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OREGON DEPARTMENT OF JUSTICE

APPOINTMENT OF ENERGY AND ENVIRONMENTAL LEGAL FELLOW

This appointment of a Legal Fellow (“Appointment”) is an agreement between the Oregon Department of Justice (“DOJ”) and Steve Novick (the “Legal Fellow”) for the provision of legal services.

RECITALS

- A.** Pursuant to Oregon Revised Statutes (“ORS”) chapter 180, DOJ provides legal services required by the State and its various agencies, departments, boards, bureaus, commissions, and officers;
- B.** DOJ has authority under ORS chapter 180 to appoint counsel outside of DOJ to provide the State with certain legal services (“Services”) on behalf of DOJ;
- C.** The New York University School of Law (“NYU”) has established the State Energy and Environmental Impact Center (“State Impact Center”) to provide supplemental, in-house resources to state attorneys general and their senior staffs on clean energy, climate change and environmental matters of regional and national importance;
- D.** The State Impact Center conducts a legal fellowship program to provide attorneys to act as legal fellows in the offices of certain state attorneys general, and has selected DOJ to participate in that program;
- E.** DOJ and NYU have entered into a Secondment Agreement, attached as Exhibit A (“Secondment Agreement”), by which NYU will pay the salary of the Legal Fellow and DOJ will appoint the Legal Fellow to work on behalf of the State of Oregon;
- F.** NYU legal fellows work under the direction and control, and owe a duty of loyalty, to the state legal offices to which they are appointed;
- G.** DOJ desires to appoint Steve Novick as a NYU legal fellow to provide advice and representation to the State of Oregon on energy and environmental legal issues;
- H.** Mr. Novick desires to provide the legal services required under this Appointment; and
- I.** This appointment sets forth the terms and conditions governing the parties’ relationship in connection with the Services, consistent with the rules of professional conduct applicable to all attorneys.

The parties agree as follows:

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APPOINTMENT

Article I

Effective Date and Duration

1.1 Effective Date. This Appointment is effective on June 18, 2018 (“**Effective Date**”), and continues through June 18, 2020 (“**Fellowship Period**”), unless this Appointment is earlier terminated according to its terms.

1.2 Special Assistant Attorneys General Appointment. By signing this Appointment, the Legal Fellow affirms that he is a member in good standing of the Oregon State Bar, agrees to accept appointment as a Special Assistant Attorney General for the purpose of and subject to the terms and conditions of this Appointment, and agrees to take an Oath of Office or an Affirmation of Office in a form substantially similar to one of the samples set forth in **Exhibit B-1** and **Exhibit B-2**. By signature of either the Attorney General or Deputy Attorney General to this Appointment, the Legal Fellow is appointed as Special Assistant Attorneys General (a “**SAAG**”). Either the Attorney General or Deputy Attorney General may withdraw appointment of the SAAG upon seven (7) days’ written notice.

Article II

Statement of Work

2.1 Legal Services. During the Fellowship Period, the Legal Fellow shall (a) provide legal services solely to the State of Oregon, as assigned by, and under the supervision of, the Supervising Attorney, and (b) shall not engage in the private practice of law or otherwise provide legal services on behalf of any other person or entity.

2.2 Quality. The Legal Fellow represents and warrants that he is a member of the Oregon State Bar and that the Services will be performed in a skillful and professional manner according to the standards of the legal profession.

2.3 Compliance with Secondment Agreement. DOJ has provided the Legal Fellow with a copy of the Secondment Agreement. The parties acknowledge and agree to comply with the terms of the Secondment Agreement. To the extent that any terms in the Secondment Agreement are determined to conflict with terms in this Appointment, the terms of the Secondment Agreement shall take precedence. As provided therein, DOJ has specifically noted to the Legal Fellow the requirements of paragraph A.6 of the Secondment Agreement.

Article III

No DOJ Compensation; Office Space and Support Services

3.1 Fellowship Position. DOJ will not pay the Legal Fellow any compensation under this Appointment. The Legal Fellow shall be solely compensated by NYU. DOJ will provide the Legal Fellow with an office

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and administrative support equivalent to such services that are provided by DOJ to Assistant Attorneys General.

Article IV Ethical Obligations

4.1 Ethical Obligations. The Legal Fellow shall comply with ethical obligations in all respects in delivering Services. Nothing under this provision waives or diminishes the restrictions on the Legal Fellow set forth in Section 6.2.

4.2 Conflicts. The Legal Fellow shall provide adequate information to DOJ related to any conflicts of interest within the meaning of the Oregon Rules of Professional Conduct.

