type or write name of company

*Gregory DeAngelo*

Signature of authorized individual

Gregory DeAngelo

Type or write name of authorized individual

# Sicuro Data Analytics, LLC

## Exhibit B

### HIPAA Business Associate Agreement

This Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the “Effective Date”).

#### RECITALS

**WHEREAS**, County and Consultant (hereinafter referred to as Business Associate (“BA”) entered into the Underlying Agreement pursuant to which BA provides services to County, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be disclosed to BA for the purposes of carrying out its obligations under the Underlying Agreement; and

**WHEREAS**, the County and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH” Act), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws as may be amended from time to time; and

**WHEREAS**, County is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 CFR Section 160.103; and

**WHEREAS**, BA, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 USC Section 17938 and 45 CFR Section 160.103; and

**WHEREAS**, “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g);

**WHEREAS**, “Breach” shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

**WHEREAS**, “Unsecured PHI” shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by BA of County Disclosed PHI
  - A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the County, Privacy Rule, Security Rule, or the HITECH Act.
  - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
    - (1) Use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
    - (2) Disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
    - (3) Disclose PHI as necessary for BA's operations only if:
      - (a) Prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
        - (i) To hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
        - (ii) The third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
    - (4) Aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
    - (5) Not disclose PHI disclosed to BA by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.

- (6) De-identify any and all PHI of County received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
  - C. BA agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.
- 3. Obligations of BA. In connection with its use of PHI disclosed by County to BA, BA agrees to:
  - A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308, 164.310, 164.312, and 164.504(e)(2). BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule.
  - B. Report to County within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
  - C. Report to County in writing of any access, use or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.
  - D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by



the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.

4. PHI Access, Amendment and Disclosure Accounting. BA agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).
  - B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.
  - C. To assist the County in meeting its disclosure accounting under HIPAA:
    - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subconsultants for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if know, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
    - (2) Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
  - D. Make available to the County, or to the Secretary of Health and Human Services (the "Secretary"), BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

5. Obligations of County.

- A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.
- D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

- A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the County's knowledge of a material breach by the BA, the County shall either:
  - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.
  - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
  - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.

C. Effect of Termination.

- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA or its agents or subconsultants still maintain in any form, and shall retain no copies of such PHI.
- (2) In the event that the County determines that returning or destroying the PHI is infeasible, BA shall provide to the County notification of the conditions that make return or destruction infeasible, and BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If County elects destruction of the PHI, BA shall certify in writing to County that such PHI has been destroyed.

7. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "County") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subconsultants, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subconsultants, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the County in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of County as set forth herein. BA's obligation to defend, indemnify and hold harmless County shall be subject to County having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may

be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.
  - D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the County to the fullest extent allowed by law.
  - E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.
- 8. Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
  - 9. Survival. The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
  - 10. Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
  - 11. Conflicts. Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.

# Sicuro Data Analytics, LLC

## Exhibit C

### Information Technology Security Requirements

1. Notification of Data Security Incident

For purposes of this section, "Data Security Incident" is defined as unauthorized access to the Consultant's business and/or business systems by a third party, which access could potentially expose County data or systems to unauthorized access, disclosure, or misuse. In the event of a Data Security Incident, Consultant must notify County in writing within forty-eight (48) hours. Notice should be made to all parties referenced in the "Notices" section of the Agreement. Notice must reference this contract number. Notice under this section must include the date of incident and Consultant's systems and/or locations which were affected. The duty to notify under this section is broad, requiring disclosure whether or not any impact to County data is known at the time, to enable County to take immediate protective actions of its data and cloud environments.

Failure to notify under this section is a material breach, and County may immediately terminate the Agreement for failure to comply.

2. Data Location

A. Consultant shall not store or transfer non-public County data outside the United States. This prohibition includes backup data and Disaster Recovery locations. The Consultant will permit its personnel and Consultants to access County data remotely only as required to provide technical support. Remote access to data from outside the continental United States is prohibited unless expressly approved in advance and in writing by the County.

B. The Consultant must notify the County in writing within forty-eight (48) hours of any location changes to Consultant's data center(s) that will process or store County data. Notice should be made to the County contact indicated in the "Notices" section of this Agreement and must reference this contract number.

3. Data Encryption

A. The Consultant shall encrypt all non-public County data in transit regardless of the transit mechanism.

B. The Consultant shall encrypt all non-public County data at rest.

- C. The Consultant's encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology Security Requirements.
  
- 4. Subconsultant Disclosure  
To the extent subcontracting or assignment is permitted under this Agreement, the Consultant is responsible for the actions of their subconsultants, vendors, and suppliers. Consultant shall take necessary steps to ensure that the provisions of this contract are enforceable on all subconsultants, vendors, and suppliers acting on behalf of or through Consultant.
  
- 5. Business Continuity  
Consultant shall provide and maintain a business continuity and disaster recovery plan that achieves the County's Recovery Time Objective (RTO) and Recovery Point Objective (RPO), as set forth in the Scope of Work and/or Service Level Agreement, and specifically incorporated herein. Upon receiving initial data from the County, Consultant shall have sufficient backups to maintain a RPO of twenty-four (24) hours. At any given time, the County shall not be required to provide Consultant with more than twenty-four (24) hours' worth of data. Additionally, in the event of a disaster, Consultant shall reproduce full data services to not exceed RTO of forty-eight (48) hours.