



BLACK HILLS
Information Security

**INFORMATION SECURITY SERVICES
MASTER SERVICE AGREEMENT**

This Master Services Agreement (the "Agreement") is by and between Black Hills Information Security, LLC., a South Dakota Corporation with offices at 115 West Hudson St. Spearfish, SD 57783 ("BHIS"), and Monterey County, a local government, County entity with offices at 1590 Moffett Street Salinas, CA 93905 ("Client"), is effective the 9th day of January, 2024 (the "Effective Date"), and sets out the terms and conditions under which BHIS will provide and Client will receive Services specified in Statements of Work.

Payment Terms

1. All rates for travel and per-diem will be in accordance with GSA rates for the area and are per consultant.
2. Any travel expenses (hotel, mileage and per-diem) will be invoiced separately from the amount listed above. Full payment of expenses is due 30 days after date of invoice.
3. Client will reimburse Consultant for authorized travel expenses, including airfare, GSA rate per diem, car rental (if required), and hotel, in addition to the project fees. BHIS will not bill for travel time to and from the Client designated location(s).
4. The initial draft report will be issued no later than 10 business days from the completion of work. Client then has 10 business days to review the report, add comments, and request changes. Consultant then has 5 business days to issue a response at which time report becomes final.
5. Client will surrender payment to BHIS no later than 30 days from invoice. BHIS invoices upon final report.
6. BHIS's fees do not include sales, use, excise, occupation, privilege, and value-added or similar taxes. Client shall be responsible, on behalf of itself and its Affiliate(s), for the payment of all taxes and fees assessed or imposed on the Services provided or the amounts charged under this agreement in any country or territory in which Client receives the benefit of the Services, including any sales, use, excise, value-added, or comparable taxes, but excluding taxes for which Client has provided a valid resale or exemption certificate. Should any payments become subject to withholding tax, Client shall be responsible for payment of said taxes to the appropriate tax authority in accordance with applicable tax laws. BHIS shall not be liable for any withholding tax, penalty or interest due as a result of Client failure to pay any applicable tax.
7. Engagement timelines and investment levels assume timely participation by Client in all aspects of the project. In the event that Client delays the engagement by failure to deliver required material, communication, not scheduling or participating in required events, or otherwise extending the timeline of the engagement, BHIS reserves the right to adjust the delivery dates and the professional fee and re-invoice Client for any additional work and associated costs that result from the delay.
8. If the Client team ceases to interact with BHIS for a period of more than 90 days, the project will be deemed to be concluded, and final billing will be submitted.
9. The schedule is determined following a signed proposal or statement of work. Any change to the schedule or scope of an engagement following establishment must be mutually agreed upon in

writing. If, in BHIS' judgment, the change requires additional work, support, and travel not included in the statement of work, BHIS reserves the right to adjust the delivery dates and the professional fee for the engagement and will re-invoice Client.

Any changes to the schedule must be agreed to by both parties.

BHIS may substitute scheduled testers at BHIS discretion to meet schedule.

Client schedule changes require four weeks of notice to avoid incurring a penalty. The following schedule may be enforced if BHIS is not able to reschedule work to avoid idling a tester.

- Less than 4 weeks' notice incurs an additional 20% charge
- Less than 2 weeks' notice incurs an additional 50% charge
- Day of start or within testing time frame incurs an additional 100% charge

BHIS will make a reasonable effort to reschedule work for testers and avoid the additional charge. Additional charge shall be assessed only on the portion of a test that is delayed or cancelled.

