Agreement between the City and County of San Francisco and

[insert name of contractor]
TABLE OF CONTENTS

Article 1 Definitions...................................................................................................................... 1

Article 2 Term of the Agreement ................................................................................................ 3
  2.1 License.................................................................................................................................. 3
  2.2 Implementation Services........................................................................................................ 3
  2.3 Options.................................................................................................................................. 3
  2.4 Effective Date....................................................................................................................... 3

Article 3 Financial Matters.......................................................................................................... 3
  3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-
  Appropriation.............................................................................................................................. 3
  3.2 Guaranteed Maximum Costs................................................................................................. 4
  3.3 Compensation....................................................................................................................... 4
  3.4 Contract Amendments; Budgeting Revisions....................................................................... 5
  3.5 Audit and Inspection of Records. (Reserved)........................................................................ 5
  3.6 Submitting False Claims........................................................................................................ 5

Article 4 Services and Resources............................................................................................... 5
  4.1 License.................................................................................................................................. 5
  4.2 Delivery................................................................................................................................ 7
  4.3 Warranties:........................................................................................................................... 7
  4.4 Services Contractor Agrees to Perform.................................................................................. 7
  4.5 Qualified Personnel............................................................................................................... 7
  4.6 Acceptance Testing............................................................................................................... 7
  4.7 Training................................................................................................................................. 7
  4.8 Maintenance and Support...................................................................................................... 7
  4.9 Hosting.................................................................................................................................. 8
  4.10 Liquidated Damages.............................................................................................................. 8
  4.11 Subcontracting.................................................................................................................... 8
  4.12 Independent Contractor; Payment of Employment Taxes and Other Expenses............... 8
  4.13 Assignment......................................................................................................................... 9
  4.14 Services Warranty............................................................................................................... 9

Article 5 Insurance and Indemnity............................................................................................ 10
  5.1 Insurance............................................................................................................................ 10
  5.2 General Indemnification...................................................................................................... 11
5.3 Infringement Indemnification ................................................................. 12

Article 6 Liability of the Parties ................................................................. 12
  6.1 City’s Liability Limit ............................................................................. 12
  6.2 Contractor’s Liability Limit ................................................................. 12
  6.3 Liability for Use of Equipment ........................................................... 13

Article 7 Payment of Taxes ........................................................................ 13
  7.1 Reimbursement by City ........................................................................ 13

Article 8 Termination and Default ............................................................. 13
  8.1 Termination for Convenience ............................................................. 13
  8.2 Termination for Default; Remedies ..................................................... 14
  8.3 Non-Waiver of Rights ......................................................................... 15
  8.4 Rights and Duties upon Termination or Expiration ............................. 16

Article 9 Rights In Deliverables (Reserved) ............................................... 16

Article 10 Additional Requirements Incorporated by Reference .............. 16
  10.1 Laws Incorporated by Reference ...................................................... 16
  10.2 Conflict of Interest ........................................................................... 16
  10.3 Prohibition on Use of Public Funds for Political Activity. (Reserved) 17
  10.4 Reserved ............................................................................................ 17
  10.5 Nondiscrimination Requirements. (Reserved) ................................ 17
  10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. (Reserved) ..................................................... 17
  10.7 Minimum Compensation Ordinance. (Reserved) ............................ 17
  10.8 Health Care Accountability Ordinance. (Reserved) ......................... 17
  10.9 First Source Hiring Program. (Reserved) .......................................... 17
  10.10 Alcohol and Drug-Free Workplace. (Reserved) .............................. 17
  10.11 Limitations on Contributions ........................................................... 17
  10.12 Slavery Era Disclosure. (Reserved) ................................................ 17
  10.13 Working with Minors. (Reserved) .................................................... 17
  10.14 Consideration of Criminal History in Hiring. (Reserved) ............... 17
  10.15 Public Access to Nonprofit Records and Meetings. (Reserved) ...... 17
  10.16 Food Service Waste Reduction Requirements ................................ 17
  10.17 Sugar-Sweetened Beverage Prohibition. (Reserved) ....................... 18
  10.18 Tropical Hardwood and Virgin Redwood Ban. (Reserved) .............. 18
  10.19 Preservative Treated Wood Products. (Reserved) ......................... 18

CMS# Contract ID # Insert FSP number
P-545 (11-17; DPH 6-17; Rev 1 EHR 12-8-17) ii
Article 11 General Provisions ................................................................. 18
  11.1 Notices to the Parties................................................................. 18
  11.2 Compliance with Americans with Disabilities Act........................... 18
  11.3 Reserved..................................................................................... 18
  11.4 Sunshine Ordinance. ................................................................. 18
  11.5 Modification of this Agreement.................................................... 19
  11.6 Dispute Resolution Procedure.................................................... 19
  11.7 Government Code Claim Requirement........................................... 20
  11.8 Agreement Made in California; Venue.......................................... 20
  11.9 Construction.............................................................................. 20
  11.10 Entire Agreement....................................................................... 20
  11.11 Compliance with Laws................................................................ 20
  11.12 Severability.............................................................................. 20
  11.13 Cooperative Drafting................................................................. 20
  11.14 Order of Precedence.................................................................. 20
Article 12 Department Specific Terms .................................................... 21
  12.1 Third Party Beneficiaries............................................................. 21
  12.2 Materials Review. (Reserved)...................................................... 21
  12.3 Emergency Response. (Reserved)................................................ 21
Article 13 Data and Security.................................................................... 21
  13.1 Nondisclosure of Private, Proprietary or Confidential Information..... 21
  13.2 Payment Card Industry (“PCI”) Requirements (Reserved)............... 21
  13.3 Business Associate Agreement.................................................. 22
  13.4 Protected Health Information...................................................... 22
Article 14 MacBride And Signature......................................................... 23
AGREEMENT

This Agreement is made this XXX day of XXXXXXXXXXX 2018 in the City and County of San Francisco, State of California, by and between XXXXXXXX (“Contractor”) and City.

