



SAN FRANCISCO HEALTH SERVICE SYSTEM

Affordable, Quality Benefits & Well-Being

REQUEST FOR PROPOSALS FOR Salesforce™ Software Development Services for the San Francisco Health Service System Dependent Eligibility Verification Audit

[Micro LBE Set-Aside]

RFPQ#HSS2021.E8

CONTACT: Michael Visconti, michael.visconti@sfgov.org

Background:

The San Francisco Health Service System (SFHSS) intends to administer its dependent eligibility verification audit (DEVA) in-house by leveraging our Salesforce™ org service cloud CRM beginning April of 2022. SFHSS has previously contracted with external partners to conduct and administer a dependent eligibility audit with the last DEVA in 2018.

Estimated Contract Term: Eighteen (18) Months with an option to renew for up to one (1) year.

Budget: The anticipated budget for this project is between \$150,000 and \$200,000. In no case shall the expenses for this project exceed \$200,000.

Intent of this Request for Proposals (RFP):

The San Francisco Health Service System (SFHSS) is issuing this Request for Proposal (RFP) to enter into an agreement with a highly qualified Salesforce™ developer capable of meeting the proposed schedule for implementation and go-live of all services as described in this RFP.

Micro-LBE Set-Aside/LBE Subcontracting:

There will be no subcontracting or sub-consulting requirement for this RFP. This procurement will be reserved for Local Business Enterprises (LBEs) certified by the Contract Monitoring Division of the City and County of San Francisco (CMD) [<https://sfgov.org/cmd/>] as Micro-LBE firms.

RFP Questions and Communications:

To ensure fair and equal access to information about this RFP, any and all communications must be directed to michael.visconti@sfgov.org. Unauthorized communications may be cause for disqualification and rejection of Proposal(s). Questions must be in writing and received by the Deadline for RFP Questions. No questions will be accepted after this time, except with respect to any questions regarding Approved Supplier status with the City and County of San Francisco or CMD.

Schedule:

RFP Issued:	10/21/2021
Deadline for Questions:	11/1/2021, 12 PM (PT)
Answers Posted:	11/1/2021 – 11/5/2021
Deadline for Proposals:	11/10/2021, 12 PM (PT)
Evaluation Panel Review:	11/11/2021 – 11/24/2021
Notification of Ranking:	By or before 12/3/2021
Finalize Agreement:	12/8/2021 – 12/29/2021
Implementation:	1/3/2022 – 4/1/2022
Go-Live	4/4/2022

1. Introduction

The City seeks to establish a partnership with an established salesforce developer to customize our Salesforce™ org service to facilitate administering dependent eligibility verification audits.

The San Francisco Health Service System ("SFHSS") is requesting that a Contractor customize SFHSS' Salesforce org to: build a branded, secure self-service experience cloud site with self-registration using Customer Community Login licenses and file upload, create custom content types using Salesforce content management system (CMS) for videos, images, help articles and news, create custom objects, fields and workflows with relationships to existing standard objects, create time and action based email alerts, create an automated process to import and export files to and from the Salesforce org, create custom reports and dashboards, create written documentation on the customizations for future modifications and use, and training SFHSS staff how to use the new features.

SFHSS currently uses its Salesforce org to case manage healthcare eligibility and enrollments for the employees of the City & County of San Francisco, San Francisco Unified School District, City College of San Francisco, and various retirees.

The purpose of this project is to help SFHSS facilitate a dependent eligibility audit (new custom object) using its existing Salesforce org by requesting its Audit Participants (Standard Object Account) to securely upload supporting documentation to prove their health benefit enrolled dependents (existing custom Object Dependent) are eligible for health coverage under SFHSS Member Rules (<https://sfhss.org/san-francisco-health-service-system-member-rules>). The Audit Participant facing experience cloud website will need to be designed to allow the Audit Participant to access the website easily and securely through any personal computer, smartphone, or tablet.

SFHSS is expecting to use the solution annually to verify the eligibility of 5,000 to 9,000 Audit Participants.

1.1 San Francisco Health Service System

The San Francisco Health Service System (SFHSS) is dedicated to preserving and improving sustainable, quality health benefits and to enhancing the well-being of employees, retirees and their families (referred to collectively as "Members" by SFHSS). SFHSS serves employees and retirees from four participating employer groups, as well as their dependents: the City & County of San Francisco, the San Francisco Unified School District, City College and the San Francisco Superior Court. SFHSS executes all process phases related to benefit operations and administration of non-pension benefits (including health, dental and vision) and manages wellbeing services and outreach for approximately 47,000 employees, 36,000 retirees and 53,000 dependents (totaling over 136,000 covered Member lives) in accordance with The City and County of San Francisco Charter §§ 12.200-12.203 and A8.420-A8.432, and San Francisco Administrative Code §§ 16.700-16.703.

1.1.1 SFHSS Enterprise Systems and Analytics Division

The SFHSS Enterprise Systems & Analytics (ESA) Division supports all the technical infrastructure for SFHSS from information technology (IT) support to systems configuration and development, implementation of cybersecurity safeguards, and project management. This division annually configures all the system modifications required to administer benefits for the

plan year which includes the financial, benefit plan and enrollment components. ESA also provides production support for the benefits administration system and the eligibility and payment interfaces.

The Contractor selected as a result of this RFP will report directly to and work closely with the ESA Division and the ESA Director, Rin Coleridge.

1.1.2 Prior Dependent Eligibility Verification Audits

In 2018, the San Francisco Health Service System conducted a dependent eligibility verification audit (DEVA) by contracting with an external vendor to administer all facets of the audit. The vendor-provided services included:

- Verification document review
- Planning
- Employee Communication
- Verification status
- Data Capture System and custom-designed web portal
- Employer monitoring of the audit
- Call Center Support
- Custom Reports
- Document management

Going forward and in partnership with the selected RFP Respondent, SFHSS intends to administer the dependent audits in-house which will help achieve three (3) objectives:

1. Conduct annual audits more cost efficiently
2. Avoid confusion for SFHSS members
3. Ensure member information and interactions are on-shore and secure

SFHSS current internal competencies include call center support, document management, verification document review and employee communication. Existing gaps in required capabilities for conducting the audit include data capture system, custom reports, verification status and workflows.

SFHSS intends to leverage its Salesforce org to fill the gaps for administering a dependent eligibility verification audit routinely. This RFP is for the complete project sequence for discovery and design, development testing and launch.

1.1.3 Audit Participant Population

The San Francisco Health Service System provides health benefits for approximately 125,000 lives. SFHSS subscribers, also known as SFHSS Members, number approximately 70,805 individuals with 38% (26,906) of those covering adult dependents in SFHSS' plans (see <https://sfhss.org/resource/2021-sfhss-demographic-report>, Page17).

SFHSS intends to audit one-third (1/3) of this specific population each year which translates into almost 9,000 SFHSS members identified as Audit Participants on an annual basis.

2. Scope of Work

This scope of work will serve as a guide to the work SFHSS expects to be performed by the selected vendor. It is not a complete listing of all services that may be required as SFHSS expects to incorporate the selected respondent's proposal and best approach to the services, the City, SFHSS and the SFHSS Member population.

The selected vendor will work closely with the SFHSS Enterprise Systems and Analytics (ESA) and the SFHSS Operation divisions. This vendor will be managed directly by the SFHSS Enterprise Systems and Analytics Division.

Pursuant to Section 3 of the RFP, an evaluation panel will review and score timely submitted proposals that meet the minimum qualifications to bid. SFHSS will select the highest-rated qualified respondent.

2.1 Salesforce org Development Scope of Work

Contents

2.1.1 Project Description and Purpose	4
2.1.2 Goals, Objectives & Deliverables	5
2.1.2.1 Goals	5
2.1.2.2 Objectives	5
2.1.2.3 Deliverables.....	6
2.1.2.3.A Salesforce Experience Cloud Site.....	6
2.1.2.3.B Custom Object.....	7
2.1.2.3.C Custom Object Workflow	9
2.1.2.3.D Email Alerts.....	10
2.1.2.3.E Data Import and Export.....	11
2.1.2.3.F Reports and Dashboards	12
2.1.2.3.G Documentation.....	13
2.1.2.3.H Training	14
2.1.3 Administration.....	14
2.1.4 Timeline.....	15

2.1.1 Project Description and Purpose

The San Francisco Health Service System ("SFHSS") is requesting that a Contractor customize SFHSS' Salesforce org to: (i) build a branded, secure self-service experience cloud site with self-registration using Customer Community Login licenses and file upload, (ii) create custom content types using Salesforce CMS for videos, images, help articles and news, (iii) create custom objects, fields and workflows with relationships to existing standard objects, (iv) create time and action based email alerts, (v) create an automated process to import and export files to and from

the Salesforce org, (vi) create custom reports and dashboards, (vii) create written documentation on the customizations for future modifications and use, and (viii) train SFHSS staff how to use the new features.

2.1.2 Goals, Objectives & Deliverables

2.1.2.1 Goals

SFHSS currently uses its Salesforce org to case manage healthcare eligibility and enrollments for the employees of the City & County of San Francisco, San Francisco Unified School District, City College of San Francisco, and various retirees. The purpose of this project is to help SFHSS facilitate a dependent eligibility audit (new custom object) using its existing Salesforce org by requesting its Audit Participants (Standard Object Account) to securely upload supporting documentation to prove their health benefit enrolled dependents (existing custom Object Dependent) are eligible for health coverage under SFHSS Member Rules (available at <https://sfhss.org/san-francisco-health-service-system-member-rules>). The Audit Participant-facing experience cloud website will need to be designed to allow the Audit Participants to access the website easily and securely through any personal computer, smartphone, or tablet. SFHSS is expecting to use the solution annually to verify the eligibility of 5,000 to 9,000 Audit Participants.

2.1.2.2 Objectives

Specific deliverables and objectives are outlined below. However, SFHSS expects RFP Respondents to be able to propose solutions to meet the requirements of the dependent eligibility audit.

- a. Creation of a Salesforce experience cloud site
 - i. The site must be secure, allow the Audit Participant to self-register without assistance from SFHSS staff, be accessible through desktop computers, smartphones and tables, integrate with a new custom object "Verification," and allow Audit Participants to upload supporting documentation (images, PDF formats preferred).
 - ii. This objective would reduce workload on SFHSS to manually reach out to Audit Participants and request eligibility documents through email, phone, or fax.
- b. Creation of new Salesforce custom objects and workflows
 - i. The new custom object must function like the standard object case.
 - ii. This will allow SFHSS staff to easily locate and manage eligibility verifications while preventing daily interactions (cases) from mixing into this annual process
 - iii. The new custom workflow must have action & time-based custom field status changes, including workflow routing to "Verification Case" owners and queues.
 - iv. This will allow verifications to be organized and reduce downtime caused by a person manually changing field values and deciding who to route cases to.
- c. Creation of a data/file import/export process
 - i. The custom process needs to allow SFHSS to import or update thousands of records into the Salesforce org while also allowing SFHSS

- to export thousands of records or files to import into a secure content management system.
- ii. Automating this step is vital due to the volume of documents which make this prohibitive as a manual process. numerous records and files.
 - 1. The import/update will identify which participants have been selected for the audit. Selection criteria include:
 - a. Date of Hire
 - b. Dependents enrolled in coverage
 - 2. Export of supporting documentation uploaded into the salesforce org
 - 3. Import updates to fields to track supporting documentation received through channels outside of the salesforce org
- iii. Creation of custom reports
 - 1. Operational reports
 - a. Mail files for letters to be sent at various phases of the audit

2.1.2.3 Deliverables

2.1.2.3.A Salesforce Experience Cloud Site

1. CMS Workspace in Salesforce CMS
 - a. Contractor will use Salesforce CMS to create a new CMS Workspace within client's Salesforce org within all instances sandbox as well production
 - b. Contributors will be selected by the client during project build
2. Custom Content Types
 - a. Contractor will create custom CMS content types for the branded experience cloud site including, but not limited to:
 - i. Banner/hero image
 1. To display a large JPEG or PNG image on a standard or Salesforce CMS content page
 - ii. Image
 1. To display a JPEG or PNG image on a standard or Salesforce CMS content page
 - iii. Help article
 1. To display a large rich-text string on a standard or Salesforce CMS page
 - iv. Video
 1. To display an embedded video on a standard or Salesforce CMS page with a page editor defined height and width
 - v. PDF
 1. To display a link to a PDF that will allow the Audit Participant to download the document to their computer/device or view the document in a new browser tab
3. Experience (custom site)
 - a. Contractor will build a secure, self-service Salesforce Experience Cloud website
 - i. Administration

