



**City and County of San Francisco**  
**City Administrator's Office – Risk Management Division**

**REQUEST FOR QUALIFICATIONS FOR**  
**Insurance Broker and Risk Management Services**

**Solicitation # RM-1-2023**

**CONTACT: BOTH [kelly.hernandez@sfgov.org](mailto:kelly.hernandez@sfgov.org) and [maria-zenaida.camua@sfgo.org](mailto:maria-zenaida.camua@sfgo.org)**

**Background**

The Risk Management Division is soliciting qualifications from Firms with experience in successfully providing large multi-faceted municipal organizations with insurance brokerage, risk management and risk consultation services, and software for management of insurance documentation to create a pool of Firms (“pool”) that are pre-qualified to support the risk management needs of all City departments.

**Intent of this Request for Qualification (RFQ)**

It is the intent of the Risk Management Division to create a prequalified list of Firms eligible for contracts. The list will be in effect for two (2) years. In addition, Firms that are rated above the minimum acceptable score will also be separately scored for specific areas of expertise as described in Sections 2.1 through 2.6. Please note, Firms prequalified under this RFQ are not guaranteed a contract, and Firms offered a contract are not guaranteed any work via task orders.

**Anticipated Contract Term**

The anticipated contract term for contracts resulting from this RFQ may last up three (3) years, with the option to extend the contract for up to six (6) additional years. Actual contract term may vary, depending upon service and project needs at the City's sole, absolute discretion. Respondents selected for resulting contract(s) must be available to commence work on or before **December 20, 2023**.

**Anticipated Contract Budget**

For each contract resulting from this RFQ, the anticipated not-to-exceed contract budget may vary, depending upon service and project needs at the City's sole and absolute discretion.

**Schedule\***

RFQ Issued	September 19, 2023
Deadline for RFQ Questions	September 26, 2023 (1PM PST)
RFQ Answers available online	October 3, 2023
<b>Deadline for RFQ Responses</b>	<b>November 3, 2023 (3 PM PST)</b>
Notice of Intent to Establish a Prequalified List	December 8, 2023
Pool of Qualified Firms Established	<b>December 20, 2023</b>

**Important - City's Supplier and Bidder Resources (including registration)**

City Supplier and Bidder Portal:

<https://sfcitypartner.sfgov.org/>

Job Aids for Response Submission via City Portal:

[https://sfcitypartnersupport.sfgov.org/support/search?term=bid&authenticity\\_token=egAx%2FIZwyPsAyjDIggpmWzve1PpE9GL8uZW1gpHcvSg%3D](https://sfcitypartnersupport.sfgov.org/support/search?term=bid&authenticity_token=egAx%2FIZwyPsAyjDIggpmWzve1PpE9GL8uZW1gpHcvSg%3D)

City's Sourcing Events (Bid Opportunities):

<https://sfcitypartner.sfgov.org/pages/Events-BS3/event-search.aspx>

Supplier Compliance Questions:

[sfcitypartnersupport@sfgov.org](mailto:sfcitypartnersupport@sfgov.org)

User Support tel. (415) 944-2442

If you have any questions regarding CMD requirements, please contact [selormey.dzikunu@sfgov.org](mailto:selormey.dzikunu@sfgov.org).

**Submission of Responses Requirements**

Responses and all related materials, including all CMD forms, must be received by Deadline for RFQ Responses. You must be a registered Bidder to apply to this RFQ so it is important to follow the instructions at the above links. Responses must be submitted electronically using method:

- (1) Via e-mail to the Risk Mgmt. Division addressed to both [kelly.hernandez@sfgov.org](mailto:kelly.hernandez@sfgov.org) and [maria-zenaida.camua@sfgov.org](mailto:maria-zenaida.camua@sfgov.org)

Check link for updates:

<https://sfcitypartner.sfgov.org/pages/Events-BS3/event-search.aspx>

OR Risk Mgmt. Division website:

<https://sf.gov/risk-management>

The summary of questions and answers pertaining to this RFQ will be posted on the Risk Mgmt. Division website

\*Each date subject to change. All hours are Pacific time zone. Check website for latest schedule.

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## 1. Introduction

### 1.1 General terms used in this Request for Qualifications (RFQ)

Terms and abbreviations used throughout this RFQ include:

- **CCSF or The City** – The City and County of San Francisco.
- **Contract Monitoring Division (CMD)** – San Francisco Contract Monitoring Division, a department of the City and County of San Francisco.
- **Contractor** – The Respondent(s) awarded a contract for services subsequent to prequalification under this RFQ.
- **Firm** – Any business entity including, but not limited to, companies, nonprofit organizations, educational institutions, and individuals.
- **Local Business Enterprise (LBE)** – A business that is certified as an LBE under S.F. Administrative Code §14B.3. Only certified Small and Micro-LBEs can be used to satisfy the LBE subcontracting participation goal.
- **Respondent/Proposer** – Any entity submitting a response to this Request for Qualifications
- **Response/Proposal** – A Respondent’s proposal submitted in response to this RFQ

### 1.2 Statement of Need and Intent

#### What Does the City Seek?

The Risk Management Division of the City Administrator’s Office is soliciting qualifications from Firms with experience in successfully providing large multi-faceted municipal organizations with insurance brokerage, risk management and risk consultation services, and software for management of insurance documentation to create a list of Firms, including ranking for specific areas of expertise, that are pre-qualified to support the risk management needs of all City departments. The list will be in effect for two (2) years. This Request for Qualifications (“RFQ”) is directed at specific Service Areas described in Section 2, Scope of Work.

#### What is the City’s Intent with this RFQ?

Pursuant to Administrative Code section 21.16(c), City departments may utilize the results of this RFQ. The City intends to negotiate agreements for various Service Areas with Firms on the pre-qualified list on an as-needed basis for services indicated in Section 2, Scope of Work. The City may use the pre-qualified list, at its sole and absolute discretion, for selection of Firms and negotiations of contracts on an as-needed basis. Firms selected for the list are not guaranteed a contract, and Firms offered a contract are not guaranteed any work via task orders. Firms that are selected to provide services shall receive a contract with an original term of three (3) years. In addition, the City shall have three (3) options to extend the term for a period of two (2) years each, which the City may exercise in its sole, absolute discretion. The City reserves the right to procure services similar or identical to the services specified in this RFQ by any other means.

Multiple contracts may be awarded at the City's sole and absolute discretion in accordance to San Francisco Administrative Code, Section 21.8.

### **1.3 Background of the City and County of San Francisco**

#### What is the City?

San Francisco is the fourth largest city in California and serves as a center for business, commerce and culture for the West Coast. The City and County of San Francisco, known as the "City," was established by Charter in 1850. It is a legal subdivision of the State of California with the governmental powers of both a city and a county under California law. The City's powers are exercised through a Board of Supervisors serving as the legislative authority, and a Mayor and other independent elected officials serving as the executive authority. The services provided by the City include public protection, public transportation, construction and maintenance of all public facilities, water, parks, public health systems, social services, planning, tax collection, and many others.

#### What are the Roles and Responsibilities of the City's Risk Management Division?

The City and County of San Francisco's Risk Management Division is part of the City Administrator's Office, and is generally the only City entity authorized to purchase insurance. The Risk Management Division also provides standards for insurance and indemnity language in City contracts, reviews any deviations from these standards, and provides general Risk Management support services and advice to all City departments and enterprises.

## **2. Scope of Work**

This scope of work is a general guide to the work the City expects to be performed and is not a complete listing of all related services that may be required or desired. The City is soliciting qualifications to create a prequalified list of consultant Firms that may be selected for any of the direct or related services described below.

#### What if My Firm is Interested in Being Considered for More than One Service Area?

Given the broad range of possible opportunities, we encourage Firms to respond for all Service Areas for which they meet or exceed minimum qualifications as described in this RFQ. Please note that qualifications are evaluated separately for each Service Area. Respondents are asked to indicate the Service Areas for which they would like to be considered by completing the last part of RFQ Attachment V for each Service Area they seek to be qualified for.

#### Is My Firm Expected to Propose for a Specific Project?

No. The Risk Management Division will create a list of prequalified Firms, including ranking resulting from the evaluation process detailed in this RFQ, for each specific Service Area. Each Respondent should demonstrate its capabilities by providing concise but comprehensive responses. The City will negotiate the specific scope of services, budget, deliverables and timeline with prequalified Firms selected for contract negotiations. There is no guarantee of a minimum amount of work or compensation for any Respondent(s) selected for contract negotiations. The City may select Contractors from the prequalified list in its sole and absolute discretion in compliance with Administrative Code section 21.4(d).

After the prequalified list has been established, the City may issue Request(s) for Proposals or Request(s) for Quotes to the prequalified Firms to better assess qualifications for a specific scope of service, which may require specific information concerning staffing, scheduling, deliverable, and cost. Alternatively, the City may select the highest available ranked Contractor based on the rankings for a particular Service Area.

Does the City prefer Firms to form a large group or consortium to cover more services, or to focus on an area of expertise and respond individually?

The City prefers individual Firm responses focused on the Service Areas for which the Firm and its lead staff can demonstrate possession of appropriate qualifications. For any proposed Respondent partnerships, at least 50% of proposed work effort on the City's projects must come from the lead Respondent Firm.

Demonstrated expertise is requested, but is not limited to, the following Service Areas:

**Please Note: A separate response is required for each of the following six Service Areas for which Respondents seek to qualify (see Attachment IV for additional details).**

## **2.1 Service Area 1 - INSURANCE BROKER SERVICES**

### **A. Overview**

1. Act as an independent insurance advisor to the City and proactively provide ongoing unbiased professional advice and recommendations that benefit the City.
2. Consultants must comply with all State and Federal laws and regulations pertaining to insurance brokers licensed in the State of California as well as ensure any industry partners engaged in performance of engaged services are in compliance with applicable laws, regulations and statutes.
3. Proactively provide ongoing review and analysis of the City's insurance programs and identification of risk transfer and risk financing options.
4. Be familiar with:
  - a. The coverages provided by all relevant insurance policies and documents issued to the City.
  - b. The exposures of the City either directly or through its partnerships.
5. Assure that insurance policies are placed in a timely manner, without lapses in coverage periods, with reputable and financially responsible insurers, who meet the City's standards.
6. When placing insurance policies provide advice to the City related to Resolution 273-18 enacted by the Board of Supervisors in 2018 urging insurance industry companies to divest from coal and tar sands industries; and to end the underwriting of activities in furtherance of the extraction or use of coal and tar sands. (see Attachment VI)
7. Service insurance policies placed for the City, including processing all changes and endorsements and verifying the accuracy of invoices within a reasonable time.
8. Provide early warning of rate and coverage changes or renewal problems. Promptly advise the City of any changes in exposure during the policy year that would require revisions to existing insurance coverages. Upon request of

the City, but at least once a year, provide a comprehensive report that reviews all of the City's insurance programs under the Firm's care.

9. Be available to answer questions or obtain answers from underwriters for policy coverage questions. Meet with City Risk Management staff, Boards, City committees, and/or staff of City departments when requested or as required.
10. Provide consultation services and written reports as normally expected of a professional broker to a large client including risk management-related training and online resource development.
11. Provide loss control services and assistance with claims as requested by City. Assist in analyzing loss exposures from existing and new operations, and determine the appropriate risk management alternatives, including types, availability, cost and extent of coverages that should be considered.
12. Set up files (digital preferred) on City's master account and each individual department account showing coverages, schedules of covered property, premium for each department for each coverage, and other information required by Broker. Handle billing and invoicing of departments as approved by City management and assist in evaluating and implementing or revising cost allocation programs within the City and its departments.
13. Maintain appropriate accounting of amounts due, receipts, and payments to insurers and service providers.
14. Develop and distribute City-approved mailings and other communications to City departments as requested or required.

**B. Policy and Contract Review**

1. Review policies and other documents in detail within fourteen days of receipt of the documents to check the wording and accuracy of each policy, binder, certificate, endorsement or other document received from insurers to ensure that the intended coverage is provided, and all coverage, terms and conditions, and other wording is complete and accurate, and in compliance with financial arrangements and administrative procedures acceptable to City.
2. Obtain revisions needed to achieve compliance with coverage request(s) and forward to the City the original policies in a digital form and format agreed to by the City.
3. Provide a timeline for issuance of policy forms prior to issuance of premium invoice and provide sufficient copies of policies in both hard copy and digital media (or via secure online sources) to City Risk Management as well as the internal department client.
4. Review contracts and lease agreements as requested to ensure that the interests of City and its departments are protected and to avoid duplications in coverage.
5. Upon request from City Risk Management, provide a written annual service summary for the policy year to include:
  - a. A schedule of coverage showing nature of coverage, limits, deductibles, insurer, policy number, premium and other relevant information.
  - b. Summary of team servicing the account.
  - c. Anticipated renewal terms and conditions and other indications of market conditions, trends and anticipated changes.

- d. Identified problem areas such as claim handling, safety hazards, insurer financial problems, etc.
- e. Recommendations for improved program design.
- f. Services performed for the current year and planned for the next year.
- g. Accounting of all income received on each account.

**C. Policy Amendments**

- 1. Process requests for additions or deletions to policies within five (5) business days of receipt or in a timeframe as agreed in writing by City Risk Management.
- 2. Provide City with copies of initial correspondence to the insurers. Follow up on such requests until the insurer has handled request.
- 3. Advise in writing of any changes to insurance policy(ies) within fourteen calendar days of change or amendment.
- 4. Provide, on renewal and upon request, participants in each coverage program, and notify within five (5) business days of any participation changes or in a timeframe agreed to in writing by City Risk Management.

**D. Marketing**

- 1. Monitor expiration dates of policies and provide City Risk Management Division Director or designee with written notification providing significant lead time. Such expiration notice lead time shall be agreed to and set by City at the time of policy inception, including a description of information needed to process the renewal.
- 2. Work with City Risk Management Division to develop and implement a marketing strategy, including identifying potential markets for program renewals at least 120 days before policy expiration.
- 3. Develop underwriting information and assist in gathering and organizing exposure and loss data for renewals of policies placed including completing applications as necessary.
- 4. Provide actuarial and statistical analysis of loss and expense data to assist in the establishment of premium, and target limits for various layers of risk.
- 5. Work with carriers to design policies and programs most advantageous to the City for coverage of exposures, policy form, exclusions, deductibles, self-insured retentions, coordination with other policies, costs and other pertinent factors.
- 6. Include City Risk Management Division Director or designee(s) in marketing efforts with prospective carriers.
- 7. Market renewal coverages for City by obtaining timely and competitive quotations from available and responsible insurers.
- 8. Provide indications to City at least 90 days and bindable quotes 45 days prior to insurance policy expiration unless otherwise approved by City.
- 9. When more than one (1) market is approached for a line of coverage, provide City Risk Management Division with copies of declination letters and all premium quotations received with a summary of coverages explaining deficiencies or benefits of the quote compared to the recommended insurance program.

10. Provide quotations for specialized types of insurance, as requested by City. These services are expected at no additional cost.

**E. Claims**

1. Assist City departments and staff, as necessary, with filing claims on assigned insured programs.
2. Promptly notify City of any losses or accidents reported to Broker and work with internal or outside claims adjustors as necessary.
3. Represent the interests of City and its departments in policy interpretation and other negotiations with insurance carriers.
4. Assist City with review of claim reserves, and represent City to the insurer with regard to requested explanation or reduction of reserve amounts. Follow-up with insurer every 30 days until resolution of any reserve reduction requests are accomplished or until claim is closed.
5. For all lines of insurance where loss runs are not otherwise available, provide regular (e.g. quarterly or upon request) loss run reports including but not limited to the claimant name, date(s) of loss, claim status, amount paid, reserves, expected outcomes of cases, and other summary information.
6. Review all loss runs for all claims on all coverages. Evaluate loss history for trends or other indicators that might dictate changes in coverage strategy. Identify any relevant issues and advise City in writing.
7. Provide annual summaries by policy year for each of the last five (5) years indicating total number of losses by type for each line of coverage and showing earned premium, incurred losses and loss ratio.

**F. Certificates of Insurance**

Issue certificates of insurance within two (2) business days following the date of request and assist the City with the development and implementation of a comprehensive online insurance certificate tracking system, or as directed, use the City's selected provider for all certificates if available.

**G. Analysis and Risk Support Services** - Provide analysis and risk support services for complex issues involving various City agencies on an as needed basis.

**2.2 Service Area 2 - ENTERPRISE RISK MANAGEMENT (ERM)** - Provide Enterprise Risk Management consulting services to assist City and/or its departments in the assessment of its risks and utilize the City's preferred enterprise solution to mitigate, measure, and improve the City's risk profile.

**2.3 Service Area 3 - PROJECT COMPLETION ANALYSIS/ CONSULTATION** - Provide consultant services and analysis for the completion of projects including but not limited to: plan document review, creation, or revision, feasibility studies for Owner Controlled Insurance Program ("OCIP"), Contractor Controlled Insurance Program ("CCIP"), etc., Risk Modeling, Self-Insurance Retention ("SIR") forecasting and self-insurance analysis, and surety bond and loan guarantee programs.

**2.4 Service Area 4 - THIRD PARTY ADMINISTRATION** - Provide Third Party Administration and/or Audit of Self-Insured Claims for Property and Workers' Compensation.

**2.5 Service Area 5 – RISK MANAGEMENT INFORMATION SYSTEMS - EXPOSURES, INSURANCE CERTIFICATE, and/or INSURANCE POLICY MANAGEMENT SOFTWARE** - Provide a comprehensive online exposure, insurance certificate and/or insurance policy management system in conformance with City requirements. If selected, Respondents will be required to pass a cyber security risk assessment prior to contract award.

