

**First American Data Tree LLC**  
**doing business as**  
**First American Data & Analytics**  
**Covenant Guard with Professional Services**

**AGREEMENT FOR SERVICES #7873**

**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 First American Data Tree LLC, doing business as First American Data & Analytics, a Delaware limited liability company duly qualified to conduct business in the State of California, whose principal place of business is 4 First American Way, Santa Ana, California 92707 (hereinafter referred to as "Contractor").

**R E C I T A L S**

**WHEREAS**, County has determined that it is necessary to obtain a Contractor to assist its Recorder Clerk's Office, in the redaction of restrictive covenants;

**WHEREAS**, On September 28, 2021 the Governor approved AB 1466 to eliminate unlawful restrictive covenants from real estate documents and requires each county recorder to establish a Restrictive Covenant Modification Program ("RECOMP") plan, to identify and redact unlawfully restrictive covenants from California real property records in their archives;

**WHEREAS**, Contractor 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 Contractor are in the public's best interest and that due to the limited timeframes, temporary or occasional nature, or schedule for the project or scope of work, the ongoing aggregate of work to be performed is not sufficient to warrant the addition of permanent staff in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(c), El Dorado County Charter, section 210(b)(6), and/or Government Code section 31000;

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

## **ARTICLE I**

**Scope of Work:** Contractor is engaged in the business of doing the services and tasks required under this Agreement, including those services and tasks that are identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Contractor agrees to furnish, at Contractor's own cost and expense, all personnel, equipment, tools, materials, and services necessary to perform the services and tasks required under this Agreement, including those services and tasks that are identified in Exhibit A, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Deliverables shall be submitted via electronic file and Contractor shall produce the file using Microsoft (MS) Office 365 applications (specifically, MS Word, MS PowerPoint, and MS Excel). Signed reports shall be submitted in Adobe portable document format (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. 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. Contractor shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in the individual Work Orders issued 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 XIV, Default, Termination, and Cancellation, herein.

Contractor shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Contractor is responsible for ensuring that its employees, as well as any subcontractor if applicable, perform the services and tasks required under this Agreement accordingly.

## **ARTICLE II**

**Term:** The term of this Agreement will begin on March 1, 2024, (the "Effective Date") and will continue for an initial period of thirty six (36) months, as set forth in Exhibit A (such period, the "Initial Term"). At the end of the Initial Term, this Agreement will be renewed automatically for consecutive renewal terms of twelve (12) months (each, a "Renewal Term"), unless terminated by either party (effective as of the end of the then current term) by providing

the other party written notice in accordance with ARTICLE XIV, Default, Termination, and Cancellation below. All terms and conditions of this Agreement shall apply during each Renewal Term, except for the fees.

## **ARTICLE III**

**Compensation for Services:** For services provided herein, including any deliverables that may be identified herein, County agrees to pay Contractor upon the satisfactory completion and County's acceptance of work, in arrears. Payment shall be made within forty-five (45) days, except as noted below, following County's receipt and approval of

itemized invoices identifying the services rendered.

For the purposes hereof, the billing rates shall be in accordance with the following:

County shall pay to Contractor an annual fee consisting of a one year CovenantGuard license fee and yearly fee for Professional Services for Optical Character Recognition (OCR) Scanning for Restrictive Covenants (RC) and loading documents into CovenantGuard, for the duration of the Term for the Services set forth in ARTICLE I, Scope of Work herein.

Year 1 \$10,000.00 License fee to be paid in advance.  
\$25,000.00 Professional Services fee to be paid on completion of work consisting of scanning up to five (5) million documents from the First American document repository.

Year 2 \$10,000.00 License fee to be paid in advance.  
\$14,000.00 Professional Services fee to be paid on completion of work consisting of scanning up to five hundred thousand (500,000) documents provided by the County (this scanning may carry over into Year 3).

Year 3 \$10,000.00 License fee to be paid in advance.

The annual fee for each consecutive Renewal Term will be the License Fee in effect from the previous year unless otherwise agreed upon in writing by both the County's Contract Administrator and Contractor.

