**Updated 2/18/2025**

**Draft City Terms and Conditions forLife, LTD, and STD RFP**

**Appendix A**

**(RFPQHSS2024.B1)**

**City and County of San Francisco**

**San Francisco Health Service System**

**1145 Market Street, 3rd Floor**

**San Francisco, California 94103**

**Agreement between the City and County of San Francisco**

**and**

**[Insert name of contractor]**

**[Insert Department Contract ID, if any]**

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

**Recitals**

WHEREAS, the San Francisco Health Service System (“Department”) wishes to procure [insert short description of the services City intends to buy] from Contractor; 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, this Agreement was competitively procured through 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, Contractor and City will carry forward the terms and conditions of this Agreement, pending the execution of a new agreement or amendment to this Agreement, under a rate structure approved by the Health Service Board and the San Francisco Board of Supervisors and agreed to by Contractor, and receipt of payment(s) by City to Contractor thereunder; and

WHEREAS, this is a contract for Services and the Local Business Enterprise (“LBE”) subcontracting participation requirement for the Services has been waived pursuant to waiver CMD14BXXXXXXX; and

WHEREAS, this Agreement is for Life Insurance and Long Term Disability is (as defined by the 2023 PSC Policy of the Civil Service Commission) and, as such, is exempt from Civil Service Commission review;

WHEREAS, the City’s [name of Commission] approved this Agreement by [insert resolution number] on [insert date of Commission action] in the amount of [insert Dollar Amount] for the period commencing [Insert Start Date] and ending [Insert End Date]; and

WHEREAS, the City’s [Board of Supervisors] approved this Agreement by [insert resolution number] on [insert date of Commission or Board action] in the amount of [insert Dollar Amount] for the period commencing [Insert Start Date] and ending [Insert End Date]; and

Now, THEREFORE, the parties agree as follows:

1. **Definitions**

The following definitions apply to this Agreement:

* 1. “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.
  2. “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 San Francisco Health Service System.
  3. “City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of City in connection with this Agreement. City Data includes, without limitation, Confidential Information. This includes data that is provided by a third-party to the City for use under this Agreement
  4. “CMD” means the Contract Monitoring Division of the City.
  5. “Confidential Information” means confidential City information including, but not limited to, personal 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”). Confidential Information includes, without limitation, City Data.
  6. “Contractor” means [insert name and address of contractor].
  7. “Contractor’s Website” means the Website that provides City employee or member access to Services.
  8. “Data Breach” means any access, destruction, loss, theft, use, modification or disclosure of City Data by an unauthorized party or that is in violation of the Agreement terms and/or applicable local, state or federal law.
  9. “Data Center(s)” means a physical location within the United States where the Contractor (or its subcontractor) houses and operates the hardware (including computer servers, routers, and other related equipment) on which Contractor (and or its subcontractor), hosts via the Internet, City Data pursuant to this Agreement.
  10. “Deliverables” means Contractor’s or its subcontractors’ work product, including any partially-completed work product and related materials, resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.
  11. “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.
  12. “Party” and “Parties” means City and Contractor either individually or collectively.
  13. “Personally Identifiable Information (PII)” means any information about an individual, including information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked to an individual, such as medical, educational, financial, and employment information.
  14. “Precedence” means that, notwithstanding the terms of any other document executed by the Parties as a part of this Agreement, the terms of this Agreement shall control over any discrepancy, inconsistency, gap, ambiguity, or conflicting terms set forth in any other Contractor pre-printed document.
  15. “Services” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1. **Term of the Agreement**
   1. **Term.** 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. **Options to Renew.** City has the option to renew the Agreement for a period of [enter number] (#) additional years. City may exercise this option at City’s sole and absolute discretion by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.” Extensions may be for the whole or partial period provided for above.
2. **Financial Matters**
   1. **Certification of Funds; Budget and Fiscal Provisions****.** 
      1. **Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 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.