1. Respondent needs to propose solution to this area in proposal that will result in a secure, self-service style Salesforce Experience Cloud site
 - ii. Builder
 1. Respondent needs to propose solution to this area in proposal that will result in an accessible (desktop computing and mobile), intuitive self-service style Salesforce Experience Cloud site that works in conjunction with solution custom object "Verification."
4. Self-Registration
- a. Contractor will develop a secure method and process for the Audit Participant to self-register on the experience cloud site.
 - i. Audit Participants are currently in the Salesforce org as records in the standard object Account
 - ii. Audit Participants have a related standard object Contact record in Salesforce org with fields containing contact information such as address, phone, and email
 - iii. Audit Participants have a related custom object Dependent in Salesforce org where records contain the name of the health benefit enrolled family member whose eligibility is in question
 - iv. Audit Participant self-registered salesforce community login must be associated with the Audit Participant record in the Salesforce standard object Account

2.1.2.3.B Custom Object

1. New Custom Object "Verification"
 - a. Contractor will create a new Salesforce custom object named "Verification (singular label)" with reports, activities, searching, and field history tracking.
 - i. The Record name will be Verification Number
 - ii. Data Type will be Auto Number
 - iii. Display format will be DEVA# {000000000}
2. Fields & Relationships
 - a. Contractor will create the following custom fields for the solution custom object "Verification" which will include, but are not limited to
 - i. Case status = picklist [doc requested, doc not submitted, doc submitted, doc verification, doc incomplete, doc verified, closed]
 - ii. Employee ID = relationship standard object account custom field employee ID
 - iii. Member = relationship standard object account.name
 - iv. Document Type = multiple picklist [marriage certificate, domestic partner certification, tax document mortgage document, utility bill, bank document]
 - v. Dependent = relationship custom object dependent.name
 - vi. DEVA Year = picklist (default to the current year)
 - vii. DEVA Case Owner = system user
 - viii. DEVA Case Start = Date/time
 - ix. DEVA Case Close = Date/time

- x. Document Submitted = Checkbox
- xi. Date Doc Submission = Date/time
- xii. DEVA Verified = Checkbox
- xiii. Date Doc Verified = Date/time
- xiv. Doc Incomplete = Checkbox
- xv. Date Doc Incomplete = Date/time
- xvi. Initial Mailing = Date/Time
- xvii. 2nd Mailing = Date/Time
- xviii. 3rd Mailing = Date/Time
- xix. Doc Incomplete Mailing = Date/Time
- xx. Senior Analyst Reviewed = Checkbox
- xxi. Senior Analyst Reviewed = Date/Time
- xxii. Audit Participant comments = text area (long)

3. Layouts

- a. Contractor will create 2 (two) page layouts, 1 (one) for use by internal SFHSS staff and 1 (one) for use by the Audit Participant through the experience cloud site, using the following custom fields for the solution custom object "Verification" which will include, but are not limited to
- b. Internal SFHSS staff page layout
 - i. Base Case Information (section)
 - 1. Case status = picklist [doc requested, doc not submitted, doc submitted, doc verification, doc incomplete, doc verified, closed]
 - 2. Employee ID = relationship standard object account custom field employee ID
 - 3. Member = relationship standard object account.name
 - 4. Document Type = multiple picklist [marriage certificate, domestic partner certification, tax document mortgage document, utility bill, bank document]
 - 5. Dependent = relationship custom object dependent.name
 - 6. Audit Participant Comments = text area (long)
 - ii. DEVA Info (section)
 - 1. DEVA Year = picklist (default to the current year)
 - 2. DEVA Case Owner = system user
 - iii. Open/Close Date (section)
 - 1. DEVA Case Start = Date/time
 - 2. DEVA Case Close = Date/time
 - iv. Status Dates (section)
 - 1. Document Submitted = Checkbox
 - 2. Date Doc Submission = Date/time
 - 3. DEVA Verified = Checkbox
 - 4. Date Doc Verified = Date/time
 - 5. Doc Incomplete = Checkbox
 - 6. Date Doc Incomplete = Date/time
 - 7. Initial Mailing = Date/Time
 - 8. 2nd Mailing = Date/Time
 - 9. 3rd Mailing = Date/Time
 - 10. Doc Incomplete Mailing = Date/Time
 - v. Auditing (section)

1. Senior Analyst Reviewed = Checkbox
 2. Senior Analyst Reviewed = Date/Time
 - c. Audit Participant experience cloud site page layout
 - i. Base Case Information (section)
 1. Case status = picklist [doc requested, doc not submitted, doc submitted, doc verification, doc incomplete, doc verified, closed]
 2. Employee ID = relationship standard object account custom field employee ID
 3. Member = relationship standard object account.name
 4. Document Type = multiple picklist [marriage certificate, domestic partner certification, tax document mortgage document, utility bill, bank document]
 5. Dependent = relationship custom object dependent.name
 6. Audit Participant Comments = text area (long)
 - ii. DEVA Info (section)
 1. DEVA Year = picklist (default to the current year)
 2. DEVA Case Owner = system user
 - iii. Open/Close Date (section)
 1. DEVA Case Start = Date/time
 2. DEVA Case Close = Date/time
 - iv. Status Dates (section)
 1. Document Submitted = Checkbox
 2. Date Doc Submission = Date/time
 3. DEVA Verified = Checkbox
 4. Date Doc Verified = Date/time
 5. Doc Incomplete = Checkbox
 6. Date Doc Incomplete = Date/time
4. Permissions
- a. Internal Staff Profiles
 - i. Default visibility for custom object is visible to all records
 - ii. Internal staff will have read & write access to solution custom object "Verification"
 - b. Audit Participant via Salesforce Customer Community Login User Profile
 - i. Default visibility for custom object is visible to records specifically related to the Audit Participant
 - ii. Audit Participant will have read & write access to solution custom object "Verification" for records specifically related to the Audit Participant
 - iii. Audit Participant will have read access to standard & custom objects related to the solution custom object "Verification" that specifically relates to the Audit Participant

2.1.2.3.C Custom Object Workflow

1. Action & Time-based field changes
 - a. Contractor will create action and time-based field changes for the solution custom object "Verification."
 - i. Action-based field changes will need to include, but are not limited to

1. Custom field "Status" to change whenever a "Verification Case" is updated by the Audit Participant or SFHSS staff
 2. Date/Time fields to document record changes upon field update
 3. Mailing of letter to audit participants (initial and reminders)
 - ii. Time-based field changes will need to include, but are not limited to
 1. Custom field "Status" to change whenever a "Verification Case" reaches a deadline, such as the file time to upload eligibility document as an image and/or PDF
 2. Date/Time fields to document record changes upon field update or deadline
 3. Mailing of letter to audit participants (initial and reminders)
2. Queues
- a. Contractor will create queues for the solution custom object "Verification"
 - i. Queues will be, but are not limited to
 1. Notified "Verification Cases"
 2. Escalated "Verification Cases"
 3. Quality Check "Verifications"
3. Routing
- a. Contractor will create routing rules of the solution custom object "Verification Case"
 - i. Routing rules will send "Verification Cases" with specific field criteria (TBD) to case owners (SFHSS staff by profile) to review the data entered by Audit Participant and to review uploaded images and/or PDFs. The assigned case owner can be random, sequential or by lowest number of cases owned where status is open.
 - b. Contractor will create an automated process where a small percentage of closed cases are routed to a queue for Quality assurance.
 - i. Queue access will be based on supervisor profile and above for quality check.

2.1.2.3.D Email Alerts

1. Contractor will create custom action and time-based email alerts that will send a custom communication template to the Audit Participant's email address (currently exists in Salesforce org)
 - a. Action-based email
 - b. Time-based email
 - i. Time-based emails will need to be automatically sent to the Audit Participant
 - c. Templates
 - i. The template text will be provided by the client
 - ii. The templates will need to allow html for any branding
 - iii. The templates will need to incorporate standard and custom fields relating to the Audit Participant (standard object Contact) and the solution Custom Object "Verification" including, but not limited to
 1. Name

2. "Verification Case" number
3. "Verification" document type
4. Date/time
- iv. Template Types
 1. Welcome New Member
 2. Forgot Password
 3. Changed Password
 4. Lockout
 5. Old Email Address
 6. New Email Address
 7. Reminders
 8. Audit approval
 9. Audit incomplete
 10. Audit fail

2.1.2.3.E Data Import and Export

1. Supporting documentation provided by audit participants can be received by document upload, fax or mail. The solution must allow the participant to upload the documentation into the Salesforce org.
2. The documents uploaded into the salesforce org will need to be transferred to the Hyland Perceptive Content Document Management System (ECM) which is the system of record for member files, along with key data elements. At a minimum, solution should provide a daily batch job for this transfer. SFHSS welcomes solutions from contractor that can provide real-time transfer of the documentation. The key elements required to ensure the document is correctly catalogued are:
 - Drawer Name
 - Emplid (Employee ID)
 - Name
 - SSN
 - DOB
 - Document Type
 - Page count
 - File Path\File Name
3. In addition to transferring documents uploaded to the salesforce org, as described in Data Import Paragraph 2, updates will need to be made to the Audit Participant's Salesforce record:
 - a. Document Submitted = Y update in Salesforce (automate)
 - b. Date doc Submission – date/time of Submission = create date from ECM (automate)
4. Documents received by fax, will be processed as follows:
 - a. Received fax is routed into the Hyland Perceptive Content Management System (ECM)
 - b. Document is linked to the member (manual process)
 - c. Document type is selected in the ECM – A DEVA value will be defined for doc type (manual process)

- d. Document Submitted = Y update in Salesforce (automate) - Contractor must solution this automated workflow
 - e. Date doc Submission – date/time of Submission = create date from ECM (automate) – Contractor must solution this automated workflow
5. Document is received by mail
- a. Document is scanned on high-speed scanner (manual process)
 - b. Document is linked to the member (manual process)
 - c. Document type is selected – A DEVA value will be defined for doc type (manual process)
 - d. Document Submitted = Y update in Salesforce (automate) - Contractor must solution this automated workflow
 - e. Date doc Submission – date/time of Submission = create date from ECM (automate) – Contractor must solution this automated workflow
6. The contractor will identify required software and enable an API between Salesforce and ECM to be able to open the document based on the key information. SFHSS' has a limited budget and only requires this one API, therefore any software required for integration should be right-sized. The documents will be only stored within ECM. Hyland and Salesforce support API's however note that this is the Hyland Perceptive Content product and not Hyland Onbase. Documents uploaded to Salesforce will need to be deleted. Solution must provide a way to identify and delete documents which have been successfully transferred to the ECM.

2.1.2.3.F Reports and Dashboards

1. Reports
- a. Contractor will create custom reports, creating a new report type “Verification and Members (Standard Object Account) with Dependents (Custom Object Dependents).” These reports will need, but are not limited to, summaries of or detail the following objectives:
 - i. Mailing Address export files to be used for mail merge with letter templates
 - 1. Ability to provide criteria of who is included in the mailing such as those without a date doc verified populated or this with a Doc incomplete checkbox.
 - 2. Examples of corresponding status dates which must be updated for records identified for the mailing address file include:
 - a. Initial Mailing = Date/Time
 - b. 2nd Mailing = Date/Time
 - c. 3rd Mailing = Date/Time
 - d. Doc Incomplete Mailing = Date/Time
 - ii. Total “Verification Cases” with the status of Open, grouped and sorted by “Verification Case” owner
 - iii. List “Verification Cases” with the status of Open sorted by Audit Participant number
 - iv. Total “Verification Cases” with the status of Closed grouped by “Verification Case” owner
 - v. Total “Verification Cases” with the status of Incomplete grouped by “Verification Case” owner

- vi. List “Verification Cases” with the status of Incomplete grouped sorted by Audit Participant number
- vii. Summary report of “Verification Case” age, measured by days, and grouped by “Verification Case” status
- viii. Total “Verification Cases” without an attached image and/or PDF uploaded by the Audit Participant
- ix. Total “Verification Cases” with an attached image and/or PDF uploaded by the Audit Participant
- x. Total “Verification Cases” where the Audit Participant or SFHSS employee has designated Additional Review with a checkbox field
- xi. List “Verification Cases” where the Audit Participant or SFHSS employee has designated Additional Review with a checkbox field
- xii. All reports may, but are not limited to, contain the following fields
 - 1. Account
 - 2. Status
 - 3. Dependent
 - 4. Case Owner
 - 5. Date/Time open
 - 6. Date/Time close
 - 7. Document attached
 - 8. Attached document type
 - 9. Additional Review Requested
 - 10. Address
 - 11. City
 - 12. State
 - 13. Postal
- xiii. Summary reports need to include charts or graphs

2. Dashboards

- a. Contractor will create a custom internal dashboard of contractor created custom summary reports listed in the prior section using the charts or graphs

2.1.2.3.G Documentation

1. Design Documentation

- a. Contractor will provide design documentation of the implemented solution, including but not limited to
 - i. Design & configuration settings of the branded Salesforce experience site
 - ii. Custom Salesforce content types and configuration settings
 - iii. Custom object “Verification” and its custom fields, related fields, and configuration settings
 - iv. Custom Object “Verification” workflows and configuration settings
 - v. Custom report configuration settings
 - vi. Data import and data + file export workflows and configuration settings

2. Training Documentation and User Acceptance Test Plan

- a. Contractor will provide 2 (two) End User Training documents

- i. End User Training document 1 will demonstrate the use of the Salesforce Experience cloud site for an Audit Participant, including but not limited to:
 - 1. How to self-register an account
 - 2. How to edit profile data
 - 3. How to upload images and/or PDFs
 - 4. How to label the images and/or PDFs using a custom multi-select picklist
 - 5. How to navigate Salesforce experience cloud site
 - 6. How to view dependent data
 - 7. How to view help articles
 - 8. How to view details of their “Verification Case”
 - 9. How to comment on their “Verification Case” by using a free form text box/field
- ii. End User Training document 2 will demonstrate the use of the new Salesforce Custom Object (Verification) & workflow, including but not limited to:
 - 1. How to view the custom object in Salesforce org
 - 2. How to change the status of the custom object in the Salesforce org
 - 3. How to view the images and/or PDFs uploaded by Audit Participants
 - 4. How to change the ownership of the custom object from 1 employee to another
 - 5. How to add additional information or comment on a “Verification Case” by using a free form text box/field or use of chatter feed
 - 6. How to use a custom checkbox field to designate the Audit Participant’s uploaded images and/or PDFs as acceptable or incomplete
- b. User Acceptance Test Plan
 - i. Contractor shall provide a User Acceptance Test (UAT) Test Plan, in advance of implementation of the solution.

