

UNION COUNTY UTILITIES AUTHORITY

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RESOLUTION NO.: 14-2022

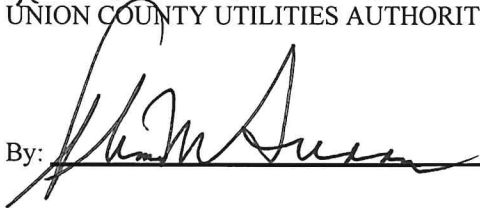
DATE: February 16, 2022

RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH TRACEPOINT, LLC FOR THE PROVISION OF ENDPOINT- MANAGED DETECTION AND RESPONSE SERVICES

APPROVED AS TO FORM:
Joseph C. Bodek, RMC
Clerk of the Authority

APPROVED AS TO SUFFICIENCY OF FUNDS
 YES NO NONE REQUIRED
UNION COUNTY UTILITIES AUTHORITY

By: Joseph C. Bodek

By: 

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Eastman</i>	✓		✓				✓
<i>Jackus</i>	✓		✓				
<i>Kahn</i>	✓		✓				
<i>Lombardo</i>	✓		✓				
<i>McManus</i>	✓		✓				
<i>People</i>	✓		✓				
<i>Rachlin</i>	✓		✓			✓	
<i>Szpond</i>	✓		✓				
<i>Scutari</i>	✓		✓				
<i>Alma, Alternate No. 1</i>	✓						
<i>Scott-Bey, Alternate No. 2</i>		✓					

**RESOLUTION OF THE UNION COUNTY UTILITIES AUTHORITY
AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH
TRACEPOINT, LLC FOR THE PROVISION OF ENDPOINT-
MANAGED DETECTION AND RESPONSE SERVICES**

WHEREAS, pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., each county within the State of New Jersey is designated a solid waste management district with responsibility for the development of a solid waste management plan setting forth the solid waste disposal strategy to be applied in the district; and

WHEREAS, the Board of County Commissioners (formerly Board of Chosen Freeholders) of the County of Union (the "County") has adopted the Union County District Solid Waste Management Plan, as amended from time to time (the "County Plan"); and

WHEREAS, the County has designated the Union County Utilities Authority (the "Authority") as the agency responsible for implementing the County Plan; and

WHEREAS, the Authority has determined that it requires certain endpoint-managed detection and response ("EMDR") services for its information technology system, to be provided by a firm with technical expertise in the field of cyber security and threat detection services; and

WHEREAS, after soliciting quotes from qualified firms, the Authority desires to enter into a professional services contract with Tracepoint, LLC ("Tracepoint"), pursuant to which Tracepoint will provide EMDR services to the Authority; and

WHEREAS, the Authority believes that Tracepoint possesses the credentials, resources, and technical expertise necessary to provide EMDR services required by the Authority.

NOW, THEREFORE, BE IT RESOLVED that the Union County Utilities Authority:

1. Awards a one-year professional services contract to Tracepoint, LLC to provide EMDR services to the Authority, for a total amount not to exceed seven thousand three hundred dollars (\$7,300.00), commencing as of February 17, 2022.
2. Authorizes the Executive Director in consultation with the Authority's General Counsel, to finalize and execute a professional services contract with Tracepoint, LLC, the terms of which contract shall be substantially the same as those set forth in the Endpoint Managed Detection and Response Services Agreement on file with the Authority.
3. This contract award for analysis and consulting services is not subject to the public bidding requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., inasmuch as the appointee is authorized and regulated by law to provide the aforementioned services and/or the services are specialized in nature and require knowledge and training of an advanced type, which such firm possesses. As such, the Clerk of the Authority is hereby directed to publish a Notice of Contract Award and make a copy of this resolution available to the public for inspection pursuant to law.
4. This Resolution shall take effect immediately.

ENDPOINT MANAGED DETECTION AND RESPONSE SERVICES AGREEMENT

TRACEPOINT, L.L.C.

THIS ENDPOINT MANAGED DETECTION AND RESPONSE SERVICES AGREEMENT (the "Agreement") is effective as of February 17, 2022 (the "Effective Date"), by and between **TRACEPOINT, LLC**, a Delaware limited liability company, with offices located at 10300 Spotsylvania Avenue, Suite 230, Fredericksburg, Virginia, 22408 (the "Contractor" or "Tracepoint"), and Union County Utilities Authority (the "Client").

RECITALS:

WHEREAS, Tracepoint possesses technical expertise in the field of endpoint managed detection and response services ("EMDR");

WHEREAS, Client desires to engage Tracepoint to provide EMDR services in accordance with the scope of work, delivery schedule, and/or other requirements as detailed in the attached Statement of Work executed between Tracepoint and Client;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties, each intending to be legally bound hereby, do promise and agree as follows:

DEFINITIONS:

All definitions below shall apply to this Agreement and each Statement of Work ("SOW"):

- "Advanced Incident Response" is any activity that results from an attack that requires reverse engineering, custom threat research, onsite support at a Client location, coordination of remediation activities across multiple systems or response to a historic embedded attack.
- "Client Information" means any information, records, data, or any other materials (in whatever form) entered into the Software or Third Party Software by Client or any User.
- "Compromise" is an Incident ranging from an individual/small-scale operation (e.g., insiders, suppliers and activists) to large-scale, organized efforts (e.g., perpetrated by criminal networks and/or foreign governments).
- "Incident" is the presence of malicious software such as Trojans, worms, viruses and spyware; password phishing; cyber-attack; cyber-intrusion; hacking; data breach; unauthorized access; denial of service; malware; bots; system Compromise or other computer security breach.
- "EMDR" services include validation of alerts generated by the Third Party Software, delivering notification to Client of legitimate threats identified from an alert, monitoring of Third Party Software to ensure it is up to date, running and operating as expected. Identification of legitimate threats without the aid of an alert is considered Threat Hunting. Responses that require reverse engineering, customer threat research, on-site support at a Client location, coordination of remediation activities across multiple systems or response to a historic embedded attack is considered Advanced Incident Response.