* + 1. **Maximum Costs.** 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 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.”
  1. **Authorization to Commence Work.** Contractor shall not commence any work under this Agreement until City has issued formal written authorization to proceed, such as a purchase order, task order or notice to proceed. Such authorization may be for a partial or full scope of work.
  2. **Compensation.** 
     1. **Calculation of Charges and Payment.** 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 B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Executive Director, 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. The breakdown of charges associated with this Agreement appears in, **Article 12.1 (“Communication with Members”),** **Appendix B (“Calculation of Charges”),** and **Appendix XX (“Performance Guarantees”)**, attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments. .
     2. **Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments until City approves the Services delivered. Payments to Contractor by City shall not excuse Contractor from its obligation to replace the unsatisfactory Services even if the unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Services may be rejected by City and in such case must be replaced by Contractor without delay at no cost to City.
     3. **Withhold Payments.**If Contractor fails to provide the Services in accordance with Contractor’s obligations under this Agreement, City may withhold any and all payments due to 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.
     4. **Invoice Format.** Invoices submitted by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.
     5. **Reserved (“LBE Payment and Utilization Tracking System”).**
     6. **Getting paid by City for Services**.
        1. City utilizes a commercial product through its banking partner to pay City contractors electronically. Contractors shall sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [SF City Partner at sfgov.org](https://sfcitypartner.sfgov.org/pages/index.aspx).
        2. At the option of City, Contractor may be required to submit invoices directly in the City’s financial and procurement system. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information.
     7. **Reserved (“Grant Funded Contracts”).**
     8. **Payment Terms.** 
        1. **Payment Due Date.** Unless City notifies the Contractor that a dispute exists, Payment shall be made within [Enter number of days, generally ≥ 30] calendar days, measured from (1) the rendering of the Services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date City issued a check to Contractor or, if Contractor agreed to electronic payment, the date City has posted electronic payment to Contractor.
        2. **Reserved (“Payment Discount Terms”).**
  3. **Audit and Inspection of Records.**
     1. Contractor agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make copies of 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 six (6) 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.
     2. **Department Required Audits**. City retains the right to audit Contractor, any affiliate or subcontractor to determine whether Contractor is fulfilling the terms of this Agreement. Upon thirty (30) days advance written notice to Contractor, during the term of the Agreement, and at any time within twenty-four (24) months following the termination of the Agreement, City or City’s designated subcontractor may perform an audit of Contractor and any affiliate or subcontractor of the Contractor that performs Services under this Agreement. Audit scope may include and not be limited to: plan implementation, transaction processing services, claim adjudication, quality assurance, approved and denied claims reviews, benefit design and administration, member and plan service issues, and performance guarantees.
        1. Contractor agrees that City may perform multiple audits per year if: the audits are different in scope, if the audits are for different subsets of Services provided by Contractor, or if the audits are required as a result of prior audit findings by the City.
        2. Contractor agrees to reasonably comply with the City’s requested audit schedule, scope, deliverables, data and information requests made by City or City’s designated subcontractor.
        3. Contractor agrees to respond to and remediate all audit findings determined to be necessary as a result of the audit, within thirty (30) days of completion of the audit report.
        4. All charges associated with obtaining or sharing required data or information to comply with the City’s audit, including but not limited to direct or indirect pass-through data retrieval fees, for up-to two (2) years of data or information, shall be borne by Contractor. If the City’s audit requires data or information which has aged two (2) or more years, and the data or information is currently archived, Contractor will provide City a quote for the costs associated with the retrieval of data or information. City reserves to the right to proceed with or discontinue the audit at any time.
        5. In the cases were significant or material findings have been identified through the City’s audit, City retains the right to perform additional audits to ensure audit findings have been corrected and are not recurring. All newly identified findings, through secondary audits, shall remain within the scope of the secondary audit. All costs associated with audits which are second to findings that have been discovered in a prior audit shall be borne by Contractor.
     3. **Data Security Audits.** Contractor shall comply with City’s Data Security Audit requirements as stated under Section 13.5.
  4. **Submitting False Claims.** The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section.
  5. Reserved (“Payment of Prevailing Wages”)**.**