**Provide support and implementation for the risk management information system (RMIS).**

**Project may include, but may not be limited to:**

- i. System Configuration of selected product(s)**
- ii. System Conversion of data**
- iii. Configuration of custom requested features**
- iv. Configuration in conformance with other City requirements**
- v. Ongoing system support and maintenance**

**2.6 Service Area 6 – RISK MANAGEMENT INFORMATION SYSTEMS – EXPOSURES, INSURANCE CERTIFICATE, AND/OR INSURANCE POLICY MANAGEMENT SOFTWARE INCLUDING CUSTOMER SUPPORT AND ONGOING CLIENT SERVICES** – Provide a comprehensive online exposure, insurance certificate and/or insurance policy management system in conformance with City requirements AND Project Management Services. If selected, Respondents will be required to pass a cyber security risk assessment prior to contract award.

**Provide support and implementation for the risk management information system (RMIS).**

**Project may include, but may not be limited to:**

- vi. System Configuration of selected product(s)**
- vii. System Conversion of data**
- viii. Configuration of custom requested features**
- ix. Configuration in conformance with other City requirements**
- x. Ongoing system support and maintenance**

**Project Management Services include but may not be limited to:**

- i. Provide project management, consulting, in support of RMIS**
- ii. Provide reporting services including the creation and editing of reports**
- iii. Support data collection and verification**
- iv. Perform up to four (4) hours of onsite training annually**



- v. Perform regular maintenance of system infrastructure, firewalls, and messaging services
- vi. Provide end user support via a dedicated email address and phone number
- vii. Manage and coordinate the execution of process communications and notifications to Tenants/Vendors, Insurance Brokers and City users
- viii. Manage and coordinate the execution of process communications and notifications

## **2.7 Service Area 7 – P3 PROJECT INSURANCE AND RISK MANAGEMENT**

**ADVISORY SERVICES** – Assist and advise in allocating risks in the contracts, develop insurance requirements for the P3 contracts and review any insurance policies that are placed for various projects.

- A. Review documents to include but not limited to:
  - a. Project plans and activities - Drawings, project schedules, plans, environmental reports, etc.
  - b. Contract-related documents pertaining to insurance – RFPs, draft contracts, etc.
  - c. Evidence of Insurance submitted to ensure compliance with the contract insurance requirements
- B. Assist the project team in answering questions from prospective P3 entities pertaining to insurance during the RFP stages of the project;
- C. Identify risks of property and liability loss arising out of activities during all phases of the project;
- D. Develop contract insurance requirement terms and conditions for approval by the project managers, City Attorney and other legal advisors to help effectively allocate responsibility for managing and financing risks;
- E. Author insurance requirements for the P3 contract to include each of the phases of the project: design, build, finance, maintain and operate and include benchmarking provisions within the insurance requirements
- F. Assist project managers and legal counsel with negotiations involving insurance contract requirements in agreements between the Project owners and various contractors and service providers;
- G. Review provided evidence of insurance for compliance with contract specifications;
- H. Advise project managers, owners and legal counsel of any findings or problems involving insurance and risk allocation;
- I. Participate in conference calls, videoconferences and other communications as required;
- J. Be available to answer questions or perform assignments relevant to the risk and insurance aspects of the project;
- K. Review and analyze annual benchmarking data submitted by the P3 entity
- L. Throughout each phase of the project, receive and analyze documents and other information provided by the P3 entity to determine compliance with insurance and other requirements
- M. Review insurance policies and other insurance-related materials for policies that are placed for the projects and advise of any deficiencies in those placements; and

- N. Provide ongoing insurance consultation throughout the projects on an as needed basis

### **3. City-Respondent Communications**

*There will **not** be a Pre-Response Conference for this RFQ. Respondents are specifically directed NOT to contact any employees or officials of the City other than those specifically designated in this RFQ and its Attachments. Unauthorized contact may be cause for rejection of responses at the City's sole and absolute discretion.*

#### **3.1 Deadline for RFQ Questions**

Please e-mail any questions to both [kelly.hernandez@sfgov.org](mailto:kelly.hernandez@sfgov.org) and [maria-zenaida.camua@sfgov.org](mailto:maria-zenaida.camua@sfgov.org).

No oral questions will be accepted. Questions, in accordance with the below schedule, must be in writing and received before the **Deadline for RFQ Questions**. No questions will be accepted after this time with the exception of those concerning City vendor compliance. All inquiries should include the number and title of the RFQ. Substantive replies will be memorialized in written addenda to be made part of this RFQ. This RFQ will only be governed by information provided through written addenda.

#### **3.2 Summary of Information Requested and Presented**

A summary of all addenda, questions and answers pertaining to this RFQ will be posted on the City's Risk Management Division's website ("Website"). It is the Respondents' responsibility to check this Website for any updates. The City recommends that Respondents check the Website for updates on a daily basis at a minimum.

#### **3.3 City Communication Following Receipt of Responses**

The City may contact the Respondents for clarification or correction of minor errors or deficiencies in their Responses prior to deeming a Response as non-responsive. Clarifications are "limited exchanges" between the City and a Respondent for the purpose of clarifying certain aspects of the Responses, and do not give a Respondent the opportunity to revise or modify its Response. Minor errors or deficiencies are defined as those that do not materially impact the City's evaluation of the Proposal; for example, failing to label the "original" Response as an "original." For information regarding the City's Evaluation Process, see RFQ Section 5 - Evaluation Criteria.

#### **4. Response Submission Requirements**

##### **4.1 Time and Place for Submission of Responses**

ALL SUBMISSIONS IN RESPONSE TO THIS RFQ MUST BE VIA EMAIL OR VIA SECURE SITES FOR FILE TRANSFER/DOWNLOAD. MATERIALS MUST BE IN PDF FORMAT. VERY LARGE FILES MUST BE BROKEN INTO SEPARATE SMALLER PDF FILES IF DELIVERED VIA EMAIL. OTHER RESPONSE FORMATS WILL NOT BE REVIEWED.

##### **Late submissions will not be considered**

If you do not receive a confirmation email regarding receipt of your response, please call the Risk Management Division at 415-554-2301 or 415-554-2305.

## 4.2 Response Package

Complete, but concise responses, are recommended for ease of review by the Evaluation Team. Responses should provide a straightforward, concise description of the Respondent's capabilities to satisfy the requirements of the RFQ. Marketing and sales type information should be excluded. All parts, pages, figures, and tables should be numbered and clearly labeled.

For word processing documents, the department prefers that text be unjustified (i.e., with a ragged-right margin) and use a serif font (e.g., Times Roman, and not Arial), and that pages have margins of at least 1" on all sides (excluding headers and footers).

Please note that there is a **page limit** for Attachment IV. Respondents may submit no more than ten (10) pages to demonstrate they meet or exceed the minimum qualifications set forth in Section 5.3A of this RFQ and no more than ten (10) additional pages for each specific service area that a Respondent seeks to qualify for per section 5.3B of this RFQ. If RFQ Attachment IV exceeds the page limit, then the pages beyond the page limit will not be evaluated. Include copies of resumes in RFQ Attachment IV. Copies of resumes do not count towards the page limit.

### Response Item Checklist

**RFQ Attachment I** – Acknowledgement of RFQ Terms and Conditions

**RFQ Attachment II** – City's Administrative Requirements

**RFQ Attachment III** – City's Agreement Terms and Conditions

**RFQ Attachment IV** – Response Template including Specific Areas of Expertise

Each Attachment must include all documents submitted for that Attachment in one, separate, complete file. Each of these separate files must be titled with Respondent's name and Attachment number (e.g. **ABC Company Attachment I, ABC Company Attachment II**), in that specific order. Each file should include signatures, where applicable.

Respondents are advised to review RFQ Attachments I through III before beginning work on Response Template in RFQ Attachment IV to ensure that City's requirements can be met.

### **4.3 Content**

Firms interested in responding to this RFQ must submit the information required in Section 5, in the order specified in Attachment IV: Response Template. Even if using an alternative format for your response, the information in Attachment IV must be included in the order specified to be scored appropriately.

Responses received under this RFQ that fail to address each of the requested items in sufficient and complete detail to substantiate that the Respondent can meet the City's minimum qualifications, will be deemed non-responsive and will not be considered for prequalification. Note that responses stating, "to be provided upon request" or "to be determined" or the like, or that do not otherwise provide the information requested (left blank) are not acceptable and shall be deemed non-responsive.

### **4.4 Redact Confidential or Proprietary Information**

All documents under this solicitation process are subject to public disclosure per the California Public Records Act (California Government Code Section §6250 et. Seq) and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Chapter 67).

**4.4.1** Responses to RFQs, contracts, and all other records of communications between the City and Respondents shall be open to inspection immediately after a contract has been awarded. Nothing in this Administrative Code provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit *until and unless that person or organization is awarded the contract*.

**4.4.2** If the City receives a Public Records Request ("Request") pertaining to this solicitation, City will use its best efforts to notify the affected Proposer(s) ("Proposers") of the Request and to provide the Proposer with a description of the material that the City deems responsive and the due date for disclosure ("Response Date"). If the Proposer asserts that some or all of the material requested contains or reveals valuable trade secret or other information belonging to the Proposer 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 the Proposer seeks judicial relief on or before the Response Date. Should Proposer fail to seek judicial relief on or before the Response Date, the City shall proceed with the disclosure of responsive documents.

## **5. Evaluation Criteria**

This section describes the guidelines used for analyzing and evaluating the responses and for Respondent prequalification. It is the City's intent to prequalify Respondent(s) that present the best overall qualifications to the City that will provide the best overall service package. Consultant Firms selected for prequalification are not guaranteed a contract. This RFQ does not in any way limit the City's right to solicit contracts for similar or identical services if, in the City's sole and absolute discretion, it determines the prequalified list is inadequate to satisfy its needs. There are two phases to the evaluation process. City and CMD staff first perform an

Initial Screening as described in Section 5.1. Responses that pass the Initial Screening process (5.1) including Minimum Qualifications (5.2) will proceed to the Evaluation of Firms (that met Minimum Qualifications) described in Section 5.3.

City representatives will serve as the Evaluation Team responsible for evaluating Respondents. Specifically, the team will be responsible for the evaluation and scoring of the responses for prequalification, and for interviews, if desired by the City.

## **5.1 Initial Screening**

The City will review each response for initial determination on responsiveness and acceptability in an Initial Screening process. Elements reviewed during the Initial Screening include, without limitation: compliance with CMD submission requirements; compliance with Minimum Qualification requirements (Section 5.2); compliance with format requirements; response completeness; and verifiable references.

Responses are not scored during the Initial Screening process. Initial Screening is a pass/fail determination as to whether a response meets the threshold requirements described above. By **Deadline for RFQ Responses**, any response that does not demonstrate that Respondent meets requirements in Sections 5.1 and 5.2 will not be eligible for consideration in the Evaluation of Firms (that met Minimum Qualifications) described below in Section 5.3. The City reserves the right to request clarification from the Respondent prior to rejecting a response for failure to meet the Initial Screening requirements. Clarifications are “limited exchanges” between the City and a Respondent for the purpose of clarifying certain aspects of the Response, and will not give a Respondent the opportunity to materially revise or modify its response.

### **5.1.1 Local Business Enterprise Goals and Rating Bonuses – RESERVED**

## **5.2 Minimum Qualifications**

Any response that does not demonstrate that the Respondent meets these minimum qualifications by the response deadline will be considered non-responsive and will not be evaluated or eligible for award of any subsequent contract(s). A separate response must be submitted for each of the six Services Areas that a Respondent seeks to qualify for. Use RFQ Attachment IV to indicate the specific Service Area your Firm seeks to qualify for. Maximum number of pages permitted for responses to this Section 5.2.A regarding minimum qualifications is ten (10).

A) **EXPERIENCE:** Two (2) Prior Project Descriptions FOR EACH SERVICE AREA for which Respondent would like to be considered for prequalification, which meet all the following criteria:

- a. The services/experiences described in **each** of the Prior Project Descriptions FOR EACH SERVICE AREA must be comparable to the services the City is requesting, described in RFQ Section 2, Scope of Work.

- b. The services described in **at least one** of the Service Areas must have been provided to public sector municipalities or similar government agency clients.
- c. Successful completion within five (5) years from the issuance date of this RFQ (successful completion means project deliverables have been completed as required) of the services the City is requesting. Additionally, Respondents must demonstrate extent of experience in each of the service areas below:
  - i. **Service Area 1: BROKER SERVICES** - A minimum ten (10) years of experience providing insurance brokerage services to the public sector, demonstrating expertise in identifying all risks and placing insurance unique to cities and counties.
  - ii. **Service Area 2: ENTERPRISE RISK MANAGEMENT (ERM)** - A minimum five (5) years of experience providing Enterprise Risk Management (ERM) consulting services to cities and counties, with a specific focus and expertise on ISO 31000 guidelines and framework.
  - iii. **Service Area 3: PROJECT COMPLETION ANALYSIS/CONSULTATION** - A minimum five (5) years of experience providing actuarial consulting services including but not limited to the projects and programs described.
  - iv. **Service Area 4: THIRD PARTY ADMINISTRATION** - A minimum five (5) years of experience providing Third Party Administration and/or Audit of self-insured claims for Property and Workers' Compensation.
  - v. **Service Area 5: EXPOSURE AND, INSURANCE CERTIFICATE AND/OR INSURANCE POLICY MANAGEMENT SOFTWARE** - A minimum (5) years of experience providing SaaS Applications to public sector clientele, specifically providing insurance and risk management software solutions.
  - vi. **Service Area 6: EXPOSURE AND INSURANCE CERTIFICATE AND/OR POLICY MANAGEMENT SOFTWARE AND CUSTOMER SUPPORT AND ONGOING INTERNAL CLIENT SERVICES** – A minimum (5) years of experience providing SaaS Applications to public sector clientele, specifically providing insurance and risk management software solutions and consulting services.
  - vii. **Service Area 7: P3 PROJECT INSURANCE AND RISK MANAGEMENT ADVISORY SERVICES** - A minimum five (5) years of experience providing comprehensive P3 Project consulting including but not limited to the services described.

B) **STAFFING:** The lead staff proposed to be assigned to the City's project(s) must individually have had a similar lead role in at least one of the Prior Project Descriptions submitted FOR EACH SERVICE AREA.

### **5.3 Response Evaluation Criteria for Prequalification**

#### Evaluation Team

City representatives will serve as the Evaluation Team responsible for scoring Respondents' submissions. Specifically, the team will be responsible for the evaluation and rating of the responses for prequalification, for conducting reference checks, and for interviews, if desired by the City.

Each RFQ Proposal that meets the Minimum Qualifications will be evaluated in accordance with the criteria below. Respondent must receive a score of 75 points or above out of the 100 total possible points for each Service Area to be prequalified for that Service Area. There is no numerical limit to the number of Firms that may be prequalified for each Service Area.

#### **5.3.A1 Firm Qualifications – 25 points**

1. Respondent's Firm history and structure, including total staff size and composition.
2. Pending or current litigation related to consulting services provided by the Firm, if any.
3. Client relationships severed for reasons other than convenience, if any.

#### **5.3.A2 Staff Qualifications – 25 points**

1. Clarity and appropriateness of proposed staffing structure.
2. Roles and responsibilities, qualifications, and educational backgrounds of lead staff members.

#### **5.3.A3 Completeness of Response Submission – 10 points**

1. Response conforms with RFQ requirements and concisely but comprehensively addresses RFQ requirements;
2. Response is professionally presented and contains organized content and format.

#### **5.3.A4 Experience – 40 points (see below).**

**5.3B Specific Service Area Expertise** – Please submit a maximum of ten (10) additional pages for each specific Service Area for which your Firm desires to be pre-qualified, including the following information:



**5.3.B1 Experience** –As part of the RFQ Attachment IV response FOR EACH SERVICE AREA for which it would like to be considered for prequalification, please include:

1. Expectations of client involvement or level of effort that are appropriate; the proposed approach should demonstrate experience with providing services to comparable clients.
2. Sufficient expertise and methodology to create competitive differences that distinguish your Firm and will be beneficial to the City.
3. Two (2) Prior Project Descriptions FOR EACH SERVICE AREA for which it would like to be considered for prequalification, which meet all the following criteria:
  - a. The services/experiences described in **each** of the Prior Project Descriptions FOR EACH SERVICE AREA must be comparable to the services the City is requesting, described in RFQ Section 2, Scope of Work.
  - b. The services described in **at least one** of the Prior Project Descriptions FOR EACH SERVICE AREA must have been provided to public sector municipalities or similar government agency clients.
  - c. Successful completion within five (5) years from the issuance date of this RFQ (successful completion means project deliverables have been completed as required) of the services the City is requesting. Additionally, Respondents must demonstrate extent of experience in each of the service areas below:
    - i. **Service Area 1: BROKER SERVICES** - A minimum ten (10) years of experience providing insurance brokerage services to the public sector, demonstrating expertise in identifying all risks and placing insurance unique to cities and counties.
    - ii. **Service Area 2: ENTERPRISE RISK MANAGEMENT (ERM)** - A minimum five (5) years of experience providing Enterprise Risk Management (ERM) consulting services to cities and counties, with a specific focus and expertise on ISO 31000 guidelines and framework.
    - iii. **Service Area 3: PROJECT COMPLETION ANALYSIS/CONSULTATION** - A minimum five (5) years of experience providing actuarial consulting services including but not limited to the projects and programs described.
    - iv. **Service Area 4: THIRD PARTY ADMINISTRATION** - A minimum five (5) years of experience providing Third Party Administration and/or Audit of self-insured claims for Property and Workers' Compensation.