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- “Threat Hunting” is a proactive service designed to identify attacks independent of an alert generated from any other service.
- “User” shall mean any individual affiliated with Client, that gains access to the EMDR Services or that transmits any data to or through EMDR Services as a result of an SOW.

AGREEMENT:

1. RESPONSIBILITIES OF CLIENT.

A. Client has engaged Tracepoint to provide EMDR services (the “Services”) in accordance with one or more SOWs executed between Client and Contractor. Nothing herein shall prevent Tracepoint from engaging qualified third-parties and/or subcontractors to perform some of the Services required hereunder, provided that Tracepoint provides advance notice to, and receives the written approval of, the Client before engaging such third parties and/or subcontractors.

B. Client is responsible for (a) determining whether to perform any response and/or remediation recommended by Contractor in the course of the EMDR Services provided; (b) obtaining all necessary rights and permissions from Users; (c) having its own connection to the Internet through one or more Internet service providers of Client’s choice in order to access the Services; and (d) acknowledging and agreeing to the provisions provided in this Agreement pertaining to the use of Third Party Software.

C. As directed by Contractor, Client shall (a) deploy all end points and ensure that network connectivity is established to enable the EMDR Services to be performed; (b) identify (and update as necessary) a primary contact that is reachable by Contractor at all times that possesses decision-making authority, to handle all communications involved with this Agreement; (c) provide information and ensure access as requested by Contractor in connection with the EMDR Services; (d) take certain actions as requested by Contractor, including but not limited to: (i) imaging hard drives and/or other memory; (ii) collecting malware/forensic artifacts; (iii) reconstructing adversarial activity; (iv) assessing end points for infection; (v) collecting any data or forensic information related to the EMDR services including Internet browsing histories, registries, process monitoring, and file system usage; (e) ensure the accuracy, quality, integrity, legality, reliability, appropriateness, completeness, creation, maintenance, and updating of all Client Information; and (f) enable and keep functional all technical requirements including but not limited to telemetry and connectivity required to perform the EMDR service. If, through commercially reasonable efforts, Client is not able to accomplish (a) through (f) of this paragraph, Contractor shall not otherwise be in breach of such obligations and the Parties acknowledge that the EMDR Services may be degraded in functionality.

D. Client agrees to be bound by the end user license agreement for Third Party Software located at <https://www.CarbonBlack.com/license-agreements/>. Client shall not, or knowingly permit any third party to: (i) decompile, reverse engineer, copy, or disassemble the Third Party Software; (ii) modify, destroy, rent, lease, loan, sell, or distribute all or any part of the Third Party Software, or documentation; and/or (iii) create derivative works based in whole or in part upon the Third Party Software. This Section shall survive any expiration or termination of this Agreement. Contractor expressly disclaims all express or implied warranties and/or guarantees with respect to the performance or reliability of such Third Party Software. Client is solely responsible for the approval and vetting of all Third Party Software used by Contractor to provide Services pursuant to this Agreement.

E. Unless otherwise agreed, Contractor shall have no duty and shall not be responsible for: (a) retaining any data, in its reasonable discretion, associated with the performance of EMDR services; (b) maintaining chain of custody of any Client Information, data, or findings for any purpose, including, but not limited to, pending or future litigation or investigation; (c) implementing any recommended remediation tasks related to an Incident or arising from standard viruses, malware, or other issues unrelated to an Incident; (d) implementing any identified or recommended improvements to prevent future Incidents that are not part of Contractor's scope of services under this Agreement; and/or (e) unless contracted under the terms of the SOW, initiating Threat Hunting or Advanced Incident Response to a discovered Compromise or Incident.

F. Client hereby acknowledges that the configuration of Client's environment, such as use of third-party spam filters or software, may require Contractor to alter the standard deployment of EMDR Services and may affect the effectiveness or accuracy of such Services. Client shall promptly notify Contractor of any change to Client's software, hardware or configuration of the environment that may impact performance of the EMDR Services. Client acknowledges that Third Party Software may need to be installed in Client's environment to enable Contractor's performance of the EMDR Services.

G. Client understands and acknowledges that Contractor's successful completion of the EMDR Services, and/or any work product delivered under this Agreement may include and require use by Client of Third Party Software and/or hardware products. Unless otherwise agreed by the Parties in writing, Client shall be solely responsible for procuring, obtaining, installing, configuring, testing and making operational such Third Party Software and/or hardware products and any rights or licenses to use and incorporate into its systems such Third Party Software and hardware products, including without limitation the right to make such Third Party Software and hardware products available to Contractor as necessary to enable Contractor (or Contractor's designee) to perform EMDR Services; and Contractor undertakes no obligation to procure or provide to Client or to install, configure, test or make operational such Third Party Software and hardware products. Contractor makes no warranties or representations hereunder, express or implied, as to the quality, capabilities, operations, performance or suitability of any Third Party Software and hardware products including the ability to integrate with any software developed for Client; and the quality, capabilities, operations, performance and suitability of Third Party Software and hardware products lies solely with Client and the vendor of the Third Party Software and hardware products. No hardware, equipment, software or licenses shall be purchased by Contractor for the performance of EMDR services, other than the items described the SOW.