Recitals

WHEREAS, the Department of Public Health (“Department”) wishes to obtain software licensing in relation to xxx; and,

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (“RFP”) issued on XXXXXXXX, in which City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, the Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement is XX%; 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, approval for this Agreement was obtained when the Civil Service Commission approved Contract number XXXXXXXXXXXX.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1. "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.

1.2. "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and Department of Public Health.”

1.3. “City Program Budget Revision” means City’s reallocation of contingency amounts available with respect to the Agreement in accordance with Article 3 of the Agreement.

1.4. “Code” means the object code and source code of the Licensed Software, including all Updates and other modifications to the Licensed Software, and all other object and source code provided by Contractor to City pursuant to this Agreement.

1.5. "CMD" means the Contract Monitoring Division of the City.

1.6. “Contested Amount” means the amount of a charge from Contractor that the City disputes in writing in good faith.

1.7. "Contractor" means XXXXXXXXXX, [insert business address], including its personnel.

1.8. “Controller” means the Controller of the City and County of San Francisco.

1.9. "Deliverables" means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the “Statement of Work” attached as Appendix A.
1.10. “**Documentation**” means any written instructions, manuals, training materials, or other documents or materials, including any technical data associated with the Licensed Software, in paper, electronic, recorded or other format, relating to the functionality, operation, use, source code, data structures, implementation, or maintenance of the Licensed Software, which are provided by Contractor to City.

1.11. "**Effective Date**" means the date upon which the City’s Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.12. “**First Live Use**” of an Item of Licensed Software occurs when the City first uses such Item for production purposes.

1.13. “**Formal Amendment**” means a fully executed written amendment to this Agreement that has been approved by each Party in accordance with the terms of Article 3 of the Agreement. A Formal Amendment can either increase the GMP or reallocate contingency amounts.

1.14. “**Item**” means each individual line item of Licensed Software specified in Appendix B (Calculation of Charges). An Update is not a new Item, but will be deemed to be the same Item as the earlier version of Licensed Software upon which the Update is based.

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

1.16. "**Party**" and "**Parties**" mean the City and Contractor either collectively or individually.

1.17. “**Program Error**” means a reproducible error or defect in the Code that results in the failure of the Licensed Software to operate (including to produce output) in substantial conformity to descriptions of such operation in the Specifications for the Licensed Software.

1.18. “**Reasonable Workaround**” means a workaround of a Program Error that the parties mutually agree does not materially decrease the general utility of the Licensed Software as described in the Specifications. If the parties do not agree, then an objective standard applies.

1.19. "**Services**" means the work performed by Contractor under this Agreement as specifically described in the "Statement of Work" 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.

1.20. “**Specifications**” means the descriptions of the operation, output, or interoperation of the applicable Licensed Software identified in the Documentation for the release and functions listed by Contractor as currently available.

1.21. “**Subcontract**” means an agreement between a third party and Contractor pursuant to which the third party (the “Subcontractor”) provides Services that are billed through directly to City.

1.22. “**Substantive Program Error**” means any Program Error that materially and adversely affects (i) City’s operations; (ii) City’s ability to use the Item of Licensed Software for the purposes contemplated in the Specifications; or (iii) patient safety. A Substantive Program Error may give rise to a warranty claim during the Initial Warranty Period. If the parties disagree about whether a Program Error is a Substantive Program Error, an objective standard applies.

1.23. “**Uncontested Amount**” means an amount charged by Contractor that is not then a Contested Amount.

1.24. “**Update**” means a release or version of the Licensed Software (both the Code and its associated Documentation) containing functional enhancements, extensions, error corrections or fixes if
such release or version is generally made available free of charge to Contractor’s similarly situated customers who are then participating in Contractor’s Maintenance Program. An Update consists of any such Licensed Software Code and its associated Documentation.

1.25. “Warranty Period” means, for each Item of the Licensed Software, one hundred eighty (180) days after the date of the First Live Use of such Item. This is the time period during which the City may report a Substantive Program Error for purposes of the warranty and the refund remedy set forth in Article 9, below. Substantive Program Errors reported after the Warranty Period for an Item are not subject to the refund remedy.

Article 2 Term of the Agreement

2.1 License.
Subject to Article 4, the license granted under this Agreement shall commence upon acceptance of the Licensed Software and shall continue in perpetuity unless sooner terminated in accordance with the provisions of this Agreement.

2.2 Implementation Services.
Contractor’s Implementation Services Term shall conclude as stated in Appendix A (Statement of Work).

2.3 Options.
The City has an option to extend the contract term for a maximum of XX XXXXX additional years (maximum term of 9 years if City exercises all options) by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement” and certifying any additional amount for such extension as provided in Section 3.4. Any extension of the Term of this Agreement must also expressly include an extension of Appendix G (Parent Guarantee), unless otherwise mutually agreed by the Parties.

2.4 Effective Date.
This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.
This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Contractor’s Services will commence and related 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. The City shall make best efforts to provide reasonable advance written notice to Contractor upon learning that funding for this Agreement may not be appropriated.
THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 Guaranteed Maximum Costs.

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

3.3 Compensation.

3.3.1 Payment. 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 Director of Health, in his or her sole discretion, concludes has been satisfactorily performed in material conformance with the requirements set forth in this Agreement. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists in accordance with Section 11.6.1. In no event shall the amount of this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no “00”]. The breakdown of charges associated with this Agreement appears in Appendix B, “Calculation of Charges,” 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.