10. Payment shall be made by direct transfer or check. Payment by credit card is not permitted.

Audit & Penetration Test Authorization

11. **Purpose.** The purpose of this agreement is to set forth the agreement regarding consulting or network security scanning and penetration testing offered by BHIS to Client. BHIS shall utilize industry standard software to perform electronic scans of Client's networks and/or firewalls or on any system attached to the Client network(s). Measures will be taken to avoid damaging networks and systems, as well as the data contained within such networks and systems. If damages caused by BHIS were unforeseeable, BHIS will not be held responsible for the damages or any of its consequences, unless said damages were caused by gross negligence or willful misconduct of BHIS.
12. **Scope.** This agreement covers all computer and communication devices owned or operated by Client. This agreement also covers any computer and communications device that are present on Client network(s) during the assessment timeframe. BHIS will not intentionally perform Denial of Service activities without the explicit request and authorization of Client.
13. **Network Control.** If Client does not control their network and/or Internet service is provided via a second or third party, these parties are required to approve scanning in writing if scanning is to occur outside of the Client LAN. By signing this agreement, all involved parties acknowledge that they authorize BHIS to use their service networks as a gateway for the conduct of these tests during the dates and times specified.
14. **Service Degradation and/or Interruption.** Network performance and/or availability may be affected by the network scanning and/or testing. Client releases BHIS of any and all liability for damages that may arise from network availability restrictions caused by the network scanning and/or testing, unless such damages are the result of gross negligence or intentional misconduct on the part of BHIS.
15. **Client Point of Contact during the Scanning Period.** Client shall identify in writing a person to be available if the BHIS Scanning Team has questions regarding data discovered or requires assistance.
16. **Scanning Period.** Client and BHIS Scanning Team shall identify in writing the allowable dates and times for scanning to take place during a Rules of Engagement meeting prior to testing.
17. **No Guarantees.** BHIS will use reasonable care in the performance of the Services. CLIENT ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT BHIS DOES NOT COVENANT, GUARANTEE OR WARRANT THAT IT WILL FIND, LOCATE, DISCOVER AND/OR REPAIR ANY OR ALL OF CLIENT'S SYSTEM'S VULNERABILITIES, OR THAT BHIS WILL BE ULTIMATELY SUCCESSFUL IN DETERMINING THE SOURCE OR FULL IMPACT OF ANY AUTHORIZED OR UNAUTHORIZED ACCESS OR SECURITY BREACH (OR ATTEMPTED

ACCESS OR SECURITY BREACH), AND WILL NOT HOLD BHIS RESPONSIBLE THEREFOR. CLIENT AGREES NOT TO REPRESENT TO ANY THIRD PARTY THAT BHIS HAS PROVIDED ANY SUCH COVENANT, GUARANTEE OR WARRANTY. ALL DETERMINATIONS REGARDING THE CLIENT'S APPROACH TO COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS, INCLUDING HOW AND WHETHER THE SERVICES CONTRIBUTE TO SUCH APPROACH, SHALL BE MADE SOLELY BY THE CLIENT AND CLIENT SPECIFICALLY ACKNOWLEDGES THAT BHIS HAS NOT REPRESENTED, WARRANTED, OR OTHERWISE GUARANTEED PERFORMANCE OF THE SERVICES WILL RESULT IN ANY SUCH COMPLIANCE.

18. **Possible Damage or Disruption.** BHIS hereby disclaims responsibility for any and all claims of loss arising from or in connection with disruptions of and/or damage to Client's or a third party's information systems and the information and data contained therein arising from or related to the provision of the Services, including, but not limited to, denial of access to a legitimate system user, automatic shutdown of information systems caused by intrusion detection software or hardware, or failure of the information system resulting from the provision of the Services. Client shall indemnify, defend, and hold harmless BHIS from any claims related to any claims of such damage.
19. **Consents and Data.** Client is solely responsible for the content of the data contemplated to be accessed by BHIS from Client's systems under this Agreement. Client has the right to grant to BHIS, and does hereby grant to BHIS (except to the extent otherwise specified in an SOW), the right to access all such data, all such systems, and all facilities associated with such systems and data for the purpose of providing the Services. Client further acknowledges that it has the right to and does hereby authorize BHIS to conduct any forensic or other investigations, to access computers, files or other data reasonably necessary to conduct such investigations, and to view information as necessary to perform the Services. Client shall, at its own cost and expense, obtain and maintain all necessary third party consents required for BHIS to so access such systems and data. Client represents and warrants that BHIS's performance of the Services does not and will not conflict with any obligations of Client to any third party, including without limitation employees of Client. Client further represents and warrants that Client has taken and will take all necessary actions (including without limitation obtaining consents) required for Client to legally disclose all personally identifiable or equivalent data contained within the data to be accessed by BHIS as the result of BHIS's performance of the Services, and that Client shall not grant BHIS access to data and shall not disclose data to BHIS to the extent such access and disclosure is not then permitted under all applicable laws. Client shall not provide BHIS access to any data which require, pursuant to any law or regulation, protection of such data to any legally and/or regulatory specified standard of care, to include without limitation export/import restrictions. Client will also notify BHIS in advance if any data provided to it is restricted for import or export control purposes, including but not limited to the State Department Arms Control list, Munitions list, or any other export control regime. Client shall indemnify, defend, and hold harmless BHIS from any claims related to any breach by Client of any of the foregoing representations, warranties, and obligations.
20. **Legacy Data.** It is understood by Client that there is an element of risk associated with the provision of the Services relating to technical testing. This risk includes the potential that certain electronic and nonoperational data or code may remain on Client's system after the provision of Services by Consultant or its subcontractors ("Legacy Data"), and that Client or its agents may mistakenly perceive such Legacy Data to be malicious in nature and take corrective actions based on such mistaken belief. Although BHIS and its subcontractors will put forth commercially reasonable efforts to remove Legacy Data from Client's system after the provision of Services, it is understood and agreed by Client that there is no guarantee that there will be no Legacy Data left remaining on Client's system after the provision of Services, nor that Consultant or its subcontractors will remove all Legacy Data from Client's systems after the provision of Services. BHIS DOES NOT ASSUME ANY RESPONSIBILITY OR LIABILITY FOR ANY ACT OR OMISSION BY CLIENT OR ITS AGENTS ARISING FROM OR RELATING TO THE DISCOVERY OF ANY LEGACY DATA, REGARDLESS OF WHETHER SUCH LEGACY DATA