Article V Termination

5.1 Parties' Right to Terminate. This Appointment may be terminated at any time by mutual written consent of DOJ and the Legal Fellow. DOJ may terminate this Appointment for its convenience upon seven (7) days' written notice to the Legal Fellow. The Legal Fellow may terminate this Appointment effective upon delivery of thirty (30) days written notice to DOJ, provided termination is consistent with the Legal Fellow's ethical obligations. Termination of this Appointment pursuant to this section is without prejudice to any obligations or liabilities of either party already accrued prior to such termination. However, upon receiving a notice of termination under this section, the Legal Fellow shall immediately cease all activities under this Appointment, unless DOJ expressly directs otherwise in the notice of termination.

5.5 Immediate Surrender of Work Product. Upon termination, the Legal Fellow shall immediately surrender to DOJ all items listed in Section 7.2.

Article VI Compliance with Applicable Law

6.1 Compliance. The Legal Fellow shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Appointment.

6.2 Prohibited Acts. The Legal Fellow is a state officer for the purpose of, and shall not act in contravention of, Article XV, § 7 of the Oregon Constitution.

6.3 HIPAA Requirements. DOJ may be subject to the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act portion of the American Recovery and Reinvestment Act of 2009, and its implementing regulations, including the Privacy and Security Rules found at 45 CFR Parts 160 and 164 (collectively, "HIPAA") as a

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business associate of a covered entity (i.e., if Benefitting Agency provides services that include a health care component), or as a business associate of a business associate of a covered entity (i.e., if a state agency is acting as a business associate of an entity that provides services that include a health care component).

If DOJ determines that the Legal Fellow is a “**Business Associate**” (as that term is defined at 45 CFR § 160.103) for the Services provided under this Appointment, DOJ will notify the Legal Fellow; the Legal Fellow agrees to comply with the Business Associate Appointment provisions attached as Exhibit C. The Legal Fellow shall comply with HIPAA to the extent that Services or obligations arising under this Appointment are covered by HIPAA, including as specified in Exhibit D, Business Associate Appointment.

Article VII Work Product

7.1 Ownership of Work Product. The Legal Fellow’s work product that results from this Appointment is the property of DOJ, although the Legal Fellow may retain copies of such work product and to use the same consistent with its ethical obligations.

7.2 Surrender of Work Product. Upon request by the Supervising Attorney, the Legal Fellow shall surrender to DOJ or to anyone the Supervising Attorney designates, all copies of final versions of any written work product, documents, research or objects or other tangible things needed to complete the Services and any work product requested hereunder.

7.3 Reports. Upon request by the Supervising Attorney, the Legal Fellow shall provide reports summarizing significant Services performed under this Appointment and developments in any deliverables, proceedings or negotiations.

Article VIII Indemnity

8.1 Subject to the limitations of Article XI, section 7, of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), ODOJ shall indemnify, defend, and hold harmless the Legal Fellow from any legal malpractice claim asserted against the Legal Fellow, provided that:

(a) The Legal Fellow waives attorney client privilege as to any facts related to the complaint asserted against the Legal Fellow and that are relevant to any separate proceedings in which the State of Oregon also has an interest, e.g., defense of a tort claim, termination of employment, etc.; and

(b) The conduct by the Legal Fellow that is the subject of the complaint was in accordance with this Agreement and was:

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- (i) In accordance with an ODOJ ethics policy or procedure or an opinion of the ODOJ Ethics Committee;
- (ii) In accordance with direction provide by the Legal Fellow’s ODOJ supervisor; or
- (iii) Was apparently within the proper scope and discretion of the duties assigned to the Legal Fellow.

Article IX Supervising Attorney

11.1 Supervising Attorney. The supervising attorney for this Appointment is Paul Garrahan, Attorney-in-Charge, Natural Resources Section (“**Supervising Attorney**”). The Deputy Attorney General or the Chief Counsel of the General Counsel Division (“**Chief Counsel**”) may designate a successor Supervising Attorney upon written notice to the Legal Fellow. Only the Supervising Attorney or another person designated by the Deputy Attorney General or the Chief Counsel is authorized to act on behalf of DOJ under this Appointment. The Supervising Attorney’s authority may be temporarily delegated to another attorney at DOJ by notice to the Legal Fellow from either the Supervising Attorney, Deputy Attorney General, or Chief Counsel.