- v. **Service Area 5: EXPOSURE AND, INSURANCE CERTIFICATE AND/OR INSURANCE POLICY MANAGEMENT SOFTWARE** - A minimum (5) years of experience providing SaaS Applications to public sector clientele, specifically providing insurance and risk management software solutions.
- vi. **Service Area 6: EXPOSURE AND INSURANCE CERTIFICATE AND/OR POLICY MANAGEMENT SOFTWARE AND CUSTOMER SUPPORT AND ONGOING INTERNAL CLIENT SERVICES** – A minimum (5) years of experience providing SaaS Applications to public sector clientele, specifically providing insurance and risk management software solutions and consulting services.
- vii. **Service Area 7: P3 PROJECT INSURANCE AND RISK MANAGEMENT ADVISORY SERVICES** - A minimum five (5) years of experience providing comprehensive P3 Project consulting including but not limited to the services described.

**A minimum score of 75 points is needed for a Firm to be considered prequalified for each individual service area.**

#### **5.4 Prequalification Process**

Respondents scoring 75 points and above for each Service Area may be added to the prequalified list and eligible for potential contract negotiations with the City on an as-needed basis in that Service Area. Due to the varied nature of the services to be performed, the City reserves the right to contract with any or all prequalified Respondents.

#### **Reference Checks**

Reference checks, including, but not limited to, prior clients as indicated in Attachment IV Prior Project Description(s), may be used to determine the applicability of Respondent experience to the services the City is requesting and the quality of services and staffing provided to prior clients, as well as adherence to schedules/budgets and Respondent's problem-solving, project management and communication abilities, as well as performance on deliverables and outcomes, and effectiveness in meeting or exceeding project objectives. If reference checks deem that information included in a Prior Project Description or elsewhere in the response is untruthful, then the City will reject the response.

### **Oral Interviews**

Interviews may be conducted following the Response Evaluation process at the City's sole discretion. Respondents (who scored 75 points or above) may be invited to Oral Interviews with an Evaluation Team. Oral Interviews, if pursued by the City, will consist of standard questions asked of selected Respondents, and specific questions regarding individual responses. If Interviews are conducted, they will be worth 100 points based on a set of criteria established following review of written responses. The 100 points possible awarded for interviews will be added to the 100 possible points awarded during the Service Area Response Evaluation process for a total of 200 points. **Respondents scoring 150 points and above of the total 200 points will be added to the prequalified list.** The City has sole and absolute discretion over whether interviews will be conducted or not to select Respondents for prequalification.

### **Release and Waiver Agreement**

To effectuate the candid completion of the reference check above, Respondent is required to sign the RFQ Attachment I, Section 14, Release of Liability.

## **5.5 Selection from Prequalified Lists of Consultants**

After the pre-qualified list has been established, the City may issue Request(s) for Quotes or Request(s) for Proposals, Oral Selection Interviews/Demonstrations, or conduct Reference Checks to the prequalified consultant list to better assess qualifications for a specific scope of service, which may include staffing, scheduling, deliverable, and cost considerations. The City may instead, at its discretion, select the highest available ranked Respondent based on the ranking of responses to the RFQ. The City reserves the right to request proposals, quotes, oral interviews/demonstrations, and conduct reference checks from vendors in one Service Area or multiple Service Areas simultaneously.

For resulting contracts that are equal to or less than the City's Minimum Competitive Amount, the City may select Contractors from the prequalified list in its sole and absolute discretion instead of issuing further solicitations. The City's Minimum Competitive Amount is \$200,000, effective July 1, 2022.

Award of contracts will be made in a manner consistent with San Francisco Administrative Code Chapter 21 Section 21.4(d).

## **5.6 Other Terms and Conditions**

The selection of any prequalified Respondent for contract negotiations shall not imply acceptance by the City of all terms of the response, which may be subject to further negotiation and approvals before the City may be legally bound thereby.

If a satisfactory contract cannot be negotiated in a reasonable time with any prequalified Respondent, then the City, in its sole discretion, may terminate negotiations and begin contract negotiations with any other remaining prequalified Respondents, consistent with San Francisco Administrative Code Section 21.4.

The City, in its sole discretion, has the right to approve or disapprove any staff person assigned to a Firm's projects before and throughout the contract term. The City reserves the right at any time to approve, disapprove or modify proposed project plans, timelines and deliverables. Such approvals will not be unreasonably withheld.

## **6. Protest Procedures**

### **6.1 Protest of RFQ Terms**

Failure of a Respondent to comply with the protest procedures set forth in this section will render a protest invalid and non-responsive, and will result in rejection of the protest.

Should a prospective Respondent object on any ground to any provision or legal requirement set forth in the RFQ (including all Appendices and all Addenda), including but not limited to Protests based on allegations that: (i) the RFQ is unlawful in whole or in part, (ii) one or more of the requirements of the RFQ is onerous, unfair, or unclear; (iii) the structure of the RFQ does not provide a correct or optimal process for the solicitation of the Services; (iv) the RFQ contains one or more ambiguity, conflict, discrepancy or other error; or (v) the RFQ unnecessarily precludes alternative solutions to the Services or project at issue, the prospective Respondent must provide timely written notice of Protest as set forth below.

No later than 5:00 p.m. P.S.T. on the third (3<sup>rd</sup>) working day of the issuance of the RFQ, a Respondent must submit written notice of any Protest of the RFQ terms via e-mail to both [kelly.hernandez@sfgov.org](mailto:kelly.hernandez@sfgov.org) and [maria-zenaida.camua@sfgov.org](mailto:maria-zenaida.camua@sfgov.org) as directed by Section 6.4. Protests or notices of Protests delivered orally (e.g., by telephone) will not be considered.

The written notice of Protest must state the basis for the Protest, refer to the specific requirement or portion of the RFQ at issue, and shall describe the modification to the RFQ sought by the prospective Respondent. The Protest shall also include the name, address, telephone number, and email address of the person representing the prospective Respondent.

If necessary, the City at its sole and absolute discretion may extend the response submittal deadline to allow sufficient time to review and investigate the Protest, and issue Addenda to incorporate any necessary changes to the RFQ.

### **6.2 Protest of Non-Responsiveness Determination**

By 5:00 p.m. PST on the fifth (5<sup>th</sup>) working day of the City's issuance of the subject notice of non-responsiveness, any Respondent that has submitted a response and believes that the City has incorrectly determined that its response is non-responsive, may submit a written notice of protest by e-mail (fax is not acceptable) as directed in Section 6.4. Such notice of protest must be received by the City on or before 5 p.m. PST of the fifth (5<sup>th</sup>) working day following the City's issuance of the notice of non-responsiveness.

The notice of protest must include a written statement specifying in detail each and every reason asserted for the protest. The protest must be signed by an individual authorized to represent the Respondent, and must cite the law, rule, local ordinance, procedure or RFQ

provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

### **6.3 Protest of Establishment of Prequalified Consultant List**

By 5:00 p.m. PST on the fifth (5<sup>th</sup>) working day of the City's issuance of a Notice of Intent to Establish a Prequalified Consultant List, any consultant Firm that has submitted a responsive response and believes that the City has incorrectly excluded it from the prequalified list, or incorrectly selected another Respondent for prequalification, may submit a written notice of protest as directed in Section 6.4. Such notice of protest must be received by the City on or before 5 p.m. PST of the fifth (5<sup>th</sup>) working day after the City's issuance of the Notice of Intent to Establish a Prequalified Consultant List. In the case of submission of a proposal after establishment of the prequalified list, the deadline for protest for exclusion of the list shall be by 5pm PST of the fifth (5<sup>th</sup>) working day after the City's issuance of the updated Prequalified Consultant List.

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

### **6.4 Delivery of Protests**

All protests must be received by the specified dates and time deadlines specified in Section 6.1, 6.2 and 6.3. Protests or notice of protests made orally (e.g., by telephone) or by fax will not be considered.

Protests must be delivered via:

E-mail: both [kelly.hernandez@sfgov.org](mailto:kelly.hernandez@sfgov.org) and [maria-zenaida.camua@sfgov.org](mailto:maria-zenaida.camua@sfgov.org)

### **6.5 Protest Review**

The City Administrator's Office will confirm receipt of notice of protest by Respondent which must be submitted in accordance to Section 6.1, 6.2, 6.3, and 6.4.

If a Respondent submits a valid, complete, and timely protest, the City Administrator's Office will review notice of protest soon after receipt of the protest to determine adequacy of notice, including, but not limited to: (1) receipt by due date; (2) inclusion of a written statement specifying in detail each and every one of the grounds asserted for the protest; (3) signed by an individual authorized to represent the Respondent; (4) citation of the law, rule, local ordinance, procedure or RFQ provision on which the protest is based; and (5) specification of facts and evidence sufficient for the City to determine the validity of the protest.

A Respondent may not rely on a Protest submitted by another Respondent, but must timely pursue its own Protest.

The City, at its discretion, may make a determination regarding a protest without requesting further documents or information from the Respondent who submitted the protest. Accordingly, the initial protest must include all grounds of protest and all supporting documentation or evidence reasonably available to the prospective Respondent at the time the protest is submitted. If the Respondent later raises new grounds or evidence that were not included in the initial protest, but which could have been raised at that time, then the City may not consider such new grounds or new evidence.

If the notice of protest is determined to be valid, the City Administrator's Office shall review facts and evidence to determine the outcome of the protest, citing any applicable laws, rules, ordinances, procedures, and/or provisions. The review shall be an informal process conducted by the City Administrator's Office or its designee and will be based upon the information submitted by the Respondent in its protest letter. The City Administrator's Office may seek input from the City Attorney's Office, Office of Contract Administration, Contract Monitoring Division, and/or other City departments as needed or appropriate. The City Administrator's Office will notify the Respondent in writing of its decision at the conclusion of the review. The City Administrator's Office or their designee shall make the final determination regarding the outcome of the protest. The decision of the City Administrator's Office is final.

## **7. Vendor Compliance**

Respondent Team must fulfill the City's administrative requirements for doing business with the City and become a compliant vendor prior to contract award. Fulfillment is defined as completion, submission and approval by applicable City agencies of the forms and requirements referenced in RFQ Attachment II.

# ATTACHMENT I: ACKNOWLEDGEMENT OF RFQ TERMS AND CONDITIONS

## HOW TO RESPOND TO THIS ATTACHMENT

By submitting a Response, the Respondent, on behalf of itself and its Partners/Subcontractors acknowledges and agrees that:

1. **RESPONDENT AUTHORIZATION:** The signatories are authorized by the Respondent to make representations for the Respondent and to obligate the Respondent to perform the commitments contained in its Response.
2. **RESPONDENT SELECTION:** Based on Responses received to this Request for Qualifications ("RFQ"), it is the intent of the Risk Management Division to create a pre-qualified pool from which to select a Respondent(s) for contract negotiations. This RFQ does not in any way limit the City's right to solicit contracts for similar or identical services if, in the City's sole and absolute discretion, it determines Responses received are inadequate to satisfy its needs.
3. **CONTRACT NEGOTIATIONS:** The City may use the pre-qualified list, at its sole and absolute discretion, for selection of firms and negotiations of contracts for up to two years following establishment of the list, or up to four years if it reissues the RFQ with the same evaluation panel to reopen the list. Contracts issued to pre-qualified firms will have terms of varying lengths depending on the City's needs, but in no case longer than nine years including extensions that may be exercised at the sole discretion of the City. If a satisfactory contract cannot be negotiated in a reasonable time or for a reasonable price with the selected Respondent, then the Risk Management Division, in its sole discretion, may terminate negotiations and begin contract negotiations with another Respondent consistent with Administrative Code section 21.4. The selection of any Respondent for contract negotiations shall not imply acceptance by the City of all terms of the Response, which may be subject to further negotiation and approvals before the City may be legally bound thereby.
4. **NO GUARANTEE OF WORK OR COMPENSATION:** There is no guarantee of a minimal amount of work or compensation for any of the Respondents selected for contract negotiations.
5. **COMPLIANCE WITH LAWS AND REGULATIONS:** Respondent must comply with all applicable State, Federal, and local laws. In the event any governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship or performance of the items offered on this Response prior to their delivery, it shall be the responsibility of the successful Respondent to notify the City at once, indicating in their letter the specific regulation which required such alterations. The City reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
6. **STAFFING:** The key individuals listed and identified in the Response will be performing the work and will not be substituted with other personnel or reassigned to another project by the Respondent/Contractor without the City's prior approval or request. The City, in its sole discretion, shall have the right to review and approve all staff assigned to provide services throughout the duration of the contracts negotiated under this RFQ. Such approval by the City will not be unreasonably withheld. If selected for interviews, the Respondent's key individuals, including partner/subcontractor representatives, will be required to meet with the City prior to selection for contract negotiations.
7. **LEAD ROLE:** The selected Respondent(s) will be expected to take the lead role in project management and staff/subcontractor coordination. Responses should factor this assumption into pricing.
8. There is no LBE subcontracting requirement for the total value of goods and services provided under this RFQ and resulting contracts. LBEs are strongly encouraged to submit responses. See RFQ Attachment for more information.

## ATTACHMENT I: ACKNOWLEDGEMENT OF RFQ TERMS AND CONDITIONS

9. CITY'S APPROVAL RIGHTS OVER SUBCONTRACTORS AND SUBCONTRACTOR PAYMENTS: The City has approval rights over the use of all subcontractors. Respondents must identify all subcontractors in their Response and these subcontractors must conform to all City policies regarding subcontractors. Furthermore, each Respondent understands, acknowledges, and agrees that if it subcontracts with a third party for services, the Respondent accepts responsibility for full and prompt payment to the third party. Any dispute between the Respondent and the third party, including any payment dispute, will be promptly remedied by the Respondent. Failure to promptly remedy or to make prompt payment to a third party (subcontractor) may result in the withholding of funds from the Respondent by the City.

10. CITY RESOURCES: The City will arrange for Contractor's access to equipment and data as deemed appropriate by the City.

11. ADMINISTRATIVE REQUIREMENTS: see *RFQ Attachment II*. Respondent must fulfill the City's administrative requirements for doing business with the City prior to contract award. Fulfillment is defined as completion, submission and approval by applicable City agencies of the forms and requirements referenced in RFQ Attachment III.

12. THE CITY'S TERMS AND CONDITIONS: see *RFQ Attachment III*. Respondent is willing and able to meet all of the City's terms and conditions as stated in the City's standard professional services agreement ("Agreement") template. Respondents wishing to negotiate modification of other terms and conditions must attach a copy of the City's Agreement referring to the specific portion of the Agreement to be changed, and show proposed changes (deleted sections with a strike over and added sections in boldface type). The City's selection of any Respondent who proposes changes to the City's Agreement terms shall not be deemed as acceptance of the Respondent's proposed changes.

13. TERM OF COST AND WORK EFFORT ESTIMATE: Submission of a Response signifies that the proposed services and prices are valid for the full possible term of the contract awarded under this RFQ and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

The City may award contract(s) based on Responses received without discussion. A Respondent's initial cost and work effort estimate should, therefore, be based on the most favorable terms available. The City reserves the right to accept other than the lowest price offer and reject all Responses that are not responsive to this RFQ.

14. RELEASE OF LIABILITY: The Respondent hereby releases all individuals, entities and firms from all claims and losses that may arise from said individuals, entities or firms providing information, comments, or conclusions to inquiries that the City and County of San Francisco may make regarding the qualifications of any individual or firm seeking to be selected as a contractor or subcontractor in connection with this RFQ. This release is freely given and will be applicable whether or not the responses by said individuals, entities or firms are accurate or not, or made willfully or negligently.

15. FINANCIAL RESPONSIBILITY FOR RESPONSE COSTS: The City accepts no financial responsibility for any costs incurred by a firm in responding to this RFQ. Responses (and related materials), once submitted, become the property of the City and may be used by the City in any way deemed appropriate, and will be returned only at the City's option and at the expense of the Respondent submitting the response. One electronic copy of a submitted response will be retained for official files and become public record.

**Any material that a Respondent considers as confidential but does not meet the disclosure exemption requirements of applicable public disclosure laws, including but not limited to the San Francisco Sunshine Ordinance and the California Public Records Act, should not be included in the Respondent's response, as it may be made available to the public.**



## **ATTACHMENT I: ACKNOWLEDGEMENT OF RFQ TERMS AND CONDITIONS**

16. **CONTRACT TIMELINE:** Actual contract periods may vary, depending upon service and project needs. Any Respondent selected for a contract must be available to commence work no later than the estimated start date stated in the RFQ. It will be the responsibility of any Respondent selected for contract negotiations to disclose, before negotiations commence, any limitations that may impact its ability to complete work in accordance with anticipated deliverables and timelines.

17. **OBJECTIONS TO RFQ TERMS OR RFQ ADDENDA:** Should a Respondent object on any ground to any provision or legal requirement set forth in this RFQ, the Respondent must, not more than three (3) business days after the RFQ is issued, provide written notice to the Controller's Office setting forth with specificity the grounds for the objection. The City may modify the RFQ document through RFQ addenda. If any Respondent wishes to object on any ground to any provision set forth in an addendum, it must notify the City no later than three (3) business days following the posting of the addendum. The failure of a Respondent to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

18. **EXCEPTIONS TO THIS RFQ:** All information requested in this RFQ must be supplied. Respondents may clearly identify any exceptions to the RFQ in this section and must provide a written explanation to include the scope of the exceptions, the ramifications of the exceptions for the City, and the description of the advantages or disadvantages to the City as a result of exceptions. The City, in its sole discretion, may reject any exceptions or specifications within the Response. Respondents may also provide supplemental information, if necessary, to assist the City in analyzing Responses.

19. **ERRORS AND OMISSIONS IN RFQ:** Respondents are responsible for reviewing all portions of this RFQ. Respondents are to promptly notify the Controller's Office, in writing, if the Respondent discovers any ambiguity, discrepancy, omission or other error in the RFQ. Any such notification should be directed to the Controller's Office promptly after discovery, but in no event later than three (3) business days following the RFQ issuance or RFQ addendum. Modifications and clarifications will be made by addenda as provided below.