H. If Contractor's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Client or its agents, subcontractors, consultants, employees, vendors, or other third parties, Contractor shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Client, in each case, to the extent arising directly or indirectly from such prevention or delay. Contractor will not independently investigate or verify any data, material, and other information furnished by Client or at its request or direction and Contractor shall be entitled to rely upon the accuracy and completeness of such data, material and other information.

I. Contractor acknowledges that its performance of its obligations pursuant to this Agreement is necessary for the successful completion of this engagement. Any failure by Client to perform its obligations that, in Contractor's good faith judgment, prevents or materially hinders Contractor's performance of the Services, is a breach of this Agreement.

2. TERM OF THE AGREEMENT.

A. The term for this Agreement shall commence on the date the last Party executes the applicable SOW and continue for twelve (12) months (the "Term"), This Agreement and any SOW hereunder may be terminated in accordance with the provisions of the Agreement.

B. Upon any termination, Client shall immediately cease use of all of Contractor's Confidential Information and Third Party Software not otherwise licensed by Client. Contractor is expressly permitted to retain malware or forensic data related to malware generated during performance of EMDR Services.

C. Contractor and Client shall each have the right to unilaterally modify or discontinue any Service covered by this Agreement upon thirty (30) days written notice to the other party. In such case, the fees for the modified or discontinued Service shall be reduced proportionately.

3. STATEMENT OF WORK.

A. All work performed by Contractor shall be in accordance with a **Statement of Work ("SOW")** in the format attached hereto as **Appendix 1**. Each SOW shall include payment rate, statement of work, specifications, deliverables, schedule, and/or other provisions as deemed appropriate. Each SOW shall not be binding on the parties until executed by Contractor and Client at which time they will be made a part of this Agreement. In the event any provisions of the SOW(s) conflict with provisions of this Agreement, the respective SOW shall control. Contractor is not authorized to perform any work without the express permission of Client. An SOW may be amended only upon mutual written agreement of the Parties.

4. RESPONSIBILITIES OF CONTRACTOR.

A. EMDR is an endpoint-based managed detection and response service powered by VMware Carbon Black where endpoint agents ("Third Party Software") are deployed in a client environment to analyze activity on individual endpoints in an effort to identify malicious activity and enable the ability to (i) terminate specific malicious processes on identified endpoints or (ii) remove specific malicious files from identified endpoints.

B. Contractor (or Contractor's designee) shall perform EMDR Services in Client's environment for the Term, as follows:

- 1) Contractor will monitor and evaluate applicable alerts within four (4) hours of an alert being generated. If Contractor, at its sole discretion, determines that an alert is a legitimate threat to the security of Client's environment, Contractor will provide Client with notification of the threat. If Contractor determines that an alert is a "false positive" or that it otherwise poses no legitimate threat to Client's environment, Contractor shall have no obligation to provide an alert analysis.

- 2) Alert details will only contain information available to Contractor. For example, the actual source IP address for an alert may be obscured from Contractor by infrastructure within Client's environment such as proxy servers. Determination of the actual source of an alert may require investigation by Client.
- 3) In addition to the threat notifications described above, Contractor may provide Client basic reporting information about the services performed, such as the number of events processed, and the number of alerts generated in a certain time period. Except as explicitly outlined in this Agreement, Contractor shall have no reporting or deliverable obligations to Client. The notification of the threat is not subject to any formal acceptance procedures.

C. Contractor represents and warrants that EMDR Services performed pursuant to this Agreement shall be performed in accordance with industry standards by individuals well qualified to perform such work. However, considering the nature of the EMDR Services provided, Client acknowledges and agrees that Contractor can make no warranty or guarantee of a certain result or outcome or that Client's data will not be lost or comprised while Services are performed. Notwithstanding any clause in this Agreement to the contrary, it is agreed that Contractor expressly disclaims all express or implied warranties and guarantees with respect to the performance of EMDR Services.

D. Client understands and acknowledges that:

- 1) Contractor is not a law firm or auditor and does not provide legal advice or "audit/attest" services of any kind. No attorney-client or legally privileged relationship exists or will be formed between Contractor and Client. None of the Services or any deliverables will constitute any legal opinion or advice.
- 2) Contractor is not an adviser with associated fiduciary obligations.
- 3) Contractor will not make any decisions on behalf of Client. The implementation of any advice and/or recommendations provided by Contractor is in the Client's sole discretion. Client is responsible for all management decisions relating to the Services, the use or implementation of the output of the Services, and for determining whether the Services are appropriate for Client's purposes. Contractor will not render an attestation or assurance report or opinion under this Agreement, nor will the Services constitute an audit, compliance review, examination, or other form of attestation.
- 4) Client acknowledges that it remains solely responsible for maintaining its own compliance with any state, federal or other regulatory standards. Tracepoint will not be liable for any fees, fines, penalties, or consequences arising from the Client's regulatory or statutory compliance requirements.