2.1.2.3.H Training

- 1. Contractor will provide End User training (video conference) to a small [approximately five-person] supervisory group of SFHSS employees with a Q&A session immediately after Go-live.
 - a. Training will cover:
 - i. how to use the solution experience cloud site
 - ii. how to the solution custom object is used

2.1.3 Administration

The San Francisco Health Service system will administer the Dependent Eligibility Verification Audit.

2.1.4 Timeline

January 3, 2022	Project Implementation/Kickoff meeting with contractor and stakeholders
January 3 – March 31, 2022 (weekly)	Meetings with contractor and client for status updates
January 14, 2022	Contractor creates custom object Verification with custom fields
January 21, 2022	Testing on data upload and data/file export begins
January 28, 2022	Client provides test images and text for email alerts
February 4, 2022	Contractor creates custom workflows and email alerts
February 11, 2022	Contractor creates test Salesforce experience cloud site with self-registration
February 25, 2022	Testing of site, objects and workflows
March 4, 2022	Client provides final site images, help text articles, email template text
March 11, 2022	Signoff by project sponsor on site, objects and workflows
March 18, 2022	Contractor delivers final reports and dashboards signed off by project sponsor
March 25, 2022	Contractor delivers final Salesforce experience cloud site, custom objects and workflows and documentation
March 28, 2022	Training of SFHSS staff
March 31, 2022	Project wrap
April 4, 2022	Go-Live (Solution Launch)

2.2 Reporting and Performance Measures

The selected respondent shall provide comprehensive weekly reports (or less frequently as determined by SFHSS) for all Services provided. These reports will detail the status of ongoing deliverables, upcoming milestones and deadlines, and any information necessary to ensuring the project meets the Timeline (2.1.4).

2.3 Project Management and Communications Services

2.3.1 Account Manager

The selected respondent will designate a single Account Manager to oversee all services. Upon reasonable notice, SFHSS may request a new Account Manager. The Account Manager shall have no less than three (3) years of professional experience in managing Salesforce development projects.

The Account Manager shall lead a series of on-boarding (orientation and implementation) meetings. Additionally, the Account Manager will schedule reoccurring meetings with SFHSS.

Frequency of meeting will be mutually agreed upon but occur no less than once every week during implementation. Implementation will occur between January 3 and April 1, 2022.

The Account Manager shall be responsible for receiving all communications, materials, requests, and data and shall be responsible for providing prompt service, responses and make themselves available by telephone and email to SFHSS during our normal business hours, 8 AM to 5 PM (Pacific Time), Monday through Friday, City and County of San Francisco Holidays (<https://sfgov.org/city-and-county-san-francisco-holidays>).

3. Response Requirements

3.1 (Reserved).

3.2 RFP Questions and Answers

Respondents may submit questions regarding the RFP in writing via email to Michael Visconti, SFHSS Contracts Administration Manager at michael.visconti@sfgov.org, cc: william.kudenov@sfgov.org.

Respondent(s) shall provide specific information to enable SFHSS to identify and respond to their questions. At its discretion, SFHSS may contact a Respondent to seek clarification regarding any inquiry received. SFHSS will publish answers to all submitted questions by or before November 5, 2021 on the SFHSS website <https://sfhss.org/RFPs>.

SFHSS reserves the right to offer additional question and answer opportunities and will make such opportunities available to all Respondents. Any Respondent that fails to report a known or suspected problem with the RFP or fails to seek clarification or correction of the RFP, shall submit a proposal at its own risk.

3.3 Deadline for RFP Questions

Respondents shall submit all questions regarding the RFP in writing by 12:00 PM (PT) on November 1, 2021 (Deadline for RFP Questions). Questions submitted after this date may be disregarded by SFHSS. However, SFHSS reserves the right to answer any questions submitted after the Deadline for RFP Questions.

3.4 Minimum Qualifications

Respondents must meet the following minimum requirements at the time their Proposal is submitted to SFHSS (Minimum Qualifications):

- (1) Respondent is a Corporation, Limited Liability Company or Non-Profit entity in Good Standing with the State of California (or Respondent's state of formation).
- (2) Respondent is licensed to do business in California.
- (3) Respondent maintains a business presence within the state of California.
- (4) All consultants / contractors assigned to this project should hold Salesforce certifications based on their role. Preference is for mid-level certifications. Developers should have Platform Developer II level. Where applicable, consultants should possess certifications in community cloud, lightning, and service cloud. For integrations, system architect and application architect certifications preferred.

- (5) Respondent is currently or will be able to comply as of the date of its Proposal with the data sharing and security requirements listed in Appendix A.1 (Standard Agreement), including, but not limited to, Article 13, and the Business Associates Agreement (BAA) listed in Appendix A.2.
- (6) Respondent agrees to complete the San Francisco Security Risk Assessment (Appendix A.3)
- (7) Respondent possesses the minimum insurance coverages set forth in Appendix A.1 (Standard Agreement).
- (8) Respondent has reviewed the conditions of becoming an Approved City Supplier including, but not limited to, San Francisco Administrative Code Chapter 12B, and agrees to become an Approved City Supplier by or before January 1, 2022.

3.5 Proposal

By submitting a Proposal, a Respondent, if selected by SFHSS as a result of this RFP, shall be held to all statements therein. This RFP and the selected respondent's proposal may be made a part of an agreement resulting from this RFP.

3.5.1 Proposal Submission Deadline

Proposals must be submitted to SFHSS via email to michael.visconti@sfgov.org by or before 12:00 PM (PT) on Wednesday, November 10, 2021 (Deadline for Proposals).

Proposals submitted by other means, including U.S. Postal Service, common carrier, and/or personal messenger will be rejected. Late submissions will not be considered, including those submitted late due to delivery service failure.

Respondents are advised, but not required, to include a delivery receipt confirmation to confirm that the email transmittal and any attached proposal is received by SFHSS.

3.5.2 Limitations on the Number of Proposals and Joint Proposals

In the instance of a planned joint Proposal from two (2) or more parties, one entity must be identified as the Respondent. The contact, address, telephone and email information are required for the Respondent as well as any Joint Respondent(s). Respondent will serve as SFHSS primary point of contact, and the Respondent will bear the sole responsibility for performance under any awarded contract.

A Respondent may not submit more than (1) Proposal in response to the RFP. Respondent must have the legal authority to independently enter into a contract to perform services described in the RFP.

3.5.3 Relevant Information

Each proposal shall contain only relevant information that is specific to this RFP and the specific questions and requests contained herein. While there is no intent to limit the content of any proposal, a Respondent must emphasize simple, straight-forward and concise statements that satisfy the requirements of the RFP, and clearly identify applicable subsections or scope. Respondents accept that superfluous information may be disregarded.

3.5.4 Proposal Structure

To be eligible for evaluation, Proposals must adhere to the following format:

Section 1. Cover Letter (word / page limit: 500 words or one (1) page¹)

Respondent shall identify its business name, address, telephone number, and email address; designate the legal form of Respondent (sole proprietorship, partnership, corporation, etc.); the name, address, telephone number, and email address of Respondent's authorized representative and primary point of contact.

Section 2: Table of Contents (word / page limit: 500 words or one (1) page)

Respondent shall list all Proposal contents and attachments, and clearly identify the relevant sections and page numbers of the Proposal and the corresponding section(s) of the RFP, as applicable.

Section 3: Executive Summary (word / page limit: 1,500 words or three (3) pages)

Respondent Executive Summary shall include, at minimum, the following information:

- Respondent's business name, address, telephone number, email address and fax number.
- Respondent's legal formation (e.g., corporation, LLC, non-profit, etc.), and the year the entity was substantially organized as it now exists.
- Respondent's parent company and all subsidiaries, as applicable.
- The name of any sole proprietor, partners, or principal officers, as appropriate.
- Respondent's greater organizational structure, including parent company, subsidiaries and partners, recent acquisitions or mergers (within the last two (2) years), or any known future acquisitions or mergers.
- The name of and background of Respondent's primary account manager or executive responsible for overseeing and carrying out Respondent's responsibilities if awarded a contract as a result of the RFP.
- Respondent's agent for service of process (name and address) and/or the name and address of the entity that receives legal notices for Respondent.
- Respondent's Federal Employer Tax Identification Number and a completed IRS W-9 form.
- Respondent's proposed subcontractor(s) and location(s) of all facilities and employees that will be providing services.
- If the Proposal is being submitted by Respondent in partnership, cooperation or association with one or more Joint Respondents or Subcontractors:
 - A full and complete listing of all Joint Respondents, including addresses, telephone numbers, email addresses and fax numbers.
 - Legal formation of each Joint Respondent.
 - Primary responsibilities of each Joint Respondent if Respondent is awarded a contract as a result of the RFP.
 - Length of relationship between each Joint Respondent and Respondent.

¹ Standard 8.5 x 11 inch or equivalent, single or double spaced, standard one (1) inch margins.

- Respondents shall provide five (3) references for which Respondent has performed similar services during the past three (3) years. For each reference, Respondent shall include a brief description of the work, and contact information.
 - Respondent should provide team biographies describing specific projects, certifications and references for each individual who will be assigned to this project.
 - At least two (1) reference should come from the public sector.

Please note that references will not be contacted as part of the RFP evaluation process nor by the RFP evaluation panel. References are for confirmation by the SFHSS Contracts Division only and any information provided will not be disclosed to the evaluation panel.

- If any of the above information is unavailable for Respondent entity, Respondent must submit the same or similar information from Respondent's parent entity, if available.

Section 4: Reserved (*Financial Status and Litigation*)

Section 5: Evidence Supporting Certification of Minimum Qualifications (no word / page limit but must be relevant and limited to the supporting information required to establish Minimum Qualifications only)

Respondent shall submit appropriate documents demonstrating how Respondent meets each Minimum Qualification (Sec. 3.4) including any regulatory eligibility requirements necessary to participate in the RFP.

Please note that evidence supporting minimum qualifications will not be evaluated by the RFP evaluation panel and will be solely reviewed and confirmed by the SFHSS Contracts Division and ESA Project Manager.

Section 6: Written Proposal (word / page limit: 10,000 words or twenty (20) pages)

Respondent's written proposal shall clearly identify its method and strategy for the proposed services, why respondent is uniquely qualified to accomplish the services, any services or specifications that a respondent is unable to meet, any highly relevant additional services that respondent is capable of providing, and any plans and timelines for development of those services. Respondents are also advised to review Section 3.5.3 (Relevant Information), in particular with regard to relevant additional services that respondent is capable of providing.

Section 7: Cost Proposal

Respondent's cost proposal shall clearly identify all costs and fees for delivering the required objectives as stated in the SOW.

Respondents must identify any and all supplemental, additional, or as-utilized costs applicable to specific services

Section 8: Standard City Agreement, Business Associates Agreement, and San Francisco Security Risk Assessment (word / page limit: not applicable)

The Standard Agreement (Appendix A.1) is an integral component of Respondent's Proposal. Respondent's Proposal will serve as the base for negotiations with the selected respondent. Respondent must be prepared to agree to all terms of the attached Standard Agreement as

presented or Respondent's Proposal may be rejected. Respondent must include a copy of the Standard Agreement with its Proposal that shows the changes Respondent proposes be made if it is selected by SFHSS as a result of this RFP. If Respondent fails to identify an objection to any particular term or condition, the term or condition will be deemed agreed to by Respondent. SFHSS reserves the right to discuss any Respondent proposed change to terms or conditions and to clarify and supplement such proposal. Proposed changes to any particular term or condition of the Standard Agreement will be used to determine the responsiveness of Respondent's Proposal. Proposals that are contingent upon SFHSS and the City making substantial changes to the material terms and specifications published in the RFP may be disqualified. SFHSS will consider the number and nature of the terms and conditions Respondent is objecting to in determining the likelihood of completing an agreement with Respondent if selected.