11.2 Direction. The Legal Fellow shall obtain the Supervising Attorney’s direction prior to performing Services under this Appointment. The Legal Fellow shall submit all interpretations of Oregon law to the Supervising Attorney for review prior to the issuance of advice based on such interpretation, except as otherwise authorized by the Supervising Attorney. The Legal Fellow shall obtain the Supervising Attorney’s approval prior to the initiation of any court, administrative or settlement actions.

11.3 Legal Fellow Judgment. The Legal Fellow shall exercise independent judgment and control with respect to the means and manner of performance under this Appointment.

Article X Legal Fellow Volunteer Status

12.1 Legal Fellow Status. The Legal Fellow is a volunteer with DOJ under this Appointment. The Legal Fellow represents and warrants that the Legal Fellow (i) is not an employee of the State of Oregon, and (ii) is not an employee of the federal government.

Article XI Miscellaneous

11.1 Notices. Except as otherwise provided in this Appointment, all notices, requests, demands or other communications required by or otherwise concerning this Appointment must be in writing and are

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effective when delivered personally (by courier service or otherwise), when delivered by e-mail and confirmed by the recipient by telephone or responding e-mail, whichever occurs first, or seven days after the date mailed by first-class mail, postage prepaid and return receipt requested in each case to the applicable addresses set forth below.

IF TO DOJ:	IF TO LEGAL FELLOW:
Supervising Attorney Paul Garrahan Department of Justice Justice Building 1162 Court Street NE Salem, OR 97301-4096 (503) 947-4593 (voice) Paul.garrahan@doj.state.or.us	Steve Novick 7315 SW 36 th Ave. Portland, OR 97219 (503) 516-0624 Stevenovick96@gmail.com

11.2 Exhibits and Schedules. Exhibit A, Exhibit B-1, Exhibit B-2, and Exhibit C are attached to this Appointment and incorporated by this reference.

11.3 No Subcontracts and Assignment. The Legal Fellow shall not enter into any subcontracts for any of the Services, or assign or transfer any of its interest in this Appointment.

11.4 Amendments. This Appointment may be amended only by a written amendment signed by DOJ and Legal Fellow.

11.5 Records Maintenance; Access. The Legal Fellow shall maintain any records pertinent to this Appointment in such a manner as to clearly document the Legal Fellow's performance hereunder. The Legal Fellow shall permit DOJ, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives, to have access to such records and other books, documents, papers, plans and writings of the Legal Fellow pertinent to this Appointment to enable them to perform examinations and audits, and make excerpts and transcripts. The Legal Fellow shall retain and keep all such records, books, documents, papers, plans, and writings for a minimum of six (6) years or such longer period as may be required by applicable law, following termination of this Appointment, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Appointment, whichever date is later.

11.6 Choice of Law; Designation of Forum; Federal Forum.

11.7.1 Choice of Law. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Appointment, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

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11.7.2 Designation of Forum. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Appointment shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

11.7.3 Federal Forum. Notwithstanding Section 13.7.2, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

11.7 Force Majeure. Neither DOJ nor the Legal Fellow are responsible for delay or default caused by fire, riot, acts of God, or war, where such cause was beyond DOJ's or the Legal Fellow's respective reasonable control. The Legal Fellow shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default, and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Appointment.

11.8 Severability. The parties agree that if any term or provision of this Appointment is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions are not affected, and the rights and obligations of the parties will be construed and enforced as if the Appointment did not contain the particular term or provision held to be invalid.

11.9 Waiver. No provision in this Appointment may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced. A waiver made on one occasion is effective only in that instance and only for the purpose that it is given and will not be construed as a waiver on any future occasion.

11.10 Execution and Counterparts. This Appointment may be executed in several counterparts, all of which when taken together constitute one Appointment binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Appointment so executed constitutes an original.

11.12 Survival. The covenants, warranties, representations, rights, and obligations set forth in Article IV, Article VII, Article VIII, Sections 11.6, 11.8 and this Section 11.12 survive termination of this Appointment.

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13.14 Merger Clause. THIS APPOINTMENT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER IDENTIFIED IN ARTICLE II. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS APPOINTMENT. THE LEGAL FELLOW, BY HIS SIGNATURE BELOW, HEREBY ACKNOWLEDGES THAT HE HAS READ AND UNDERSTOOD THIS APPOINTMENT, AND THAT HE AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Steve Novick

Date: _____

**STATE OF OREGON acting by and through the
OREGON DEPARTMENT OF JUSTICE**

By: _____ Date: _____
Frederick M. Boss
Deputy Attorney General

Reviewed:

By: _____ Date: _____
Stephanie A. Thompson
Senior Assistant Attorney General

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EXHIBIT A

[ATTACH SECONDMENT AGREEMENT HERE]

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EXHIBIT B-1

State of Oregon Department of Justice Oath of Office

State of Oregon)
) ss.
County of Marion)

I, Steve Novick, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of Oregon, and the laws thereof, and that I will faithfully discharge the duties of Special Assistant Attorney General according to the best of my ability, so help me God.