E. Client specifically acknowledges that certain aspects of EMDR are provided or controlled by third parties. At times, actions or inactions caused by third parties can produce situations in which connections to EMDR Services may be impaired or disrupted. Although Contractor will use commercially reasonable efforts that it deems appropriate to remedy and avoid impaired or disrupted EMDR Services, Contractor cannot and does not guarantee that impairments and disruptions will not occur.

5. COMPENSATION.

A. Contractor shall invoice Client the fees as stated on the applicable SOW. Payment terms are Net 60 days.

B. Client shall reimburse Contractor for all reasonable travel expenses, as well as all shipping, delivery, messenger, materials and any other expenses directly related to the Services which are reasonably and properly incurred by the Contractor in the course of providing the Services herein, and for which Contractor, upon request, provides invoices or other supporting documentation. Contractor shall have the right to require Client to directly pay any unusual or extraordinary expenses. The amount of any such expenses shall be included by Contractor in its monthly invoice.

6. ASSUMPTIONS, DEPENDENCIES AND ADDITIONAL PROVISIONS.

A. The provision of EMDR Services is based upon the assumptions, dependencies, warranties, and provisions set forth in this Agreement and, without limiting the generality of the foregoing, this Section 6. If Contractor is requested in writing to deviate from or add services to the EMDR Services contemplated by this Agreement, then the Parties shall negotiate in good faith appropriate and equitable adjustments to the Services and pricing.

B. Contractor will conduct EMDR Services from Contractor's designated offices. If any member of Contractor's team has performed work for twelve (12) months onsite at Client's offices under this Agreement, reasonable travel and expenses reimbursement will be considered taxable wages under IRS regulations, and therefore any tax gross-ups will also be submitted for reimbursement by Contractor and paid by Client. Contractor will not be entitled to any such reimbursement unless the onsite visit(s) to Client's offices were approved by client in writing in advance of all visits.

C. Differences of opinion relative to Contractor's findings, conclusions and recommendations based upon its professional judgment and the information available to it shall not serve as the basis for rejection of Contractor's work or the withholding of any payments otherwise due.

D. Contractor's performance of the services may involve the analysis and identification of issues in an environment where risks to Client's security and responses thereto are evolving and may not be fully understood. The realization of Client's objective of reducing its vulnerability to security risks is subject to a wide range of factors and can be affected by, among other things, technological, political, and economic developments, and the effectiveness of local and national law enforcement and intelligence agencies. Contractor has no control over such factors. Consequently, Contractor does not guarantee or make any representations or warranties that any conclusions or recommendations made in connection with Services provided will apply to any future events or to changed circumstances, including whether Client will suffer a cyber attack, cyber incident, and/or loss or exfiltration of data. Contractor has no obligation to update any conclusions or recommendations made in connection with Services provided hereunder to reflect anticipated or unanticipated events or circumstances after the Services are completed.

E. Client acknowledges and agrees that Contractor's access to and use of any of Client's systems, networks and applications as may be reasonably necessary for the purpose of Contractor's performance of the work described herein, including but not limited to tests, simulations or scans conducted by Contractor, could result in disruptions to, including the unavailability of such systems, networks and applications. During the performance of Services, Client should maintain alternative communication systems and back up or archival versions of all current data and applications contained on its information systems, which systems may be tested or otherwise used by Contractor and maintain and fully comply with prudent storage and backup processes and procedures for its systems, networks, data, and applications. Client represents and warrants that Client has the full power and right and authority to permit Contractor (either directly through subcontractors) to access and use the systems, networks and applications of Client necessary to perform the work described herein. Contractor shall not be responsible for any losses, claims, or liabilities, including but not limited to loss of data, resulting from its access to and use of such systems, networks and applications in accordance with this Agreement, or Client's failure to fully comply with any back up processes and procedures.

7. REPRESENTATIONS, WARRANTIES AND INDEMNITIES. This Section 7 limits the liabilities arising under this Agreement or any SOW, and is a bargained-for and material part of this Agreement.

A. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, CONTRACTOR (INCLUDING ANY AFFILIATES, SUB-CONTRACTORS AND AGENTS) AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS AND OFFICERS (COLLECTIVELY, THE "CONTRACTOR PARTIES") MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO ANY OF THE SERVICES, SOFTWARE, THIRD-PARTY SOFTWARE, DELIVERABLES, OR CLIENT REPORTS, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY OR NON-INFRINGEMENT. CONTRACTOR DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE. CONTRACTOR PARTIES ARE NOT PROVIDING ANY IMPLIED OR EXPRESS GUARANTEES OR WARRANTIES THAT THE PROVISION OF THE SERVICES WILL PROTECT OR OTHERWISE SECURE CLIENT'S NETWORK FROM ATTACK OR THAT THE SERVICES PROVIDED WILL NOT RESULT IN CLIENT DATA BEING LOST OR COMPROMISED. FURTHERMORE, CONTRACTOR PARTIES SHALL NOT BE LIABLE TO THE EXTENT THAT ANY BREACH RESULTS FROM ANY ACT/OMISSION OF CLIENT, OR CLIENT'S EMPLOYEES OR AGENTS.