The services to be performed by a Selected Respondent may involve the incidental access to information that is protected by HIPAA. As such, Selected Respondent must agree, as a component of the final agreement, to abide by the Business Associate Agreement (BAA, Appendix A.2) included as part of the Standard Agreement (Appendix A.1).

SFHSS reserves the right to add, delete, or modify language from Appendix A.1 (Standard Agreement) or Appendix A.2 (BAA) when preparing the final form of the agreement with the selected respondent.

The San Francisco Security Risk Assessment (Appendix A.3) must be fully completed by respondents and submitted with their proposal. In all instances where a non-City employee is given access of any kind to City networks or systems, the San Francisco Security Risk Assessment must be completed. Respondents must select from three preset responses (Yes, No, or Not Applicable) to each Control heading ("Control") of the San Francisco Security Risk Assessment. In the cases where a Respondent indicates "yes" or "not applicable" to a Control, Respondent must provide an explanation and/or support. In the cases Respondent indicate "no" to a Control, Respondent must agree to the "high-level expectation to address the gap" (Column G of Appendix A.3).

Section 9: Insurance (word / page limit: not applicable)

Respondent shall provide evidence of the amount of insurance coverage carried as defined in Appendix A.1 (Standard Agreement), Article 5.

3.5.5 Proposal Provisions and Reservation of Rights by the City

- (1) Disposition of Proposals, Public Disclosure and Confidentiality. Upon opening, all Proposals in response to the RFP shall become the exclusive property of SFHSS and may be subject to public disclosure pursuant to the San Francisco Sunshine Ordinance (San Francisco Administrative Code Sec. 67.24(e)) and the California Public Records Act (California Government Code, Sec. 6250). In accordance with San Francisco Sunshine Ordinance, contracts, bids, responses to requests for proposals, Proposals, and all other records of communications between the Health Service Board, the officers and employees of SFHSS, members of the Evaluation Panel, and persons or firms seeking contracts, including but not limited to respondents, prospective bidders, and incumbent providers of in-scope services, shall be open to inspection immediately after a contract has been awarded. Nothing in this request for proposals requires the disclosure of the net worth of a private person or organization or other proprietary financial data submitted for qualification for a contract or other benefit until, and unless, that person or

organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

- (2) Confidentiality. If a Respondent believes that any portion of its Proposal is exempt from public disclosure under the San Francisco Sunshine Ordinance or applicable California Public Records law, such portion may be marked "CONFIDENTIAL". SFHSS may deny public disclosure of any portions so designated and will work with Respondent to preserve confidentiality of documents. The submittal of a Proposal with portions marked CONFIDENTIAL shall constitute the Respondent's agreement, in consideration for SFHSS' willingness to receive such response, to reimburse SFHSS for, and to indemnify, defend, and hold harmless SFHSS, the Health Service Board, the City and County of San Francisco, its officers, fiduciaries, employees, and agents from and against: (a) any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs and expenses including, without limitation, attorneys' fees, expenses and court costs of any nature whatsoever (collectively, "Claims") arising from or relating to SFHSS' nondisclosure of any such designated portions of a Proposal; and (b) any and all Claims arising from or relating to SFHSS' public disclosure of any such designated portions of a Proposal if disclosure is deemed required by law or by court order.
- (3) Conflict of Interest. SFHSS cautions Respondents that the California Government Code Section 1090 conflict of interest prohibition pertaining to public officials and government employees has been interpreted to prohibit contractors, vendors and/or suppliers (Contractors) from being financially interested in any contract that they help create. It is the sole responsibility of each Respondent, and their employees/contractors, to determine whether such a conflict of interest exists or may exist. Respondent, and staff, will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III (Conduct of Government Officials and Employees), Chapter 2 (Conflict of Interest and Other Prohibited Activities) of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. Respondent, Account Executive, and key staff will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such potential conflicts during the term of the Agreement. Individuals who will perform work for SFHSS on behalf of Respondent might be deemed Contractors under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful Respondent that the City has selected Respondent.
- (4) Request for Clarification. At any time during the Proposal evaluation process, SFHSS may require a Respondent to provide oral or written clarification regarding its Proposal. Nonetheless, SFHSS reserves the right to make an award without further clarifications of Proposals received.
- (5) Contract Delay Contingency. In the event the implementation date under an agreement resulting from this RFP is delayed until a later year for any reason, the parties shall make a good faith effort to maintain the contractual relationship and to amend the applicable agreement as necessary to address the delay. In this event, SFHSS also reserves the right to terminate the applicable agreement at its sole discretion.

- (6) Cancellation. Should Respondent wish to cancel, revise, or rescind its Proposal, a written letter so stating must be received by SFHSS via email (michael.visconti@sfgov.org) before the Deadline for Proposals. Should Respondent wish to revise a Proposal, the revised Proposal must be received before the Deadline for Proposals. In no case will a statement of intent to submit a revised Proposal, or commencement of a revision process, extend the Deadline for Proposals for any Respondent.
- (7) Validity of Response. Any Proposal must remain valid for at least ninety (90) days. This includes services, pricing, as well as the proposed staffing assignments.
- (8) Expenses. There is no expressed or implied obligation for SFHSS to reimburse any Respondent for expenses incurred in responding to the RFP. SFHSS reserves the right to retain all submitted questions and responses to the RFP and use any information or ideas contained therein.
- (9) Authorized Communications. Respondent will direct all communications, in writing, via email, to Michael Visconti, Contracts Administration Manager, San Francisco Health Service System, michael.visconti@sfgov.org.
- (10) Unauthorized Communications. **Respondents are precluded from contacting other SFHSS staff, the Health Service Board, members of the Evaluation Panel, or any partners or consultants of SFHSS**, including but not limited to, other City employees, representatives, or officials, regarding the RFP. Respondents are precluded from issuing news releases, social media postings, media releases, or other similar public releases of information regarding the RFP or the contents herein without prior written approval from SFHSS are prohibited. Failure to adhere to the prohibition on unapproved communications may result in disqualification from the RFP.
- (11) Rejection of Proposal. SFHSS reserves the right to consider as acceptable only those Proposals submitted in compliance with all the requirements set forth in this RFP, all Appendices thereto and which demonstrate an understanding of the scope of services. At its sole discretion, SFHSS reserves the right to reject any Response for reasons including, but not limited to:
- Collusion among two or more Respondents (including, but not limited to, Respondent's employees, consultants, officers, partners or subcontractors)
 - Conflicts of interest;
 - Submission of a conditional or incomplete Proposal;
 - Failure to respond in the format required, both in content and sequence;
 - Failure to submit the response by the specified deadline;
 - Failure to answer any question in this RFP;
 - Failure to meet a qualification or requirement;
 - False or misleading statements;

- Non-responsive Proposal(s);
 - Proposals submitted by a non-responsible Proposer, and/or
 - Any other reason which, in SFHSS' opinion, the response or Proposal fails to meet the conditions and requirements of this RFP.
- (12) No Offer to Contract. Issuance of this RFP in no way constitutes a commitment by SFHSS, the Board, or the City, to award a contract. Acceptance of a Proposal neither commits SFHSS to award a contract to any Respondent, even if all requirements stated in this RFP are met, nor limits our right to negotiate in our best interest. SFHSS reserves the right to contract with a respondent for reasons other than lowest price.
- (13) Reserved. (Commissions)
- (14) Consent to Reassign Personnel. If selected by SFHSS as a result of this RFP, Respondent shall not reassign personnel assigned to the contract during the term of the contract without prior notification to SFHSS and the Board, including the account executive, account manager, or key staff. If personnel are unable to perform duties due to illness, resignation, or other factors beyond Respondent's control, Respondent shall make every reasonable effort to provide suitable Substitute Personnel for review and approval by SFHSS.
- (15) Substitute Personnel. If selected by SFHSS, Respondent shall coordinate with SFHSS regarding the selection of Substitute Personnel including from the personnel identified within the Respondent's RFP response, but not limited to in-person interviews with proposed Substitute Personnel. Substitute Personnel shall not automatically receive the hourly rate of the individual or position being replaced. SFHSS and Respondent shall negotiate the hourly rate of any substitute personnel into the contract. The hourly rate negotiated shall depend, in part, upon the experience and individual skills of the proposed substitute personnel. The negotiated rate cannot exceed the hourly rate stated in the contract.
- (16) Removal of Personnel. SFHSS reserves the right to request personnel be removed from performing any services upon written notice from SFHSS including, but not limited to, for actual or perceived conflict(s) of interest. If any personnel are removed, Substitute Personnel shall be assigned.
- (17) Objections to the RFP Terms. Should Respondent object on any ground to any provision or legal requirement set forth in this RFP, Respondent must, not less than ten (10) calendar days before the Deadline for Proposals, provide written notice to SFHSS at michael.visconti@sfgov.org setting forth with specificity the grounds for the objection(s). The failure of a Respondent to object within the time allowed, and in the manner set forth in this paragraph, shall constitute a complete and irrevocable waiver of any such objection(s).
- Deadline for Objections to RFP Terms: November 1, 2021 (11:59 PM PT)**
- (18) Campaign Reform Ordinance. Respondents must comply with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which states as follows:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a Respondent is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period Respondent is prohibited from making contributions to:

- The officer's re-election campaign;
- A candidate for that officer's office; and/or
- A committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a Contractor approaches any City officer or employee about a particular contract, or a City officer or employee initiates communication with a potential Contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the Contractor. Examples of initial contacts include: (1) a vendor contacts a City officer or employee to promote himself or herself as a candidate for a contract; and (2) a City officer or employee contacts a Contractor to propose that the Contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to this RFP, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

- Criminal. Any person who knowingly or willfully violates Section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
- Civil. Any person who intentionally or negligently violates Section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
- Administrative. Any person who intentionally or negligently violates Section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, Respondents should contact the San Francisco Ethics Commission at (415) 581-2300.

- (19) Reservations of Rights by the City. The issuance of this RFP does not constitute an agreement by SFHSS, the Health Service Board, or the City that any contract will be entered into by SFHSS, the Board, or the City. SFHSS expressly reserves the right at any time to:
- Waive or correct any defect or informality in any response, proposal, or proposal procedure;
 - Reject any or all Proposals;

- Reissue a Request for Proposals, Request for Qualifications or a similar procurement;
- Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
- Procure any services specified in this RFP by any other means; and/or
- Determine that no contract(s) will be pursued.

3.6 Evaluation

This section describes the requirement and guidelines used for analyzing and evaluating Respondent Proposal. SFHSS intends to select the Respondent that provides the best overall qualifications, inclusive of cost considerations. This RFP does not in any way limit SFHSS' right to solicit contracts for similar or identical services if, in the sole and absolute discretion of SFHSS, it determines the responses received are inadequate to satisfy the needs of the SFHSS and Members.

3.6.1 Proposal Deadline and Review of Minimum Qualifications

SFHSS will determine, upon receipt of Proposals, in its sole discretion, whether Respondents have met the Minimum Qualifications (Sec. 3.4). Should SFHSS require additional information from any Respondent to confirm Minimum Qualifications, SFHSS will notify Respondent within ten (10) working days of receipt of Proposal. Respondent will then have five (5) working days to submit additional information to SFHSS.

If it is determined that Respondent does not meet the Minimum Qualifications, Respondent's Proposal will be deemed non-responsive and there will be no further review, either by SFHSS, or the Evaluation Panel. However, SFHSS reserves the right, in its sole discretion, to waive minor administrative irregularities.

3.6.2 Evaluation Panel

If Respondent meets the Minimum Qualifications (Sec. 3.4) as determined by SFHSS, SFHSS will submit Respondent(s) Proposal(s) to a panel of SFHSS-selected representatives and subject-matter experts for evaluation (the "Evaluation Panel").

The Evaluation Panel will review each minimally qualified and responsive Proposal. Collaborative evaluation of Proposals will only be permitted so long as all members of the Evaluation Panel are present in person, by phone, by video conference, or a combination thereof ("Evaluation Panel Discussions").

3.6.3 Respondent Proposal, Questionnaire, and Scoring

The evaluation criteria listed below will be used to evaluate and rank all Proposals:

- Each section in the RFP to be included in Respondent Proposal has been assigned a maximum number of available points (Maximum Points).

- Proposals will be weighted by the Evaluation Panel using the following overarching categories and weighting:
- Proposals will be evaluated based the strength of the solution proposed, relevant experience, references, and cost

Category	Weight
Value of Cost Proposal	30%
Proposal and Proposed Approach to Services and Deliverables	50%
Prior Experience, Team, Project Manager, Communications, Reporting	10%
RFP Terms and Conditions, City Terms and Conditions (Appendix A.1, Standard Agreement, Appendix A.2 Business Associate Agreement, Appendix A.3 San Francisco Security Risk Assessment)	10%
Total	100%

3.6.4 Oral Interviews

At SFHSS's sole discretion, following the review and evaluation of the Proposals, SFHSS may invite Respondent(s) to an oral interview before the Evaluation Panel (Oral Interviews). If conducted, the Oral Interviews may be weighted equally to the proposal. The Oral Interviews will be conducted via Microsoft Teams or Cisco WebEx video conference. SFHSS will provide questions to Respondent(s) in advance of the Oral Interviews. SFHSS will also determine the types and numbers of personnel from Respondents that will be allowed to participate in the Oral Interviews.