The total amount of this Agreement shall not exceed \$69,000, 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 Contractor's charges for the specific services billed on those invoices.

Invoices shall be mailed to County at the following address:

County of El Dorado  
Recorder Clerk Office  
360 Fair Lane  
Placerville, California 95667

Attn.: Catrina Christensen  
Assistant County Recorder

or to such other location as County directs.

In the event that Contractor 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 XIV, Default, Termination, and Cancellation, herein.

#### **ARTICLE IV**

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

#### **ARTICLE V**

**Ownership of Data:** County retains all ownership rights in and to County's Data. The term "County Data" refers to any document images provided by County and any edited or redacted versions of said document images provided by Contractor to the County. Contractor retains all ownership and intellectual property rights to the Services, including all document images housed in the Contractor's document image repository that were acquired under separate agreement, and CovenantGuard (SaaS).

#### **ARTICLE VI**

##### **Information Security:**

- A. Contractor shall comply with applicable laws and regulations, including but not limited to the Code of Federal Regulations, Title 45, parts 160-164, regarding the confidentiality and security of personal identifiable information (PII).

Personal identifiable information (PII) means any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including but not limited to, his or her name, signature, social security number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, or any other financial information.

- B. Permitted Uses and Disclosures of PII.

1. Permitted Uses and Disclosures. Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities. The information privacy and security programs must reasonably and appropriately protect the confidentiality, integrity, and availability of the PII that it creates, receives, maintains, or transmits; and prevent the use or disclosure of PII other than as provided for in this Agreement. Except as otherwise provided in this Agreement, the Contractor, may use or disclose PII to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate Federal or State laws or regulations.

2. Specific Uses and Disclosures provisions.

Except as otherwise indicated in the Agreement, Contractor shall:

- a. Use and disclose PII for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, provided that such use and disclosures are permitted by law.
  - b. Take all reasonable steps to destroy, or arrange for the destruction of County's records within its custody or control containing personal information which is no longer to be retained by Contractor by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.
3. Safeguards. To prevent use or disclosure of PII other than as provided for by this Agreement. Contractor shall provide County with information concerning such safeguards as County may reasonably request from time to time.

C. Responsibilities of Contractor.

1. Contractor shall restrict logical and physical access to confidential, personal, or sensitive data to authorized users only.
  2. Contractor shall implement appropriate authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), Contractor shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-86 and SANS Institute Password Protection Policy.
  3. Implement the following security controls on each server, workstation, or portable (e.g. laptop computer) computing device that processes or stores confidential, personal, or sensitive data:
    - a. Network based firewall and/or personal firewall
    - b. Continuously updated anti-virus software
    - c. Patch-management process including installation of all operating system/software vendor security patches.
- D. Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PII by Contractor or its subcontractors in violation of the requirements of this Agreement.
- E. Agents and Subcontractors of Contractor. To ensure that any agent, including a subcontractor to which the Contractor provides PII received from County, or created or received by Contractor, for the purposes of this contract shall comply with the same

restrictions and conditions that apply through this Agreement to Contractor with respect to such information.

- F. Notification of Electronic Breach or Improper Disclosure. During the term of this Agreement, Contractor shall notify County immediately upon discovery of any breach of PII and/or data, where the information and/or data is reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to the County Privacy Officer, within two (2) business days of discovery, at (530)621-5852. Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Contractor shall investigate such breach and provide a written report of the investigation to the County Privacy Officer, postmarked within thirty (30) working days of the discovery of the breach.
- G. Data Harvesting: During the term of the agreement and after, the data observed by the integration between Contractor and County's CrowdStrike Falcon Platform is required to stay in ownership of County. Any data that was collected during that time is to be deleted from Contractor's databases in order to protect sensitive network and systems data sets.

#### **ARTICLE VII**

**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 VIII**

**Contractor 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 Contractor, and Contractor may perform similar work or services for others. However, Contractor 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 Contractor's responsibilities or hinder Contractor's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

#### **ARTICLE IX**

**Confidentiality:** Contractor 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. Contractor, and all Contractor'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 Recorder Clerk'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 X**

**Assignment and Delegation:** Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor 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 XI**

**Independent Contractor:** The parties intend that an independent contractor relationship will be created by this contract. Contractor 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. Contractor exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, 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 Contractor. Those persons will be entirely and exclusively under the direction, supervision, and control of Contractor.