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

3.3.3 Withhold Payments. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City must give Contractor written notice of such failure. If after ten (10) business days from the date of written notice, Contractor has still not provided such Services, then the City may withhold applicable payments due Contractor under the invoice(s) for the specific Services giving rise to such failure until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City as specified in Section 3.3.6, or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5 LBE Payment and Utilization Tracking System Contractors must submit all required payment information using the City’s new online Financial and Procurement System as required by CMD to enable the City to monitor Contractor’s compliance with the LBE subcontracting
commitments. Contractor shall pay its LBE subcontractors within three working days after receiving payment from the City, except as otherwise authorized by the LBE Ordinance. Failure to submit all required payment information in the Financial and Procurement System with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment information is provided. Following the City’s payment of an invoice, Contractor has ten calendar days to acknowledge all subcontractors have been paid in the online Financial and Procurement System.

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

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

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

3.4 Contract Amendments; Budgeting Revisions.

3.4.1 Formal Contract Amendment: Contractor shall not be entitled to an increase in the Guaranteed Maximum Price or an extension of the Term unless the Parties agree to a Formal Amendment in accordance with the San Francisco Administrative Code and Section 11.5 (Modifications of this Agreement).

3.4.2 City Revisions to Program Budgets: The City shall have authority, without the execution of a Formal Amendment, to purchase additional Services and/or make changes to the work in accordance with the terms of this Agreement (including such terms that require Contractor's agreement), not involving an increase in the GMP or the Term by use of a written City Program Budget Revision.

3.5 Audit and Inspection of Records. (Reserved)

3.6 Submitting False Claims.

The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

Article 4 Services and Resources

4.1 License
4.1.1 **Grant of License.** Contractor grants City a non-exclusive, non-transferable, royalty free [specify perpetual or limited term] license to use the Licensed Software. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that this Agreement grants City no title or right of ownership in the Licensed Software.

4.1.2 **Authorized Modification.** City shall be permitted to develop, use and modify Application Program Interfaces (API’s), macros and user interfaces. For purposes of this Agreement, such development shall be deemed an authorized modification. Any such APIs, macros or other interfaces developed by the City shall become the property of the City.

4.1.3 **Source Code.** Contractor will provide to City a copy of the Source Code which corresponds to the most current version of the Licensed Software. Contractor agrees to update, enhance or otherwise modify such Source Code promptly upon its release of a new version of the Licensed Software to its other Licensees such that the Source Code is maintained as corresponding to the newest released version of the Licensed Software. City’s right to possession of the Source Code will be governed by Appendix A-1 (Statement of Work).

4.1.4 **Discontinuation.** Contractor agrees that in the event it ceases to market and/or provide maintenance and support for the Licensed Software, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, it will provide City, without charge, one (1) copy of the then-current Source Code for all of the programs and all supporting Documentation for the Licensed Software then operating and installed at City’s locations. If City should obtain the Source Code and the Documentation pursuant to this Section, the only use made of the Source Code and the Documentation will be for the proper maintenance of the Licensed Software in connection with City’s use of the Licensed Software as provided for, and limited by, the provisions of this Agreement.

4.1.5 **Restrictions on Use.** City is authorized to use the Licensed Software only for City’s internal purposes and as specified in Appendix A-1 (Statement of Work). City agrees that it will, through its best efforts, not use or permit the Licensed Software to be used in any manner, whether directly or indirectly, that would enable any other person or entity to use the Licensed Software on other than as specified in Appendix A-1 (Statement of Work).

4.1.6 **Transfer of Products.** City may move the Licensed Software and supporting materials to another City site which physically replaces the original installation site upon prior written notice to Contractor.

4.1.7 **Documentation.** Contractor shall provide City with a minimum of two copies of the Documentation per installation. Contractor grants to City permission to duplicate all printed Documentation for City’s internal use.

4.1.8 **Proprietary Markings.** City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Licensed Software or any related materials or Documentation.

4.1.9 **Click-Wrap Disclaimer.** While the terms of various Contractor-provided shrink-wrap, click-wrap, browse-wrap, or similar agreements may be required for use of certain Contractor provided services, or may be required for City to use certain software that interacts with or connects to the Licensed Software, no such agreement will modify the City’s rights with regard to the Licensed Software or amend the terms of the Agreement.

4.1.10 **Risk of Loss.** If any of the Licensed Software products are lost or damaged before installation is complete, Contractor shall promptly replace such Licensed Software at no additional charge to the City. If any of the Licensed Software products are lost or damaged while in the possession of the City, Contractor will promptly replace such products without charge, except for program storage media, unless supplied by the City.
4.1.11 **Disabling Code.** Contractor represents and warrants that the SaaS Application and Services, and any information, reports or other materials provided to Authorized Users as a result of the operation of the SaaS Application and Services, including future enhancements and modifications thereto, shall be free of any Disabling Code at the time of their receipt by Authorized Users.

4.2 **Delivery**

4.2.1 **Delivery.** Promptly following the Effective Date of the Agreement, Contractor will deliver to the City the Licensed Software and the Documentation published and generally released by Contractor to similarly situated customers for the Licensed Software.

4.2.2 **Installation.** Contractor shall install and implement the Licensed Software as detailed in Appendix A (Statement of Work).

4.3 **Warranties:**

4.3.1 **Right to Grant License.** Contractor hereby warrants that it has title to and/or the authority to grant a license of the Licensed Software to the City.

4.3.2 **Conformance with Specifications.** Contractor warrants that when the Licensed Software specified in Appendix A (Statement of Work) and Appendix B (Calculation of Charges) and all updates and improvements to the Licensed Software are delivered to City, they will be free from defects as to design, material, and workmanship and will perform in accordance with the Contractor’s published Documentation for the Licensed Software.