1. **Services and Resources**
   1. **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in **Appendix A, “Scope of Services.”** Officers and employees of City are not authorized to request and City is not required to compensate for Services beyond those stated.
   2. **Qualified Personnel.** Contractor represents and warrants that it is qualified to perform the Services required by City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. Contractor will comply with City’s reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City’s request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule.
   3. **Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. 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. Any agreement made in violation of this provision shall be null and void. [Use the following sentence and list desired subcontractors if a specific contractor is required for services:] City’s execution of this Agreement constitutes its approval of the subcontractors listed below and/or in appendices.
   4. **Independent Contractor; Payment of Employment Taxes and Other Expenses.**
      1. **Independent Contractor.** For the purposes of this Section 4.4, “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 is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, and its agents and employees will not represent or hold themselves out to be employees of City at any time. 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 is liable for its acts and omissions. 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 of its agents or employees. 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 is not performing in accordance with the requirements of this Section, 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 warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.
      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 4.4 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 hold 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.
   5. **Assignment.** The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.
   6. **Reserved (“Service Warranties”).**
   7. **Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in Appendix A, 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.
   8. **Reserved (“Performance Bond”).**
   9. Reserved (“Fidelity Bond”).
   10. Reserved (“Emergency - Priority 1 Service”).
2. **Insurance and Indemnity**
   1. **Insurance.**
      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:
         1. 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.
         2. 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.
         3. Workers’ Compensation Liability Insurance, in statutory amounts, with Employers’ Liability Limits not less than **$1,000,000** each accident, injury, or illness.
         4. Professional Liability Insurance, applicable to Contractor’s profession, with limits not less than **$10,000,000** for each claim with respect to negligent acts, errors or omissions in connection with the Services.
         5. Technology Errors and Omissions Liability Insurance, with limits of **$5,000,000** 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 this Agreement and shall also provide coverage for the following risks:
            1. Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and
            2. Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to City’s or third person’s computer, computer system, network, or similar computer-related property and the data, software, and programs thereon.
         6. Cyber and Privacy Liability Insurance with limits of not less than **$10,000,000** 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.
         7. **Reserved (“Pollution Liability Insurance”)**.
      2. **Additional Insured.**
         1. The Commercial General Liability Insurance policy must include as Additional Insured the City and County of San Francisco, and its Officers, Agents, and Employees.
         2. The Commercial Automobile Liability Insurance policy must include as Additional Insured the City and County of San Francisco and its Officers, Agents, and Employees.
         3. **Reserved (“Pollution Additional Insured Endorsement”)**.
      3. **Waiver of Subrogation.** The Workers’ Compensation Liability Insurance policy(ies) shall include a waiver of subrogation in favor of City for all work performed by the Contractor, and its employees, agents and subcontractors.
      4. **Primary Insurance.**
         1. The Commercial General 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.
         2. 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.
         3. **Reserved (“Pollution Liability Insurance as Primary Insurance”).**
      5. **Other Insurance Requirements.**
         1. Thirty (30) days’ advance written notice shall be provided to 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 City address set forth in Section 11.1 entitled, “Notices to the Parties.”
         2. 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, be maintained for a period of three (3) 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.
         3. 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.
         4. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
         5. Before commencing any Services, Contractor shall furnish to City certificates of insurance including additional insured and waiver of subrogation status, as required, 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.
         6. 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 and its officers, agents, and employees, and the Contractor as additional insureds and waive subrogation in favor of City, where required.
   2. **Indemnification.**
      1. 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 liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, “Claims”), 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 personal 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; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are 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, experts, and related costs, and City’s costs of investigating any claims against City.
      2. 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.
      3. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys’ fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor’s Services.
      4. Under no circumstances will City indemnify or hold harmless Contractor.
3. **Liability of the Parties**
   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.
   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.
   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.
4. **Payment of Taxes**
   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 City to verify Contractor’s compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.
   2. **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a “possessory interest” for property tax purposes. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to timely report on behalf of City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by City to enable City to comply with any reporting requirements for possessory interests that are imposed by applicable law.
   3. **Withholding.** Contractor agrees that it is obligated to pay all amounts due to 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 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.
5. **Termination and Default**
   1. **Termination for Convenience.**
      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 (“Notice of Termination”). The Notice of Termination shall specify the date on which termination of the Agreement shall become effective (“Termination Date”).
      2. Upon receipt of the Notice of Termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to affect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of the termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:
         1. Completing performance of any Services that City requires Contractor to complete prior to the Termination Date.
         2. Halting the performance of all Services on and after the Termination Date.
         3. Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.
         4. At City’s direction, assigning to City any or all of Contractor’s right, title, and interest under the orders and subcontracts cancelled. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the cancellation of such orders and subcontracts.
         5. Contractor will cooperate with any succeeding third party administrator in effecting the transition of work including, without limitation, producing and transferring any records reasonably necessary in order to enable the succeeding third party administrator to assume Contractor's responsibilities without unnecessary disruption or failure of services during the transition.
         6. Contractor shall also promptly furnish to City’s succeeding third-party administrator all records deemed necessary by City, to ensure complete transition to City’s succeeding third-party administrator, to at no cost to the City. All records to be transferred shall be in a format acceptable to the City and Contractor.
         7. Subject to City’s approval, settling all outstanding liabilities and all claims arising out of the cancelled orders and subcontracts.
         8. Taking such action as may be necessary, or as 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.
      3. Within 30 days after the Termination Date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:
         1. The reasonable cost to Contractor, without profit, for all Services provided prior to the Termination Date, for which City has not already made 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.
         2. 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.
         3. The reasonable cost to Contractor of handling and returning material or equipment delivered to City or otherwise disposed of as directed by City.
         4. A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of such 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.
      4. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the Termination Date, except for those costs specifically listed 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.
      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 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.
      6. City’s payment obligation under this Section shall survive termination of this Agreement.
   2. **Termination for Default; Remedies.**
      1. Each of the following shall constitute an immediate event of default (“Event of Default”) under this Agreement:
         1. Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