20. **INQUIRIES AND COMMUNICATIONS REGARDING RFQ:** Inquiries regarding the RFQ and all communications including notifications related to, exceptions or objections to, or of an intent to request written modification or clarification of, the RFQ must be directed by e-mail (mail and fax are not acceptable) to:

Email to both : [Kelly.hernandez@sfgov.org](mailto:Kelly.hernandez@sfgov.org) and [maria-zenaida.camua@sfgov.org](mailto:maria-zenaida.camua@sfgov.org)

21. **CHANGE NOTICES:** The Risk Management Division may modify the RFQ, prior to the Response due date, by issuing written addenda. The Risk Management Division will make reasonable efforts to post notification of modifications in a timely manner. Notwithstanding this provision, the Respondent shall be responsible for ensuring that its Response reflects any and all addenda issued by the Risk Management Division prior to the Response due date regardless of when the Response is submitted. Therefore, the City recommends that the Respondent contact the Risk Management Division via the two email addresses shown above or check the Controller's Office website before submitting its Response to determine if the Respondent is aware of all addenda.

22. **REVISION OF RESPONSE:** Respondent may revise a Response on the Respondent's own initiative at any time before the deadline for Responses. The Respondent must submit the revised Response in the same manner as the original. A revised Response must be received on or before the Response due date. In no case will a statement of intent to submit a revised Response, or commencement of a revision process, extend the Response due date for any Respondent. At any time during the Response Evaluation process, the Risk Management Division may require a Respondent to provide oral or written clarification of its Response. The City reserves the right to create the RFQ pool without further clarification of Responses received.

23. **CONFLICTS OF INTEREST:** The successful Respondent will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest,

## ATTACHMENT I: ACKNOWLEDGEMENT OF RFQ TERMS AND CONDITIONS

including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful Respondent will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful Respondent might be deemed contractors under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten (10) calendar days of the City notifying the successful Respondent that the City has selected the Respondent.

RESPONDENTS are strongly advised to consult with their legal counsel regarding their eligibility to submit a RESPONSE for this RFQ or subsequent RFQs/RFPs.

24. RESPONDENT'S OBLIGATIONS UNDER THE CAMPAIGN REFORM ORDINANCE:  
Respondents must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

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

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

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate.

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

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

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

## **ATTACHMENT I: ACKNOWLEDGEMENT OF RFQ TERMS AND CONDITIONS**

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

25. **SUNSHINE ORDINANCE:** In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request. Respondent understands that any writing presented under this RFQ may be subject to public disclosure.

26. **PUBLIC ACCESS TO MEETINGS AND RECORDS:** If a Respondent is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the Respondent must comply with Chapter 12L. The Respondent must include in its Response (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Respondent's meetings and records, and (2) a summary of all complaints concerning the Respondent's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the Respondents shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Respondent's Chapter 12L submission shall be grounds for rejection of the Response and/or termination of any subsequent Agreement reached on the basis of the Response.

27. **RESERVATIONS OF RIGHTS BY THE CITY:** The issuance of this RFQ does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves, without limitation, the right at any time to:

- A. Waive or correct any defect or informality in any Response, response, or response procedure;
- B. Reject any or all Responses;
- C. Reissue a Request for Qualifications or Request for Responses;
- D. Prior to submission deadline for Responses, modify all or any portion of the selection procedures, including deadlines for accepting Responses, the specifications or requirements for any materials, equipment or services to be provided under this RFQ, or the requirements for contents or format of the Responses;
- E. Procure any materials, equipment or services specified in this RFQ by any other means; or

# ATTACHMENT I: ACKNOWLEDGEMENT OF RFQ TERMS AND CONDITIONS

F. Determine that no contract will be pursued.

28. **NO WAIVER:** No waiver by the City of any provision of this RFQ shall be implied from any failure by the City to recognize or take action on account of any failure by a Respondent to observe any provision of this RFQ. Failure by the Department to object to an error, omission or deviation in the Response in no way will modify the RFQ or excuse the Respondent from full compliance with the specifications of the RFQ or any contract awarded pursuant to the RFQ.

29. **CERTIFICATION:** Each Respondent hereby certifies that it has carefully examined this RFQ and documents attached hereto for terms, conditions, specifications, covenants, requirements, services, etc.; and the Respondent certifies that it understands the services requested, that the Respondent has knowledge and expertise to provide the proposed services submitted for consideration, and that its Response is based upon the terms, conditions, specifications, services, and requirements of this RFQ and attachments. By its signature on this Attachment, the Respondent certifies that its Response is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a Response for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud, so that all Responses for the purchase will result from free, open and competitive proposing among all vendors, in compliance with the City's laws.

30. **ACCEPTANCE:** Submission of a Response indicates a Respondent's acceptance of the terms and conditions contained in this RFQ unless clearly and specifically noted otherwise in the Response. The City may discontinue its selection, contract negotiations, or contract award processes with any Respondent if it is determined that the Respondent has not accepted the RFQ terms and conditions contained herein.

31. **CONTRACT REQUIREMENTS:**

**A. Standard Contract Provisions**

The successful respondent will be required to enter into a contract substantially in the form of the Agreement for Professional Services. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsement, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

Respondent are urged to pay special attention to the requirements of Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits, (§10.5 in the Agreement); the Minimum Compensation Ordinance (§10.7 in the Agreement); the Health Care Accountability Ordinance (§10.8 in the Agreement); the First Source Hiring Program (§10.9 in the Agreement); and applicable conflict of interest laws (§10.2 in the Agreement), as set forth in paragraphs B, C, D, E and F below.

**B. Nondiscrimination in Contracts and Benefits**

The successful respondent will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the CMD's website at [www.sfCMD.org](http://www.sfCMD.org).

**C. Minimum Compensation Ordinance (MCO)**

The successful respondent will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements. For the contractual requirements of the MCO, see §47.

## **ATTACHMENT I: ACKNOWLEDGEMENT OF RFQ TERMS AND CONDITIONS**

For the amount of hourly gross compensation currently required under the MCO, see [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract.

Additional information regarding the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco).

### **D. Health Care Accountability Ordinance (HCAO)**

The successful respondent will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at [www.sfgov.org/olse/hcao](http://www.sfgov.org/olse/hcao).

### **E. First Source Hiring Program (FSHP)**

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry-level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at <http://www.workforcedevelopmentsf.org/> and from the First Source Hiring Administrator, (415) 401-4960.

### **F. Conflicts of Interest**

The successful respondent will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful respondent will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful respondent might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful respondent that the City has selected the respondent.

## ATTACHMENT I: ACKNOWLEDGEMENT OF RFQ TERMS AND CONDITIONS

**Each Respondent, as part of its Response, must submit this document signed by a representative(s) authorized by the Respondent to make representations for the Respondent and to obligate the Respondent to perform the commitments contained in its Response.**

Acknowledged and Agreed:

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Signature

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Printed Name

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Title

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Firm Name

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City, State

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Phone Number

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E-mail

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Date

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Signature

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Printed Name

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Title

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Firm Name

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City, State

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Phone Number

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E-mail

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Date

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Signature

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Printed Name

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Title

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Firm Name

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City, State

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Phone Number

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E-mail

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Date

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Signature

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Printed Name

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Title

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Firm Name

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City, State

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Phone Number

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E-mail

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Date

## **ATTACHMENT II: CITY'S ADMINISTRATIVE REQUIREMENTS (LINKS TO FORMS)**

### **HOW TO RESPOND TO THIS ATTACHMENT**

**Please complete and submit Page 3 of this Attachment as part of your Response.**

#### **NEW TO CITY BUSINESS?**

If your firm has never done business with the City before, please review, complete and submit the forms referenced and linked here as soon as possible and in advance of your response submission to the appropriate City Department identified below.

Completion and submission of the vendor requirements outlined in Attachment II as soon as possible and in advance of your Response to the Contact listed below is recommended but not required to prevent delays to the overall program timeline. The City cannot do business with any vendor that by contract award, fails to meet all requirements. Even if your firm is selected for contract negotiations and completes the scope of work portion of negotiations, the City cannot execute a contract and begin work if there are outstanding compliance requirements such as the City's Equal Benefits ordinance, the City's business tax requirements or the City's insurance requirements. We attempt to prevent those types of delays by providing as much advance notice of vendor requirements as possible.

#### **NOT YOUR FIRST TIME DOING BUSINESS WITH THE CITY?**

Even if your firm has done business with the City before, please review vendor compliance status at <https://sfcitypartner.sfgov.org/>.

### **CONTACT**

Contact [CentralContracts@sfgov.org](mailto:CentralContracts@sfgov.org) for information and assistance.

### **GENERAL INFORMATION**

Respondent Team must fulfill the City's administrative requirements for doing business with the City and become a compliant vendor prior to contract award.

- Fulfillment of the City's administrative requirements is defined as completion, submission and approval by applicable City agencies (Contract Monitoring Division, Treasurer/Tax Collector, Office of Contract Administration, Risk Management, etc.) of these forms.
- If you wish to complete and submit the vendor requirements outlined in Attachment III in advance of your Response, please send all of these forms directly to the Contact below. The Contact will inform your firm if it needs to complete documentation requirements directly with an agency.
- The City can only do business with Respondents that have fulfilled the City's requirements.
- The City highly recommends that Respondents at the time of Response submission fulfill the administrative requirements for doing business with the City.

## ATTACHMENT II: CITY'S ADMINISTRATIVE REQUIREMENTS (LINKS TO FORMS)

### How to become Eligible to Do Business with the City:

Before the City can award any award any contract to a contractor, all vendors must meet the minimum requirements described below. There may be additional requirements placed upon a vendor depending on the type of good or service to be purchased.

City's Requirements: <http://sfgov.org/oca/qualify-do-business>

### Mandatory Forms:

At a minimum, in order to become eligible to do business with the City, a vendor must submit the following documents to the Vendor Support Division via the City's supplier portal located at <https://sfcitypartner.sfgov.org/>:

1. [Vendor Application Packet](#) (includes *New Vendor Number Request Form* and *IRS Form W-9*)
2. [CCSF Vendor - Business Registration \(Electronic Submission - you must have a vendor number to complete\)](#)
3. [CMD 12B-101 Declaration](#) of Nondiscrimination in Contracts and Benefits

### Vendor Eligibility and Invoice Payment:

Vendors must have a City-issued vendor number, have all compliance paperwork submitted and approved by the City, and have an executed contract or purchase order before payments can be made. Once a vendor number has been assigned, an email notification will be provided by the City's Vendor File Support Division. This notification will include instructions on how to sign up to receive payments through the City's supplier portal located at <https://sfcitypartner.sfgov.org/>.

To provide a superior and user friendly Automated Clearing House (ACH) experience, the City is partnering with Paymode-X, a nationally recognized and widely used ACH provider. Visit [http://www.paymode.com/city\\_countyofsanfrancisco](http://www.paymode.com/city_countyofsanfrancisco) to enroll.





## ATTACHMENT II: CITY'S ADMINISTRATIVE REQUIREMENTS (LINKS TO FORMS)

### Supplemental Forms:

**Additional Forms and Requirements after Contract Award. Not required at time of submission.**

<u>Form name and Internet Location</u>	<u>Form</u>	<u>Description</u>	<u>Routing* &amp; For more info</u>  *Completed through San Francisco's On-Line Financial & Procurement System.
Minimum Compensation Ordinance Declaration  <a href="http://sfgov.org/olse/sites/default/files/Document/MCO_Declaration_6_16.pdf">http://sfgov.org/olse/sites/default/files/Document/MCO_Declaration_6_16.pdf</a>  <a href="http://www.sfgov.org/olse/mco">www.sfgov.org/olse/mco</a>	MCO Declaration  <b>Required If:</b> You have at least \$25,000 (\$50,000 for non-profit organizations) in cumulative annual business with a City department or departments and have more than 5 employees, including employees of any parent, subsidiaries and subcontractors.	Established Minimum Compensation Ordinance requirements. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain Minimum Qualifications.	<a href="https://sfcitypartner.sfgov.org/">https://sfcitypartner.sfgov.org/</a>  For more info, contact Office of Labor Standards Enforcement  <a href="mailto:mco@sfgov.org">mco@sfgov.org</a>
Health Care Accountability Ordinance Declaration  <a href="http://sfgov.org/olse/sites/default/files/Document/HCAO_Declaration_6_16_0.pdf">http://sfgov.org/olse/sites/default/files/Document/HCAO_Declaration_6_16_0.pdf</a>  <a href="http://sfgov.org/olse/health-care-accountability-ordinance-hcao">http://sfgov.org/olse/health-care-accountability-ordinance-hcao</a>	HCAO Declaration  <b>Required If:</b> You have at least \$25,000 (\$50,000 for non-profit organizations) in cumulative annual business with a City department or departments and have more than 20 employees (more than 50 employees for nonprofit organizations), including employees of any parent, subsidiaries or subcontractors.	Establishes Health Care Accountability Ordinance requirements.	<a href="https://sfcitypartner.sfgov.org/">https://sfcitypartner.sfgov.org/</a>  For more info, contact Office of Labor Standards Enforcement  <a href="mailto:hcao@sfgov.org">hcao@sfgov.org</a>

## ATTACHMENT II: CITY'S ADMINISTRATIVE REQUIREMENTS (LINKS TO FORMS)

First Source Hiring Program (FSHP)  <a href="http://oewd.org/first-source">http://oewd.org/first-source</a>	First Source Hiring Form	If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply.	<a href="mailto:CentralContracts@sfgov.org">CentralContracts@sfgov.org</a>  For more info, contact First Source Hiring Administrator (415) 401-4960
Insurance  See Insurance sample document for more information <a href="http://mission.sfgov.org/DOCUMENT_CENTER_DOCUMENTS/DC2816.pdf">http://mission.sfgov.org/DOCUMENT_CENTER_DOCUMENTS/DC2816.pdf</a>		Please reference Article 5, Insurance of Attachment IV and consult with your broker on your ability to meet the requirements specified therein.	<a href="mailto:CentralContracts@sfgov.org">CentralContracts@sfgov.org</a>
Local Business Enterprise Program Application ( <a href="#">Contract Monitoring Division</a> )	Application	You desire to participate in the City's Local Business Enterprise Program which helps certain financially disadvantaged businesses increase their ability to compete effectively for City contracts	On-line application. Submit through <a href="#">Contract Monitoring Division</a>

For further guidance, refer to the City's supplier training videos that are located online at:  
<https://sfcitypartner.sfgov.org/>.

## ATTACHMENT III: CITY'S AGREEMENT TERMS AND CONDITIONS

Respondents, if selected for contract negotiations, will be required to enter into such contract(s) substantially in the form of the City and County of San Francisco Standard Professional Services Agreement (P-600) and Software as a Service Agreement (P-648), as attached. There is no need to sign the signature page of these Terms and Conditions as part of your response; the signature process will occur after contract negotiations have concluded.

### HOW TO RESPOND TO THIS ATTACHMENT

Please answer the following 2 questions and submit this page of this Attachment as part of your Response Submission.

**1. Respondent accepts the City's terms and conditions?**

Yes ☐ If Yes, please complete statement below.  
No ☐

"Firm, \_\_\_\_\_, accepts all of the City's terms and conditions."

**2. Respondent wishes to negotiate modification of other terms and conditions?**

Yes ☐ If Yes, attach modifications.  
No ☐

Respondents wishing to negotiate modification of other terms and conditions must attach a copy of the City's Agreement referring to the specific portion of the Agreement to be changed, and show proposed changes (deleted sections with a strikethrough and added sections in boldface type). The proposed changes need to be included in the "Original" of your response (your other response copies do not need to include this Attachment).

The City's selection of any Respondent who proposes changes to the City's Agreement terms shall not be deemed as acceptance of the Respondent's proposed changes.

Failure to timely execute the contract(s), or to furnish any and all certificates, bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

Respondents are urged to pay special attention to the requirements of applicable conflict of interest laws (§10.2 in the Agreement), Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits (§10.5 in the Agreement), the Minimum Compensation Ordinance (§10.7 in the Agreement), the Health Care Accountability Ordinance (§10.8 in the Agreement), the First Source Hiring Program (§10.9 in the Agreement), and Administrative Code Chapter 12T, Consideration of Criminal History in Hiring and Employment Decisions (§10.14 in the Agreement) as set forth herein.

**ATTACHMENT III: CITY'S AGREEMENT  
TERMS AND CONDITIONS**

**The following document contains sample contract templates to be used as an introduction to common terms found in the City of San Francisco Professional Services template. The actual contract between the City and Contractor will differ and be tailored to fit the circumstances.**

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

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

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

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

**Recitals**

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

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

WHEREAS, the Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement is [insert LBE subcontracting percentage number] % **OR delete preceding whereas clause and insert whereas clause below:**

WHEREAS, there is no Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement; and

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

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

WHEREAS, the City’s [name of Commission or Board of Supervisors] approved this Agreement by [insert resolution number] on [insert date of Commission or Board action];

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 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 [insert name of department].

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

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

1.5 "Contractor" or "Consultant" means [insert name and address of contractor].

1.6 "Deliverables" means Contractor's work product resulting from the Services provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.

1.7 "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.

1.8 "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.

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

1.10 "Services" means the work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

## **Article 2      Term of the Agreement**

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

2.2 The City has [number of options] options to renew the Agreement for a period of [one year or other time span] each. The City may extend this Agreement beyond the expiration

date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

### **Article 3 Financial Matters**

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

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

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

### **3.3 Compensation.**

**3.3.1 Payment.** 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 [insert title of department head], in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no ".00"]. The breakdown of charges associated with this Agreement appears in Appendix 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 [insert name of department] approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory



Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

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

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

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

(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](http://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.