CONTRACTOR PARTIES DO NOT WARRANT THAT THE EMDR SERVICES WILL BE FREE FROM ANY IMPAIRMENTS, DISRUPTION, VIRUSES, ERRORS, INTERRUPTION, OR FAILURE, OR SUCH SERVICES WILL PROTECT CLIENT AGAINST ALL POSSIBLE SECURITY THREATS, INCLUDING WILFUL MISCONDUCT BY THIRD PARTIES OR BY CLIENT OR CLIENT'S EMPLOYEES OR AGENTS. CONTRACTOR PARTIES DO NOT WARRANT THAT EMDR SERVICES WILL MEET CLIENT'S REQUIREMENTS OR THAT THEY WILL BE INTEROPERABLE WITH CLIENT'S OR ANY THIRD PARTY'S SOLUTIONS, SERVICES, SOFTWARE, OR APPLICATIONS.

B. Client understands that the performance of Services associated with data privacy, security and management present risks that Client's data may be lost or compromised during the performance of such Services. Contractor Parties expressly disclaim any and all promises, representations, and warranties concerning the estimation of system security or vulnerability, including, but not limited to, any warranty as to the system's quality, operation, or its fitness for any particular purpose. Further, due to these risks and limitations, the Client acknowledges that Contractor Parties shall in no way be liable to the Client for any reliance the Client places on the estimation of system security provided.

- 1) Client hereby represents and warrants that it has the legal right to grant Contractor Parties access to any and all personal identifiable information and/or

other commercially sensitive or non-public information associated with the Services provided, and must be able to provide proof of ownership or show appropriate express written permission if Client is not the owner of the subject assets and/or information. The Client represents and warrants that Client possesses full legal authority and ownership of any and all such information security assets to be tested, as well as disclosed or revealed personal identifiable information, network data, code, and Client proprietary and confidential property and information. The Client is solely responsible for identifying any exceptions or carve-outs regarding access and ownership of Client's information security assets, and these exceptions or carve-outs shall (i) be stated clearly by Client and included in the SOW, and (ii) revised in writing as needed by Client during the course of the engagement. Contractor shall assume it has the required permission(s) to access Client's information security assets unless informed of such exceptions and carve-outs by Client or its agent(s) in advance.

- 2) Client acknowledges that Client has sole responsibility for adequate protection and backup of Client data and for all aspects of data management and/or data retention and/or equipment used and/or tested in connection with the Services, and will not make a claim against Contractor Parties for any lost data, compromised data, system or data breach, reduction in system up-time or data availability, inaccurate output, loss of network connectivity, work delays, or any lost profits resulting from the performance of Services or the use of Software or third-party Software while performing such Services. Contractor Parties hereby disclaim responsibility for any and all claims of loss or data security arising from or in connection with disruptions of and/or damage to Client'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, system breach, data breach, automatic shut-down of information systems caused by intrusion detection software or hardware, loss or compromise of Client data, or failure of the information system resulting from the provision of the Services. This paragraph shall not relieve Contractor from responsibility for any claims which arise from the Contractor's (or its sub-contractor's and third parties' referenced in paragraph 1(A)) intentional or willful misconduct.

C. In no event shall any party be liable for any indirect, special, exemplary, consequential or punitive damages, or for lost revenue, loss of profits (except for fees due and owing to Contractor), savings, or other indirect or contingent event-based economic loss arising out of or in connection with this Agreement, any SOW, or the Services, or for any loss or interruption of data, technology or services, or for any breach hereof or for any damages caused by any delay in furnishing Services under this Agreement or any SOW, even if a party has been advised of the possibility of such damages. This mutual waiver shall survive termination or completion of this Contract.

D. To the fullest extent permitted by law, but except for claims arising from the intentional or willful misconduct referenced in paragraph 7(B)(2), the total liability, in the aggregate, of Contractor Parties to Client, and anyone claiming by, through, or under Client for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Services or this Agreement from any cause or causes, including but not limited to negligence, professional errors and omissions, strict liability, breach of contract, or breach of warranty, shall not exceed the total compensation received by Contractor Parties under this Agreement.

E. Client shall indemnify, defend and hold harmless Contractor Parties from any actual or threatened claims and any losses incurred by Contractor Parties (including as a party or witness in any claim) arising from or related to Client's use of the Services, Client's use of any deliverable, any disclosure of a deliverable by Client to a third party, or any use of, or reliance on, such deliverable by any third party. If any Contractor Party is requested or required to appear as a witness in any action that is brought by, on behalf of, or against Client or that otherwise relates to Services rendered by the Contractor Parties hereunder, Client agrees to (i) compensate the Contractor Parties for the associated time at the Contractor Parties' regular rates in effect at the time and (ii) reimburse Contractor Parties for all documented, actual out of pocket expenses incurred by Contractor Parties in connection with such appearance or preparing to appear as a witness, including without limitation, the fees and disbursements of legal counsel of the Contractor Parties choosing. In addition, Contractor Parties will be compensated and reimbursed for any time and expense (including without limitation, fees and expenses of legal counsel of Contractor Parties' choosing) that Contractor Parties may incur in considering or responding to discovery requests or other formal information requests for documents or information made in connection with any action or in connection with the Services. The foregoing indemnity is not available unless: (a) the Contractor Parties promptly notify Client in writing of any such claim, (b) Client has sole control of the defense and all settlement negotiations related to such claim, and (c) Contractor Parties cooperate with Client, at Client's request and expense, in defending or settling such claim. Nothing herein shall restrict the right of the Contractor Parties to participate in a claim, action or proceeding through its own counsel and at its own expense.