4.3.3 **Initial Warranty Period.** For each item of Licensed Software, the Initial Warranty Period shall be 180 days commencing with the City’s first live use, during which the City may report an error and seek repair, replacement, or return of the Licensed Software for a full refund at the City’s option.

4.4 **Services Contractor Agrees to Perform.**

Contractor agrees to perform the Services provided for in Appendix A, “Statement of Work.” Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for Services beyond the scope listed in Appendix A unless Appendix A is modified as provided in Article 3 of this Agreement (Contract Amendments; Budgeting Revisions).

4.5 **Qualified Personnel.**

Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. 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 adequate resources to allow completion within the project schedule specified in this Agreement.

4.6 **Acceptance Testing.**

Acceptance Testing shall be performed as detailed in Appendix A (Statement of Work).

4.7 **Training.**

Training shall be performed as detailed in Appendix A (Statement of Work).

4.8 **Maintenance and Support.**
Maintenance and support, including hosting as applicable, shall be performed as detailed in the Appendix A (Statement of Work) and the Service Level Agreement.

4.9 Hosting.
Hosting shall be performed as detailed in the associated Maintenance Agreement.

4.10 Liquidated Damages.
Contractor agrees that in the event the Services to be performed by Contractor are delayed beyond any date specifically identified as a “Milestone” in the Statement of Work attached as Appendix A, as the sole result of Contractor’s failure to perform its obligations, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of three thousand dollars ($3,000) per day for each calendar day of delay beyond each such Milestone (not to be assessed cumulatively, i.e. not more than three thousand dollars per day) 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 contract was awarded. The liquidated damages shall be capped at three million dollars ($3,000,000). Before the assessment of liquidated damages, the Parties will conduct a root cause analysis to ascertain the cause of the delay in meeting the applicable Milestone. A sum representing the liquidated damages shall be credited by Contractor to City as a non-transferable credit (not convertible to cash) that may be applied forward to any additional Services performed under this Agreement (for clarity, liquidated damages, if any, shall be deducted from/credited against future sums billed by and owed to Contractor). Should Contractor bring the Project back on schedule and achieve a subsequent Milestone, Contractor may request and in that instance the City shall release any Liquidated Damages previously withheld. Liquidated damages shall be the exclusive remedy of the City for any such delays. Liquidated damages shall not apply to delays that are not solely attributable to Contractor. For clarity, liquidated damages shall not apply to delays caused by the City or its personnel, third party delays, or a force majeure event.

4.11 Subcontracting.

4.11.1 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.

4.11.2 City's execution of this Agreement constitutes its approval of the subcontractors listed below.

XXXXXXXXXXX
XXXXXXXXXXX

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

4.12.1 Independent Contractor. For the purposes of this Article 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 or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be
entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this Section in accordance with San Francisco Administrative Code Section 21.34. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.12.2 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 the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys’ fees, arising from this Section.

4.13 Assignment.

The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor 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.

4.14 Services Warranty.

Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so that all
Services are performed as contemplated in this Agreement as detailed in Appendix A (Statement of Work).

**Article 5 Insurance and Indemnity**

**5.1 Insurance.**

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

(a) Workers’ Compensation, in statutory amounts, with Employers’ Liability Limits not less than $1,000,000 each accident, injury, or illness; and

(b) 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; and

(c) 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.

(d) Professional liability insurance, applicable to Contractor’s profession, with limits not less than $1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Technology Errors and Omissions Liability coverage, with limits of $5,000,000 each occurrence and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

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

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

(f) Contractor shall maintain in force during the full life of the agreement Cyber and Privacy Insurance with limits of not less than $20,000,000 per occurrence. 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.

**5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:**

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) 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 insurance applies separately to each insured against whom claim is made or suit is brought.
5.1.3 All policies shall be endorsed to provide thirty (30) days’ advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled “Notices to the Parties.”

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

5.1.5 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.

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

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

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

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

5.2 General Indemnification.

5.2.1 Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all third party claims for loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to tangible property, arising directly or indirectly from Contractor’s performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either’s agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related third party costs that the City necessarily incurs.

5.2.2 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, while such claim is in effect, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.
5.2.3 There shall be no limitation on the ability of either party to bring an action arising from or relating to this Agreement except those set forth in California Law.

5.2.4 Contractor’s indemnification obligation applies only if (i) Contractor is notified in writing of the claim promptly following City receiving the claim (for clarity, the filing of a California Government Code claim in accordance with Sections 911, et seq., is a jurisdictional prerequisite to a third-party filing suit), and (ii) City reasonably assists Contractor in obtaining information about the facts underlying the claim. If Contractor agrees in writing to defend, indemnify, and hold the City and its officers and employees harmless without a reservation of rights, Contractor may request sole control over the defense subject to City Attorney approval, with the exception that in any case a settlement calls for the payment of City funds or action on the part of the City, such settlement would be subject to final approval of the City Attorney and the San Francisco Board of Supervisors, each acting in its sole discretion.

5.3 Infringement Indemnification.

5.3.1 Contractor shall indemnify and hold City harmless from all third party claims, loss and liability, including attorneys’ fees, court costs and all other litigation expenses for any infringement of United States patent rights existing at the time of delivery of the Deliverable, or any copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of Deliverables supplied by Contractor in the performance of this Agreement. The obligation shall not be applicable to the extent that an infringement claim is based solely upon (i) the City’s alteration or modification of the Deliverables delivered by the Contractor; (ii) if the City uses the Deliverables in a manner not intended by, or previously approved by Contractor or (iii) the City’s failure to use corrections or enhancements made available by Contractor.

5.3.2 If any Deliverable is, or in Contractor’s opinion is likely to be, held to be infringing, Contractor will at its expense and subject to the approval of the City either: (i) procure the right for the City to continue using it, (ii) replace it with a noninfringing equivalent, (iii) modify it to make it noninfringing, or (iv) direct the return of the Deliverable and refund to City the fees paid for such Deliverable.