Subscribed and sworn to before me
this ___ day of _____, 20__

Notary Public for Oregon
My commission expires _____

Note: Execute this oath of office before either a notary public or judicial official and return it to the Supervising Attorney for filing with the Secretary of State.

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EXHIBIT B-2

State of Oregon Department of Justice Affirmation of Office

State of Oregon)
) ss.
County of Marion)

I, Steve Novick, do solemnly affirm that I will support the Constitution of the United States, the Constitution of the State of Oregon, and the laws thereof, and that I will faithfully discharge the duties of Special Assistant Attorney General according to the best of my ability.

Signed and affirmed before me
this ___ day of _____, 20__

Notary Public for Oregon
My commission expires _____

Note: Execute this affirmation of office before either a notary public or judicial official and return it to the Supervising Attorney for filing with the Secretary of State.

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EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

DOJ and the Legal Fellow agree that the following terms and conditions constituting a business associate agreement (“**BAA**”) apply to the performance of their obligations under the Appointment. Capitalized terms used, but not otherwise defined in this BAA, have the same meaning as those terms in the Privacy Rule and Security Rule, 45 CFR 160 and 164.

1. Business Associate Status.

1.1 DOJ is, for purposes of the Appointment, either a business associate of a State agency (a covered entity) or is a business associate of a State agency acting in its capacity as a business associate of a health care component of another State agency (a hybrid covered entity), because DOJ performs some functions on behalf of a State Agency that involve the creation, receipt, maintenance or transmission of Protected Health Information (“**PHI**”); and

1.2 The Legal Fellow creates, receives, maintains or transmits PHI and Electronic Protected Health Information (“**EPHI**”) in the performance of its obligations under the Appointment on behalf of DOJ; and

1.3 The Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as “**HIPAA**”), requires a business associate to enter into a business associate agreement with a subcontractor that creates, receives, maintains or transmits PHI on behalf of a business associate; and

1.4 Both DOJ and the Legal Fellow are committed to compliance with the standards set forth in HIPAA as may be amended further from time to time, in the performance of their obligations under the Appointment.

2. Obligations and Activities of Legal Fellow.

The Legal Fellow shall:

2.1 Not use or disclose PHI or EPHI other than as permitted or required by the Appointment or this BAA, as permitted by the Privacy Rule, the Security Rule or as required by law.

2.2 Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to EPHI, to prevent use or disclosure of the PHI and EPHI other than as provided for by the BAA and the Appointment, or as required by law.

2.3 Implement and maintain administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of DOJ. The Legal Fellow represents that the PHI and EPHI it creates, receives, maintains, or transmits on behalf of DOJ is:

2.3.1 Ensured as to its confidentiality, integrity, and availability,

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2.3.2 Protected against threats or hazards to its security or integrity, and

2.3.3 Protected against unauthorized use or disclosure.

2.4 Create and maintain documentation that demonstrates its compliance with 45 C.F.R. 164.308, 164.310, 164.312 and 164.316. Minimally, the Legal Fellow shall:

2.4.1 Maintain PHI and EPHI in a secured server and only permit access to PHI and EPHI by employees or subcontractors who have signed confidentiality agreements and have a need to know the information maintained in the PHI and EPHI for the purposes set forth in the Appointment and this BAA. Legal Fellow represents that its workforce complies with the security standards, including policies and procedures that Legal Fellow maintains pursuant to the Security Rule.

2.4.2 Document the level of security and privacy protection required under this BAA in a security risk management plan. The Legal Fellow shall make this plan available to DOJ upon request.

2.4.3 Provide DOJ, as reasonably requested, access to the Legal Fellow's data officers, agents, contractors, subcontractors, employees, facilities, equipment, records, and any other information reasonably necessary to:

- a) Determine Legal Fellow's compliance with the terms and conditions of this BAA;
- b) Determine whether or not to continue to provide PHI or EPHI, in whole or in part, under this BAA;
- c) Verify documentation of a written security risk management plan.
- d) Meet any applicable state or federal laws, rules and regulations regarding use and disclosure relating to PHI and EPHI; and
- e) Allow DOJ's Information Security and Privacy Office to audit facilities, equipment, processes, and procedures.