**3.3.7 Grant Funded Contracts.**

(a) **Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City

upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other agreement between Contractor and City.

(b) **Grant Terms.** The funding for this Agreement is provided in full or in part by a Federal or State Grant to the City. As part of the terms of receiving the funds, the City is required to incorporate some of the terms into this Agreement. The incorporated terms may be found in Appendix [choose C/D/E etc.], "Grant Terms." To the extent that any Grant Term is inconsistent with any other provisions of this Agreement such that Contractor is unable to comply with both the Grant Term and the other provision(s), the Grant Term shall apply.

(c) Contractor shall insert each Grant Term into each lower tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor or service provider.

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

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

### **3.6 Payment of Prevailing Wages**

**3.6.1 Covered Services.** Services to be performed by Contractor under this Agreement may involve the performance of trade work covered by the provisions of Section 6.22(e) [Prevailing Wages] of the Administrative Code or Section 21C [Miscellaneous

Prevailing Wage Requirements] (collectively, "Covered Services"). The provisions of Section 6.22(e) and 21C of the Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

**3.6.2 Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Copies of the prevailing wage rates as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement ("OLSE") and on the Internet at <http://www.dir.ca.gov/DLSR/PWD> and <http://sfgov.org/olse/prevailing-wage>. Contractor agrees that it shall pay not less than the prevailing wage rates, as fixed and determined by the Board, to all workers employed by Contractor who perform Covered Services under this Agreement.

**3.6.3 Subcontract Requirements.** As required by Section 6.22(e)(5) of the Administrative Code, Contractor shall insert in every subcontract or other arrangement, which it may make for the performance of Covered Services under this Agreement, a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services under said subcontract or other arrangement not less than the highest general prevailing rate of wages as fixed and determined by the Board of Supervisors for such labor or services.

**3.6.4 Posted Notices.** As required by Section 1771.4 of the California Labor Code, Contractor shall post job site notices prescribed by the California Department of Industrial Relations ("DIR") at all job sites where services covered by Chapter 6.22 are to be performed.

**3.6.5 Payroll Records.** As required by Section 6.22(e)(6) of the Administrative Code and Section 1776 of the California Labor Code, Contractor shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services on the project, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall undertake the performance of any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives and the DIR.

**3.6.6 Certified Payrolls.** Certified payrolls shall be prepared pursuant to Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractors, who performed labor in connection with Covered Services. Contractor and each subcontractor performing Covered Services shall submit certified payrolls to the City and to the DIR electronically. Contractor shall submit payrolls to the City via the reporting system selected by the City. The DIR will specify how to submit certified payrolls to it. The City will provide basic training in the use of the reporting system at a scheduled training session. Contractor and all subcontractors that will

perform Covered Services must attend the training session. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

**3.6.7 Compliance Monitoring.** Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and /or the OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the Administrative Code. Steps and actions include but are not limited to requirements that: (i) the Contractor will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Public Works Contractor by the Charter and Chapter 6 of the San Francisco Administrative Code; ii) the Contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (iii) the contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iv) the Contractor shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (v) that the Labor Standards Enforcement Officer may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter on Public Works Contractors. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

**3.6.8 Remedies.** Should Contractor, or any subcontractor who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Contract, subcontract or other arrangement for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in Administrative Code Section 6.22 (e) and/or California Labor Code Section 1775. The City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

## **Article 4 Services and Resources**

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

**4.2 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 timely completion within the project schedule specified in this Agreement.

**4.3 Subcontracting.**

**4.3.1** 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.

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

**4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.**

**4.4.1 Independent Contractor.** For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy



and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.4.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and 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.

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

**4.6 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 as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

**4.7 Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to

determine. Contractor agrees that the sum of [insert whole dollar amount in words and numbers -- no pennies and no “.00”] per calendar day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between City and Contractor. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor’s failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

4.8 **Bonding Requirements.** The Contractor is required to furnish a performance bond on the form in a form acceptable to the City, in a sum of not less than [insert bonding level] of the annual amount of the contract to guarantee the faithful performance of this contract. The bond must be approved as to sufficiency and qualifications of the surety by the Controller.

## **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

“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; policy must include Abuse and Molestation coverage.”

(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 for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the 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 \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

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

5.1.4 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."

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

5.1.5 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.

5.1.6 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.

5.1.7 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.

5.1.8 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.

5.1.9 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.

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

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

## **Article 6 Liability of the Parties**

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION

PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

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

## **Article 7 Payment of Taxes**

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

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

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

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

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

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

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

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

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

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

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

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

- (a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered

payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

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

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

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

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

## **8.2 Termination for Default; Remedies.**

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

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

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws

Article 7	Payment of Taxes	Article 13	Data and Security
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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 is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

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

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

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

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:

3.3.2	Payment Limited to Satisfactory Services	9.1	Ownership of Results
3.3.7(a)	Grant Funded Contracts – Disallowance	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	Article 13	Data and Security

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 which, if this Agreement had been completed, would have been required to be furnished to City.

**Article 9 Rights In Deliverables**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**9.2 Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any



other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

## **Article 10 Additional Requirements Incorporated by Reference**

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

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

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

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

### **10.5 Nondiscrimination Requirements.**

**10.5.1 Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall

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

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

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

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

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

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



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

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) [or California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq., if state funds involved].

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**10.12 Slavery Era Disclosure.** Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor's affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company's Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

**10.13 Working with Minors.** In accordance with California Public Resources Code Section 5164, if Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach, Contractor shall not hire, and shall prevent its

subcontractors from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Contractor, or any subcontractor, is providing services to the City involving the supervision or discipline of minors or where Contractor, or any subcontractor, will be working with minors in an unaccompanied setting on more than an incidental or occasional basis, Contractor and any subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for such positions and/or prohibiting employment of certain persons including but not limited to California Penal Code Section 290.95. In the event of a conflict between this section and Section 10.14, “Consideration of Criminal History in Hiring and Employment Decisions,” of this Agreement, this section shall control.

#### **10.14 Consideration of Criminal History in Hiring and Employment Decisions.**

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

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

**10.15 Public Access to Nonprofit Records and Meetings.** If Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

**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 Distribution of Beverages and Water.**

10.17.1 **Sugar-Sweetened Beverage Prohibition.** Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

10.17.2 **Packaged Water Prohibition.** Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

10.18 **Tropical Hardwood and Virgin Redwood Ban.** 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.

10.18.1 Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

10.19 **Preservative Treated Wood Products.** Contractor shall comply with the provisions of San Francisco Environment Code Chapter 13, which requires that each Contractor purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

## **Article 11 General Provisions**

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

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

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

Any notice of default must be sent by registered mail. 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 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

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

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, “Notices to Parties,” regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. **[If the contract amount is \$50,000 or more then add the following sentence:]** Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

**11.6 Dispute Resolution Procedure.**

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

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

**11.6.3 Health and Human Service Contract Dispute Resolution Procedure.** The Parties shall resolve disputes that have not been resolved administratively by other departmental remedies in accordance with the Dispute Resolution Procedure set forth in Appendix **[C/D/E - insert the appendix letter]** incorporated herein by this reference.

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

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

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

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

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

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

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

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

## **Article 12 Department Specific Terms**

**12.1 Reserved.**

## **Article 13 Data and Security**



### 13.1 Nondisclosure of Private, Proprietary or Confidential Information.

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

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

13.2 **Payment Card Industry ("PCI") Requirements.** Contractors providing services and products that handle, transmit or store cardholder data, are subject to the following requirements:

13.2.1 Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Contractor whose application has achieved PA-DSS certification must then be listed on the PCI Councils list of PA-DSS approved and validated payment applications.

13.2.2 Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers (<https://www.pcisecuritystandards.org/index.shtml>). Compliance with the PCI DSS shall be achieved through a third party audit process. The Contractor shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

13.2.3 For any Contractor that processes PIN Debit Cards, payment card devices supplied by Contractor shall be validated against the PCI Council PIN Transaction Security (PTS) program.

13.2.4 For items 13.2.1 to 13.2.3 above, Contractor shall provide a letter from their qualified security assessor (QSA) affirming their compliance and current PCI or PTS compliance certificate.

13.2.5 Contractor shall be responsible for furnishing City with an updated PCI compliance certificate 30 calendar days prior to its expiration.

13.2.6 Bank Accounts. Collections that represent funds belonging to the City and County of San Francisco shall be deposited, without detour to a third party's bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

13.3 **Business Associate Agreement.** This Agreement may require the exchange of information covered by the U.S. Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). A Business Associate Agreement ("BAA") executed by the parties is attached as Appendix [Letter C/D/E etc.].

### **13.4 Management of City Data and Confidential Information**

**13.4.1 Access to City Data.** City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

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

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

### **Article 14 MacBride And Signature**

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

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

**CITY**

**CONTRACTOR**

Recommended by:

[company name]

---

[name]  
[title]  
[department]

---

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

Approved as to Form:

City Supplier Number: [Supplier Number]

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
[name of Deputy City Attorney]  
Deputy City Attorney

Approved:  
Alaric Degrafinried  
Director of the Office of Contract Administration,  
and Purchaser

By: \_\_\_\_\_  
[name of Purchaser or  
"Name: \_\_\_\_\_"]

**Appendices**

- A: Scope of Services
- B: Calculation of Charges
- C: Insurance Waiver [or other Appendix title]



## **Appendix A Scope of Services**

### **1. 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.

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

3. **Reports.** Contractor shall submit written reports as requested by the [insert name of department]. Format for the content of such reports shall be determined by the [insert name of department]. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

### **4. Department Liaison**

In performing the Services provided for in this Agreement, Contractor's liaison with the [insert name of department] will be [insert name of contact person in department].

**In drafting the Scope of Services, the following format may be helpful in drafting:**

A. Project Background

B. Project Definitions

C. Project Deliverables

The Contractor shall provide each of the following deliverables in writing to the City for review and approval to achieve the project objectives.

C.1. <Title>

Deliverable 1

C.2 <Title>

Deliverable 2

C.3. <Title>

Deliverable 3

C.4 <Title>

Deliverable 4

## Appendix B Calculation of Charges

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

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

<b>Deliverable</b>	<b>Target Completion Dates</b>	<b>Cost</b>
<b>&lt;Title&gt;</b>		
<u>Deliverable 1:</u>		
<b>&lt;Title&gt;</b>		
<u>Deliverable 2:</u>		
<b>&lt;Title&gt;</b>		
<u>Deliverable 3:</u>		
<b>Total Cost</b>		

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

SOFTWARE AS A SERVICE AGREEMENT  
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND

[Insert name of contractor]  
[Insert Agreement number (if applicable)]

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

**Recitals**

WHEREAS, the [name of department making purchase] (“Department”) wishes to procure [insert short description of the services City intends to buy] from Contractor; and

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

[Solicitation] WHEREAS, Contractor was competitively selected pursuant to Sourcing Event ID [Enter Number]; and

[No Solicitation] WHEREAS, Contractor was selected pursuant to San Francisco Administrative Code Section [Enter Admin Code Section]; and

[LBE requirements apply] WHEREAS, this is a contract for Services and there is a Local Business Entity (“LBE”) subcontracting participation requirement with respect to the Services, as defined further herein; and

[LBE requirements waived] WHEREAS, this is a contract for Services and the Local Business Entity (“LBE”) subcontracting participation requirement for the Services has been waived; and

[Micro LBE Set Aside] WHEREAS, this is a Micro LBE Set Aside Contract as defined by Chapter 14B of the San Francisco Administrative Code; and

[Exempt from 14B] WHEREAS, this Contract is deemed exempt from Chapter 14B of the San Francisco Administrative Code and there is no Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement; and

[CSC Approval by Duration] WHEREAS, approval for the Agreement was obtained on [insert date of Civil Service Commission action or DHR approval date if under \$100K] from the [Civil Service Commission or Department of Human Resources on behalf of the Civil Service Commission] under PSC number [insert PSC number] in the amount of [insert Dollar Amount] for the period of [insert number of years]; and

**[CSC Approval by Start and End Dates]** WHEREAS, approval for the Agreement was obtained on **[insert date of Civil Service Commission action or DHR approval date if under \$100K]** from the **[Civil Service Commission or Department of Human Resources on behalf of the Civil Service Commission]** under PSC number **[insert PSC number]** in the amount of **[insert Dollar Amount]** for the period commencing **[Insert Start Date]** and ending **[Insert End Date]**; and WHEREAS, the City's **[name of Commission or Board of Supervisors]** approved this Agreement by **[insert resolution number]** on **[insert date of Commission or Board action]**.

Now, THEREFORE, the parties agree as follows:

## **Article 1      Definitions**

The following definitions apply to this Agreement:

1.1      “Acceptance” means notice from the City to Contractor that the SaaS Application meets the specifications and requirements contained in the Documentation and Appendices. City's Acceptance shall be governed by the procedures set forth in Section 4.3.

1.2      “Acceptance Period” means the period allocated by City to test the SaaS Application to determine whether it conforms to the applicable specifications and, if appropriate, properly operates in the defined operating environment, is capable of running on a repetitive basis, and is otherwise in compliance with the service level obligations without failure.

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

1.4      “Authorized Users” means a person authorized by City to access the City's Portal and use the SaaS Application, including any City employee, contractor, or agent, or any other individual or entity authorized by City.

1.5      “Back-Up Environment” means Contractor's back-up Data Center for the SaaS Services.

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

1.7      “City Data” or “the City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement, including data resulting from use of the SaaS Service. City Data includes, without limitation, Confidential Information.

1.8      “City Portal” means an electronic gateway to a secure entry point via Contractor's Website that allows City and its Authorized Users to log in to an area where they can view and download information or request assistance regarding the SaaS Application and Services.

1.9 “City’s Project Manager” means the individual specified by the City pursuant to Section 4.2.1 hereof, as the Project Manager authorized to administer this Agreement on the City’s behalf.

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

1.11 “Confidential Information” means confidential City information including, but not limited to, Personally Identifiable Information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information. These laws include, but are not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act/California Consumer Privacy Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M). Confidential Information includes, without limitation, City Data.

1.12 “Contractor” means [\[insert name and address of contractor\]](#).

1.13 “Contractor Project Manager” means the individual specified by Contractor pursuant to Section 4.2.1 hereof, as the Project Manager authorized to administer this Agreement on Contractor’s behalf.

1.14 “Contractor’s Website” means the Website that provides Authorized User access to the SaaS Application Services.

1.15 “Data Breach” means any access, destruction, loss, theft, use, modification or disclosure of City Data by an unauthorized party or that is in violation of the Agreement terms and/or applicable local, state or federal law.

1.16 “Data Center(s)” means a physical location within the United States where Contractor (or its subcontractor) houses and operates the hardware (including computer servers, routers, and other related equipment) on which Contractor hosts on the Internet the SaaS Application and City Data pursuant to this Agreement.

1.17 “Deliverables” means Contractor’s work product resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “SaaS Implementation and Training Services,” attached as Appendix A.

1.18 “Deliverable Data” means Project Data that is identified in Appendix A, and required to be delivered to the City.

1.19 “Disabling Code” means computer instructions or programs, subroutines, code, instructions, data or functions (including but not limited to viruses, worms, date bombs or time

bombs), including but not limited to other programs, data storage, computer libraries and programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that alter, destroy, inhibit, damage, interrupt, interfere with or hinder the operation of the City's access to the SaaS Services through Contractor's Website and/or Authorized User's processing environment, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.

1.20 "Documentation" means technical publications provided by Contractor to City relating to use of the SaaS Application, such as reference, administrative, maintenance, and programmer manuals.

1.21 "End Users" means any Authorized User who accesses Contractor's Website and uses the SaaS Application and Services.

1.22 "Internet" means that certain global network of computers and devices commonly referred to as the "internet," including, without limitation, the World Wide Web.

1.23 "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, which impose specific duties and obligations upon Contractor.

1.24 "Open Source Software" means software with either freely obtainable source code, a license for modification, or permission for free distribution.

1.25 "Party" or "Parties" means, respectively, the City and Contractor either individually or collectively.

1.26 "Performance Credit" means credit due to City by Contractor with regard to Contractor's service level obligations in Appendix D (Service Level Obligations).

1.27 "Personally Identifiable Information (PII)" means any information about an individual, including information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that can reasonably be linked to an individual, such as medical, educational, financial, and employment information.

1.28 "Precedence" means that, notwithstanding the terms of any other document executed by the Parties as a part of this Agreement, the terms of this Agreement shall control over any discrepancy, inconsistency, gap, ambiguity, or conflicting terms set forth in any other Contractor pre-printed document.

1.29 "Project Data" means data that is first produced in the performance of this Agreement.

1.30 “SaaS Application/SaaS Software/Software” means the licensed and hosted computer program and associated documentation, as listed in this Agreement and Appendices, and any modification or Upgrades or modifications to the program(s), residing in Contractor’s servers that provides the SaaS Services that may be accessed by Authorized Users through the Internet. The SaaS Application may include Contractor provided Third-Party Software [include if Third-Party Software is being used. Otherwise, remove “and Contractor provided Third-Party Software.”]. All Software, revisions and versions provided by Contractor shall be subject to the terms and conditions of this Agreement, including any amendments thereto.

1.31 “SaaS Application Patch” means an update to the SaaS Application comprised of code inserted (or patched) into the code of the SaaS Application, and which may be installed as a temporary fix between full releases of a SaaS Application Revision or SaaS Application Version. Such a patch may address a variety of issues including without limitation fixing a Software bug, installing new drivers, addressing new security vulnerabilities, addressing software stability issues, and upgrading the Software. SaaS Application Patches are included in the annual payments made by City to Contractor for the SaaS Services under this Agreement.

