



Mutual Confidentiality Agreement

This Mutual Confidentiality Agreement ("Agreement") is made this _____ ("Effective Date") by and between _____ ("Respondent"), a _____ with an office at _____ and the City and County of San Francisco ("City"), State of California, each individually referred to as a "Party," and collectively, the "Parties."

Respondent wishes to submit a proposal in response to the competitive solicitation RFPQ#HSS2020.M1 for Health Plans ("RFP") as requested by the City's San Francisco Health Service System ("Department"). Department has engaged Aon Consulting, Inc. ("Aon") to collect and distribute certain information and support the administration of this RFP. As a result of this competitive solicitation, if selected by Department, Respondent seeks to enter into discussions with City with respect to a potential business relationship between Respondent and City. In the course of, or for the purpose of facilitating such discussions, including, but not limited to, all discussions, responses and submissions in connection with the RFP (the "Purpose"), either Party may disclose to one another Confidential Information as defined below. For good and valuable consideration, the receipt and sufficiency of which is acknowledged by each Party, this Agreement sets out the Parties' respective obligations with respect to the Confidential Information which one party to this Agreement receives (the "Receiving Party") from the other Party (the "Disclosing Party"). For purposes of clarity, Aon's obligations with respect to City's Confidential Information is set forth in a separate agreement between City and Aon and is not governed by the terms of this Agreement.

1. Confidential Information

"Confidential Information" includes the existence and terms of this Agreement, and any business or technical information or processes, whether or not stored in any medium, relating to the Disclosing Party's business or City's business (and/or those of the City's or the Disclosing Party's suppliers and customers), including, but not limited to: equipment; software; designs; technology; technical documentation; product or service specifications or strategies; marketing plans; pricing information; financial information and data; demographic information; information relating to existing, previous, and potential suppliers, customers, and contracts; inventions; trade secrets; trademarks; intellectual property; applications; methodologies; and other know-how which is identified as confidential at the time of disclosure or that a reasonable person would consider, from the nature of the information and circumstances of disclosure, is confidential to the Disclosing Party or City. Confidential Information includes original information supplied by the Disclosing Party or City (or on behalf of City), as well as all paper and electronic copies.

2. Limited Access and Use

- (a) The Receiving Party agrees to treat the Confidential Information as confidential to and as the property of the Disclosing Party or City, where applicable, and agrees to use an appropriate degree of care (which, in any case, will not be less than a reasonable degree of care) to prevent disclosure of the Confidential Information of the Disclosing Party or City.
- (b) The Receiving Party will use Confidential Information only for the Purpose.
- (c) Confidential Information will be kept separate from any other City business the Receiving Party may be conducting and will not be included within the general file of the Receiving Party.
- (d) Confidential Information will not be used by the Receiving Party in furthering or expanding its business, or developing its own services or systems, except for providing services in connection with and for the sole purpose of the Purpose.

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- (e) The Receiving Party will not disclose the Confidential Information to any third party or individual without the prior written consent of the Disclosing Party, except the Receiving Party may disclose the Confidential Information to: (i) its employees who have a need to know such Confidential Information for the purpose of carrying out this Agreement and who have been advised of the obligations of confidentiality and are obligated to keep the Confidential Information confidential; and (ii) City.
- (f) The Receiving Party will not copy or reproduce the Confidential Information except as reasonably required for the purposes contemplated in this Agreement and will ensure that any confidentiality or other proprietary rights notices on the Confidential Information are reproduced on all copies.
- (g) Confidential information will be returned to the Disclosing Party by the Receiving Party or destroyed by the Receiving Party upon the request of the Disclosing Party at any time. An authorized representative of the Receiving Party, if requested by the Disclosing Party, shall certify in writing on behalf of the Receiving Party that all such Confidential Information has been returned or destroyed, as applicable. The Receiving Party may retain one (1) copy of the Confidential Information for archival purposes or to defend its work product, provided however, such Confidential Information remains subject to the terms and conditions of this Agreement.

3. No License

The parties acknowledge and agree that all rights to the Confidential Information, except for the specific rights to use the Confidential Information described herein, are reserved by the Disclosing Party. No license, express or implied, under any trade secret right, trademark, patent, copyright, or other proprietary right or applications which are now or may hereafter be owned by a party, is granted by the disclosure of Confidential Information under this Agreement. Nothing in this Agreement is to be construed as granting the Receiving Party any title, ownership, license, or other right or interest with respect to the Confidential Information disclosed by the Disclosing Party.

4. Loss of Status

This Agreement does not apply to or restrict the Receiving Party from using or disclosing Confidential Information:

- (a) which is or becomes public other than through a breach of this Agreement;
- (b) already known to the Receiving Party prior to the date of this Agreement and with respect to which the Receiving Party does not have an obligation of confidentiality;
- (c) which is independently developed by the Receiving Party;
- (d) which is disclosed to the Receiving Party by a person or entity not party to this Agreement, excluding City, and who is entitled to disclose such information without breaching an obligation of confidentiality; or
- (e) required to be disclosed by law, whether under an order of a court, government tribunal, or other legal process. If the Receiving Party is required to disclose Confidential Information as part of a judicial process, government investigation, legal proceeding, or other similar process, the Receiving Party will give prior written notice of such requirement to the Disclosing Party. Reasonable efforts will be made to provide this notice in sufficient time to allow the Disclosing Party or City, where applicable, to seek an appropriate confidentiality agreement, protective order, or modification of any disclosure, and the Receiving Party will reasonably cooperate in such efforts.



5. Term

This Agreement shall remain effective for a period (the "Term") beginning on the Effective Date, and ending December 31, 2022 or the date on which all business relationships, if any, entered into by the parties with each other are terminated, whichever is later. Subject to Section 4, all Confidential Information disclosed during the Term shall continue to be governed by the terms and conditions of this Agreement after expiration of the Term or other termination of this Agreement.

6. Future Relationship

Nothing in this Agreement shall be construed as obligating any party to: (a) continue any discussions, (b) enter into a business relationship, or (c) provide any services.

7. Injunctive Relief

The parties acknowledge that the unauthorized use or disclosure of the Confidential Information could cause irreparable harm to the Disclosing Party or City. Accordingly, the parties agree that they have the right to seek an injunction, without bond or other security, against any breach or threatened breach of this Agreement as well as the right to pursue any and all other rights and remedies available at law or in equity for such breach or threatened breach.

8. Notice

Notices delivered in connection with this Agreement must be in writing and delivered to the address set out in the first paragraph of this Agreement to the attention of the individual representing each party under this Agreement or as changed by the parties by written notice delivered to each other from time to time in accordance with this Agreement.

9. Severability

In the event that any provision of this Agreement shall be determined illegal or otherwise unenforceable, such provision shall be severed and the balance of this Agreement shall continue in full force and effect.

10. Waiver

The failure of either party to enforce any rights granted under this Agreement or to take action against the other party in the event of a breach shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

11. Entire Agreement and Amendments

This Agreement binds the parties and their respective successors and permitted assigns (provided that neither party may assign this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, except that either party may assign this Agreement without the other party's consent in the event an assignment is necessitated by an internal business reorganization) and constitutes the entire understanding between the parties with respect to its subject matter, superseding any prior oral or written agreement or understanding relating hereto, and cannot be amended, changed, or terminated except by a written instrument executed by a duly authorized representative of each party.

12. Applicable Law and Jurisdiction

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.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date written above.

City
By: _____
Name: _____
Title: _____

RESPONDENT
By: _____
Name: _____
Title: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Gustin R. Guibert
Deputy City Attorney

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