2.5 Mitigate, to the extent practicable, any harmful effect that is known to the Legal Fellow of a use or disclosure of PHI or EPHI by Legal Fellow in violation of the requirements of the BAA.

2.6 Report to DOJ, as promptly as possible, any use or disclosure of the PHI or EPHI not provided for by the Appointment or this BAA, of which it becomes aware.

2.7 In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI or EPHI on behalf of the Legal Fellow agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.

2.8 At the request of DOJ, and in the time and manner designated by DOJ, provide access to PHI and EPHI in a Designated Record Set, to DOJ or, as directed by DOJ, to an Individual in order to meet the requirements under 45 CFR 164.524.

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2.9 Make any amendment(s) to PHI and EPHI in a Designated Record Set that the DOJ directs or agrees to pursuant to 45 CFR 164.526 at the request of DOJ or an Individual, and in the time and manner designated by DOJ.

2.10 Make internal practices, books, and records, including policies and procedures and any PHI or EPHI, relating to the creation, receipt, maintenance or transmission of PHI or EPHI on behalf of DOJ, available to DOJ or to the Secretary of United States Department of Health and Human Services (“**Secretary**”), within the time and in the manner designated by DOJ or the Secretary, for purposes of the Secretary determining DOJ’ compliance with the Privacy Rule or Security Rule.

2.11 Refer requests for disclosures of PHI and EPHI to DOJ for response. To the extent the Legal Fellow discloses PHI or EPHI for purposes not related to services provided under the Appointment but are otherwise permitted by this BAA or permitted by the applicable privacy rules, the Legal Fellow agrees to document such disclosures to the extent such documentation is required for DOJ to respond to a request by an Individual for an accounting of disclosures of PHI and EPHI in accordance with 45 CFR 164.528.

2.12 In time and manner to be designated by DOJ, provide to DOJ or an Individual any information collected in accordance with Section 2.11 of this BAA, to permit DOJ to respond to a request by an Individual for an accounting of disclosures of PHI and EPHI in accordance with 45 CFR 164.528.

2.13 In the event of discovery of a Breach of Unsecured Protected Health Information:

2.13.1 Notify DOJ of such Breach without unreasonable delay, and in any event no later than thirty (30) days after the discovery of the Breach. A Breach is considered discovered as of the first day on which the Breach is known or, exercising reasonable diligence would have been known, to Legal Fellow or any employee or agent of Legal Fellow, other than the individual committing the Breach. Notification must include identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Legal Fellow to have been accessed, acquired or disclosed during such Breach and any other information as may be reasonably required by DOJ necessary for DOJ to meet its notification obligations;

2.13.2 Confer with DOJ as to the preparation and issuance of an appropriate notice to each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Legal Fellow to have been accessed, acquired or disclosed as a result of such Breach;

2.13.3 Where the Breach involves more than 500 individuals, confer with DOJ as to the preparation and issuance of an appropriate notice to prominent media outlets within the State or as appropriate, local jurisdictions;

2.13.4 Confer with DOJ in a timely manner as to the preparation and issuance of an appropriate notice to the Secretary of Unsecured Protected Health Information that has

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been acquired or disclosed in a Breach in order for the Legal Fellow to meet its obligations under 45 CFR 164.408. Legal Fellow understands that if the Breach was with respect to 500 or more individuals, Legal Fellow must provide notice to the Secretary contemporaneously with the notices to individuals. If the Breach was with respect to less than 500 individuals, a log may be maintained of any such Breach and the log must be provided to the Secretary by the Legal Fellow annually documenting such Breaches occurring during the year involved;

2.13.5 Except as set forth in Section 2.13.6 below, provide notifications to individuals without unreasonable delay and in no case later than 60 calendar days after the discovery of a Breach. Any notice must be provided in the manner required by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, sec 13402(e) and (f), Public Law 111-5, 45 CFR 164.404 through 164.410 and as agreed upon by DOJ; and

2.13.6 Delay any notification required by this section if requested by a law enforcement official in accordance with 45 CFR 164.412.

2.13.7 For purposes of this section, the terms “Unsecured Protected Health Information” and “Breach” have the meaning set forth in 45 CFR § 164.402. A Breach will be considered as “discovered” in accordance with 45 CFR 164.410(a)(2).