1.32 “SaaS Implementation and Training Services” means the services by which Contractor will implement all necessary Software configurations and modules necessary to make the SaaS Application available and accessible to City.

1.33 “SaaS Issue” means a problem with the SaaS Services identified by the City that requires a response by Contractor to resolve.

1.34 “SaaS Maintenance Services” means the activities to investigate, resolve SaaS Application and Services issues and correct product bugs arising from the use of the SaaS Application and Services in a manner consistent with the published specifications and functional requirements defined during implementation.

1.35 “SaaS Services” means the Services performed by Contractor to host the SaaS Application to provide the functionality listed in the Documentation.

1.36 “SaaS Severity Level” means a designation of the effect of a SaaS Issue on the City. The severity of a SaaS Issue is initially defined by the City and confirmed by Contractor. Until the SaaS Issue has been resolved, the Severity Level may be raised or lowered based on Contractor’s analysis of impact to business.

1.37 “SaaS Software Error” means any failure of SaaS Software to conform in all material respects to the requirements of this Agreement or Contractor’s published specifications.

1.38 “SaaS Software Error Correction” means either a modification or addition that, when made or added to the SaaS Software, brings the SaaS Software into material conformity with the published specifications, or a procedure or routine that, when observed in the regular operation of the SaaS Software, avoids the practical adverse effect of such nonconformity.



1.39 “SaaS Software Revision” means an update to the current SaaS Software Version of the SaaS Software code that consists of minor enhancements to existing features and code corrections. SaaS Software Revisions are provided and included with the annual service payments made by City to Contractor for the SaaS Service.

1.40 “SaaS Software Version” means the base or core version of the SaaS Software that contains significant new features and significant fixes and is available to the City. SaaS Software Versions may occur as the SaaS Software architecture changes or as new technologies are developed. The nomenclature used for updates and upgrades consists of major, minor, build, and fix and these correspond to the following digit locations of a release, a,b,c,d, an example of which would be NCC 7.4.1.3, where the 7 refers to the major release, the 4 refers to the minor release, the 1 refers to the build, and the 4 refers to a fix. All SaaS Software Versions are provided and included as part of this Agreement upon request or approval from City for the upgrade.

1.41 “Scheduled SaaS Maintenance” means the time (in minutes) during the month, as measured by Contractor, in which access to the SaaS Services is scheduled to be unavailable for use by the City due to planned system maintenance and major version upgrades.

1.42 “Services” means the work performed by Contractor under this Agreement as specifically described in the “SaaS Implementation and Training Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.43 “Successor Service Provider” means a new service provider, if any, selected by City in the event the SaaS Services are terminated under this Agreement.

1.44 “Third-Party Software” **[Include this definition if Contractor is providing third-party software, otherwise delete this definition]** means the software described in Appendix B, “Third-Party Software-Included in this Agreement.”

1.45 “Transition Services” means that assistance reasonably requested by City to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider.

## **Article 2      Term of the Agreement**

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

2.2 **Options to Renew.** The City has **[number of options]** options to renew the Agreement for a period of **[one year or other time span]** each. The City may extend this Agreement beyond the expiration date by exercising an option at the City’s sole and absolute

discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

### **Article 3 Financial Matters**

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

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

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

#### **3.3 Compensation.**

**3.3.1 Calculation of Charges.** Contractor shall provide an invoice to the City on a monthly basis for goods delivered and/or Services completed in the immediate preceding month, unless a different schedule is set out in Appendix C, “Calculation of Charges.” Compensation shall be made for goods and/or Services identified in the invoice that the City, in his or her sole discretion, concludes has been satisfactorily performed. 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 C, “Calculation of Charges.” A portion of payment may be withheld until conclusion of the Agreement if agreed to by both Parties as retainage, described in Appendix C. In no event

shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

(a) **SaaS Implementation and Training Services:** The breakdown of costs associated with the SaaS Implementation and Training Services appear in Appendix C (“Calculation of Charges”). Compensation for services rendered pursuant to Appendix A shall be made in monthly payments on or before the 30<sup>th</sup> day of each month for work that City, in its reasonable discretion, concludes has been performed as of the 1<sup>st</sup> day of the immediately preceding month. In no event shall the amount for SaaS Implementation and Training Services under this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no “.00”].

(b) **SaaS Application and Hosted Services:** The breakdown of costs associated with the SaaS Application and Hosted Services appear in Appendix C (“Calculation of Charges”). Compensation for services rendered pursuant to Appendix B shall be made in quarterly payments, based on a calendar year, on or before the 1<sup>st</sup> day of each quarter. In no event shall the amount for SaaS Application and Hosted Services under this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no “.00”]. If there is an increase in annual SaaS Application and Hosted Services charges, Contractor shall give City written notice of such increase at least thirty (30) days prior to the expiration of the applicable SaaS Application and Hosted Services period. Annual SaaS Application and Hosted Services charges shall not increase more than 3% of the rate of the year immediately prior to such increase.

### 3.3.2 **Payment Limited to Satisfactory Services and Delivery of Goods.**

Contractor is not entitled to any payments from City until City approves the goods and/or Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory delivery of goods and/or Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. Goods and/or Services delivered pursuant to this Agreement that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

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

3.3.4 **Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of goods delivered or Services performed, sales/use tax (if

applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

**3.3.5 LBE Payment and Utilization Tracking System.** If LBE Subcontracting Participation Requirements apply to a Contract awarded pursuant to this Solicitation, the Awarded Contractor shall: (a) Within three (3) business days of City's payment of any invoice to Contractor, pay LBE subcontractors as provided under Chapter 14B.7(H)(9); and (b) Within ten (10) business days of City's payment of any invoice to Contractor, confirm its payment to subcontractors using the City's Supplier Portal Payment Module, unless instructed otherwise by CMD. Failure to submit all required payment information to the City's Supplier Portal Payment Module with each payment request may result in the withholding of 20% of subsequent payments due. Self-Service Training is located at this link:  
<https://sfcitypartnersfgov.org/pages/training.aspx>.

**3.3.6 Getting paid by the City for Goods and/or Services.**

(a) The City and County of San Francisco utilizes the Paymode-X<sup>®</sup> service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [http://portal.paymode.com/city\\_countyofsanfrancisco](http://portal.paymode.com/city_countyofsanfrancisco).

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system (PeopleSoft) via eSettlement. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through [sfemployeeportalsupport@sfgov.org](mailto:sfemployeeportalsupport@sfgov.org).

**3.3.7 Grant Funded Contracts.**

(a) **Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other agreement between Contractor and City.

(b) **Grant Terms.** The funding for this Agreement is provided in full or in part by a Federal or State Grant to the City. As part of the terms of receiving the funds, the City is required to incorporate some of the terms into this Agreement. The incorporated terms may be found in Appendix [choose E/F/G etc.], "Grant Terms." To the extent that any Grant Term is inconsistent with any other provisions of this Agreement such that Contractor is unable to comply with both the Grant Term and the other provision(s), the Grant Term shall apply.

(c) Contractor shall insert each Grant Term into each lower tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor or service provider.

### 3.3.8 Payment Terms.

(a) **Payment Due Date:** Unless City notifies the Contractor that a dispute exists, Payment shall be made within [Enter number of days, generally ≥ 30] calendar days, measured from (1) the delivery of goods and/or the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor.

(b) **Payment Discount Terms:** The Payment Discount Terms for this Agreement are as follows: [ ] %/[ ] Days, Net [ ]. The Payment Discount period begins upon date of completion of delivery of the goods and/or services on a Purchase Order for which payment is sought, or upon date of receipt of properly prepared invoices covering such items, whichever is later. Payment is deemed to be made, for the purpose of earning the discount, on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor.

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

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false

record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

### 3.6 **Reserved. (Payment of Prevailing Wages)**

## **Article 4 SaaS Services and Resources**

4.1 **SaaS Licensed Software.** Subject to the terms and conditions of this Agreement, Contractor hereby grants City and Authorized Users a renewable, irrevocable, non-exclusive, royalty-free, and worldwide license to access, display, and execute the SaaS Application and SaaS Services during the Term of this Agreement and any renewals thereof, if any.

4.1.1 **Click-Wrap Disclaimer.** No “click to accept” agreement that may be required for the City and/or Authorized Users’ access to the SaaS Services or Contractor’s Website and no “terms of use” or “privacy policy” referenced therein or conditioned for use of the SaaS Services or Contractor’s Website shall apply. Only the provisions of this Agreement as amended from time to time shall apply to City and/or Authorized Users for access thereto and use thereof. The Parties acknowledge that City and/or each Authorized User may be required to click “Accept” as a condition of access to the SaaS Services through Contractor’s Website, but the provisions of such “click to accept” agreement and other terms (including Terms of Use and Privacy Policy) referenced therein shall be null and void for City and/or each such Authorized User. The foregoing does not apply to the City’s own click-wrap agreements in the event the City chooses to have Contractor include terms of use, terms of service, privacy policies, or similar requirements drafted and approved by the City.

4.1.2 **SaaS Application Title.** City acknowledges that title to each SaaS Application and SaaS Services shall at all times remain with Contractor, and that City has no rights in the SaaS Application or SaaS Services except those expressly granted by this Agreement.

4.1.3 **Authorized APIs.** City shall be permitted to access and use Contractor’s SaaS Application Program Interfaces (APIs) when commercially available to develop and modify, as necessary, macros and user interfaces for use with any existing or future City systems and infrastructure. For purposes of this Agreement, such development shall be deemed an authorized modification but will not be supported by Contractor unless provided for in this Agreement. Functionality and compatibility of City developed macros will be sole responsibility of City. Any such macros or user interfaces developed by City shall become the property of City. All flat-file exchanges will be over an encrypted file transport service (ftps/vsftpd/scp/sftp) to a secure private ftp site.



4.1.4 **Proprietary Markings.** City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the SaaS Application or any related materials or Documentation.

#### 4.2 **Project Managers; Services Contractor Agrees to Perform.**

4.2.1 **Project Managers.** Contractor and City shall each designate a Project Manager, who shall be accessible by telephone throughout the duration of the Agreement and shall be available 9 a.m. to 5 p.m. (Pacific Standard Time), Monday through Friday, excluding City-designated holidays. These hours may be adjusted by mutual agreement of City and Contractor. Contractor shall use its best efforts to maintain the same Project Manager throughout the duration of the Agreement. However, if Contractor needs to replace its Project Manager, Contractor shall provide City with written notice thereof at least forty-five (45) days prior to the date the Project Manager shall be replaced. Notwithstanding the foregoing, Contractor will have the right to appoint temporary Project Managers in connection with short term unavailability, sick leave or reasonable vacations. Contractor shall notify City in advance of any such temporary appointments. City may require Contractor to replace its Project Manager, by giving Contractor notification thereof and City's objective reasons therefor.

**Contractor's Project Manager:** [Name]  
[Address]  
[e-mail]  
[phone number]

**City's Project Manager:** [Name]  
[Address]  
[e-mail]  
[phone number]

4.2.2 **Services Contractor Agrees to Perform.** During the Term of this Agreement, Contractor will perform all of the services set forth in Appendix A (SaaS Implementation and Training Services), Appendix B (SaaS Application and Hosted Services), and the following: **[edit this section to reflect the services Contractor agrees to perform.]**

(a) **Maintenance and Support.** Contractor shall provide Maintenance/Support in accordance with Appendix B (SaaS Application & Hosting Services). Maintenance and Support Services include the provision of upgrades and a service desk, during the term of this Agreement for the SaaS Application(s).

(b) **Hosting.** Contractor shall provide hosting in accordance with Appendix B, including the following:

(i) **Hosting Infrastructure.** Contractor shall provide all hosting infrastructure, including, but not limited to, hardware, software and other equipment, at Contractor's hosting site as required to provide hosting and deliver the SaaS Application and Services.

(ii) **Security.** Contractor shall ensure that all electronic transmission or exchange of City Data will be encrypted using current industry standards. Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes stated in the Agreement. City Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Contractor not involved in administration of this Agreement, unless otherwise permitted in this Agreement. Remote access to view City data by Contractor for development and technical support purposes from outside the United States is allowed as long as City Data remains hosted solely on systems residing in the continental United States.

(iii) **Access.** Contractor shall provide Authorized Users 24/7 access to the SaaS Application(s).

(iv) **Disaster Recovery and Business Continuity.** Contractor shall provide Disaster Recovery Services and assist with Business Continuity as described in Section 14.4 and Appendix E.

(c) **Service Level Obligations.** Contractor shall comply with the support (24/7 service desk) and Service Level Obligations described in Appendix D.

#### 4.3 **Acceptance Testing; Document Delivery; Training.**

4.3.1 After City has obtained access to the SaaS Application and Services, and subsequent to each SaaS Software version upgrade, revision and patch as further outlined in Appendix B, City and Contractor shall conduct user acceptance testing as outlined in Appendices A and B, as the case may be, to verify that the SaaS Application and Services substantially conform to the specifications and City's requirements contained therein. In the event that the City determines that the SaaS Services do not meet such specifications, the City shall notify Contractor in writing, and Contractor shall modify or correct the SaaS Services so that it satisfies the Acceptance criteria. The date of Acceptance will be that date upon which City provides Contractor with written notice of satisfactory completion of Acceptance testing. If City notifies Contractor after the Acceptance Testing Period that the SaaS Services do not meet the Acceptance criteria outlined in Appendices A and B, as the case may be, then City shall be entitled to terminate this Agreement in accordance with the procedures specified in Article 8 herein, and shall be entitled to a full refund of any fees paid as part of this Agreement prior to termination.

4.3.2 **Document Delivery.** Contractor will deliver completed Documentation in electronic format for the SaaS Application and Services at the time it gives City access to the SaaS Application and Services. The Documentation will accurately and completely describe the functions and features of the SaaS Application and Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the SaaS Application and Services. City shall have the



right to make any number of additional copies of the Documentation at no additional charge. The City may withhold its issuance of the notice of final Acceptance until City receives the completed Documentation.

#### 4.4 **Personnel**

4.4.1 **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 timely completion within the project schedule specified in this Agreement.

#### 4.4.2 **Contractor Vaccination Policy.**

(a) Contractor acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency ("Emergency Declaration"), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator ("Contractor Vaccination Policy"), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>.

(b) A Contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. Contract does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.

(c) In accordance with the Contractor Vaccination Policy, Contractor agrees that:

(i) Where applicable, Contractor shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are either fully vaccinated for COVID-19 or obtain from Contractor an exemption based on medical or religious grounds; and

(ii) If Contractor grants Covered Employees an exemption based on medical or religious grounds, Contractor will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form ("Exemptions Form"), which can

be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form)..

#### **4.5 Subcontracting**

4.5.1 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” and Article 13 “Data and Security” 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.

4.5.2 City’s execution of this Agreement constitutes its approval of the subcontractors listed below.

#### **4.6 Independent Contractor; Payment of Employment Taxes and Other Expenses.**

4.6.1 **Independent Contractor.** For the purposes of this Section 4.6, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor,

is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.6.2 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.

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

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

4.9 **Bonding Requirements.** Contractor is required to furnish a performance bond on the form in a form acceptable to the City, in a sum of not less than **[insert bonding level]** of the annual amount of the contract to guarantee the faithful performance of this contract. The bond must be approved as to sufficiency and qualifications of the surety by the Controller.

## **Article 5 Insurance; Indemnity and Warranties**

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

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

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

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

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

**NOTE: Limits of insurance may be increased according to the Scope of Work, risk, and amount of contract.**

(e) Technology Errors and Omissions Liability coverage, with limits of **\$1,000,000** for each claim and each loss. The policy shall at a minimum cover professional

misconduct or lack of the requisite skill required for the performance of services defined in the Agreement and shall also provide coverage for the following risks:

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

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

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

(g) Reserved. (Pollution Liability Insurance)

#### **5.1.2 Additional Insured Endorsements**

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

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

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

#### **5.1.3 Waiver of Subrogation Endorsements**

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

#### **5.1.4 Primary Insurance Endorsements**

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

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the

Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

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

#### 5.1.5 Other Insurance Requirements

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

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

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

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

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

(f) 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 Contractor as additional insureds.

## 5.2 Indemnification

**5.2.1 General Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses,



or claims for injury or damages (collectively, “Claims”), arising from or in any way connected with Contractor’s performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor’s execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either’s agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City’s costs of investigating any claims against the City. In addition to Contractor’s obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

**5.2.2 Infringement Indemnification.** If notified promptly in writing of any judicial action brought against City based on an allegation that City’s use of the SaaS Application and Services infringes a patent, copyright, or any right of a third-party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise, only if Contractor accepts the defense and hold harmless requirements without reservation, and provided, however, that Contractor shall not agree to any injunctive relief or settlement that obligates the City to perform any obligation, make an admission of guilt, fault or culpability or incur any expense, without City’s prior written consent, which shall not be unreasonably withheld or delayed. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City’s use of the SaaS Application and/or Services constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement, only if Contractor accepts the defense and hold harmless requirements without reservation, and provided, however, that Contractor shall not agree to any injunctive relief or settlement that obligates the City to perform any obligation, make an admission of guilt, fault or culpability or incur any expense, without City’s prior written consent, which shall not be unreasonably withheld or delayed. In the event a final injunction is obtained

against City's use of the SaaS Application and Services by reason of Infringement, or in Contractor's opinion City's use of the SaaS Application and Services is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the SaaS Application and Services as contemplated hereunder, (b) replace the SaaS Application and Services with a non-infringing, functionally equivalent substitute SaaS Application and Services, or (c) suitably modify the SaaS Application and Services to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the SaaS Application and Services. If none of these options is reasonably available to Contractor, then Agreement may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Agreement for the license of such infringing SaaS Application and/or Services. Any unauthorized modification or attempted modification of the SaaS Application and Services by City or any failure by City to implement any improvements or updates to the SaaS Application and Services, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or combination of the SaaS Application and Services with products or data of the type for which the SaaS Application and Services was neither designed nor intended to be used, unless City has obtained prior written authorization from Contractor permitting such use.