F. In no event shall Contractor Parties, be liable to the Client for (i) any claims arising out of the COVID-19 Pandemic or other epidemic constituting a national medical emergency, or (ii) any entry by Contractor Parties into any real property or building owned or controlled by Client for the purposes of providing Services pursuant to this Agreement during the COVID-19 Pandemic or any other epidemic constituting a national medical emergency. Client understands and assumes the risks associated with Contractor Parties entering properties owned or controlled by Client during the COVID-19 Pandemic or other epidemic, and hereby releases, waives, discharges, and forever holds Contractor Parties harmless from and against all claims, damages, losses, and suits arising from or in any way connected with the COVID-19 Pandemic or other epidemic, or otherwise associated with the transmission thereof.

8. RESTRICTIVE COVENANTS.

A. Client agrees that at all times during the Term of this Agreement and for one (1) year after termination of this Agreement for any reason, Client shall not, directly or indirectly, whether personally or through agents, associates or co-workers, whether individually or in connection with any corporation, partnership or other business entity and whether as an employee, member, owner, partner, financier, joint venturer, shareholder, officer, manager, agent, independent contractor, consultant, or otherwise, seek to acquire the clients or employees of Contractor for his/her/its own or another entity, within the jurisdiction and/or municipality in which Contractor performs Services pursuant to this Agreement, or any other jurisdiction and/or municipality where Contractor otherwise does business including various states and territories in the continental United States. For the purposes of the restrictive covenants contained in this Section 8: (i) "clients" shall mean all entities to which Contractor provides Services; and (ii) "Services" shall mean the services identified on each SOW that Contractor provides to Client pursuant to this Agreement.

B. The language of this restrictive covenant has been drafted so as to correspond as nearly as feasible to the requirements of law in effect at the time this Agreement is signed. Any ambiguity in such language, or in the language contained in any part of this restrictive covenant, shall be construed so

as to comply with the requirements of applicable laws and so as to render this restrictive covenant enforceable to the fullest extent of the laws of the jurisdiction which it is being enforced.

C. Client hereby agrees and acknowledges that Contractor has a valid and legitimate business interest in protecting its business from any activity prohibited by this restrictive covenant. Therefore, Client acknowledges and agrees that a breach of this restrictive covenant in this Agreement by Client cannot be adequately compensated in an action for damages at law, and; in addition to any of the legal remedies to which it may be entitled, equitable relief would be necessary to protect Contractor from a violation of this Agreement and from the harm which this restrictive covenant is intended to prevent. Client acknowledges that Contractor is entitled, in addition to any other legal remedy it may have under this Agreement or otherwise, to preliminary and permanent injunctive and other equitable relief to prevent and curtail any breach of this Agreement without any requirement to prove actual damages or post a bond and without the necessity of proving irreparable injury. Client acknowledges that no specification in this Agreement of a particular legal or equitable remedy may be construed as a waiver of or prohibition against pursuing other legal or equitable remedies available in the event of a breach or threatened breach of this Agreement by Client. The parties further agree that should any action in law or equity become necessary to enforce or interpret the terms of this Section 8, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which it may be entitled.

9. FORCE MAJEURE.

Except for an obligation to pay an amount pursuant to this Agreement or a SOW, neither party shall be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected party will give prompt written notice to the other party and will use commercially reasonable efforts to minimize the impact of the event.

10. NOTICE AND PAYMENT.

Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party at the above-stated address or mailed by certified mail, return receipt requested or by overnight delivery from a nationally recognized carrier. Either party may change the address to which notice or payment is to be sent by written notice to the other under any provision of this paragraph.

11. JURISDICTION.

This Agreement shall be governed in accordance with the laws of the State of New Jersey, without regard to its conflicts of law provisions. All disputes under this Agreement shall be resolved in the State and Federal courts having jurisdiction in and for Union County, New Jersey.

12. AGREEMENT BINDING ON SUCCESSORS.

The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.

13. ASSIGNABILITY.

Neither party may assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of the other party, which shall not be unreasonably withheld.

14. WAIVER.

No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

15. SEVERABILITY.

If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

16. INTEGRATION.

This Agreement, along with any **SOW(s)** incorporated and integrated herein, constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may conflict with this Agreement.

17. CONFIDENTIALITY/HIPAA.

A For the purposes of this Agreement, Client "Confidential Information" means any and all non-public information provided to Contractor by Client, including but not limited to Client's business and financial data, customer/client lists, internal documents and related information. Contractor's "Confidential Information" means any and all non-public information provided to Client by Contractor, including but not limited to Contractor's business and financial data, customer/client lists, internal documents and related information, including the Software or other digital media produced for or used by Client pursuant to the Services provided by Contractor hereunder or pursuant to an SOW, as well as any other material that is expressly labeled as "confidential." Confidential Information will not include information that: (i) has become part of the public domain through no act or omission of the recipient, (ii) was developed independently by the recipient, or (iii) is or was lawfully and independently provided to the recipient prior to disclosure by the disclosing party, from a third party who is not and was not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.

B. Each party will keep the other party's Confidential Information confidential, and will not use or disclose such information to any third party for any purpose except (i) as expressly authorized by the disclosing party in writing, (ii) as needed to fulfill the recipient's obligations under this Agreement, or (iii) as required by applicable law pursuant to Paragraph D of this Section 17. If a recipient is required to disclose the Confidential Information to any third party as described in part (ii) of the preceding sentence, then the recipient will ensure that such third party is required, by written agreement, to keep the information confidential under terms that are at least as restrictive as those stated in this Section.