2.14 Be liable to DOJ, and indemnify DOJ for any and all costs incurred by DOJ, including, but not limited to, costs of issuing any notices required by HITECH or any other applicable law, as a result of Legal Fellow’s Breach of Unsecured Protected Health Information.

3. Permitted Uses and Disclosures by Legal Fellow.

3.1 General Use and Disclosure Provisions.

3.1.1 Except as otherwise permitted, limited or prohibited by this BAA, Legal Fellow may use or disclose PHI and EPHI to perform the Services and deliver the associated work product required under this Appointment for or on behalf of DOJ as specified in the Appointment and this BAA, provided that such use or disclosure would not violate the Privacy Rule, Security Rule, or other applicable federal or state laws or regulations if done by DOJ, or the minimum necessary policies and procedures of DOJ.

3.1.2 All applicable federal and state confidentiality or privacy statutes or regulations, and related procedures, continue to apply to the uses and disclosures of information under this BAA, except to the extent preempted by the HIPAA Privacy Rule and Security Rule.

3.1.3 Legal Fellow may use or disclose PHI or EPHI as required by law.

3.2 Specific Use and Disclosure Provisions.

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3.2.1 Except as otherwise limited in this BAA, Legal Fellow may use PHI and EPHI for the proper management and administration of the Legal Fellow or to carry out the legal responsibilities of the Legal Fellow.

3.2.2 Except as otherwise limited in this BAA, Legal Fellow may disclose PHI and EPHI for the proper management and administration of the Appointment, if applicable, provided that disclosures are required by law, or Legal Fellow obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Legal Fellow of any instances of which it is aware in which the confidentiality of the information has been breached.

3.2.3 Legal Fellow may use PHI and EPHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

3.2.4 Legal Fellow may not aggregate or compile PHI or EPHI with the PHI or EPHI of other Covered Entities unless the Appointment permits Legal Fellow to perform Data Aggregation services. If the BAA permits Legal Fellow to provide Data Aggregation services, Legal Fellow may use PHI and EPHI to provide the Data Aggregation services requested by DOJ as permitted by 45 CFR 164.504(e)(2)(i)(B), subject to any limitations contained in this BAA. If Data Aggregation services are requested by DOJ, Legal Fellow is authorized to aggregate PHI and EPHI with PHI or EPHI of other Covered Entities that the Legal Fellow has in its possession through its capacity as a Legal Fellow to such other Covered Entities provided that the purpose of such aggregation is to provide DOJ with data analysis relating to the Health Care Operations of DOJ. Under no circumstances may Legal Fellow disclose PHI or EPHI of DOJ to another Covered Entity absent the express authorization of DOJ.

4. Permissible Requests by DOJ. DOJ may conduct an audit and inspection of Legal Fellow with respect to Legal Fellow's compliance with the terms of this BAA and applicable law for the establishment of policies and procedures for the safeguarding of any PHI and EPHI provided to Legal Fellow by DOJ. Legal Fellow shall implement any recommendations of DOJ resulting from such audit and inspection as may be reasonably necessary to ensure compliance with the terms of this BAA and applicable law for the safeguarding of any PHI and EPHI provided to Legal Fellow by DOJ.

5. Regulatory References. A reference in this BAA to a section in HIPAA, the Privacy Rule, Security Rule, or the HITECH Act means the section in effect as of the effective date of this BAA or as the Privacy Rule or Security Rule may be subsequently amended from time to time.

6. Appointment; Waiver. The parties agree to take such action as is necessary to amend the BAA from time to time as is necessary for DOJ to comply with the requirements of the Privacy Rule, Security Rule, HIPAA and the HITECH Act. No provision hereof may be deemed waived

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unless in writing, duly signed by authorized representatives of the parties. A waiver with respect to one event may not be construed as continuing, or as a bar to or waiver of any other right or remedy under this BAA or the Appointment.

7. Interpretation; Order of Precedence. Any ambiguity in this BAA, or ambiguity or apparent conflict between this BAA and the Appointment, will be resolved to permit DOJ to comply with the Privacy Rule and the Security Rule. This BAA does not supersede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. In the event of any conflict between the provisions of the BAA and the Privacy Rule or Security Rule, the Privacy Rule and Security Rule control.

8. No Third-Party Beneficiaries. DOJ and Legal Fellow are the only parties to this BAA and are the only parties entitled to enforce its terms. Nothing in this BAA gives, is intended to give, or may be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this BAA. The parties agree that Benefitting Agency is the only intended third-party beneficiary under this BAA.