### **5.3 Warranties of Contractor.**

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

**5.3.2 Warranty of Performance.** Contractor warrants that when fully implemented, the SaaS Application to be configured and provided under this Agreement shall perform in accordance with the specifications applicable thereto. With respect to all Services to be performed by Contractor under this Agreement, including SaaS Implementation and Training Services outlined in Appendix A, and SaaS Application and Hosted Services outlined in Appendix B, Contractor warrants that it will use reasonable care and skill. All services shall be performed in a professional, competent and timely manner by Contractor personnel appropriately qualified and trained to perform such services. In the event of a breach of the foregoing warranty relating to any service under this Agreement within twelve (12) months from the date of provision such services, Contractor shall, at its sole cost and expense, re-perform such services.

**5.3.3 Compliance with Description of Services.** Contractor represents and warrants that the SaaS Application and Services specified in this Agreement and all updates and improvements to the SaaS Application and Services will comply in all material respects with the specifications and representations specified in the Documentation (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards,



functions and requirements) as set forth (i) herein or in any amendment hereto, and (ii) the updates thereto.

**5.3.4 Title.** Contractor represents and warrants to City that it is the lawful owner or license holder of all Software, materials and property identified by Contractor as Contractor-owned and used by it in the performance of the SaaS Services contemplated hereunder and has the right to permit City access to or use of the SaaS Application and Services and each component thereof. To the extent that Contractor has used Open Source Software (“OSS”) in the development of the SaaS Application and Services, Contractor represents and warrants that it is in compliance with any applicable OSS license(s) and is not infringing.

**5.3.5 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.

**5.3.6 Warranty of Suitability for Intended Purpose.** Contractor warrants that the SaaS Application and Services will be suitable for the intended purpose of this Agreement.

## **Article 6 Liability of the Parties**

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

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

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

## **Article 7 Payment of Taxes**

**7.1 Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest

taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

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

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

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

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

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

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

## **Article 8 Termination; Disposition of Content; Survival**

**8.1 Termination for Cause and/or Convenience.** City shall have the right, without further obligation or liability to Contractor:

8.1.1 To immediately terminate this Agreement if Contractor commits any breach of this Agreement or default (see Section 8.2 below) and fails to remedy such breach or default within ten (10) days after written notice by City of such breach (10-day cure period), in which event, Contractor shall refund to City all amounts paid under this Agreement for the SaaS Application and/or Services in the same manner as if City ceased to use the SaaS Application due to infringement under Section 5.2.2. At City's sole election, the 10-day cure period will *not* apply to termination for data breach and/or breach of confidentiality; or

8.1.2 To terminate this Agreement upon thirty (30) days prior written notice for City's convenience and without cause, provided that except for termination due to an uncured breach as set forth in this Section and in the event of Infringement, City shall not be entitled to a refund of any amounts previously paid under this Agreement.

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

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

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

8.2.2 Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten (10) days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

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

substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

8.2.4 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.

8.2.5 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.5 shall survive termination of this Agreement.

8.3 **Bankruptcy.** In the event that Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at City's option this Agreement shall terminate and be of no further force and effect. Upon termination of this Agreement pursuant to this Section, Contractor shall within forty-eight (48) hours return City's Data in an agreed-upon machine readable format. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within thirty (30) calendar days clear, purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five (5) calendar days that such clear, purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

8.4 **Transition Services and Disposition of City Data.** Upon expiration or termination of the SaaS Services under this Agreement: **[Consider whether five calendar days**

are sufficient for the transfer of data to City – consider the amount of data to be transferred.  
Please tweak as needed.]

8.4.1 Contractor may immediately discontinue the SaaS Services and City shall immediately cease accessing the SaaS Application and Services. Contractor shall within five (5) calendar days of the expiration or termination of the SaaS Services return City’s data in an agreed-upon machine readable format. This provision shall also apply to all City Data that is in the possession of subcontractors, agents or auditors of Contractor. Such data transfer shall be done at no cost to the City. Once Contractor has received written confirmation from City that City’s Data has been successfully transferred to City, Contractor shall within thirty (30) calendar days clear, purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five (5) calendar days that such clear or purge and/or physical destruction has occurred. Secure disposal shall be accomplished by “clearing,” “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

8.4.2 Contractor shall provide to City and/or Successor Service Provider assistance requested by City to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider. During the transition period, SaaS and City Data access shall continue to be made available to City without alteration. Such Transition Services shall be provided on a time and materials basis if the City opts to return to its own servers or City chooses a Successor Service Provider. Transition costs may include: (a) developing a plan for the orderly transition of the terminated SaaS Services from Contractor to Successor Service Provider; (b) if required, transferring the City Data to Successor Service Provider; (c) using commercially reasonable efforts to assist City in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Contractor in connection with the Services; (d) using commercially reasonable efforts to make available to City, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Contractor in connection with the SaaS Services; and, (e) such other activities upon which the Parties may agree. Notwithstanding the foregoing, should City terminate this Agreement due to Contractor’s material breach, City may elect to use the Services for a period of no greater than six (6) months from the date of termination at a reduced rate of twenty (20%) percent off of the then-current Services Fees for the terminated Services. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section 8.4.2 shall survive the termination of this Agreement.

8.5 **Remedies.** 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.

8.6 **Notice of Default.** Any notice of default must be sent by registered mail to the address set forth in Section 11.1, “Notices to the Parties.”

8.7 **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.

## 8.8 **Survival**

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

3.3.2	Payment Limited to Satisfactory Services	8.9	Data Rights
3.3.7(a)	Grant Funded Contracts - Disallowance	9.1	Ownership of Results
3.4	Audit and Inspection of Records	9.2	Works for Hire
3.5	Submitting False Claims	11.6	Dispute Resolution Procedure
4.6	Independent Contractor; Payment of Employment Taxes and Other Expenses	11.7	Agreement Made in California; Venue
Article 5	Insurance; Indemnity and Warranties	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.4	Transition Services and Disposition of Content	13.2.1	Proprietary or Confidential Information of City
8.7	Non-Waiver of Rights	13.2.5	Notification of Legal Requests

## 8.9 **Data Rights**

8.9.1 Preexisting Data of each Party that will be included as a Deliverable under this Agreement will be identified in Appendix A. Preexisting Data of the City may only be used by Contractor for purposes of the Scope of Work of this Agreement, unless such data is otherwise publicly available.

8.9.2 The City shall have the unrestricted right to use the Deliverable Data and delivered Project Data, including all Preexisting Data provided as a Deliverable under this Agreement.

## Article 9 **Rights In Deliverables**



**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**9.2 Works for Hire.** If, in connection with Services, Contractor or its subcontractor(s) creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

## **Article 10 Additional Requirements Incorporated by Reference**

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca/](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 that 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.*). Contractor further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

**10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate

in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

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

#### **10.5 Nondiscrimination Requirements**

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

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

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



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

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

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

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

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) [or California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq., if state funds involved].

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**10.12 Slavery Era Disclosure.** Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor’s affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company’s Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

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

**10.14 Consideration of Criminal History in Hiring and Employment Decisions**

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

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of

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

**10.15 Public Access to Nonprofit Records and Meetings.** If Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

**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 Distribution of Beverages and Water**

**10.17.1 Sugar-Sweetened Beverage Prohibition.** Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

**10.17.2 Packaged Water Prohibition.** Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

**10.18 Tropical Hardwood and Virgin Redwood Ban.** 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.

### **Article 11 General Provisions**

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

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

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

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

**[Version 1] Compliance with Americans with Disabilities Act.** Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement. Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. Sec. 1201 et seq.) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), Web Content Accessibility Guidelines (WCAG) 2.0 Levels A and AA; and WCAG 1.0 Level AA, to the extent these guidelines include additional requirements that are not included in and are not inconsistent with WCAG 2.0 Levels A and AA and WCAG 2.1, as updated from time to time.

**[Version 2] Compliance with Americans with Disabilities Act.**

11.1.1 Contractor shall ensure and warrants that all products and services consisting of or utilizing electronic, information or communication technology (EICT), including but not limited to software and web-based applications, meet the applicable requirements of each of the following statutes, regulations, standards, guidelines and policies (“Requirements”):

- (a) California Government Code (Cal. Gov. Code) Section 11135, which prohibits discrimination on the basis of physical or mental disability and other grounds;
- (b) Section 202 of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12132, et seq.), and the federal rules and regulations adopted in implementation thereof, which are incorporated in California law by Cal. Gov. Code Section 11135;
- (c) Cal. Gov. Code Section 7405, which:
  - (i) Incorporates in California law Section 508 of the Rehabilitation Act of 1973, as amended [29 United States Code (USC) Sec. 794d], and implementing regulations, as set forth in 36 Code of Federal Regulations (CFR) Part 1194, as in effect on March 19, 2017; and
  - (ii) Requires Contractors with state governmental entities subject to Cal. Gov. Code Section 11135 to respond to and resolve complaints regarding accessibility of its EICT products and related services;
- (d) To the extent any telecommunications products or services are provided under the contract, 47 USC Section 255 and related regulations, including:

(i) 47 CFR Parts 6, 7, 14 and (if real-time text functionality is provided) 67, and

(ii) 36 CFR Part 1193, to the extent it remains in effect;

(e) California Fair Employment and Housing Act (Cal. Gov. Code sections 12900-12951 & 12960-12976);

(f) Unruh Civil Rights Act (California Civil Code section 51);

(g) Disabled Persons Act (California Civil Code sections 54-54.1);

(h) Cal. Gov. Code sections 19230-19237;

(i) Web Content Accessibility Guidelines (WCAG) 2.0 Levels A and AA; and

(j) WCAG 1.0 Level AA, to the extent these guidelines include additional requirements that are not included in and are not inconsistent with WCAG 2.0 Levels A and AA and WCAG 2.1, as updated from time to time.

11.1.2 Contractor shall ensure that its products and services maintain or enhance, and do not diminish, the net accessibility, usability and compatibility of the City's existing environment and applications.

11.1.3 All documentation, user guides, training materials and services, and challenge response password and other identity-verification systems must meet the requirements. Contractor shall ensure that individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including information accessible features), and technical support which is provided to equivalently authorized individuals without disabilities.

11.1.4 All subsequent updates, upgrades, bug-fixes and patches provided pursuant to the contract shall meet the Requirements.

11.1.5 In accordance with Cal. Gov. Code section 7405(b), Contractor shall have an ongoing obligation to promptly respond to and resolve any complaint regarding accessibility of its EICT products and services that is brought to the attention of Contractor, to the satisfaction of the City.

11.1.6 A failure to meet any of the requirements may result in rejection of the product or services by the City, withholding of payment, a complaint filed with California Department of Fair Employment and Housing (DFEH), a civil action, or other remedies, including, but not limited to, those provided in Cal. Gov. Code sections 11136 – 11139 and 12930, and this Agreement.

11.1.7 In the event of a conflict between accessibility standards, the highest standard will apply.

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

**11.3 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §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 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 and approved in the same manner as this Agreement. [If the contract amount is \$50,000 or more then add the following sentence:] 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).

#### **11.5 Dispute Resolution Procedure**

**11.5.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of 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 Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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



### 11.5.3 **Health and Human Service Contract Dispute Resolution Procedure.**

The Parties shall resolve disputes that have not been resolved administratively by other departmental remedies in accordance with the Dispute Resolution Procedure set forth in Appendix [C/D/E - insert the appendix letter] incorporated herein by this reference.

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

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

**11.8 Entire Agreement.** This Agreement 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”).

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

**11.10 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (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.

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

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

attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

## **Article 12 Department Specific Terms**

### **12.1 Reserved.**

## **Article 13 Data and Security**

### **13.1 City Data**

**13.1.1 Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City. Contractor warrants that the SaaS Application does not maintain, store, or export the City Data using a database structure, data model, entity relationship diagram or equivalent.

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

**13.1.3 Access to and Extraction of City Data.** City shall have access to City Data 24-hours a day, 7 days a week. The SaaS Application shall be capable of creating a digital, reusable copy of the City Data, in whole and in parts, as a platform independent and machine-readable file. Such file formats include, without limitation, plain text files such as comma-delimited tables, extensible markup language, and javascript object notation. City Data that is stored in binary formats, including without limitation portable document format, JPEG, and portable network graphics files, shall instead be reproducible in the same format in which it was loaded into the SaaS Application. This reusable copy must be made available in a publicly



documented and non-proprietary format, with a clearly-defined data structure and a data dictionary for all terms of art contained in the data. For purposes of this section, non-proprietary formats include formats for which royalty-free codecs are available to End Users. Contractor warrants that City shall be able to extract City Data from the SaaS Application on demand, but no later than 24-hours of City's request, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees to Contractor).

**13.1.4 Backup and Recovery of City Data.** As a part of the SaaS Services, Contractor is responsible for maintaining a backup of City Data and for an orderly and timely recovery of such data in the event of data corruption or interruption of the SaaS Services. Unless otherwise described in Appendices A and/or B, Contractor shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Agreement and as outlined in Appendix D and maintaining the security of City Data as further described herein. Contractor's backup of City Data shall not be considered in calculating storage used by City.

**13.1.5 Data Breach; Loss of City Data.** In the event of any Data Breach, act, SaaS Software Error, omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of City Data, Contractor shall, as applicable:

(a) Notify City immediately following discovery, but no later than twenty-four (24) hours, of becoming aware of such occurrence or suspected occurrence. Contractor's report shall identify:

- (i) the nature of the unauthorized access, use or disclosure;
- (ii) the Confidential Information accessed, used or disclosed;
- (iii) the person(s) who accessed, used, disclosed and/or received protected information (if known);
- (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and
- (v) what corrective action Contractor has taken or will take to prevent future unauthorized access, use or disclosure.

(b) In the event of a suspected Breach, Contractor shall keep the City informed regularly of the progress of its investigation until the uncertainty is resolved;

(c) Contractor shall coordinate with the City in its breach response activities including without limitation:

- (i) Immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;

- (ii) Promptly (within 2 business days) designate a contact person to whom the City will direct inquiries, and who will communicate Contractor responses to City inquiries;
- (iii) As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities;
- (iv) Provide status reports to the City on Data Breach response activities, either on a daily basis or a frequency approved by the City;
- (v) Make all reasonable efforts to assist and cooperate with the City in its Breach response efforts;
- (vi) Ensure that knowledgeable Contractor staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and
- (vii) Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City.

(d) In the case of personally identifiable information (PII) or protected health information (PHI), at City's sole election, (a) notify the affected individuals as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (b) reimburse City for any costs in notifying the affected individuals;

(e) In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no fewer than twenty-four (24) months following the date of notification to such individuals;

(f) Perform or take any other actions required to comply with applicable law as a result of the occurrence;

(g) Recreate lost City Data in the manner and on the schedule set by City without charge to City; and

(h) Provide to City a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence.

(i) Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain (at the City's election) information that may include: name and contact information of Contractor's (or City's) representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting

agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor.

(j) Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

(k) City shall conduct all media communications related to such Data Breach, unless in its sole discretion, City directs Contractor to do so.

### **13.2 Proprietary or Confidential Information**

**13.2.1 Proprietary or Confidential Information of City.** Contractor understands and agrees that, in the performance of the work or services under this Agreement may involve access to City Data that is Confidential Information. Contractor and any subcontractors or agents shall use Confidential Information only in accordance with all applicable local, state and federal laws restricting the access, use and disclosure of Confidential Information and only as necessary in the performance of this Agreement. Contractor's failure to comply with any requirements of local, state or federal laws restricting access, use and disclosure of Confidential Information shall be deemed a material breach of this Agreement, for which City may terminate the Agreement. In addition to termination or any other remedies set forth in this Agreement or available in equity or law, the City may bring a false claim action against Contractor pursuant to Chapters 6 or 21 of the Administrative Code, or debar Contractor. Contractor agrees to include all of the terms and conditions regarding Confidential Information contained in this Agreement in all subcontractor or agency contracts providing services under this Agreement.

**13.2.2 Obligation of Confidentiality.** Subject to San Francisco Administrative Code Section 67.24(e), any state open records or freedom of information statutes, and any other applicable laws, Contractor agrees to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third-parties other than its employees, agents, or authorized subcontractors who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. Contractor agrees to advise and require its respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.

**13.2.3 Nondisclosure.** Contractor agrees and acknowledges that it shall have no proprietary interest in any proprietary or Confidential Information and will not disclose, communicate or publish the nature or content of such information to any person or entity, nor use, except in connection with the performance of its obligations under this Agreement or as otherwise authorized in writing by the disclosing Party, any of the Confidential Information it produces, receives, acquires or obtains from the disclosing Party. Contractor shall take all

necessary steps to ensure that the Confidential Information is securely maintained. Contractor's obligations set forth herein shall survive the termination or expiration of this Agreement. In the event Contractor becomes legally compelled to disclose any of the Confidential Information, it shall provide the City with prompt notice thereof and shall not divulge any information until the City has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by the disclosing Party are unsuccessful, or the disclosing Party otherwise waives its right to seek such remedies, the receiving Party shall disclose only that portion of the Confidential Information that it is legally required to disclose.

**13.2.4 Litigation Holds.** Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

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

**13.2.6 Cooperation to Prevent Disclosure of Confidential Information.** Contractor shall use its best efforts to assist the City in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, Contractor shall advise the City immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will cooperate with the City in seeking injunctive or other equitable relief against any such person.

**13.2.7 Remedies for Breach of Obligation of Confidentiality.** Contractor acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the City, which damage may be inadequately compensable in the form of monetary damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available, to include, at the sole election of City, the immediate termination of this Agreement, without liability to City.