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| --- | --- | --- | --- |
| 3.5 | Submitting False Claims. | 10.10 | Alcohol and Drug-Free Workplace |
| 4.5 | Assignment | 11.10 | Compliance with Laws |
| Article 5 | Insurance and Indemnity | Article 13 | Data and Security |
| Article 7 | Payment of Taxes |  |  |

* + - 1. 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.
      2. 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.
      3. 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, reorganization or arrangement, 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.
    1. **Default Remedies.** 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 City.
    2. 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.
    3. Any notice of default must be sent in accordance with Article 11.
  1. **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.
  2. **Rights and Duties upon Termination or Expiration.**
     1. This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

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| 3.3.2 | Payment Limited to Satisfactory Services | 9.1 | Ownership of Results |
| 3.4 | Audit and Inspection of Records | 9.2 | Works for Hire |
| 3.5 | Submitting False Claims | 11.7 | Agreement Made in California; Venue |
| Article 5 | Insurance and Indemnity | 11.8 | Construction |
| 6.1 | Liability of City | 11.9 | Entire Agreement |
| 6.3 | Liability for Incidental and Consequential Damages | 11.10 | Compliance with Laws |
| Article 7 | Payment of Taxes | 11.11 | Severability |
| 8.1.6 | Payment Obligation | 12.3 | Overpayments Made by City |
| 8.2.2 | Default Remedies | Article 13 | Data and Security |

* + 1. Subject to the survival of the Sections identified in Section 8.4.1, 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.

1. **Rights in Deliverables**
   1. **Ownership of Results.** Any interest of Contractor or its subcontractors in the Deliverables, any partially-completed Deliverables, and related materials, shall become the property of and will be transmitted to City. Unless expressly authorized in writing by City, Contractor may not retain and use copies for reference and as documentation of its experience and capabilities.
   2. **Works for Hire.** All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code, shall be the property of City. If any such Deliverables are ever determined not to be works for hire under federal law, Contractor hereby assigns all Contractor’s copyrights to such Deliverables to City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon its subcontractors. With City’s prior written approval, Contractor and its subcontractors may retain and use copies of such works for reference and as documentation of their respective experience and capabilities provided that any such use is in conformance with the confidentiality provisions of this Agreement.
2. **Additional Requirements Incorporated by Reference**
   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/ .
   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 City if it becomes aware of any such fact during the term of this Agreement.
   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 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.
   4. **Consideration of Salary History.** Contractor shall comply with San Francisco Labor and Employment Code Article 141, 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 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 Article 141. Information about and the text of Article 141 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 Article 141, irrespective of the listing of obligations in this Section.
   5. **Nondiscrimination Requirements.**
      1. **Nondiscrimination in Contracts.** Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.
      2. **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. 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 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 Labor and Employment Code Article 131.2.
   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.
   7. **Minimum Compensation Ordinance.** Labor and Employment Code Article 111applies to this Agreement. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at http://sfgov.org/olse/mco. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.
   8. **Health Care Accountability Ordinance.** Labor and Employment Code Article 121 applies to this contract. Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Article 121.3 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 Article 121, 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 Article 121. 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.
   9. **First Source Hiring Program.** Contractor must comply with all of the applicable 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. **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.
   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 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 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 ten percent (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.
   12. **Slavery Era Disclosure.** Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor’s affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company’s Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.
   13. **Reserved (“Working with Minors”).**
   14. **Consideration of Criminal History in Hiring and Employment Decisions.** 
       1. Contractor agrees to comply fully with and be bound by all of the provisions of Article 142, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Labor and Employment Code (“Article 142”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, 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 Article 142.
       2. The requirements of Article 142 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. Article 142 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.
   15. **Nonprofit Contractor Requirements.**
       1. **Good Standing.** If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General’s Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City’s request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General’s Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall bea material breach of this Agreement.
       2. **Public Access to Nonprofit Records and Meetings.** If Contractor is a nonprofit organization, provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries), and receives a cumulative total per year of at least $250,000 in City or City-administered funds, Contractor must comply with the City’s Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.
   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.
   17. **Distribution of Beverages and Water.**
       1. **Reserved (“Sugar-Sweetened Beverage Prohibition”).**
       2. **Reserved (“Packaged Water Prohibition”).**
   18. **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.
3. **General Provisions**
   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:

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| --- | --- |
| To City: | San Francisco Health Service System  1145 Market Street, 3rd floor  San Francisco, CA 94103  Attn: Executive Director  Fax: (415) 554-1752 |
| To Contractor: | Name  Title  Company  Address  Email  Phone |

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

* 1. **Compliance with Laws Requiring Access for People with Disabilities.** 
     1. 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 people with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities 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.
  2. **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.
  3. **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 § 7920 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.
  4. **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.
  5. **Dispute Resolution Procedure.** 
     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. Disputes will not be subject to binding arbitration. 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 City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.
     2. **Government Code Claim Requirement.** No suit for money or damages may be brought against City until a written claim therefor has been presented to and rejected by 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.
  6. **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.
  7. **Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.
  8. **Entire Agreement.** This contract including the appendices, 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.”
  9. **Compliance with Laws.** Contractor shall keep itself fully informed of City’s Charter, codes, ordinances and duly adopted rules and regulations of 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.
  10. **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 (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) 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. **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.
  12. **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 **MM DD YYYY**. 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.
  13. **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 any City Data under this Agreement, and in no event later than twenty-four (24) hours after Contractor 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 City’s instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where City Data is stored.