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 Contractor performs the work or services for accomplishing the results. Contractor understands and agrees that Contractor lacks the authority to bind County or incur any obligations on behalf of County.

Contractor, including any subcontractor or employees of Contractor, 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. Contractor 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 Contractor. Contractor shall not be subject to the work schedules or vacation periods that apply to County employees.

Contractor 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 Contractor provides for its employees.

Contractor 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 XII**

**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 XIII**

**Audit by California State Auditor:** Contractor 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, Contractor 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 XIV**

#### **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 Contractor 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 Contractor, the excess costs to procure from an alternate source.

2. County shall pay Contractor the sum due to Contractor 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 Contractor under this Agreement and the balance, if any, shall be paid to Contractor upon demand.
3. County may require Contractor 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 Contractor in this Agreement proves to have been false or misleading in any respect.
  3. Contractor 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 Contractor.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event Contractor 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 Contractor, 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, Contractor 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 XV**

**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:

County of El Dorado  
Recorder Clerk’s Office  
360 Fair Lane  
Placerville, California 95667

Attn.: Janelle K. Horne  
Recorder-Clerk

With a copy to:

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

Attn.: Michele Weimer  
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Contractor shall be addressed as follows:

First American Data & Analytics  
4 First American Way  
Santa Ana, California 92707

Attn.: Legal Department

or to such other location as Contractor directs.

**ARTICLE XVI**

**Change of Address:** In the event of a change in address for Contractor's principal place of business, Contractor's Agent for Service of Process, or Notices to Contractor, Contractor shall notify County in writing as provided in ARTICLE XV, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, 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 XVII**

**Indemnity:** To the fullest extent permitted by law, Contractor 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 Contractor 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 Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

The insurance obligations of Contractor 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 XVIII**

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance (providing scope of coverage equivalent to ISO policy form CG 00 01) 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 Contractor in performance of the Agreement.
- D. In the event Contractor is a licensed professional or professional contractor 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. Contractor shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. 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.
- G. Contractor 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, Contractor 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 Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event Contractor

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.

H. 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.
- I. Contractor'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 Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County. Contractor currently has large deductible/self-retention amounts on their insurance policies, which are hereby approved by the 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 Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. 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.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor 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.
- O. 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 Contractor and performing work for County and who are considered to be contractor 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 contractors 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.

Contractor covenants that during the term of this Agreement neither it, or any officer or employee of Contractor, 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 Contractor becomes aware of a conflict of interest related to this Agreement, Contractor 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 XIV, Default, Termination, or Cancellation.

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

## **ARTICLE XXII**

### **Nondiscrimination:**

- A. County may require Contractor's services on projects involving funding from various state and/or federal agencies, and as a consequence, Contractor shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Contractor 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; Contractor 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. Contractor and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Contractor shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Contractor'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 Contractor is a California resident, Contractor 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. Contractor 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 Contractor 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. Contractor 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:** Contractor hereby represents and warrants that Contractor and any of its subcontractors employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Contractor and its subcontractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Contractor and its subcontractors 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 Janelle K. Horne, Recorder-Clerk, Recorder Clerk'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**

**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 XXXIV**

**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.

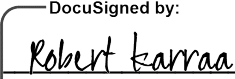
**-- COUNTY OF EL DORADO --**

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

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

Purchasing Agent  
Chief Administrative Office  
"County"

**-- FIRST AMERICAN DATA TREE LLC  
doing business as  
FIRST AMERICAN DATA & ANALYTICS --**

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

Dated: 2/14/2024

DocuSigned by:  
4583A0ADE6CD4D5...  
Robert Karraa  
President  
"Contractor"

**First American Data Tree LLC**  
**doing business as**  
**First American Data & Analytics**  
**Exhibit A**  
**Scope of Work**