Article 6 Liability of the Parties

6.1 City’s Liability Limit.

CITY’S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN ARTICLE 3 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 Contractor’s Liability Limit.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CONTRACTOR 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. CONTRACTOR'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT FOR CONTRACTOR'S NEGLIGENCE SHALL BE CAPPED IN THE AGGREGATE AT 1.5 TIMES THE TOTAL, NOT TO EXCEED AMOUNT FOR ALL SERVICES AND/OR DELIVERABLES UNDER THIS AGREEMENT IN ACCORDANCE WITH SECTION 3.3 OF THIS AGREEMENT, AND ANY LIQUIDATED DAMAGES PAID BY CONTRACTOR SHALL BE INCLUDED IN THE CAP STATED ABOVE.

CONTRACTOR'S LIABILITY LIMIT SET FORTH ABOVE SHALL NOT APPLY TO:

1. DAMAGES CAUSED BY CONTRACTOR'S GROSS NEGLIGENCE (FOR PURPOSES OF THIS SECTION, “GROSS NEGLIGENCE” SHALL MEAN A WANT OF EVEN SCANT CARE OR EXTREME DEPARTURE FROM THE ORDINARY STANDARD OF CONDUCT) OR WILLFUL MISCONDUCT;

2. CONTRACTOR'S OBLIGATION TO INDEMNIFY AND DEFEND CITY PURSUANT TO THE GENERAL INDEMNIFICATION AND INFRINGEMENT INDEMNIFICATION PROVISIONS HEREIN;

3. DAMAGES THAT ARISE FROM THE UNAUTHORIZED USE OR DISCLOSURE OR FAILURE TO MAINTAIN CONFIDENTIALITY OF CITY’S INFORMATION IN THE POSSESSION OR CONTROL OF CONTRACTOR RESULTING FROM CONTRACTOR’S BREACH OF SECTION 13.1 (NONDISCLOSURE OF PRIVATE, PROPRIETARY, OR CONFIDENTIAL INFORMATION) OR THE BUSINESS ASSOCIATE AGREEMENT (ATTACHED HERETO AS APPENDIX E), INCLUDING ALL OF CITY’S RELATED COSTS OF INVESTIGATION AND NOTIFICATION, AND STATUTORY FINES AND PENALTIES, UP TO AN AGGREGATE LIABILITY CAP OF $20,000,000;

4. WRONGFUL DEATH CAUSED BY CONTRACTOR; AND

5. CLAIMS COVERED BY INSURANCE UNDER THIS AGREEMENT.

6.3 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.

Article 7 Payment of Taxes

7.1 Reimbursement by City.

Payment of any taxes, including possessory interest taxes, and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise
this option by giving Contractor thirty (30) days’ prior written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall use reasonable efforts to commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. Contractor shall take the following actions, unless otherwise directed in writing by the City:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At City’s direction, assigning to City any or all of Contractor’s right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Settling all outstanding liabilities arising out of the termination of orders and subcontracts in support of this Agreement.

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Contractor shall submit a final invoice to City, which shall set forth any outstanding claim for payment.

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

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for the same Services covered by Contractor’s final invoice; (ii) an amount contested under an applicable invoice which is properly disputed in accordance with and subject to the dispute resolution language of Section 11.6; and (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4. In instances in which 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 City may seek the difference between the invoiced amount and the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement pursuant to the dispute resolution language of Section 11.6.

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

8.2 Termination for Default; Remedies.
8.2.1 City may terminate this Agreement for material breach by Contractor, by giving thirty (30) days’ prior written notice to Contractor. In such event, Contractor shall have the right to cure the breach within the notice period. Each of the following may constitute an event of default ("Event of Default") under this Agreement:

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

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<thead>
<tr>
<th>3.6</th>
<th>Submitting False Claims.</th>
<th>11.11</th>
<th>Compliance with Laws</th>
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<tr>
<td>4.13</td>
<td>Assignment</td>
<td>13.1</td>
<td>Nondisclosure of Private, Proprietary or Confidential Information</td>
</tr>
<tr>
<td>Article 5</td>
<td>Insurance and Indemnity</td>
<td>13.4</td>
<td>Protected Health Information</td>
</tr>
<tr>
<td>Article 7</td>
<td>Payment of Taxes</td>
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(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(c) Contractor files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor’s property; or (v) takes action for the purpose of any of the foregoing.

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

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. Upon any termination, City shall pay Contractor uncontested amounts for Services performed in material conformance to the requirements of this Agreement up to and on the effective date of termination, in accordance with Section 3.3.1. Any contested amounts shall be subject to the dispute resolution language detailed in Section 11.6 below.

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

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

8.3 Non-Waiver of Rights.
The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

8.4 Rights and Duties upon Termination or Expiration.

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

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<tr>
<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td>3.3.1 Payment</td>
<td>11.6 Dispute Resolution Procedure</td>
</tr>
<tr>
<td>3.3.2 Payment Limited to Satisfactory Services</td>
<td>11.8 Agreement Made in California; Venue</td>
</tr>
<tr>
<td>3.5 Audit and Inspection of Records</td>
<td>11.9 Construction</td>
</tr>
<tr>
<td>3.6 Submitting False Claims</td>
<td>11.9 Entire Agreement</td>
</tr>
<tr>
<td>Article 5 Insurance and Indemnity</td>
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</tr>
<tr>
<td>Article 6 Liability of Parties</td>
<td>11.12 Sevability</td>
</tr>
<tr>
<td>Article 7 Payment of Taxes</td>
<td>13.1 Nondisclosure of Private, Proprietary or Confidential Information</td>
</tr>
<tr>
<td>8.1.6 Payment Obligation</td>
<td>13.4 Protected Health Information</td>
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</tbody>
</table>

8.4.2 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 for which payment has been made by City provided that any work-in-progress shall be provided on an as-is basis, without warranty of any kind.