1. **Department Specific Terms**
   1. **Communication with Members.** At least fourteen (14) days prior to the scheduled distribution date (whether via electronic means, U.S. Mail, courier, messenger or distribution to facilities where members may obtain copies), Contractor shall submit to City, for review and approval, all written communications (“Communications Materials”) intended for all or any portion of the members covered under this Agreement or any other similar agreement between Contractor and City. Within seven (7) days from receipt, City shall provide written comments or approval to Contractor. If Contractor receives no such comments or approval from City within such period of seven (7) days, Contractor may distribute the Communications Materials. If Contractor receives such comments within such period of seven (7) days, Contractor shall use reasonable efforts, in good faith and with diligence, to modify the Communications Materials to reflect any such comments and shall then promptly resubmit the modified Communications Materials to City for approval. If, within seven (7) days after resubmission, either (i) Contractor has not received approval of such modified Communications Materials or (ii) Contractor and City are unable to reach agreement on such modified Communications Materials, Contractor may distribute the Communications Materials.
      1. For the purposes of this Section 12.1, the term "Communications Materials" shall not include (i) "auto-generated" communications (i.e., such as letters acknowledging a filing for grievance or correspondence accompanying a member medical claim); and (ii) communications to members that are initiated and sent by Contractor's contracted medical groups without Contractor's prior knowledge. Notwithstanding the foregoing, Contractor shall use reasonable efforts, in good faith and with diligence, to require all contracted medical groups to submit any such communications to Contractor prior to distribution.
      2. All Communications Materials created by Contractor, pursuant to this 12.1, shall be sent via email to the following persons and addresses (or such other persons and addresses as may be provided to either party pursuant to notice given in accordance with Section 11.1 of this Agreement ("Notice to Parties"):
         1. If to Contractor: Name

EMAIL

Title

If to City: Jessica Shih

jessica.shih@sfgov.org

Communications Director

San Francisco Health Service System

With Copy to: Rey Guillen

rey.guillen@sfgov.org

Chief Operating Officer

San Francisco Health Service System

* + 1. Promptly after the end of each calendar quarter during the term hereof, City shall adjust the fees of this Agreement for any Communications Materials that are not distributed in accordance with the terms of this Section 12.4. Such adjustments shall be in the following amounts:
       1. One distribution 0.5%
       2. 2-3 distributions 0.5%
       3. More than 3 distributions 0.5%
  1. **Effects of Payments; No Late Charges.** In no event shall City be liable for interest or late charges for any late payments. The payment due date for each enrollment unit associated with City is the **XX** day following the coverage month. City will pay **Dues/Premium/Fees** to Contractor based on City’s electronic eligibility file for such coverage month.
     1. It is important that City reports membership changes on the electronic eligibility file in a timely manner as there is a time limit for retroactive changes. For purposes of this Agreement, the time limit for retroactive enrollment changes is six (6) months, except where enrollment changes beyond such six-month period are required under any applicable law, rule, regulation or judgment or order of any court or arbitrator, or except where City and Contractor otherwise agree.
  2. **Rates and Benefits Approval-Extension of Terms and Conditions.** Approval of the rates and benefits contained within this Agreement are contingent upon the approval of the Health Service Board and the San Francisco Board of Supervisors. The Health Service Board and/or the San Francisco Board of Supervisors retains the right to approve or deny rates and benefits packages for the applicable plan year.

After (i) the San Francisco Board of Supervisors has approved rates and benefits for the upcoming plan year, beginning January 1st; (ii) and the approved rates and benefits are agreed to by Contractor, and (iii) Contractor has received payments under the new rate structure on or after January 1st, then, except for the new rates and benefits and/or other contract changes required by state or federal law, all other terms and conditions of the existing Agreement will carry forward until a new Agreement or amendment is executed.