Oral Interviews may require Respondent to provide members of its technical, customer service, account or implementation team, as well as other operational and strategic professionals who are integral to the services detailed in the scope of the RFP.

SFHSS reserves the right to select and recommend the highest-ranking Respondent(s) without conducting Oral Interviews.

Timing of Oral Interviews: Oral interviews, if required by SFHSS, will occur November 16 – 18, 2021.

In lieu of Oral Interviews, SFHSS may also deliver written Requests for Clarification to each qualified respondent and require written responses according to the following schedule:

Request for Clarification Issued: November 16, 2021

Responses due in Writing to SFHSS: November 22, 2021, 12:00 PM (PT)

3.6.5 Final Ranking Announcement

SFHSS will announce the final ranking of all respondents following review by the Evaluation Panel and/or following the Oral Interviews or Requests for Clarification (if conducted) via email to each Respondent's authorized representative and primary point of contact.

3.6.6 Contract Negotiation

Following the announcement of the final ranking, SFHSS will commence contract negotiations with the highest ranked respondent. If SFHSS is unable to negotiate a satisfactory contract with the highest-ranked respondent within a reasonable time, or if the highest ranked respondent deviates materially from the terms of the RFP including all addendum, amendments and attachments thereto, SFHSS, in its sole discretion, may terminate negotiations with the highest ranked respondent and begin contract negotiations with the next highest ranked respondent.

3.7 Protests

3.7.1 Protest of Non-Responsive Determination or Failure to Meet Minimum Qualification

Within five (5) working days of the date of SFHSS' issuance of a notice of non-responsiveness, any Respondent that has submitted a Proposal and believes that SFHSS has incorrectly determined that its proposal is non-responsive may submit a written notice of protest. Such notice of protest must be received by SFHSS on or before the end of the fifth (5th) working day following SFHSS' issuance of the notice of non-responsiveness. The day of the issuance of the notice of non-responsiveness shall not count towards these five working days (day zero). The notice of protest must include a written statement specifying in detail each and every ground asserted for the protest. The protest must be signed by an individual legally authorized to represent Respondent, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify all facts and evidence that would support and/or justify the protest.

3.7.2 Protest of Ranking, Scoring, or Contract Award

Within five (5) working days of the date of the announcement and notice of final ranking (Section 3.6.5) by SFHSS, any Respondent that has submitted a responsive Proposal and believes that SFHSS has incorrectly ranked the Respondents, may submit a written notice of protest. Such notice of protest must be received by SFHSS on or before 5:00 PM (PT) on the fifth (5th) working day after the day of the notice of final ranking (day zero).

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent Respondent, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify all facts and evidence that would support and/or justify the protest.

3.7.3 Delivery of Protests

Respondent is responsible for delivery to, and confirmation of receipt by, SFHSS of any protest by the deadlines specified in this Section.

Protests must be delivered via email to:

Michael Visconti
 Contracts Administration Manager
 San Francisco Health Service System
michael.visconti@sfgov.org

With copies sent to:

abbie.yant@sfgov.org

erik.rapoport@sfcityatty.org

Protests or notice of protests made orally, e.g., by telephone, by U.S. Postal Service or common carrier, my messenger or other means, will not be considered or accepted by SFHSS.

The remainder of this page intentionally left blank

APPENDIX A

Please see Appendix A.1 (Standard Agreement) , posted to <https://sfhss.org/RFPs> including the Business Associate Agreement (BAA, Appendix A.2) and Appendix A.3- San Francisco Security Risk Assessment.

**Appendix A.1 Draft Standard Agreement for
RFPQ#HSS2021.E8**

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

Agreement between the City and County of San Francisco and

**[Insert name of contractor]
[Insert agreement number (if applicable)]**

This Agreement is made this [insert day] day of [insert month], 20 [insert year], in the City and County of San Francisco (“City”), State of California, by and between [name and address of Contractor] (“Contractor”) and City.

Recitals

WHEREAS, the [insert name of department] (“Department”) wishes to [insert short description of services required]; and,

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through [specify the procurement vehicle such as RFP or RFQ (if RFQ, convert all references to RFP to RFQ) and date issued, or state the exception to competitive procurement and date granted] a Request for Proposal (“RFP”) issued on [insert date], in which City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, the Local Business Enterprise (“LBE”) subcontracting participation requirement for this Agreement is [insert LBE subcontracting percentage number] %; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement; and

WHEREAS, the City’s Civil Service Commission approved Contract number [insert PSC number] on [insert date of Civil Service Commission action]; and

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth. Whenever the words “as directed”, “as required”, “as permitted”, or words of like effect are used, it shall be understood as the direction, requirement, or permission of the [insert name of department]. The words “sufficient”, “necessary”, or “proper”, and the like, mean sufficient, necessary or proper in

the judgment of the [insert name of department], unless otherwise indicated by the context. “Acceptance Tests” means the procedures and performance standards required for Acceptance by City of the Programs and the System as defined herein. These procedures and performance standards are set forth for each phase of System development, the Acceptance Test Plan. The following definitions apply to this Agreement:

1.1 “Acceptance” means notice from the City to Contractor that the [Licensed or developed] software meets the specifications contained in the Documentation. City’s Acceptance of the [Licensed or developed] software shall be governed by the procedures set forth in Article 4 (“Services, Software Implementation and Acceptance”).

1.2 “Acceptance Window” means the time period following completion of Phase 1 or 2 during which Contractor must secure Acceptance of the completed phase from City.

1.3 “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein, together with any future written and executed amendments.

1.4 “Change Order” means a written instrument signed by the City’s Project Manager that modifies this Agreement through an adjustment to one or more of the following: (i) the Project Schedule, (ii) the Statement of Work, (iii) the Acceptance Criteria, or (iv) other requirements specified in this Agreement.

1.5 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and [insert name of department].

1.6 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

1.7 “CMD” means the Contract Monitoring Division of the City.

1.8 “Contractor” or “Consultant” means [insert name and address of contractor].

1.9 “Critical Milestones” means those milestones specified in the Project Schedule as Critical Milestones after which liquidated damages apply for failure to complete performance in accordance with this Agreement.

1.10 “Deliverables” means those items described and itemized in Appendix [insert Appendix letter], which items Contractor commits to provide to City on the dates specified in the Implementation Plan.

1.11 “Design Specifications” means the written design specifications to be prepared by Contractor to implement the Functional Specifications. The Design Specifications shall include descriptions of each Program to be developed hereunder together with descriptions of the hardware and software environment in which such Programs may be operated and the files or databases, if any, with which such Programs shall function.

1.12 “Documentation” means the technical publications relating to use of the System, such as reference, installation, administrative, maintenance, and programmer manuals, provided by Contractor to City.

1.13 “Equipment” means the central processing unit[s] and associated peripheral devices [or, computer hardware] on which the Programs will operate and with which the Programs must be compatible, to be purchased [or, leased] by Contractor for City [or, provided by City].

1.14 “Errors, Defects and Malfunctions” means either a deviation between the function of the developed Programs and the documentation furnished by Contractor for the Programs, or a failure of the Programs which degrades the use of the Programs.

1.15 “Fix” means repair or replace source, object or executable code in the Programs to remedy an Error, Defect or Malfunction.

1.16 “Functional Specifications” means the written description of City’s requirements, operations, and procedures, which document is to be prepared by Contractor, and upon approval by City, shall form the basis for the Design Specifications as defined herein.

1.17 “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations upon Contractor.

1.18 “Party” or “Parties” means, respectively, the City and Contractor either individually or collectively.

1.19 “Patch” means temporary repair or replacement of code in the Programs to remedy an Error, Defect or Malfunction. Patches may be made permanent and released in Subsequent Releases of the Software.

1.20 “Performance Specifications” means the description of the minimum System characteristics and performance which must be achieved by the Functional Specifications.

1.21 “Priority Category” means a priority assigned to an Error, Defect or Malfunction, designating the urgency of correcting an Error, Defect or Malfunction. Assignment of a Priority Category to an Error, Defect or Malfunction is based on City’s determination of the severity of the Error, Defect or Malfunction and Contractor’s reasonable analysis of the priority of the Error, Defect or Malfunction.

1.22 “Priority Protocol” means a Priority Protocol that is based on the Priority Category, rules specifying the turnaround time for correcting Errors, Malfunctions and Defects; escalation procedures, and personnel assignment.

1.23 “Programs” or “Software” means the software developed by Contractor and delivered to City, in the form of machine-executable instructions, to operate on the Equipment for purposes of accomplishing the functional capabilities set forth in Program Specifications.

1.24 “Project Schedule” means the schedule for Contractor’s completion of all phases of Work, and the Critical Milestones associated with such completion as specified in this Agreement.

1.25 “Review Period” means the time period during which City shall review the completed Work of Phase [1 or 2 (list number of phases if known)] and give notice to Contractor of its acceptance or rejection of the completed phase.

1.26 “Services” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendices A-D, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.27 “Subsequent Release” means a release of the Software for use in a particular operating environment which supersedes the Software. A Subsequent Release is offered and expressly designated by Contractor as a replacement to a specified Software product. A Subsequent Release will be supported by Contractor in accordance with the terms of this Software Maintenance Attachment. Multiple Subsequent Releases may be supported by Contractor at any given time.

1.28 “Support Services” means the support service performed at the option of City. Support Services include correcting an Error, Defect or Malfunction; providing telephone and/or online support concerning the installation and use of the Programs; training in the installation and use of the Programs; on-site consulting and application development services; detection, warning and correction of viruses; and disabled/disabling code.

1.29 “System” means the Programs prepared by Contractor for City and the Equipment on which those Programs operate, the combination of which shall satisfy the requirements set forth in the Performance Specifications.

1.30 “Upgrade” means either an enhancement to the Programs code to add new features or functions to the system or software programming revisions containing corrections to Errors, Defects and Malfunctions that have been reported by users or discovered by the Contractor.

1.31 “Version Locking” means a mechanism that restricts access to a computer file by allowing only one user or process access at any specific time.

1.32 “Warranty Period” means a period commencing with the installation of the Software product during which reported Errors, Defects and Malfunctions for Software products are corrected without charge in accordance with the provisions below.

1.33 “Work” means the implementation, assembly, installation, optimization, and integration as required by this Agreement, whether completed or partially completed, including all labor, materials, and services provided, or to be provided, by Contractor to fulfill its obligations hereunder. The Work, therefore, constitutes all of the requirements for providing the System to the City.

1.34 “Workaround” means a change in the procedures followed or end user operation of the software to avoid an Error, Defect or Malfunction without significantly impairing functionality or degrading the use of the Software.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on [insert Contractor’s start date] and expire on [insert expiration date], unless earlier terminated as otherwise provided herein.

2.2 The City has [number of options] options to renew the Agreement for a period of [one year or other time span] each. The City may extend this Agreement beyond the expiration date by exercising an option at the City’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

2.3 The term of the **Maintenance Services Option** (Section 4.7) if executed by City, shall commence on [insert commencement date] and expire on [insert expiration date], unless earlier terminated as otherwise provided herein. The City has [number of options] options to renew the **Maintenance Services** for a period of [one year or other time span] each. The City may extend this Agreement beyond the expiration date by exercising an option at the City’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

Article 3 Financial Matters

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 Guaranteed Maximum Costs. The City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, “Modification of this Agreement.”

3.3 Compensation.

3.3.1 Payment. In consideration for the services rendered under this Agreement and for the rights in the Programs granted hereunder, the City shall pay to Contractor on a deliverable base schedule. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix E (“Calculation of Charges”). Compensation shall be made for Services identified in the invoice that the [insert title of department head], in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no “.00”]. The breakdown of charges associated with this Agreement appears in Appendix E, “Calculation of Charges.” In no event shall City be liable for interest or late charges for any late payments.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until [insert name of department] approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.3 Retention. The final payment of [insert percent in words] percent ([insert percent in numbers]%) of the software development and license costs shall be paid [insert days in words and (numbers)] days after City issues its notice of Acceptance of the System.

3.3.4 Withhold Payments. If Contractor fails to provide Services in accordance with Contractor’s obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City’s withholding of payments as provided herein.