C. Each recipient of Confidential Information will exercise the same degree of care with respect to the Confidential Information it receives as it normally takes to safeguard and preserve its own

confidential and proprietary information, which in all cases will be at least a commercially reasonable level of care.

D. If a recipient of Confidential Information is legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any of the Confidential Information, the recipient will immediately notify the disclosing party in writing of such requirement so the disclosing party may seek a protective order or other appropriate remedy and/or waive the recipient's compliance with the provisions of this Section. The recipient will use its best efforts, at the disclosing party's expense, to obtain or assist the disclosing party in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, the recipient may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that the recipient has been advised by written opinion of counsel reasonably acceptable to the disclosing party that it is legally compelled to disclose.

E. To the extent applicable to this Agreement, Contractor and Client shall comply with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder ("HIPAA") and Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH"), which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and any regulations promulgated thereunder, all collectively referred to herein as "HIPAA Requirements." No party use or further disclose any Protected Health Information (as defined in 45 C.F.R. § 164.501) or Individually Identifiable Health Information (as defined in 42 USC § 1320d), other than as permitted by HIPAA Requirements and the terms of this Agreement. As may be required under HIPAA Requirements, Contractor and Client shall execute a standard form Business Associate Agreement in association with any Services rendered to Client that may require such Agreement. In such instance, Client shall provide Contractor with its standard form Business Associate Agreement, which Contractor shall execute without reasonable delay.

18. INDEPENDENT CONTRACTOR.

Contractor is an independent contractor and not an employee of Client. In the performance of the work, duties and obligations devolving upon the Contractor under this Agreement, it is mutually understood and agreed that the Contractor is at all times acting and performing as an independent contractor. The Contractor and Client understand and agree that (a) Contractor shall not participate in any benefit program provided by Client for its employees; (b) Client will not withhold on behalf of Contractor any sums for income tax, unemployment insurance, social security, or any other withholding pursuant to any law or requirement of any governmental body; and (c) that all such withholdings and benefits, if applicable, are the sole responsibility of the Contractor. Nothing herein shall give any party any right or duty to share in the losses or profits of the other party.

19. DISPUTE RESOLUTION.

The parties agree to make a good faith effort to settle any dispute, controversy, claim or other matters in question arising between or among them or under or related to this Agreement, including all issues of fact and law (the "Dispute"). In settling any Dispute, the parties shall act in accordance with the following procedures:

A. Upon written notice by either party of any dispute that arises out of or relates to this Agreement (the "Dispute"), the parties shall attempt to resolve it promptly by negotiation between a representative from each party who has the authority to settle the Dispute. This process should be completed within thirty 30 days of written notice of the Dispute (the "Negotiation Period").

B. In the event the parties do not settle the Dispute within the Negotiation Period (or within such other deadline to which the parties have mutually agreed), the Parties shall then try in good faith to settle the Dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association. Either party may initiate the mediation process by written notice to the other party. Each Party shall pay equally the fees and related expenses, including the other party's reasonable travel expenses, incurred in connection with such mediation.

C. Any Dispute not resolved through negotiation or Mediation in accordance with (A) and (B) above, the parties hereby elect to resolve any dispute hereunder by binding arbitration. The arbitration shall be conducted in Union County, New Jersey, in accordance with the rules of the American Arbitration Association then in force (the "Rules"). The Party seeking relief shall serve upon the other party a written demand for arbitration stating the substance of the dispute and the contention of the party requesting arbitration. The party seeking relief shall also apply to the American Arbitration Association for appointment of an arbitrator in accordance with the Rules. Should the party seeking relief fail or refuse to appoint an arbitrator within twenty (20) days of service of the written demand, any party may apply for appointment of the arbitrator. The arbitrator shall conduct a hearing on the dispute where both parties will be permitted to present evidence and argue their case in accordance with the Rules. The parties to the dispute shall abide by the written decisions or awards rendered in the arbitration proceedings, and all such decisions or awards may be enforced and executed upon judicially. The parties to the Dispute shall divide equally the administrative charges, arbitrator's fees, and related expenses of arbitration, but each Party to the dispute shall pay its own legal fees incurred in connection with any such arbitration.

D. The parties hereto submit to the jurisdiction and venue of the state and federal courts having jurisdiction in and for Union County, New Jersey, for both judicial remedies and for the judicial enforcement of an arbitration award. Notwithstanding anything contained in this Section to the contrary, this Section shall not preclude either party from petitioning the court for injunctive relief in the form of temporary restraining order or other protective order for alleged violations of the restrictive covenants contained in the Agreement.

20. REQUIRED DISCLOSURES.

As part of its conflict of interest evaluation in response to Federal Government solicitation and contractual requirements, Contractor (or Contractor's designee) may disclose the following information regarding its active commercial healthcare contracts portfolio: name of client, period of performance, point of contact, value of contract, and brief description of work being performed, and other information (if required). This information will be disclosed to the Government's Contracts and/or Procurement Officer and will be submitted under seal to the Government; and will be labeled as "containing trade secrets, proprietary financial, commercial and technical or other confidential information furnished on a confidential basis that is not subject to disclosure under FOIA." Any disclosure made by Contractor (or Contractor's designee) to the Government's Contracts and/or Procurement Officer will not involve the disclosure and/or release of any actual contract and/or agreement executed between Contractor (or Contractor's designee) and Client.