* 1. **Overpayments Made by City.** Contractor shall refund any and all overpayments made by City. The City reserves the right to recover any City, City Agent, or Contractor substantiated overpayments.
  2. **Disaster Contingency.** Contractor agrees to have in place a Disaster Plan to ensure the safety and retrievability of existing member files for claims processing. City shall not be in default under and Contractor shall not have the right to terminate or exercise any other right or remedy under this Agreement for any delay or default by City in performing hereunder (including payment) if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, wars, insurrections, terrorist attacks or any other cause beyond the reasonable control (but only to the extent such other cause does not exceed sixty (60) days) of City (hereinafter "Disaster"). In the event of such a Disaster, Contractor agrees to continue providing members with all coverage, rights and other benefits otherwise required hereunder during the pendency of such Disaster. During such period, Contractor shall determine eligibility of members on the basis of the most recent electronic data transmitted by or on behalf of City to Contractor, subject to such modifications as may be subsequently provided to Contractor from time to time. Contractor and City acknowledge that normally-available means of transmitting such data may be disrupted as a result of any Disaster, and Contractor and City agree to cooperate, in good faith and with diligence, in order to find mutually acceptable alternative means of transmission and other communications in order to effect the intent of this Section. As soon as is reasonably practicable after a Disaster has occurred, City and Contractor shall confer to reconcile, and arrange for City's payment for, all benefits coverage provided by Contractor during the Disaster period. This provision in no way limits the rights of City or San Francisco Health Service System members to benefits coverage otherwise provided for in the Agreement or under Federal, State or local law.
  3. **Further Assurances.** From and after the date of the Agreement, Contractor agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by the Agreement and to carry out the purpose of the Agreement in accordance with the Agreement**.**