Article 9 Rights In Deliverables (Reserved)

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference.

Contractor represents and warrants that it will comply with all applicable laws and regulations in performing the Services. Subject to the foregoing, the full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/

10.2 Conflict of Interest.

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

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, “Political Activity”) in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City’s Controller. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Maintenance Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Contractor’s use of profit as a violation of this section.

10.4 **Reserved.**

10.5 **Nondiscrimination Requirements. (Reserved)**

10.6 **Local Business Enterprise and Non-Discrimination in Contracting Ordinance. (Reserved)**

10.7 **Minimum Compensation Ordinance. (Reserved)**

10.8 **Health Care Accountability Ordinance. (Reserved)**

10.9 **First Source Hiring Program. (Reserved)**

10.10 **Alcohol and Drug-Free Workplace. (Reserved)**

10.11 **Limitations on Contributions.**

By executing this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. 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 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.12 **Slavery Era Disclosure. (Reserved)**

10.13 **Working with Minors. (Reserved)**

10.14 **Consideration of Criminal History in Hiring. (Reserved)**

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

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

10.17 **Sugar-Sweetened Beverage Prohibition. (Reserved)**

10.18 **Tropical Hardwood and Virgin Redwood Ban. (Reserved)**

Pursuant to San Francisco Environment Code Section 804(b), the 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.

10.19 **Preservative Treated Wood Products. (Reserved)**

**Article 11 General Provisions**

11.1 **Notices to the Parties.**

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

To CITY: Office of Contract Management and Compliance
Department of Public Health
101 Grove Street, Room 410
San Francisco, California 94102
e-mail: XXXXXX@sfdph.org

And:
XXXXXXX
DEPARTMENT OF PUBLIC HEALTH
375 LAGUNA HONDA BLD, A100-ANNEX
SAN FRANCISCO, CA 94116
e-mail: XXXXXX@sfdph.org

To CONTRACTOR: <VENDOR>
<VENDOR ADDRESS>
<VENDOR CITY>, <VENDOR STATE> 94111 e-mail: <V e-mail>

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

11.2 **Compliance with Americans with Disabilities Act.**

Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 **Reserved.**

11.4 **Sunshine Ordinance.**

11.4.1 **Public Records Request:** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.
11.4.2 Contractors Obligations: If the Department of Public Health receives a Public Records Request pertaining to Contractor, the Department will use its best efforts to notify Contractor of the Request and to provide Contractor with a description of the material that the Department deems responsive and the due date for disclosure (“Response Date”). If Contractor asserts that some or all of the material requested contains or reveals valuable trade secrets or other information belonging to Contractor that is exempt from disclosure and directs the City in writing to withhold such material from production (“Withholding Directive”), then the City will comply with the Withholding Directive on the condition that Contractor seeks judicial relief on or before the Response Date. If any third-party initiates or threatens to initiate legal action to compel the production of Contractor’s material, Contractor shall defend, indemnify and save harmless City and its officers, agents and employees from any and all such third party claims. Should Contractor fail to seek judicial relief on or before Response Date, the City shall proceed with the disclosure of responsive documents.

11.4.3 Agreement not to Sue: Contractor agrees that it will not sue the City for damages in connection with the disclosure by the City of information that Contractor asserts is exempt from disclosure, so long as such disclosure was inadvertent and the City uses reasonable efforts to mitigate the effects of the inadvertent disclosure and/or uses reasonable efforts to retrieve the information as appropriate.

11.5 Modification of this Agreement.

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

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Non-Binding Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance or receipt of services under this Agreement, including those related to non-payment or disputed invoices, (“Disputes”) in accordance with the following escalation process. Upon written notice by a party to the other party of a Dispute (“Dispute Notice”), such Dispute shall first be referred to Contractor’s lead engagement partner or, principal, or managing director (or designee) and City’s Contract Administrator (or designee), as defined in Appendix A (Statement of Work). If they are unable to resolve the Dispute within fifteen (15) days of the Dispute Notice, the Dispute will be escalated to Contractor’s lead client service partner (or designee) and the Department of Public Health Chief Financial Officer (or designee). If the Parties are still unable to resolve the dispute within fifteen (15) additional days, then each party may resort to the formal dispute resolution procedure set forth in Section 11.6.1(b) or, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review.

(a) After the parties have exhausted the informal dispute resolution process outlined in Section 11.6.1(a), then, if agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon non-binding alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law.
(b) The status of any Dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

11.7 Government Code Claim Requirement.

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

11.8 Agreement Made in California; Venue.

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

11.9 Construction.

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

11.10 Entire Agreement.

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

11.11 Compliance with Laws.

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

11.12 Severability.

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

11.13 Cooperative Drafting.

This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.14 Order of Precedence.
Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, and the Statement of Work attached as Appendix A, the RFP. The terms of this Agreement are to be read and interpreted together with all other documents, appendices, exhibits, and addenda attached to the Agreement as a single agreement.

**Article 12    Department Specific Terms**

12.1 **Third Party Beneficiaries.**
No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

12.2 **Materials Review. (Reserved)**

12.3 **Emergency Response. (Reserved)**

12.4 **Exclusion Lists and Employee Verification.**
Upon hire and monthly thereafter, Contractor will check the exclusion lists published by the Office of the Inspector General (OIG), General Services Administration (GSA), and the California Department of Health Care Services (DHCS) to ensure that any employee, temporary employee, volunteer, consultant, or governing body member responsible for oversight, administering or delivering state or federally-funded services who is on any of these lists is excluded from (may not work in) your program or agency. Proof of checking these lists will be retained for seven years.