WAS LEFT INTENTIONALLY, BY DESIGN, BY ERROR OR OTHERWISE. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, CONSULTANT EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED. IN PARTICULAR, BHIS MAKES NO WARRANTY THAT CLIENT'S SYSTEM WILL BE FREE OF LEGACY DATA AFTER THE PROVISION OF SERVICES. IN NO EVENT SHALL BHIS BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR DAMAGES RESULTING FROM DISCOVERY OF LEGACY DATA AND ACTS OR OMISSIONS BASED THEREUPON.

- 21. **Excuse.** BHIS shall be excused from the performance of any obligation to the extent that such performance conflicts with any applicable law or regulation, including without limitation when BHIS in good faith believes that such performance is likely to so conflict.
- 22. **Confidential Information.** Parties below acknowledge that during the term of this Agreement each party may receive or have access to the Proprietary and Confidential information of the other party, and each party agrees that such information is a valuable asset of the other party and shall remain proprietary and confidential as to its owner. Each party agrees it will not reveal, publicly disclose, or use the other party's Proprietary or Confidential information except as necessary in performing obligations authorized in this Agreement.
- 23. **Intellectual Property.** All work product will contain Background IP.

Background Intellectual Property shall mean Intellectual Property, proprietary information, or confidential know-how relevant to the project which is in the possession of a party prior to the commencement of the project or generated after commencement of the project but independent of the project.

BHIS owns and retains all right, title and interest (including without limitation all copyrights patents, moral rights, trademark rights, and other intellectual property and industrial property rights) in, to and associated with the services ideas, inventions, techniques, improvements, discoveries, software design, software coding, charts, drawings, specifications, notebooks, tracings, photographs, reports, briefings, findings, recommendations, data and memoranda. This is not a work made-for-hire agreement.

Works published or copyrighted during the term of the service agreement and this SOW will remain copyright of BHIS, unless explicitly agreed within a statement of work, or licensing agreement. BHIS retains all rights to work undertaken under the term of the agreement, unless published under a community license such as the Creative Commons, in which case ownership may pass to the community.

Any Client proprietary or confidential information remains the property of the Client. No client content shall be so published without written permission.

Client has a right to use any products related to BHIS services for internal use and will not acquire any right, title or interest in or to any methodology, format, content or technology provided by BHIS as part of the services. Client may share reports, letters of attestation and other provided derivative works with business partners and Clients and other third parties for the purpose of improving and demonstrating Client's security practices, status, and compliance.

IN WITNESS WHEREOF, and in consideration of the mutual promises herein contained and other good and valuable consideration (the receipt of which is hereby acknowledged), authorized representatives of the parties have signed this Agreement as of the Effective Date.

Monterey County

BHIS

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Signature:	DocuSigned by: <i>Nora Fletcher</i> CD99DA2F5E8C407...
Name:	Nora Fletcher
Title	Project Management Professional
Date:	11/29/2023 4:34 AM MST