**I. SERVICES**

Contractor shall provide County with the following Software as a Service (Services), for an initial term of thirty six (36) months, subject to the licensing rights and restrictions set forth in this Scope of Work:

**A. Software as a Service.**

**1. Description of the First American Data & Analytics (FA DNA) Programs.** The FA DNA Programs provided as a service consist of system administration, system management, and system monitoring activities that Contractor performs and include the right to use the programs, and support services for the FA DNA Programs (collectively, the "Services"). FA DNA Programs comprise a web-based application that Contractor hosts as a Service. The term "FA DNA Programs" refers to the software products owned or distributed by Contractor, called CovenantGuard, to which Contractor grants County access as part of the Services, including program documentation, and any program updates provided as part of the Services.

**2. Definitions.**

- a. End User** means, if applicable, an individual or entity determined by County to have a legitimate business need to use and whom County has approved as a qualified recipient of the Services or Derivative Products, and, if applicable, who has permission to access County's system on a restricted basis using an assigned password or other security mechanism.
- b. Professional Services for OCR Scanning** means scanning digitized images of recorded documents, using optical character recognition, to locate key words and phrases within that document.
- c. Administration Module** means a feature that allows for the County to manage their "End User" access, change passwords, run reports, etc.

**3. CovenantGuard.** CovenantGuard is a production-ready Software as a Service (SaaS) workflow product. It includes a process to ingest documents and scan for Restrictive Covenants. Users can view the documents, which have been sorted into groups (RC found, RC not found, unable to process),

via a user interface that tracks the progression of each document through a workflow. Documents that have been identified to have RC are displayed on the screen with the RC phrase highlighted to show which words CovenantGuard recommends for redaction. Users can add, edit, or delete the system recommended redaction and determine their own redaction based on rules specified by their county. Once the redactions have been set, the system allows for multiple levels of users to approve and confirm them. The final step is to produce a fully recordable redacted document that pre-pends a Restrictive Covenant Modification form complete with all fields filled in automatically based on the details for that specific document. CovenantGuard logs all user and system actions in order to generate reports related to the number of documents processed, phrases identified, and time to completion. It also has an Administration Module to enable specified users the rights to add and delete other users of the system.

- 4. Discretion of Contractor.** Contractor shall have the right, in its sole and absolute discretion, at any time or from time to time to implement new versions of the Services or additions, features, modifications, or enhancements to the Services or any part or component contained therein, or to change the methods by which the Services are delivered, all of which may be implemented by Contractor from time to time in its sole discretion. Contractor shall also have the right, in its sole and absolute discretion, at any time or from time to time to stop delivering the Services, provided that Contractor will not do so during the period for which fees for the services have been paid. Any such modification or alteration of any of the Services shall not create a presumption, of any kind or nature that the Services were in any way defective prior to such modification or alteration. Contractor shall determine, in its sole and absolute discretion, whether, and to what extent, it shall promote, advertise, market, license, and deliver the Services, and nothing contained herein shall obligate Contractor to do so. County agrees that County has not relied on the future availability of any Services, programs or updates in entering into the payment obligations in the Scope of Work, provided that the preceding does not relieve Contractor of its obligation to deliver Services that County has ordered and paid for per the terms of the Agreement.

## II. LICENSE

- A. License Grant.** Subject to the terms and conditions of this Scope of Work, Contractor grants to County a non-exclusive, non-transferable, limited license to use the Services set forth in this Scope of Work, solely for the Permitted Applications. There are no implied licenses under this Scope of Work, and any rights not expressly granted to County are reserved by Contractor for its own use and benefit.