1. **Data and Security** 
   1. **Proprietary or Confidential Information.**
      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.
      2. **Proprietary or Confidential Information of City.** Contractor understands and agrees that, in the performance of the work or services under this Agreement may involve access to City Data, which includes proprietary or Confidential Information. Contractor and any subcontractors or agents shall use City Data only in accordance with all applicable local, state and federal laws restricting the access, use and disclosure of City Data and only as necessary in the performance of this Agreement. Contractor’s failure to comply with any requirements of local, state or federal laws restricting access, use and disclosure of City Data shall be deemed a material breach of this Agreement, for which City may terminate the Agreement. In addition to termination or any other remedies set forth in this Agreement or available in equity or law, City may bring a false claim action against Contractor pursuant to Chapters 6 or 21 of the Administrative Code, or debar Contractor. Contractor agrees to include all of the terms and conditions regarding City Data contained in this Agreement in all subcontractor or agency contracts providing services under this Agreement.
      3. **Obligation of Confidentiality.** Subject to San Francisco Administrative Code Section 67.24(e), any state open records or freedom of information statutes, and any other applicable laws, Contractor agrees to hold all City Data in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such City Data to third-parties other than its employees, agents, or authorized subcontractors who have a need to know in connection with this Agreement or to use such City Data for any purposes whatsoever other than the performance of this Agreement. Contractor agrees to advise and require its respective employees, agents, and subcontractors of their obligations to keep all City Data confidential.
      4. **Nondisclosure.** Contractor agrees and acknowledges that it shall have no proprietary interest in any City Data and will not disclose, communicate or publish the nature or content of such information to any person or entity, nor use, except in connection with the performance of its obligations under this Agreement or as otherwise authorized in writing by City, any of City Data it produces, receives, acquires or obtains from City. Contractor shall take all necessary steps to ensure that City Data is securely maintained. Contractor’s obligations set forth herein shall survive the termination or expiration of this Agreement. In the event Contractor becomes legally compelled to disclose any City Data, it shall provide City with prompt notice thereof and shall not divulge any information until City has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by City are unsuccessful, or City otherwise waives its right to seek such remedies, Contractor shall disclose only that portion of City Data that it is legally required to disclose.
      5. **Litigation Holds.** Contractor shall retain and preserve City Data in accordance with City’s instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where City Data is stored.
      6. **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 any City Data under this Agreement, and in no event later than twenty-four (24) hours after Contractor 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 City’s instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where City Data is stored.
      7. **Cooperation to Prevent Disclosure of City Data.** Contractor shall use its best efforts to assist City in identifying and preventing any unauthorized use or disclosure of any City Data. Without limiting the foregoing, Contractor shall advise City immediately in the event Contractor learns or has reason to believe that any person who has had access to City Data has violated or intends to violate the terms of this Agreement and Contractor will cooperate with City in seeking injunctive or other equitable relief against any such person.
      8. **Remedies for Breach of Obligation of Confidentiality**. Contractor acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to City, which damage may be inadequately compensable in the form of monetary damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available, to include, at the sole election of City, the immediate termination of this Agreement, without liability to City.
      9. **Data Security.** To prevent unauthorized access of City Data,
         1. Contractor shall at all times during the Term provide and maintain up-to-date security systems and procedures, and adjust its security systems and procedures in response to relevant changes in technology, with respect to (a) the Services, (b) Contractor’s Website, (c) Contractor’s physical facilities, (d) Contractor’s infrastructure, and (e) Contractor’s networks.
         2. Contractor shall provide security for its networks and all Internet connections consistent with industry best practices, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs.
         3. Contractor will maintain appropriate safeguards to restrict access to City Data to those employees, agents or service providers of Contractor who need the information to carry out the purposes for which it was disclosed to Contractor.
         4. For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., most current industry standard encryption for transport and storage, such as the National Institute of Standards and Technology’s Internal Report 7977 or Federal Information Processing Standards [FIPS] 140-2 [Security Requirements for Cryptographic Modules] or FIPS-197 or successors, intrusion prevention/detection or similar barriers) and secure authentication (e.g., password protected) access to hosted City Data.
         5. For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of City Data.
         6. City Data shall be encrypted at rest and in transit with controlled access.
         7. Contractor will establish and maintain any additional physical, electronic, administrative, technical and procedural controls and safeguards to protect City Data that are no less rigorous than accepted industry practices (including, as periodically amended or updated, the International Organization for Standardization’s standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, NIST Special Publication 800-53 Revision 5 or its successor, NIST Special Publication 800-18 or its successor, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards or other applicable industry standards for information security), and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.
         8. Contractor warrants to City compliance, in performing its obligations hereunder, with the following (as periodically amended or updated) as applicable:
            1. The California Information Practices Act/California Consumer Privacy Act (Civil Code §§ 1798 et seq);
            2. The European General Data Protection Regulation (“GDPR”);
            3. Relevant security provisions of the Internal Revenue Service (IRS) Publication 1075, including the requirements that Data not traverse networks located outside of the United States;
            4. Relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCI DSS) including the PCI DSS Cloud Computing Guidelines;
            5. Relevant security provisions of the Social Security Administration (SSA) Document Electronic Information Exchange Security Requirement and Procedures for State and Local Agencies Exchanging Electronic Information with the Social Security Administration;
            6. Relevant security provisions of the Criminal Justice Services (CJIS) Security policy;
            7. Relevant security provisions of the Medi-Cal Privacy and Security Agreement between the California Department of Health Care Services and the County of San Francisco.
      10. **Data Privacy and Information Security Program.** Without limiting Contractor’s obligation of confidentiality as further described herein, Contractor shall establish and maintain a data privacy and information security program and procedures in response to relevant changes in technology and internal and external threats to information security, including physical, technical, administrative, and organizational safeguards, that is designed to: (i) ensure the security and confidentiality of City Data; (ii) protect against any anticipated threats or hazards to the security or integrity of City Data; (iii) protect against unauthorized disclosure, access to, or use of City Data; (iv) ensure the proper disposal of City Data; and (v) ensure that all of Contractor’s employees, agents, and subcontractors, if any, comply with all of the foregoing.
      11. **City’s Right to Termination for Deficiencies.** City reserves the right, at its sole election, to immediately terminate this Agreement, without limitation and without liability, if City reasonably determines that Contractor fails or has failed to meet its obligations under this Article 13.