21. RECORDS RETENTION.

Pursuant to N.J.A.C. 17:44-2.2, Contractor and Firm will be required, at a minimum, to maintain all documentation related to products, transactions or services under this Agreement for a period of five (5) years from the date of final payment. Such records shall be made available to the Office of the New Jersey State Comptroller upon request. Such retention period shall be deemed only a minimum period and the Contractor

and Firm will be subject to all other retention periods required under any and all other applicable laws, rules, regulations and contract provisions governing record retention for the types of services to be provided.

22. PAY-TO-PLAY LAW COMPLIANCE.

Compliance with the New Jersey Local Unit Pay-to-Play Law ("Pay-to-Play Law") (N.J.S.A. 19:44A-20.4 et seq.) is a material term and condition of this Agreement and is binding upon the parties hereto.

23. EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PLAN.

See Appendix 2, which is attached hereto and made a part hereof.

24. AMERICANS WITH DISABILITIES ACT COMPLIANCE.

See Appendix 3, which is attached hereto and made a part hereof.

(Signatures follow on the next page)

DONE AND SIGNED by the parties on the dates listed below, but effective as of the Effective Date listed on Page 1. This Agreement may be signed in counterparts and shall have the same force and effect as if all parties executed one document. Counterparts may be delivered via facsimile or other electronic transmission method (including pdf) and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

CLIENT:

Union County Utilities Authority

By: _____
Authorized Officer/Agent

Date: _____

CONTRACTOR:
TRACEPOINT, LLC

By: _____
Authorized Member

Date: _____

APPENDIX 1
STATEMENT OF
WORK

This **STATEMENT OF WORK** ("SOW") is a part of and incorporates the terms and conditions of the **ENDPOINTMANAGED DETECTION AND RESPONSE SERVICES AGREEMENT** by and between Client and the Contractor dated as of February 17, 2022. All terms and conditions of the Endpoint Managed Detection And Response Services Agreement are incorporated into this Statement of Work, unless specifically altered or amended herein.

1. Client: UNION COUNTY UTILITIES AUTHORITY

Client Contact: DANIEL SULLIVAN, EXECUTIVE DIRECTOR Email: DSULLIVAN@UCUA.ORG

2. Scope of Services: EMDR

Number of Endpoints: 22
Carbon Black Enterprise EDR
Carbon Black Endpoint
Standard

3. Annual Fee*: \$7,300.00

*If Client exceeds 50 endpoints, Contractor will automatically increase the number of authorized endpoints in 50 endpoint increments and will increase the fee for the then current Term by $(\$ 146 \times Y) \times (Z/12)$ where Y is the additional number of endpoints (in blocks of 50) and Z is the number of months remaining in the then current Term. Contractor will invoice Client for additional blocks of endpoints as they are authorized.

4. Term of SOW: This SOW is effective for one (1) year in accordance with the Endpoint Managed Detection And Response Services Agreement.

5. Other Terms and Conditions: **NONE**

IN WITNESS WHEREOF, the Parties have caused this Work Order to be executed on their behalf by the undersigned duly authorized individuals.

CONTRACTOR: TRACEPOINT, L.L.C.

By: _____
Title: _____
Date: _____

CLIENT: UNION COUNTY UTILITIES AUTHORITY

By: _____
Title: _____
Date: _____

APPENDIX 2

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)

N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established

by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- Letter of Federal Affirmative Action Plan Approval
- Certificate of Employee Information Report
- Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance)

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

APPENDIX 3

AMERICANS WITH DISABILITIES ACT OF 1990 EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DIABLITY

The Contractor and the Union County Utilities Authority ("Authority") do hereby agree that the provisions of Title 11 of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. S12101 *et seq.*), which prohibits discrimination on the basis of disability by public entities in all services, programs and activities provided or made available by public entities, and the rules and regulation promulgated pursuant thereunto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the Authority pursuant to this contract, the contractor agrees that the performance shall be in strict compliance with the Act. In the event the contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the contractor shall defend the Authority in any action or administrative proceeding commenced pursuant to this Act. The contractor shall indemnify, protect, and save harmless the Authority, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of the alleged violation. The contractor shall, at its own expense, appear, defend, and pay any and, all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the Authority's grievance procedure, the contractor agrees to abide by any decision of the Authority, which is rendered pursuant to, said grievance procedure. If any action or administrative proceeding results in an award of damages against the Authority or if the Authority incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure the contractor shall satisfy and discharge the same at its own expense.

The Authority shall, as soon as practicable after a claim has been made against it, give written notice thereof to the contractor along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the Authority or any of its agents, servants, and employees, the Authority shall expeditiously forward or have forwarded to the contractor every demand, complaint, notice, summons, pleading, or other process received by the Authority or its representatives.

It is expressly agreed and understood that any approval by the Authority of the services provided by the contractor pursuant to this contract will not relieve the contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the Authority pursuant to this paragraph.

It is further agreed and understood that the Authority assumes no obligation to indemnify or save harmless the contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the contractor's obligations assumed in this Agreement; nor shall they be construed to relieve the contractor from any liability, nor preclude the Authority from taking any other actions available to it under any other provisions of this Agreement or otherwise at law.