**B. License Restrictions.** County represents and warrants to Contractor that it shall comply, and ensure that its End Users comply, with the following:

1. County shall not use the Services for purposes other than the Permitted Applications and shall ensure compliance with such terms by its End Users.
2. Unless expressly authorized in the Permitted Applications, County shall not: (i) disclose, disseminate, reproduce or publish any portion of the Services to any third party in any manner (including via the internet) or permit the same; (ii) process or combine any portion of the Services or permit any portion of the Services to be processed or combined with other data or software from any other source; (iii) allow access to the Services through any terminals located outside of County's operations or facilities; (iv) use the Services to create, enhance or structure any database; (v) use the Services to create derivative products or derivative datasets; or (vi) use the Services in connection with, or to enable development of, machine learning, rules engines, or other similar automated processes.
3. County shall not use the Services: (i) as a factor in establishing an individual's eligibility for credit or insurance; (ii) in connection with underwriting individual insurance; (iii) in evaluating an individual for employment purposes; (iv) in connection with a determination of an individual's eligibility for a license or other benefit granted by a governmental authority; (v) in any way that would cause the information to constitute a "consumer report" under the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.; or (iv) in any other manner that would cause such use to be construed as a consumer report by any governmental authority.
4. County shall not use the Services in any way that: (i) infringes Contractor's, patent, trademark, trade secret or other intellectual property or proprietary rights or rights of publicity or privacy; (ii) violates any law, statute, ordinance or regulation; or (iii) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing. If Client uses the Services for marketing purposes, County shall comply with the published guidelines of the Association of National Advertisers and all applicable non-solicitation and privacy laws and regulations.
5. County shall: (i) obtain any necessary licenses, certificates, permits, approvals or other authorizations required by federal, state or local statute, law or regulation applicable to County's use of the Services; and (ii) limit use of the Services to its employees who have been appropriately trained.
6. County shall not disassemble, decompile, manipulate or reverse engineer Contractor' s Confidential Information or any portion of the Services. County shall take all necessary steps to prevent unauthorized use or

disclosure or disassembly, decompiling, manipulation or reverse engineering of Contractor's Confidential Information or any portion of the Services.

7. All product names set forth in this Scope of Work are registered or common law trademarks or service marks (collectively "Trademarks") of Contractor or its affiliates or data providers and no right or license to use the Trademarks is granted under this Scope of Work. Except as may be authorized in a prior writing by Contractor, County shall not use the Trademarks in any advertising or promotional material nor shall County disclose Contractor as a data source to any third party, except that such disclosures may be made as required by federal, state or local law or regulation. County shall not remove, alter or obscure any Trademarks or proprietary notices contained in the Services or other materials provided by Contractor, unless expressly authorized in the Permitted Applications, and to the extent any Trademarks appear in the Services, County shall have a limited license to use such Trademarks in accordance with the terms and conditions of this Scope of Work solely as they appear in the Services.

**III. PERMITTED APPLICATIONS.** County and other approved third parties specified below shall use the Services solely for the Permitted Applications specified below, and shall not use, display, resell, relicense, or redistribute the Services unless expressly authorized below in this Section.

**A. Permitted Applications.**

1. **Internal Use.** County may use the Services for County's internal business purposes, and shall not display, resell, relicense, or otherwise redistribute the Services, or any part thereof, to any third party. Notwithstanding the foregoing, County shall be permitted to display the document images in the ordinary course of County's operation as a County Recorder.

**B. Additional Use Restrictions.** County may not:

1. remove or modify any program markings or any notice of Contractor's proprietary rights;
2. make the programs or materials resulting from the Services available in any manner to any third party for use in third party's business operations;
3. modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products or Services competitive to Contractor;

4. disclose results of any Services or program benchmark tests without Contractor's prior written consent; and
5. License, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Services, FA DNA programs or materials available, to any third party other than, as expressly permitted under the terms of this Scope of Work.

**C. Additional Conditions.** The rights granted to County under the Scope of Work are also conditioned on the following:

1. The rights of any user licensed to use the Services (e.g., on a "named user" basis) cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized user, in which case the prior authorized user shall no longer have any right to access or use the license).
2. Except as expressly provided herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means.
3. County agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Services.
4. It is acknowledged and approved that Contractor obtains data and images from the County of El Dorado website.

**First American Data Tree LLC  
doing business as  
First American Data & Analytics  
Exhibit B**

**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 Contractor'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   X   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   X   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.

2/14/2024  
Date

DocuSigned by:  
Robert Karraa  
Signature of authorized individual

First American Data Tree LLC dba First American Data & Analytics  
Type or write name of company

Robert Karraa  
Type or write name of authorized individual