3.3.5 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City to Contractor at the address specified in Section 11.1,

“Notices to the Parties,” or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.6 LBE Payment and Utilization Tracking System. Contractor must submit all required payment information using the City’s Financial System as required by CMD to enable the City to monitor Contractor’s compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from the City, except as otherwise authorized by the LBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor’s submission of all required CMD payment information. Failure to submit all required payment information to the City’s Financial System with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment information is provided. Following City’s payment of an invoice, Contractor has ten calendar days to acknowledge using the City’s Financial System that all subcontractors have been paid. Self-Service Training for suppliers is located at this link: <https://sfcitypartner.sfgov.org/Training/TrainingGuide>.

3.3.7 Getting paid for goods and/or services from the City.

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City’s Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

(b) The following information is required to sign up: (i) The enroller must be their company’s authorized financial representative, (ii) the company’s legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company’s U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company’s bank account information, including routing and account numbers.

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or

subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

Article 4 Services, Software Implementation and Acceptance

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Appendices A-D, “Scope of Services.” Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendices A-D, unless Appendices A-D are modified as provided in Section 11.5, “Modification of this Agreement.”

4.2 Software Implementation.

4.2.1 Program Development. Subject to the terms and conditions of this Agreement, and in consideration for the payments to be made, Contractor agrees to design, develop, and install the Programs in the following discrete and sequential phases. In Phase 1, Contractor will develop Functional Specifications; in Phase 2, Contractor will create the Design Specifications; in Phase 3, Contractor will code the Programs, install the completed System at City’s site, and deliver the Documentation for the System. The Work covered under each phase is specified in [specify the document or Appendix which describes the scope of work]. Upon completion of Phase 3, the System will be subject to Acceptance Testing to verify conformity with the Design Specifications.

4.2.2 Interpretation of the Specifications. The City hereby acknowledges that the Functional Specifications will, upon acceptance by the City, provide the basis for the Design Specifications, and that the Design Specifications will, upon acceptance by the City, provide the basis for the coding and installation of the Programs. In the event of a variance between the written proposal Contractor submitted in response to City’s request for the services to be performed under this Agreement (the “Proposal”) and the Functional Specifications, the Functional Specifications shall be determinative. In the event of a variance between the Functional Specifications and the Design Specifications, the Design Specifications shall be determinative.

4.2.3 Interpretive Differences. In the event City and Contractor differ in their interpretations of the Proposal, Functional Specifications, Design Specifications, or Acceptance Tests, City’s interpretation, if reasonable, shall be determinative.

4.2.4 Change Orders.

(a) **City Proposed Change Order.** The City may at any time, by written order, and without notice to Contractor's sureties, submit a Change Order to Contractor. Within ten (10) working days of receiving a proposed Change Order, Contractor shall submit to City a written cost estimate, which shall include any adjustments to the Project price, the Project Schedule, the Statement of Work, the Acceptance Criteria or any other obligations of Contractor, as applicable.

(b) **Contractor Proposed Change Order.** Contractor may also propose a Change Order involving either additions, deletions, or revisions to the Work, or any obligations imposed upon the Parties under this Agreement. Contractor's proposed Change Order shall be in the form of a Request for Change ("RFC") which shall explain, in writing, Contractor's basis for requesting the Change Order and the impact of the proposed Change Order on the Project Schedule, the cost of Work, the Agreement documents and Deliverables, and any other interdependent Work, including but not limited to, the Acceptance Criteria, training, documentation, performance, resources, data conversion, users, re-engineering tasks, and all other aspects of the Project, as provided in this Agreement.

(c) Any Change Order requiring a Project price adjustment that results in an overall increase to the not to exceed Project compensation (Section 3.3), shall be agreed to in writing by the Parties and executed in the same manner as this Agreement pursuant to Section 11.5 ("Modification of Agreement").

(d) All Change Orders must be approved, in writing, by City's Project Manager. Contractor shall not proceed with any work contemplated in any Change Order until it receives written notification to commence such work from City's Project Manager.

(e) The City shall have authority to order minor changes in the Work not involving either an adjustment in the total contract sum or an extension of the time for completion of the Work. The City's Project Manager may waive a variation in the Work if, in his or her opinion, such variation does not materially change the Work or the Program's performance.

4.3 Acceptance Procedure.

4.3.1 **Acceptance of Phases 1 and Phase 2.** Upon completion of Phases 1 and Phase 2 [add more phases if needed] of Program development, City shall, within the Review Period, review and give notice to Contractor of City's acceptance or rejection of the specifications of each completed phase of Work. Should City reject either the Phase 1 or Phase 2 Work, then City is entitled to another Review Period upon receipt from Contractor of the revised Phase 1 or Phase 2 specifications. In the event that Contractor fails to provide Phase 1 or Phase 2 Work which meets the Acceptance Criteria of this Agreement during the Acceptance Window, City may, at its option, assess Liquidated Damages per Section 4.12 of this Agreement and/or terminate this Agreement under Section 8.2, Termination for Default.

4.3.2 **Final Acceptance of System.** Upon completion of Phase 3 [update the phase number if needed], City and Contractor shall conduct Acceptance Testing of the System in accordance with the Acceptance Test Plan. City will not be deemed to have Accepted any Program or the System until Contractor receives written notice of Acceptance from City.

4.3.3 **Data Conversion.** [insert City or Contractor] shall be responsible for the timely and accurate conversion of City’s data to the format required by the Programs [or, System], and for providing the test data specified in the Acceptance Test Plan [or, Design Specifications].

4.3.4 **Contractor’s Assistance in Acceptance Tests.** Contractor must furnish all materials, equipment, and technical assistance necessary to conduct the Acceptance Tests. Test Equipment provided by Contractor for performance of the Acceptance Tests shall be currently certified as “calibrated” by the test equipment manufacturer, or its authorized calibration service agent. (See Section 4.5.8(b))

4.3.5 **Failure to Pass Acceptance Tests.** In the event that City determines that the System fails to meet the standards set forth in the Acceptance Test Plan, City shall promptly report to Contractor each deficiency, and Contractor will correct the reproducible aspects of the problem or failure within [insert number] days from date of Contractor’s receipt of notice of the problem or failure. Problems or failures that do not re-occur or cannot be repeated by Contractor, or by the City in Contractor’s presence, shall not be considered a failure. In the event that Contractor cannot achieve System Acceptance within [insert number] days following the commencement of Acceptance Testing, Contractor shall be in default under this Agreement and, in addition to those remedies set forth in Article 8 entitled “Termination and Default” City is further entitled to a refund of all payments made to Contractor under this Agreement.

4.3.6 **Parallel Processing.** The Parties contemplate that parallel processing will be used until both the Programs [or, the System] and its backup have completed the Acceptance Tests.

4.4 **Documentation Delivery and Training.**

4.4.1 **Documentation Delivery.** Contractor will deliver [insert number] copies of the completed Documentation for the Programs [or, the System] in accordance with the Documentation description, Appendix B, and the Project Schedule, Appendix C. The City may withhold its issuance of the notice of final Acceptance until City receives the completed Documentation.

4.4.2 **City Training.** Contractor will provide up to [insert number] hours of training to [insert number] City personnel at City’s [or, Contractor’s] premises at no charge [or, at the rates shown in Appendix E]. Upon request by the City, Contractor will provide additional training at its then prevailing rates.

4.5 **Project Administration.**

4.5.1 **Project Schedule.** The Project Schedule is set forth in Appendix C and may be amended by mutual agreement between City and Contractor.

(a) **Delays.** To prevent slippage in the completion of the project, Contractor agrees that if such slippage occurs, it will assign additional qualified personnel to the project.

(b) **Time of the Essence.** The Parties agree that time is of the essence, and that the System will be developed and implemented in accordance with the Project Schedule.

(c) **Critical Milestones.** Contractor acknowledges and understands that the Project Schedule contains certain time-sensitive milestones (“Critical Milestones”) that must be attained by certain dates; otherwise, the City will suffer financial harm. Milestones that are Critical Milestones are so indicated in the Project Schedule. Notwithstanding City’s ability to assess liquidated damages for Contractor’s failure to meet any Critical Milestone, the time period for achieving final Acceptance shall not exceed [insert number] calendar days after initiation of System testing. In addition to any other remedy provided under this Agreement, Contractor’s inability to achieve final Acceptance of the System within [insert number] calendar days after the last Critical Milestone will be cause for immediate termination of this Agreement, and City shall be entitled to a full refund of any amounts paid to Contractor under this Agreement for the portion(s) of the Programs that are not accepted.

4.5.2 **Progress Reports.** Contractor will provide City with monthly [or, weekly] written status reports advising the City of its progress, which reports will be delivered [insert number] days following the month to which it relates.

4.5.3 **Project Managers.** Contractor and City shall each designate a Project Manager, who shall be accessible by telephone throughout the duration of the Agreement and shall be available 9 a.m. to 5 p.m. Monday through Friday, excluding City-designated holidays. These hours may be adjusted by mutual agreement of City and Contractor.

(a) The City’s Project Manager will be authorized to make binding decisions for the City regarding this Agreement and will: (1) review all specifications, technical materials and other documents submitted by Contractor, request necessary corrections, and approve such documents; (2) provide requested City information and data and assume responsibility on the adequacy of the same; (3) advise Contractor of City’s requirements; and (4) upon request provide access to City’s staff, facility and hardware. City’s Project Manager shall have the right to manage and direct any aspect of the Project as may be necessary, in his or her opinion, to safeguard the interest of the City. City’s Project Manager shall communicate all of his or her concerns to Contractor’s Project Manager. In the event Contractor believes that any direction being given by City’s Project Manager shall impair the performance of the Project or any phase thereof, Contractor shall immediately inform the City’s Project Manager of its concern. Except as specifically provided under this Agreement, City’s Project Manager’s management of the Project shall not relieve Contractor of any obligations or liabilities set forth in this Agreement and the Appendices or Exhibits thereto.

(b) Throughout the term of this Agreement, whenever the Contractor’s Project Manager is not on site, he or she must be available by phone or e-mail. Whenever the Contractor’s Project Manager will be unavoidably absent or otherwise unavailable by phone or e-mail for more than eight hours, then a substitute Project Manager must be designated to respond to telephone calls and e-mails from the City. Contractor shall use its best efforts to maintain the same Project Manager until Final Acceptance of the Programs.

Contractor’s Project Manager: [insert name
mailing address
phone number
e-mail address]

City's Project Manager:

[insert name
name of department
mailing address
phone number
e-mail address]

4.5.4 Changing Project Managers. The City and Contractor shall use their best efforts to maintain the same Project Manager until Final Acceptance of the System. However, if a Party needs to replace its Project Manager, the Party shall provide the other Party written notice thereof at least forty-five (45) days prior to the date the Project Manager shall be replaced. Such notice shall provide all the required information above. Notwithstanding the foregoing, the Parties have the right to appoint temporary Project Managers in connection with short term unavailability, sick leave or reasonable vacations. Parties shall notify each other in advance of any such temporary appointments. City may require Contractor to replace its Project Manager, by giving Contractor notification thereof and City's objective reasons therefor.

4.5.5 Qualified Personnel/Staffing. Work under this Agreement shall be performed only by competent personnel appropriately trained in technical skills to perform their duties under the supervision of, and in the employment of, Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. The personnel of each Party, when on the premises of the other, shall comply with the security and other personnel regulations of the Party on whose premises such individual is located.

4.5.6 Meetings. From the commencement date of the Project until the Final Acceptance of the Programs, the Project Managers shall communicate at times and locations designated by City to discuss the progress of the Project. Until the Final Acceptance of the Project, the Project Managers shall communicate, as required by the City, to discuss any operational problems or defects that City has encountered. City shall have the right to call a meeting at any time by providing Contractor forty-eight (48) hours written notice thereof. Such notice shall provide the time, place and the purpose of the meeting. Contractor and City's Project team must be available to meet as often as is necessary to facilitate timely completion of the Project.

4.5.7 Inspection. City's Project Manager shall have the right to inspect and/or test, at any time, all Work, Deliverables and materials to be provided for the Project, and the manufacture, assembly and installation of such Deliverables and materials. City's Project Manager's inspection shall be based on compliance with the Agreement. City's Project Manager's right to inspect all aspects of the Project shall not relieve Contractor of its obligation to furnish material and workmanship in accordance with this Agreement. City's Project Manager may reject any portion of the Project, which fails to meet any applicable standard.

(a) **Defects Post-Inspection.** Notwithstanding any previous inspection, acceptance, or payment by the City for any Work, or Deliverables found to be in non-compliance with the Agreement, or found to be defective before Final Acceptance of the Project, such Work or Deliverables shall be repaired or replaced within a reasonable period of time by Contractor at its own cost and expense.

(b) **Special Testing Tools.** Contractor shall furnish all tools, labor and material which Contractor deems necessary to inspect any Deliverables, Work or material. Unless purchased by the City as part of the Project, Contractor shall provide all test equipment needed to verify Deliverables or Work at its sole cost and expense. The equipment provided by Contractor for performance test shall currently be certified as “calibrated” by the test equipment manufacturer, or its authorized calibration service agent. Unless purchased by the City, all test equipment shall remain the property of Contractor.