**Article 13    Data and Security**

13.1 **Nondisclosure of Private, Proprietary or Confidential 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.

In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement, except as required by law, professional rule or regulation. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

13.2 **Payment Card Industry (“PCI”) Requirements. (Reserved)**
13.3 Business Associate Agreement.

The parties acknowledge that City is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 (“HIPAA”) and is required to comply with the HIPAA Privacy Rule governing the access, transmission, and storage of health information and the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”).

The parties acknowledge that CONTRACTOR will:

1. Do at least one or more of the following:
   A. Create, receive, maintain, or transmit PHI for or on behalf of CITY/SFDPH (including storage of PHI, digital or hard copy, even if Contractor does not view the PHI or only does so on a random or infrequent basis); or
   B. Receive PHI, or access to PHI, from CITY/SFDPH or another Business Associate of City, as part of providing a service to or for CITY/SFDPH, including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial; or
   C. Transmit PHI data for CITY/SFDPH and require access on a regular basis to such PHI. (Such as health information exchanges (HIEs), e-prescribing gateways, or electronic health record vendors)

FOR PURPOSES OF THIS AGREEMENT, CONTRACTOR IS A BUSINESS ASSOCIATE OF CITY/SFDPH, AS DEFINED UNDER HIPAA. CONTRACTOR MUST COMPLY WITH AND COMPLETE THE FOLLOWING ATTACHED DOCUMENTS, INCORPORATED TO THIS AGREEMENT AS THOUGH FULLY SET FORTH HEREIN:

a. Appendix E SFDPH Business Associate Agreement (BAA) (04-12-2018)
   1. SFDPH Attestation 1 PRIVACY (06-07-2017)
   2. SFDPH Attestation 2 DATA SECURITY (06-07-2017)

2. NOT do any of the activities listed above in subsection 1;
   Contractor is not a Business Associate of CITY/SFDPH. Appendix E and attestations are not required for the purposes of this Agreement.  This option requires review and approval from the Office of Compliance and Privacy Affairs.

13.4 Protected Health Information.

Contractor, all subcontractors, all agents and employees Contractor and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor 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 protected health information 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, the City may terminate the Contract.

**Article 14  MacBride And Signature**

14.1 **MacBride Principles -Northern Ireland.**

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

Recommended by:

___________________________________
Barbara A. Garcia, MPA
Director of Health
Department of Public Health

CONTRACTOR

[INSERT CONTRACTOR NAME]

____________________________
Supplier ID: [Supplier ID]

Approved as to Form:

Dennis J. Herrera
City Attorney

By: ________________________________
Louise S. Simpson
Deputy City Attorney

Approved:

_____________________________________
Jaci Fong
Director of the Office of Contract Administration, and Purchaser

Appendices
A: Statement of Work
B: Calculation of Charges
C: (Reserved)
D: (Reserved)
E: HIPAA Business Associate Agreement
F: Invoice Template
G: Parent Guarantee (If Applicable)
H: Service Level Agreement

CMS# Contract ID # [Insert FSP number]
P-545 (11-17; DPH 6-17; Rev 1 EHR 12-8-17) 24 [agreement date]
Appendix A
Statement of Work

1. Terms

A. Contract Administrator:

In performing the Services hereunder, Contractor shall report to XXXXXXXX Contract Administrator for the City, or his / her designee.

B. Reports:

Contractor shall submit written reports on the progress of the Services as reasonably requested by the City. The format for the content of such reports shall be determined by the City. The timely submission of all reports may be a necessary and material term and condition of this Agreement. All reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

For services solicited under a Group Purchasing Organization (GPO) the Contractor shall report all applicable sales under this agreement to the respective GPO.

C. Evaluation:

Contractor shall participate as requested with the City, State and/or Federal government in evaluative studies designed to show the effectiveness of Contractor’s Services. Contractor agrees to meet the requirements of and participate in the evaluation program and management information systems of the City.

For contracts for the provision of services at San Francisco General or Laguna Honda Hospital and Rehabilitation Center, the evaluation program shall include agreed upon performance measures as specified in the Performance Improvement Plan and Performance Measure Grid which is presented in Attachment 1 to Appendix A. Performance measures are reported annually to the Zuckerberg San Francisco General performance improvement committees (PIPS and Quality Council) or the to the Administration Office of Laguna Honda Hospital and Rehabilitation Center.

The City agrees that any final written reports generated through the evaluation program shall be made available to Contractor within thirty (30) working days. Contractor may submit a written response within thirty working days of receipt of any evaluation report and such response will become part of the official report.

D. Possession of Licenses/Permits:

Contractor shall possess all licenses and/or permits required by the laws and regulations of the United States, the State of California, and the City to provide the Services. Failure to maintain these licenses and permits may constitute a material breach of this Agreement.

E. Adequate Resources:

Contractor agrees that it has secured or shall secure at its own expense all persons, employees and equipment required to perform the Services required under this Agreement, and that all such Services shall be performed by Contractor, or under Contractor’s supervision, by persons authorized by law to perform such Services.
F. Infection Control, Health and Safety:

1. Contractor must have a Bloodborne Pathogen (BBP) Exposure Control plan as defined in the California Code of Regulations, Title 8, Section 5193, Bloodborne Pathogens (http://www.dir.ca.gov/title8/5193.html), and demonstrate compliance with all requirements including, but not limited to, exposure determination, training, immunization, use of personal protective equipment and safe needle devices, maintenance of a sharps injury log, post-exposure medical evaluations, and recordkeeping.

2. Contractor must demonstrate personnel policies/procedures for protection of staff and clients from other communicable diseases prevalent in the population served. Such policies and procedures shall include, but not be limited to, work practices, personal protective equipment, staff/client Tuberculosis (TB) surveillance, training, etc.