      12. **Data Transmission.** Contractor shall ensure that all electronic transmission or exchange of system and application data with City and/or any other parties expressly designated by City shall take place via encrypted secure means (e.g. HTTPS or SFTP or most current industry standard established by NIST). Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor shall ensure that no City Data of any kind shall be copied, modified, destroyed, deleted, transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City. Contractor is prohibited from accessing City Data from outside the United States except as provided for in Section 13.1.12 (a) of this Agreement.
          1. **Remote Access to City Data**. Remote access to view or otherwise access City Data by Contractor for any purpose from outside the United States is prohibited without the formal written approval of City as long as City Data remains hosted solely on hardware residing on Data Centers located in the United States and no City Data is downloaded to or stored on any hardware residing on Data Centers not residing in the United States.
   2. **Reserved (“Payment Card Industry (“PCI”) Requirements”).**
   3. **Reserved (“Business Associate Agreement”).**
   4. **Management of City Data.**
      1. **Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to City Data and any derivative works of City Data is the exclusive property of City.
      2. **Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of, City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by City. Access to City Data must be strictly controlled and limited to Contractor’s staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data 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 City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data 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 and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.
      3. **Data Breach; Loss of City Data**. In the event of any Data Breach, act, SaaS Software Error, omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of City Data, Contractor shall, as applicable:
         1. Notify City immediately following discovery, but no later than twenty-four (24) hours, of becoming aware of such occurrence or suspected occurrence. Contractor’s report shall identify:
            1. the nature of the unauthorized access, use or disclosure;
            2. the Confidential Information accessed, used or disclosed;
            3. the person(s) who accessed, used, disclosed and/or received protected information (if known);
            4. what Contractor has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and
            5. what corrective action Contractor has taken or will take to prevent future unauthorized access, use or disclosure.
         2. In the event of a suspected Breach, Contractor shall keep City informed regularly of the progress of its investigation until the uncertainty is resolved;
         3. Contractor shall coordinate with City in its breach response activities including without limitation:
            1. Immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;
            2. Promptly (within 2 business days) designate a contact person to whom City will direct inquiries, and who will communicate Contractor responses to City inquiries;
            3. As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by City, and undertake appropriate response activities;
            4. Provide status reports to City on Data Breach response activities, either on a daily basis or a frequency approved by City;
            5. Make all reasonable efforts to assist and cooperate with City in its Breach response efforts;
            6. Ensure that knowledgeable Contractor staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and
            7. Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City.
         4. In the case of PII or PHI, at City’s sole election, (a) notify the affected individuals as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (b) reimburse City for any costs in notifying the affected individuals;
         5. In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no fewer than twenty-four (24) months following the date of notification to such individuals;
         6. Perform or take any other actions required to comply with applicable law as a result of the occurrence;
         7. Recreate lost City Data in the manner and on the schedule set by City without charge to City; and
         8. Provide to City a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence.
         9. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain (at City’s election) information that may include: name and contact information of Contractor’s (or City’s) representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor.
         10. Contractor shall retain and preserve City Data in accordance with City’s instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where City Data is stored.
         11. City shall conduct all media communications related to such Data Breach, unless in its sole discretion, City directs Contractor to do so.
      4. **Disposition of City Data.** Upon request of City or termination or expiration of this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to, or collected or created by Contractor on City’s behalf, which includes all original media. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractor’s environment(s), 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. Secure disposal shall be accomplished by “clearing,” “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.
   5. **American Institute of Certified Public Accounts (AICPA) Audit Reports.** 
      1. Contractor shall provide to City, on an annual basis, an SSAE 18, SOC 2, Type 2 Report, and an SSAE 18, SOC 1, Type 2 Audit Report, to be conducted by an independent third party (“Audit Reports”) (if Contractor is using a hosting service provider, Contractor shall provide such Audit Reports it receives from its service provider or providers) as follows: (a) the Audit Reports shall include a 365 day (12-month) testing period; and (b) the Audit Reports shall be available to City no later than thirty (30) days after they are received by Contractor. If Contractor receives a so-called “negative assurance opinion,” or the annual Audit Report finds a material data privacy or information security issue, Contractor shall notify City of such opinion within three (3) days of receipt by Contractor. Contractor shall implement reasonably required safeguards as identified by any audit of Contractor’s data privacy and information security program or promptly notify City in writing if Contractor is unable to implement mitigation measures to address the issue(s). Upon any such notification, City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.
      2. **Audit of Contractor’s Policies.** Contractor agrees to make its policies, procedures and practices regarding Data Security available to City, if needed, and agrees that City reserves the rights, including, but not limited to, making a site visit, scanning for malicious codes, and hiring a third-party to perform a security audit if City determines that the Audit Report is unsatisfactory.
      3. **Information Security Audits.** Contractor must contract with an independent third party to perform yearly information security audits of their primary and backup Data Centers. The annual audits must include an outside penetration/vulnerability test, and internal penetration and vulnerability tests with the third-party directly on the internal network. The summary results of the audits must be shared with City. All audit findings must be remedied.
      4. **Audit Findings.** Contractor shall implement reasonably required safeguards as identified by City or by any audit of Contractor’s data privacy and information security program.
   6. **Protected Health Information.** Contractor, all subcontractors, all agents and employees of Contractor, and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all PHI disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contactor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Contract. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of PHI given to Contractor or its subcontractors or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, City may terminate the Agreement**.**
2. **MacBride And Signature**
   1. **MacBride Principles – Northern Ireland.** The provisions of San Francisco Administrative Code Chapter12F 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 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**  Recommended by:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **[name]**  **[title]**  **[department]**  Approved as to Form:  David Chiu  City Attorney  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **[name of Deputy City Attorney]**  Deputy City Attorney | **CONTRACTOR**  **[company name]**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **[name of authorized representative]**  **[title]**  **[optional: address]**  **[optional: city, state, ZIP]**  City Supplier Number: **[Supplier Number]** |

**Appendices**

A: Scope of Services

B: Calculation of Charges

XX: Performance Guarantees

XXX: [*Additional appendices to be added as warranted*]

**Appendix A**

**Scope of Services**

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**Appendix B**

**Calculation of Charges**

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**Appendix XX**

**Performance Guarantees**

[*INTENTIONALLY BLANK- FOR REFERENCE PURPOSES ONLY]*

**Appendix XXX**

**[Additional Appendices]**

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