4.5.8 Right to Stop Work. City’s Project Manager shall have the right to stop any Work on the Project if: (i) City notifies Contractor of a defect in the Work or Deliverables and after such notice, Contractor fails to promptly commence correction of any identified defects in the Work or Deliverables, or (ii) Contractor fails to carry out any portion of the Project in accordance with this Agreement. All stop work orders from the City shall be in writing and signed by City’s Project Manager. City shall specifically state the cause for the order to stop work. Upon receiving a stop work order, Contractor shall immediately cease working on that portion of the Work specified in the order, until the cause for such order has been eliminated. City’s right to stop any work on the Project shall not give rise to a duty on the part of the City to exercise this right for the benefit of Contractor or any other person or entity. In the event City’s Project Manager orders work to be stopped without proper justification, City shall reimburse Contractor for the actual and direct costs incurred by Contractor due to the delay. Furthermore, Contractor will be entitled to a time extension equal to the number of days delay City has caused due to the unjustified work stoppage. In no event will a stop work order extend beyond 30 days.

4.5.9 City Facilities. [TBD]

4.6 Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. All Subcontracts must incorporate the terms of Article 10 (“Additional Requirements Incorporated by Reference”) of this Agreement, unless inapplicable. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

4.7 Maintenance Services Option. City, at its sole discretion, reserves the right to obtain maintenance services from Contractor for a period up to [insert the number of years] years from final acceptance of the Programs by City [or, upon expiration of the performance warranty provided herein]. Contractor will provide maintenance services for the Programs in accordance with the terms and conditions of this Agreement and Appendix F (Maintenance Terms and Conditions). Annual maintenance and support charges shall not increase more than [insert percentage or CPI] % of the rate of the year immediately prior to such increase.

4.8 Consulting Services. Upon request by City, Contractor will provide programming, project management, consulting and other related services. The scope and charges for such services shall be the then prevailing best government rate [or, are specified in Appendix ___].

4.9 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.9.1 Independent Contractor. For the purposes of this Section 4.9, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this Section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.9.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.9 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its

officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Section.

4.10 Assignment. The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

4.11 Liquidated Damages. By entering into this Agreement, Contractor agrees that in the event the Services are delayed beyond the Critical Milestones as provided in Appendices A-D, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the sum of **[insert whole dollar amount in words and numbers -- no pennies and no ".00"]** per calendar day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between City and Contractor. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor's failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

Article 5 Insurance, Indemnity and Warranties

5.1.1 Required Coverages. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than **\$1,000,000** each accident, injury, or illness.

(d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than **\$1,000,000** for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Technology Errors and Omissions Liability coverage, with limits of **\$1,000,000** for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Agreement and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(f) Cyber and Privacy Insurance with limits of not less than **\$1,000,000** per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(g) Reserved (Pollution Liability Insurance).

5.1.2 Additional Insured Endorsements

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) Reserved (Pollution Auto Liability Insurance Additional Insured Endorsement).

5.1.3 Waiver of Subrogation Endorsements

(a) The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.4 Primary Insurance Endorsements

(a) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved. (Pollution Liability Insurance Primary Insurance Endorsement).

5.1.5 Other Insurance Requirements

(a) Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 entitled "Notices to the Parties."

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

5.2 Indemnification.

5.2.1 **General Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state,

or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as it arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

5.2.2 Infringement Indemnification. If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the Programs infringes a patent or copyright, or any rights of a third party, or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (infringement), Contractor will hold City harmless and defend such action at its expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Programs constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement. In the event that a final injunction shall be obtained against City's use of the Programs by reason of Infringement, or in Contractor's opinion City's use of the Programs is likely to become the subject of Infringement, Contractor may at its option and expense (a) procure for City the right to continue to use the Programs as contemplated hereunder, (b) replace the Programs with non-infringing, functionally equivalent substitute Programs, or (c) suitably modify the Programs to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Programs. If none of these options is reasonably available to Contractor, then this Agreement may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Agreement for the development and license of the infringing Programs.

5.3 Warranties

5.3.1 Warranty of Title. Contractor warrants that the Programs developed pursuant to this Agreement will, prior to its transfer to City, be the sole and exclusive property of Contractor.

5.3.2 **Warranty of Authority; No Conflict.** Each Party hereby warrants to the other that it is authorized to enter into this Agreement and that its performance thereof will not conflict with any other agreement.

5.3.3 **Warranty of Performance Specifications; Warranty Services.** Contractor hereby warrants that when fully implemented, the developed Programs, configuration, customization and services performed by Contractor pursuant to this Agreement, when fully implemented, including technical and functional system integration that includes planning, fit/gap analysis, design, configuration, enhancements and custom programming, and developed interfaces (collectively “System Integration and Customization”), will perform in accordance with the required functionality defined in Appendix [] during a one year period following the issuance of written Acceptance by City. Upon City issuing written notice to Contractor of a warranty breach under this section, Contractor shall correct and repair the configuration and customized code provided by Contractor during the Warranty Period, at no charge to the City, within thirty (30) days following the notice, provided that:

(a) The problem encountered occurs within one year of the acceptance of such provided System Integration and Customization.

(b) The root cause analysis indicates the problem is in the system not meeting the System Integration and Customization requirements where the Contractor has responsibility (e.g., a problem caused by the developed, configured or customized COTS software or hardware component not meeting requirements, a defect in the configuration or code created by the Contractor).

Full correction of the system defect is to be completed by Contractor unless otherwise approved by the City, and the corrected code shall be appropriately tested to verify that no regression errors are introduced. Contractor shall warrant against Version Locking due to customization of the system.

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY’S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, “PAYMENT,” OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

6.2 **Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code Section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code Section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

- (a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.
- (b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.
- (c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.
- (f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

- (a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- (b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the Services or other work.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.4	Nondisclosure of Private, Proprietary or Confidential Information
4.6	Subcontracting	10.10	Alcohol and Drug-Free Workplace
4.10	Assignment	10.13	Working with Minors
Article 5	Insurance, Indemnity and Warranties	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within

ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.2 shall survive termination of this Agreement.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 **Non-Waiver of Rights.** The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such

default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

8.4 Rights and Duties upon Termination or Expiration.

8.4.1 Upon termination of this Agreement, Contractor will submit an invoice to City for an amount which represents the value of its work or services actually performed prior to the effective date of termination for which Contractor has not previously been compensated, except that with respect to reimbursement for Contractor’s services, in no event will the compensation paid for the month in which termination occurs be greater than the scheduled deliverable fee if the engagement is deliverable based, or the monthly fee multiplied by a fraction, the numerator of which will be the days in the month elapsed prior to the termination and the denominator of which shall be 31. Upon approval and payment of this invoice by City, City shall be under no further obligation to Contractor monetarily or otherwise.

8.4.2 Upon termination or expiration of this Agreement, Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

8.5 Survival. This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services		Article 9	Property Rights of the Parties
3.3.8(a)	Grant Funded Contracts - Disallowance			
3.4	Audit and Inspection of Records		10.4	Nondisclosure of Private, Proprietary or Confidential Information
3.5	Submitting False Claims		11.6	Dispute Resolution Procedure
4.9	Independent Contractor; Payment of Taxes and Other Expenses		8.3	Non-Waiver of Rights
Article 5	Insurance, Indemnity and Warranties		11.7	Agreement Made in California; Venue
6.1	Liability of City		11.8	Construction
6.3	Liability for Incidental and Consequential Damages		11.9	Entire Agreement
Article 7	Payment of Taxes		11.10	Compliance with Laws
8.1.6	Payment Obligation		11.11	Severability

8.5.1 Subject to the survival of the Sections identified in Section 8.5, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Intellectual Property Rights of the Parties

9.1 **Sale of the Programs.** Upon receipt of final payment for the Programs [or, System], Contractor will convey to City good and marketable title to the Programs [or, the System] free and clear of all liens, claims and encumbrances.

9.2 **Ownership of Underlying Modules.** The foregoing conveyance of title is subject to Contractor's retention of ownership of all modules developed by Contractor as a utility routine or generalized interface and not specifically for City.

9.3 **City's Data.** Any data or other materials furnished by the City for use by Contractor under this Agreement shall remain the sole property of the City and will be held in confidence in accordance with Section 5.3 ("Warranties") of this Agreement. Such materials shall be returned to City upon Acceptance of the Programs. Contractor shall within fifteen (15) calendar days purge or physically destroy all City data it acquired from the City from its servers or files and provide City with written certification within five (5) calendar days that such purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

9.4 **Ownership of Modifications and Enhancement.** Contractor hereby grants to City an exclusive perpetual license to use for internal purposes only the Programs contained in the modifications and enhancements to the software package licensed hereunder to City.

9.5 **Competition.** Nothing in this Agreement shall be construed so as to preclude Contractor from developing, using, or marketing software that is competitive with that prepared for City hereunder, irrespective of whether such software is similar in functionality or design or is otherwise related to the Programs developed by Contractor for City pursuant to this Agreement.

9.6 **Royalty Payments.** Contractor shall pay to City a royalty of [insert number in words] percent ([insert number] %) of all fees received by Contractor for the licensing [or sale] of the Programs, or portions thereof until the total amount of payments received by City total [insert amount in words] dollars (\$ [insert amount as number]) at which time such royalty payments shall cease.

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements

10.5.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least [enter percentage] of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor’s LBE subcontracting commitments.

10.7 Minimum Compensation Ordinance. If Administrative Code Chapter 12P applies to this Agreement, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.8 Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this Agreement, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a

candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Reserved. (Slavery Era Disclosure)

10.13 Reserved. (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Reserved (Public Access to Nonprofit Records and Meetings)..

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Reserved (Distribution of Beverages and Water).

Article 11 General Provisions

11.1 **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: **[insert name or title of department contact person, name of department, mailing address, and e-mail address]**

To Contractor: **[insert name of contractor, mailing address, and e-mail address]**

Any notice of default must be sent by registered mail or other trackable overnight mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 **Compliance with Americans with Disabilities Act.** Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement. Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. Sec. 1201 et seq.) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d).

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, except as noted in Section 4.2.4, "Change Orders," and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to

San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.8 Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 Entire Agreement. This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

11.12 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this

Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor’s proposal dated [Insert Date of Proposal]. The RFP and Contractor’s proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor’s proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City’s terms and Contractor’s printed terms attached, the City’s terms shall take precedence, followed by the procurement issued by the department, Contractor’s proposal, and Contractor’s printed terms, respectively.

11.14 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (“Legal Requests”) related to all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), or which in any way might reasonably require access to City’s Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City’s instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

11.15 Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

Article 12 Department Specific Terms

12.1 Reserved.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 Protection of Private Information. If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 Confidential Information. In the performance of Services, Contractor may have access to City’s proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to

Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.2 Reserved (Payment Card Industry (“PCI”) Requirements).

13.3 Business Associate Agreement. This Agreement may require the exchange of information covered by the U.S. Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). A Business Associate Agreement (“BAA”) executed by the parties is attached as Appendix G.

13.4 Management of City Confidential Information.

13.4.1 Use of Confidential Information. Contractor agrees to hold City’s Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City’s Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City’s Confidential Information outside the United States is subject to prior written authorization by the City. Access to City’s Confidential Information must be strictly controlled and limited to Contractor’s staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the Confidential Information solely for performing its obligations under the Agreement and not for Contractor’s own purposes or later use. Nothing herein shall be construed to confer any license or right to the Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.4.2 Disposition of Confidential Information. Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

Article 14 MacBride and Signature

14.1 MacBride Principles -Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve

employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Recommended by:

[company name]

[name]
[title]
[department]

[name of authorized representative]
[title]
[optional: address]
[optional: city, state, ZIP]

City Supplier Number: [Supplier number]

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
[name of Deputy City Attorney]
Deputy City Attorney

Approved:
Sailaja Kurella
Acting Director of the Office of Contract
Administration, and Purchaser

By: _____
[name of Purchaser or "Name: _____"]

Appendices

- A: Performance Specifications
- B: Documentation
- C: Project Schedule
- D: Acceptance Test Plan
- E: Calculation of Charges
- F: Maintenance Terms and Conditions
- G: Business Associate Agreement

**Appendix A
Performance Specifications**

Reserved for agreed upon Scope

Appendix B Documentation

The following is a description of all technical publications relating to use of the System, such as reference, installation, administrative, maintenance, and programmer manuals, and the number of copies of each to be provided by Contractor to City.

Reserved for agreed upon Documentaiton requirements

Appendix C Project Schedule

Reserved for agreed upon Project Schedule. Below noted text is for example purposes.

1. Start Date: [insert start date]

The date on which the time for completion of Phase 1 shall begin to accrue.

2. Notice to Proceed: [insert number in words and (numbers)] days

The minimum time period of advance notification that City shall give Contractor to notify Contractor that Authorization has been obtained for this Agreement and that Contractor should be ready to begin Work on the Start Date.