3. Contractor must demonstrate personnel policies/procedures for Tuberculosis (TB) exposure control consistent with the Centers for Disease Control and Prevention (CDC) recommendations for health care facilities and based on the Francis J. Curry National Tuberculosis Center: Template for Clinic Settings, as appropriate.

4. Contractor is responsible for site conditions, equipment, health and safety of their employees, and all other persons who work or visit the job site.

5. Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as BBP and TB and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.

6. Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.

7. Contractor assumes responsibility for procuring all medical equipment and supplies for use by their staff, including safe needle devices, and provides and documents all appropriate training.

8. Contractor shall demonstrate compliance with all state and local regulations with regard to handling and disposing of medical waste.

G. Aerosol Transmissible Disease Program, Health and Safety:

1. Contractor must have an Aerosol Transmissible Disease (ATD) Program as defined in the California Code of Regulations, Title 8, Section 5199, Aerosol Transmissible Diseases (http://www.dir.ca.gov/Title8/5199.html), and demonstrate compliance with all requirements including, but not limited to, exposure determination, screening procedures, source control measures, use of personal protective equipment, referral procedures, training, immunization, post-exposure medical evaluations/follow-up, and recordkeeping.

2. Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as Aerosol Transmissible Disease and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.

3. Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.
(4) Contractor assumes responsibility for procuring all medical equipment and supplies for use by their staff, including Personnel Protective Equipment such as respirators, and provides and documents all appropriate training.

H. Acknowledgment of Funding:

Contractor agrees to acknowledge the San Francisco Department of Public Health in any printed material or public announcement describing the San Francisco Department of Public Health-funded Services. Such documents or announcements shall contain a credit substantially as follows: "This program/service/activity/research project was funded through the Department of Public Health, City and County of San Francisco."

I. Hospital Policy 16.27:

It is the policy of Zuckerberg San Francisco General (ZSFG) to provide quality patient care and trauma services with compassion and respect, while maintaining patient privacy and safety. ZSFG is committed to providing reasonable opportunities for Health Care Industry Representatives (HCIRs), external representatives/vendors, to present and demonstrate their products and/or services to the appropriate ZSFG personnel. However, the primary objective of ZSFG is patient care and it is therefore necessary for all HCIRs to follow guidelines that protect patient rights and the vendor relationship. Therefore, all HCIR’s that will come onto the campus of Zuckerberg San Francisco General Hospital must comply with Hospital Policy 16.27 "PRODUCT EVALUATION AND PHARMACEUTICAL SERVICES: GUIDELINES FOR SALES PERSONNEL, HEALTHCARE INDUSTRY REPRESENTATIVES, AND PHARMACEUTICAL COMPANY REPRESENTATIVES" Before visiting any ZSFG facilities, it is required that a HCIR create a profile with “VendorMate.” Vendormate is the company that manages the credentialing process of policy 16.27 for SFGH. For questions, or to register as a HCIR please contact the Director of Materials Management, or designee (during normal business hours) at (415) 206-5315 or sign on to https://sfdph.vendormate.com for details.

2. Description of Services

Contractor agrees to perform the following Services:

All written Deliverables, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

Detailed description(s) of services are listed below, attached hereto, and incorporated into Appendix A by this reference:

Appendix A-1 <Program Name>

Appendix A-2 <Program Name>

3. Services Provided by Attorneys.

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

**AIM:** All ZSFG services provided through contractual agreement are provided safely and effectively for patient care and support services, annually.

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<thead>
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<th>Contract Name</th>
<th>Services Provided</th>
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<th>Metric</th>
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<td>Nor-Cal Medical Temp</td>
<td>Pharmacy personnel</td>
<td>Orientation Check List Completed within 7 Days of First Contact</td>
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Appendix B
Calculation of Charges

1. Method of Payment
   A. Contractor shall submit monthly invoices by the fifteenth (15th) working day of each month, in the format attached in Appendix F, based upon the number of units of service that were delivered in the immediately preceding month. All deliverables associated with the Services listed in Section 2 of Appendix A, times the unit rate as shown in the Program Budgets listed in Section 2 of Appendix B shall be reported on the invoice(s) each month.

2. Program Budgets and Final Invoice
   A. Program Budgets are listed below and are attached hereto.
      - Appendix B-1 <Program Name>
      - Appendix B-2 <Program Name>
   B. Contractor understands that, of the maximum dollar obligation listed in Section 3.3.1 of this Agreement, $XXXXX is included as a contingency amount and is neither to be used in Program Budgets attached to this Appendix, or available to Contractor without a modification to this Agreement executed in the same manner as this Agreement or a revision to the Program Budgets of Appendix B, which has been approved by Contract Administrator. Contractor further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable City and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by Controller. Contractor agrees to fully comply with these laws, regulations, and policies/procedures.
   C. Contractor agrees to comply with its Program Budgets of Appendix B in the provision of Services. Changes to the budget that do not increase or reduce the maximum dollar obligation of the City are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. Contractor agrees to comply fully with that policy/procedure.
   D. A final closing invoice, clearly marked “FINAL,” shall be submitted no later than forty-five (45) calendar days following the closing date of the Agreement, and shall include only those Services rendered during the referenced period of performance. If Services are not invoiced during this period, all unexpended funding set aside for this Agreement will revert to City. City’s final reimbursement to the Contractor at the close of the Agreement period shall be adjusted to conform to actual units certified multiplied by the unit rates identified in the Program Budgets attached hereto, and shall not exceed the total amount authorized and certified for this Agreement.

3. No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.
Appendix D
Reserved
Appendix E
Business Associate Agreement
Appendix F
Invoice
Appendix G (If Applicable)

Parent Guarantee