3. Phase 1: Preparation of Functional Specifications

a. Time for completion: [insert number in words and (numbers)] days

The length of time following the Start Date during which Contractor shall complete and deliver to City for City's review the following Work:

b. Functional Specifications of the System

[List any additional things Contractor shall complete during Phase 1 and any Critical Milestones associated with this phase.]

c. Review Period: [insert number in words and (numbers)] days

The length of time following delivery to City of the Work specified above, or resubmission of such Work to City following error correction by Contractor, that City shall have to review the completed Work and give notice to Contractor of City's acceptance or rejection of the completed Work.

d. Acceptance Window: [insert number, such as 90 or 120, in words and in (numbers)] days

The time period following completion of Phase 1 during which Contractor must secure Acceptance of that phase from City.

4. Phase 2: Preparation of Design Specifications

a. Time for completion: [insert number in words and (numbers)] days

The length of time following Acceptance by City of the Functional Specifications and other Work produced in Phase 1 during which Contractor shall complete the following Work:

b. Design Specifications of the System

[List any additional things Contractor shall complete during Phase 2 and any Critical Milestones associated with this phase.]

c. Review Period: [insert number in words and (numbers)] days

The length of time following delivery to City of the Work specified above, or resubmission of such Work to City following error correction by Contractor, that City shall have to review the completed Work and give notice to Contractor of City's acceptance or rejection of the completed Work.

d. Acceptance Window: [insert number, such as 90 or 120, in words and in (numbers)] days

The time period of following completion of Phase 2 during which Contractor must secure Acceptance of the completed phase from City.

5. Phase 3: Program Coding, System Installation, and Documentation Delivery

a. Time for completion: [insert number in words and (numbers)] days

The length of time following Acceptance by City of the Design Specifications and other Work produced in Phase 2 during which Contractor shall complete the following Work:

Coding of the Programs for the System

Factory, pre-installation testing of the System by Contractor **[and City, if so desired]**

Installation of the completed System at its final City site

Delivery of Documentation for System

[List any additional things Contractor shall complete during Phase 3 and any Critical Milestones associated with this phase.]

Following completion by Contractor of Phase 3, City and Contractor shall commence performance of the Acceptance Tests.

**Appendix D
Acceptance Test Plan**

Reserved for agreed upon Acceptance Plan.

**Appendix E
Calculation of Charges**

Reserved for agreed upon Calculation of Charges. Below noted text is for example purposes.

No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

In drafting the Calculation of Charges, the following format may be helpful in drafting:

Deliverable	Target Completion Dates	Cost
<Title>		
<u>Deliverable 1:</u>		
<Title>		
<u>Deliverable 2:</u>		
<Title>		
<u>Deliverable 3:</u>		
<Title>		
<u>Deliverable 4:</u>		
<Title>		
<u>Deliverable 5:</u>		

<Title>		
<u>Deliverable 6:</u>		
<u>Total Cost:</u>		

Appendix F
Software Maintenance Terms and Conditions

Reserved for agreed upon Software Maintenance Terms and Conditions. Below noted text is for example purposes.

1. Scope of Service Coverage

a. Contractor shall provide Support Services **[and provide Upgrades]** during the term of this Maintenance Agreement for the Software.

b. During the term of this Maintenance Agreement, Contractor will furnish Error, Defect or Malfunction correction in accordance with the Priority Categories listed below, based on the City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

1) Priority 1: An Error, Defect or Malfunction which renders the Software inoperative; or causes the Software to fail catastrophically.

2) Priority 2: An Error, Defect or Malfunction which substantially degrades the performance of the Software, but does not prohibit the City's use of the Software.

3) Priority 3: An Error, Defect or Malfunction which causes only a minor impact on the use of the Software.

c. Contractor will furnish Error, Defect or Malfunction correction in accordance with the following protocols:

1) Priority 1 Protocol: Within two hours, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; shall proceed to immediately provide a Fix, a Patch or a Workaround; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Subsequent Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect or Malfunction is corrected.

2) Priority 2 Protocol: Within four hours, Contractor assigns a product technical specialist(s) to diagnose the Error, Defect or Malfunction and to commence correction of the Error, Defect or Malfunction; to immediately provide a Workaround; to provide escalation procedures as reasonably determined by Contractor's staff; and to exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Software maintenance release.

3) Priority 3 Protocol: Contractor may include a Fix or Patch in the next Software major release.

2. Hotline Support. Contractor shall provide remote access hotline support to City to help City answer routine questions with respect to the use of the Software. Contractor also shall provide remote access hotline support to City to initiate resolution of Priority 1 and Priority 2

Errors, Defects and Malfunctions. Hotline support shall be made available by phone between the hours of 8 a.m. and 6 p.m. Pacific time Monday through Friday, except legal holidays. Hotline support shall be available by electronic bulletin board, electronic mail or other service 24-hours a day, seven-days a week. Responses to questions posted by electronic means will be made within the time frame established under Priority Protocols for an Error, Defect or Malfunction in a Software Product.

3. City Responsibilities Related to Support. City shall use reasonable efforts to make available to Contractor reasonable access to the equipment on which City experienced the Error, Defect or Malfunction, the Software Product and all relevant documentation and records. City shall also provide reasonable assistance to Contractor, including sample output and diagnostic information, in order to assist Contractor in providing Support Services. City shall be responsible for the interface between the Software and other software products installed on City equipment. Unless otherwise agreed in writing between City and Contractor, City is responsible for installing, managing and operating any Software delivered under this Maintenance Agreement.

4. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of the Contractor to replace unsatisfactory work, equipment, or materials although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that did not conform to the requirements of this Maintenance Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

5. Qualified Personnel. Work under this Maintenance Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall assign adequate personnel resources to provide the level of service within the response times specified in this Maintenance Agreement.

**Appendix G
Business Associate Agreement**

The Business Associate Agreement is attached to the RFP as Appendix A.2.

**Appendix A.2 Draft Business Associate Agreement for
RFPQ#HSS2021.E8**

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) supplements and is made a part of the agreement by and between the City and County of San Francisco, the Covered Entity (“CE”), and [insert name of contractor] (“Contractor”), the Business Associate (“BA”), dated [insert date] (CMS # ___) (“Agreement”). To the extent that the terms of the Agreement are inconsistent with the terms of this BAA, the terms of this BAA shall control.

RECITALS

A. CE, by and through the San Francisco Health Service System (“SFHSS”), wishes to disclose certain information to BA pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

B. For purposes of the Agreement and this BAA, CE requires Contractor, even if Contractor is also a covered entity under HIPAA, to comply with the terms and conditions of this BAA as a BA of CE.

C. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated there under by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws, including, but not limited to, California Civil Code §§ 56, et seq., California Health and Safety Code § 1280.15, California Civil Code §§ 1798, et seq., California Welfare & Institutions Code §§5328, et seq., and the regulations promulgated there under (the “California Regulations”).

D. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into an agreement containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this BAA.

E. BA enters into agreements with CE that require the CE to disclose certain identifiable health information to BA. The parties desire to enter into this BAA to permit BA to have access to such information and comply with the BA requirements of HIPAA, the HITECH Act, and the corresponding Regulations.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

1. Definitions.

a. **Breach** means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information, and shall have the meaning given to such term under the HITECH Act and HIPAA

Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402], as well as California Civil Code Sections 1798.29 and 1798.82.

b. Breach Notification Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Part 164, Subpart D.

c. Business Associate is a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information received from a covered entity, but other than in the capacity of a member of the workforce of such covered entity or arrangement, and shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.

d. Covered Entity means a health plan, a health care clearinghouse, or a health care provider who transmits any information in electronic form in connection with a transaction covered under HIPAA Regulations, and shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

e. Data Aggregation means the combining of Protected Information by the BA with the Protected Information received by the BA in its capacity as a BA of another CE, to permit data analyses that relate to the health care operations of the respective covered entities, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

f. Designated Record Set means a group of records maintained by or for a CE, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

g. Electronic Protected Health Information means Protected Health Information that is maintained in or transmitted by electronic media and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103. For the purposes of this BAA, Electronic PHI includes all computerized data, as defined in California Civil Code Sections 1798.29 and 1798.82.

h. Electronic Health Record means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given to such term under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

i. Health Care Operations shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

j. Privacy Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

k. Protected Health Information or PHI means any information, including electronic PHI, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual;

and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Sections 160.103 and 164.501. For the purposes of this BAA, PHI includes all medical information and health insurance information as defined in California Civil Code Sections 56.05 and 1798.82.

l. Protected Information shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.

m. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, and shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.

n. Security Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

o. Unsecured PHI means PHI that is not secured by a technology standard that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute, and shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

2. Obligations of Business Associate.

a. User Training. The BA shall provide, and shall ensure that BA subcontractors provide, training on PHI privacy and security, including HIPAA and HITECH and its regulations, to each employee or agent that will access, use or disclose Protected Information, upon hire and/or prior to accessing, using or disclosing Protected Information for the first time, and at least annually thereafter during the term of the Agreement. BA shall maintain, and shall ensure that BA subcontractors maintain, records indicating the name of each employee or agent and date on which the PHI privacy and security trainings were completed. BA shall retain, and ensure that BA subcontractors retain, such records for a period of seven years after the Agreement terminates and shall make all such records available to CE within 15 calendar days of a written request by CE.

b. Permitted Uses. BA may use, access, and/or disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.502, 164.504(e)(2). and 164.504(e)(4)(i)].

c. Permitted Disclosures. BA shall disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2 (n) of this BAA, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)]. BA may disclose PHI to a BA that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Information on its behalf, if the BA obtains satisfactory assurances, in accordance with 45 C.F.R. Section 164.504(e)(1), that the subcontractor will appropriately safeguard the information [45 C.F.R. Section 164.502(e)(1)(ii)].

d. Prohibited Uses and Disclosures. BA shall not use or disclose Protected Information other than as permitted or required by the Agreement and BAA, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the Protected Information solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(1)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Agreement.

e. Appropriate Safeguards. BA shall take the appropriate security measures to protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the CE, and shall prevent any use or disclosure of PHI other than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.306, 164.308, 164.310, 164.312, 164.314 164.316, and 164.504(e)(2)(ii)(B). BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316, and 42 U.S.C. Section 17931. BA is responsible for any civil penalties assessed due to an audit or investigation of BA, in accordance with 42 U.S.C. Section 17934(c).

f. Business Associate's Subcontractors and Agents. BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph 2.f. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2) through (e)(5); 45 C.F.R. Section 164.308(b)]. BA shall mitigate the effects of any such violation.

g. Accounting of Disclosures. Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure [45 C.F.R. 164.528(b)(2)]. If an individual or an individual's representative submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five (5) calendar days.

h. Access to Protected Information. BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within (5) days of request by CE to enable CE to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains Protected Information in electronic format, BA shall provide such information in electronic format as necessary to enable CE to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. 164.524.

i. Amendment of Protected Information. Within ten (10) days of a request by CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA and its agents and subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment or other documentation to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected

Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

j. Governmental Access to Records. BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the “Secretary”) for purposes of determining BA’s compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.

k. Minimum Necessary. BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the intended purpose of such use, disclosure, or request. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)]. BA understands and agrees that the definition of “minimum necessary” is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes “minimum necessary” to accomplish the intended purpose in accordance with HIPAA and HIPAA Regulations.

l. Data Ownership. BA acknowledges that BA has no ownership rights with respect to the Protected Information.

m. Notification of Breach. BA shall notify CE within 5 calendar days of any breach of Protected Information; any use or disclosure of Protected Information not permitted by the BAA; any Security Incident (except as otherwise provided below) related to Protected Information, and any use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BA to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 42 U.S.C. Section 17932; 45 C.F.R. 164.410; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

n. Breach Pattern or Practice by Business Associate’s Subcontractors and Agents. Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(iii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent’s obligations under the Agreement or this BAA, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contractual arrangement with its subcontractor or

agent, if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or this BAA within five (5) calendar days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

3. Termination.

a. Material Breach. A breach by BA of any provision of this BAA, as determined by CE, shall constitute a material breach of the Agreement and this BAA and shall provide grounds for immediate termination of the Agreement and this BAA, any provision in the AGREEMENT to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii).]

b. Judicial or Administrative Proceedings. CE may terminate the Agreement and this BAA, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

c. Effect of Termination. Upon termination of the Agreement and this BAA for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this BAA to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(2)(ii)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

d. Civil and Criminal Penalties. BA understands and agrees that it is subject to civil or criminal penalties applicable to BA for unauthorized use, access or disclosure or Protected Information in accordance with the HIPAA Regulations and the HITECH Act including, but not limited to, 42 U.S.C. 17934 (c).

e. Disclaimer. CE makes no warranty or representation that compliance by BA with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations or corresponding California law provisions will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

4. Amendment to Comply with Law.

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the

security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the updated standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable state or federal laws. CE may terminate the Agreement upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Agreement or this BAA when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

5. Reimbursement for Fines or Penalties.

In the event that CE pays a fine to a state or federal regulatory agency, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine or penalties or damages within thirty (30) calendar days from City's written notice to BA of such fines, penalties or damages.