**13.2.8 Surrender of Confidential Information upon Termination.** Upon termination of this Agreement, including but not limited to expiration of the term, early termination or termination for convenience, Contractor shall, within five (5) calendar days from

the date of termination, return to City any and all Confidential Information received from the City, or created or received by Contractor on behalf of the City, which are in Contractor's possession, custody, or control. The return of Confidential Information to City shall follow the timeframe and procedure described further in this Agreement (Article 8).

**13.2.9 Data Security.** To prevent unauthorized access of City Data,

(a) Contractor shall at all times during the Term provide and maintain up-to-date security with respect to (a) the Services, (b) Contractor's Website, (c) Contractor's physical facilities, (d) Contractor's infrastructure, and (e) Contractor's networks.

(b) Contractor shall provide security for its networks and all Internet connections consistent with industry best practices, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs.

(c) Contractor will maintain appropriate safeguards to restrict access to City's Data to those employees, agents or service providers of Contractor who need the information to carry out the purposes for which it was disclosed to Contractor.

(d) For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., most current industry standard encryption for transport and storage, such as the National Institute of Standards and Technology's Internal Report 7977 or Federal Information Processing Standards [FIPS] 140-2 [Security Requirements for Cryptographic Modules] or FIPS-197 or successors, intrusion prevention/detection or similar barriers) and secure authentication (e.g., password protected) access to the City's Confidential Information and hosted City Data.

(e) For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of City Data.

(f) City Data shall be encrypted at rest and in transit with controlled access.

(g) Contractor will establish and maintain any additional physical, electronic, administrative, technical and procedural controls and safeguards to protect City Data that are no less rigorous than accepted industry practices (including, as periodically amended or updated, the International Organization for Standardization's standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, NIST Special Publication 800-53 Revision 4 or its successor, NIST Special Publication 800-18 or its successor, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards or other applicable industry standards for information security), and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply

with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

(h) Contractor warrants to the City compliance, in performing its obligations hereunder, with the following (as periodically amended or updated) as applicable:

- (i) The California Information Practices Act/California Consumer Privacy Act (Civil Code §§ 1798 et seq);
- (ii) The European General Data Protection Regulation (“GDPR”);
- (iii) Relevant security provisions of the Internal Revenue Service (IRS) Publication 1075, including the requirements that Data not traverse networks located outside of the United States;
- (iv) Relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCI DSS) including the PCI DSS Cloud Computing Guidelines;
- (v) Relevant security provisions of the Social Security Administration (SSA) Document Electronic Information Exchange Security Requirement and Procedures for State and Local Agencies Exchanging Electronic Information with the Social Security Administration;
- (vi) Relevant security provisions of the Criminal Justice Services (CJIS) Security policy;
- (vii) Relevant security provisions of the Medi-Cal Privacy and Security Agreement between the California Department of Health Care Services and the County of San Francisco.

**13.2.10 Data Privacy and Information Security Program.** Without limiting Contractor’s obligation of confidentiality as further described herein, Contractor shall establish and maintain a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (i) ensure the security and confidentiality of the City Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the City Data; (iii) protect against unauthorized disclosure, access to, or use of the City Data; (iv) ensure the proper disposal of City Data; and, (v) ensure that all of Contractor’s employees, agents, and subcontractors, if any, comply with all of the foregoing.

**13.2.11 City’s Right to Termination for Deficiencies.** City reserves the right, at its sole election, to immediately terminate this Agreement, without limitation and without liability, if City reasonably determines that Contractor fails or has failed to meet its obligations under this Article 13.

**13.2.12 Data Transmission.** Contractor shall ensure that all electronic transmission or exchange of system and application data with City and/or any other parties expressly designated by City shall take place via encrypted secure means (e.g. HTTPS or SFTP or most current industry standard established by NIST). Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor shall ensure that no City Data of any kind shall be



copied, modified, destroyed, deleted, transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City. Contractor is prohibited from accessing City Data from outside the continental United States.

### **13.3 American Institute of Certified Public Accounts (AICPA) Audit Reports.**

13.3.1 Contractor shall provide to City, on an annual basis, an **SSAE 18, SOC 2, Type 2 Report, and an SSAE 18, SOC 1, Type 2 Audit Report**, to be conducted by an independent third party (“Audit Reports”) (if Contractor is using a hosting service provider, Contractor shall provide such Audit Reports it receives from its service provider or providers) as follows: (a) the Audit Reports shall include a 365 day (12-month) testing period; and (b) the Audit Reports shall be available to City no later than thirty (30) days after they are received by Contractor. If Contractor receives a so-called “negative assurance opinion,” or the annual Audit Report finds a material data privacy or information security issue, Contractor shall notify City of such opinion within three (3) days of receipt by Contractor. Contractor shall implement reasonably required safeguards as identified by any audit of Contractor’s data privacy and information security program or promptly notify City in writing if Contractor is unable to implement mitigation measures to address the issue(s). Upon any such notification, City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

13.3.2 **Audit of Contractor’s Policies.** Contractor agrees to make its policies, procedures and practices regarding Data Security available to City, if needed, and agrees that City reserves the rights, including, but not limited to, making a site visit, scanning for malicious codes, and hiring a third-party to perform a security audit if City determines that the Audit Report is unsatisfactory.

13.3.3 **Information Security Audits.** Contractor must contract with an independent third party to perform yearly information security audits of their primary and backup Data Centers. The annual audits must include an outside penetration/vulnerability test, and internal penetration and vulnerability tests with the third-party directly on the internal network. The summary results of the audits must be shared with the City. All audit findings must be remedied.

13.3.4 **Audit Findings.** Contractor shall implement reasonably required safeguards as identified by City or by any audit of Contractor’s data privacy and information security program.

13.4 **Payment Card Industry (“PCI”) Requirements.** Contractors providing services and products that handle, transmit or store cardholder data, are subject to the following requirements:



13.4.1 Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Contractor whose application has achieved PA-DSS certification must then be listed on the PCI Councils list of PA-DSS approved and validated payment applications.

13.4.2 Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers (<https://www.pcisecuritystandards.org/index.shtml>). Compliance with the PCI DSS shall be achieved through a third-party audit process. Contractor shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

13.4.3 For any Contractor that processes PIN Debit Cards, payment card devices supplied by Contractor shall be validated against the PCI Council PIN Transaction Security (PTS) program.

13.4.4 For items 13.4.1 to 13.4.3 above, Contractor shall provide a letter from their qualified security assessor (QSA) affirming their compliance and current PCI or PTS compliance certificate.

13.4.5 Contractor shall be responsible for furnishing City with an updated PCI compliance certificate 30 calendar days prior to its expiration.

13.4.6 **Bank Accounts.** Collections that represent funds belonging to the City and County of San Francisco shall be deposited, without detour to a third-party's bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

13.5 [The following section applies only to contracts with Protected Health Information. If your SaaS Services do not involve Protected Health Information, delete this section 13.5.] **Protected Health Information.** Contractor, all subcontractors, all agents and employees of Contractor, and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all 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 the 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 Agreement.

13.6 [The following section applies only to contracts with Protected Health Information. If your SaaS Services do not involve Protected Health Information, delete this section.] **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, use, disclosure, transmission, and storage of protected health information (PHI) and the Security Rule under the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"). Contractor shall comply with the Health Insurance Portability and Accountability Act (HIPAA) Business Associate Addendum ("Addendum") terms and conditions, attached and incorporated as though fully set forth herein as Appendix F. To the extent that the terms of the Agreement are inconsistent with the terms of this Addendum, the terms of the Addendum shall control.

## **Article 14 Force Majeure**

**14.1 Liability.** No Party shall be liable for delay in the performance of its obligations under this Agreement if and to the extent such delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, or any other cause beyond the reasonable control of such Party (a "Force Majeure Event"). In the case of a Force Majeure Event, Contractor shall immediately commence disaster recovery services as described in Section 14.4.

**14.2 Duration.** In a Force Majeure Event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by telephone (to be confirmed in writing within two (2) days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.

**14.3 Effect.** If a Force Majeure Event substantially prevents, hinders, or delays performance of the Services as critical for more than fifteen (15) consecutive days, then at City's option: (i) City may terminate any portion of this Agreement so affected and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; or (ii) City may terminate this Agreement without liability to City or Contractor as of a date specified by City in a written notice of termination to Contractor. Contractor shall not have the right to any additional payments from City for costs or expenses incurred by Contractor as a result of any force majeure condition that lasts longer than three (3) days.

**14.4 Disaster Recovery.** In the event of a disaster, as defined below, Contractor shall be provide disaster recovery services in accordance with the provisions of the disaster recovery plan attached as Appendix E hereto, or as otherwise set forth in this Agreement or any Statement of Work. Notwithstanding Section 14.1, a Force Majeure Event shall not excuse Contractor of its obligations for performing disaster recovery services as provided in this Section. In the event that a disaster occurs and Contractor fails to restore the hosting services within 24 hours of the initial disruption to Services, City may, in its discretion, deem such actions to be a material

default by Contractor incapable of cure, and City may immediately terminate this Agreement. For purposes of this Agreement, a “disaster” shall mean an interruption in the hosting services or the inability of Contractor to provide City with the SaaS Application and hosting services for any reason that could not be remedied by relocating the SaaS Application and hosting services to a different physical location outside the proximity of its primary Data Center.

## **Article 15      Appendices**

**15.1      Additional Appendices.** [Add additional appendices as needed.] The following appendices are hereby attached and incorporated into this Agreement as though fully set forth herein and together form the complete Agreement between the Parties:

### **Appendices:**

- A. SaaS Implementation and Training Services
- B. SaaS Application & Hosting Services
- C. Calculation of Charges
- D. Service Level Obligations
- E. Disaster Recovery Plan
- F. Business Associate Agreement [add if PHI is involved]
- G. Insurance Wavier [add if an Insurance Waiver has been granted by the Risk Manager]

## **Article 16      MacBride And Signature**

**16.1      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**

**CONTRACTOR**

Recommended by:

[company name]

\_\_\_\_\_  
[Department Head Name or Authorized Designee]  
[Title]  
[Department]

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

City Supplier Number: [Supplier Number]

Approved as to Form:

David Chiu  
City Attorney

By: \_\_\_\_\_  
[name of Deputy City Attorney]  
Deputy City Attorney

Approved:

\_\_\_\_\_  
Sailaja Kurella  
Director of the Office of Contract Administration,  
and Purchaser

**Appendices:**

- A: SaaS Implementation and Training Services
- B: SaaS Application & Hosting Services
- C: Calculation of Charges
- D: Service Level Obligations
- E: Disaster Recovery Plan

## **Appendix A**

### **SaaS Implementation and Training Services**

[Include the description of “Deliverable Data” in this Appendix.]

## **Appendix B**

### **SaaS Application & Hosting Services**

- I. Description of the SaaS Application and Hosted Services**
- II. SaaS Data Centers**
- III. SaaS Maintenance Services**
- IV. City Responsibilities**
- V. Technical Support & Training**

**I. Description of the SaaS Application and Hosted Services:** “SaaS Application and Hosted Services” include the following services [describe the SaaS Application and/or provide functional, performance, etc. references]:

**A. Software:** Use of Contractor’s Software operating on hosted equipment located at Contractor’s facility and/or any Data Center as further outlined under Section II (SaaS Data Centers) of this Appendix B. This includes:

- 1. ...
- 2. ....
- 3. ....

**B. Third-Party Software:**

1. Providing certain third-party software required to operate the SaaS Software, including ....., and other bundled third-party software packages required to support the operation of the SaaS Software.

2. Inclusion of regular Software and Contractor-supplied third-party software updates, patches and fixes as scheduled by Contractor.

**C. Remote Software:** Contractor shall provide access to and use of a remote software tool for City management of Authorized Users, access rights and other similar role-based controls as they pertain to the SaaS Services. Method will be published through Contractor portal and be made available to Authorized Users with elevated privileges.

1. **Back-Up of City’s Data:** Contractor shall provide up to thirty-six (36) months of on-line hourly data retention for SaaS Software operation and functionality.

2. Contractor shall provide incremental City Data backups at a minimum of every four (4) hours to an off-site location other than the primary hosting center.

3. Contractor shall provide weekly, off-site backups with a duration that matches the agreed-upon backup schedule and retention to a location other than the primary hosting center. Off-site backups to include previous eight (8) weeks.

**E. SaaS Environments:** The SaaS Application and Hosted Services shall be hosted in a certified and secure Tier-3 data hosting center.

1. A single Back-up Environment available as needed to serve as the backup or “failover” environment for the SaaS and Hosted Services

2. A single test environment available to the City and Contractor for the evaluation and eventual promotion of SaaS Software updates, patches, fixes or otherwise deemed tests. Test Environment shall perform at 50% or better of production environment.

**F. Reporting:** Contractor shall provide electronic notification within 2 hours of discovery and subsequent monthly reporting of any incidents or breaches that had occurred within the environment or to the hosted application. In the event of a breach, Contractor shall follow the procedures set forth in Section 13.1.5 of the Agreement.

**G. Availability of SaaS Services:** Contractor (or its Hosting Service contractor) shall host the **SaaS Services** on computers owned or controlled by Contractor (or its contractor) and shall provide the City with access to both a production environment with SaaS Application and data and a test environment with SaaS Application via Internet-access to use according to the terms herein.

**1. Hosted System Uptime:** Other than Scheduled SaaS Maintenance Services as outlined in Section III, emergency maintenance described below, Force Majeure as described in the Agreement and lack of Internet availability as described below, Contractor shall provide uptime to the SaaS Application and Hosted Service to achieve a 99.9% Service Level Availability.

## **2. Scheduled SaaS Maintenance**

i. Contractor shall conduct Scheduled SaaS Maintenance during the following hours: Saturdays between 12 AM (Pacific Time) and 8 AM (Pacific Time), with the same exclusions noted in subsection 1, above.

ii. Scheduled SaaS Maintenance shall not exceed an average of 4 hours per month over a twelve (12) month period except for major scheduled upgrades.



**3.       Unscheduled SaaS Maintenance.** Contractor shall use commercially reasonable efforts to prevent more than one (1) hour of continuous down time during business hours in any month for which unscheduled SaaS maintenance is required. If Contractor fails to meet this obligation for a period of three successive calendar months, Contractor shall furnish City with a Performance Credit in the amount of 10% of the Services Fees (as calculated on a monthly basis for the reporting month).

**4.       Emergency Maintenance.** If Force Majeure Events or emergencies arise or continue, Contractor shall be entitled to take any actions that Contractor, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the SaaS systems or the SaaS Software. Such emergency maintenance may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the SaaS Software by City is made available. Contractor shall endeavor to provide advance written notice of such emergency maintenance to City as soon as is reasonably possible.

**5.       Notice of Unavailability:** In the event there will be more than thirty (30) minutes down time of any SaaS or Hosted Service components for any reason, including but not limited to, Scheduled SaaS Maintenance or emergency maintenance, Contractor shall provide notice to users by posting a web page that indicates that the site is temporarily unavailable and to please come back later. Contractor shall also provide advanced e-mail notice to [XXXX@sfgov.org](mailto:XXXX@sfgov.org) which will include at least a brief description of the reason for the down time and an estimate of the time when City can expect the site to be up and available.

**H.     Changes in Functionality.** During the term of this Agreement, Contractor shall not reduce or eliminate functionality in SaaS Services. Where Contractor has reduced or eliminated functionality in SaaS Services, City, in its sole election, shall: (i) have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees; or, (ii) determine the value of the reduced or eliminated functionality and Contractor shall immediately adjust the Services fees accordingly on a prospective basis. Where Contractor increases functionality in the SaaS Services, such functionality shall be provided to City without any increase in the Services fees.

## **II.       SaaS Data Centers**

**A.     Control:** The method and means of providing the Services shall be under the exclusive control, management, and supervision of Contractor, giving due consideration to the requests of City. Contractor, or any previously approved subcontractor, shall provide the Services (including data storage) solely from within the continental United States and on computing and data storage devices residing in the United States.

## **B. Data Center Standards.**

Contractor's Data Centers shall have fully redundant and diverse network paths to City endpoints. Data Centers shall be located in geographically different seismic zones characterized by the lowest predicted chance of damage as defined by the US Geological Survey Earthquake Hazards Program.

Environmental systems must monitor/detect temperature, humidity, fluid leaks, fire/smoke/particulate and have accompanying suppression systems. Fire suppression systems should be dry pipe. Power should be fully conditioned to avoid spikes and other aberrations that can damage equipment. Temporary power units, such as generators, must be in place to support SaaS Services in the event of a power outage for up to three calendar days, and fuel replenishment contracts must be in place to keep temporary power operational for longer periods.

**C. Location:** The location of the approved Data Centers that will be used to host the SaaS Application are as follows:

**Primary Tier 3 data center:**

[name and address]\

**Back-up Tier 2 data center:**

[name and address]

**D. Replacement Hosted Provider:** In the event Contractor changes the foregoing Hosted Provider, Contractor shall provide City with prior written notice of said change and disclose the name and location of the replacement Hosted Provider. The replacement Hosted Provider shall be a reputable Hosted Provider comparable to Contractor's current Hosted Provider, and said replacement Hosted Provider shall be located within the United States. The replacement Hosted Provider shall perform a **SSAE 18, SOC 1 and/or SOC 2, Type 2 Report** Audit Report at least annually, in accordance with Section 13.3 of this Agreement.

**E. Notice of Change:** If the location of the Data Center used to host the SaaS Application is changed, Contractor shall provide City with written notice of said change at least sixty (60) days prior to any such change taking place. Contractor shall disclose the address of the new facility, which shall be within the United States. The Data Centers referenced above are subcontractors that must be approved by City.

**F. Subcontractors.** Contractor shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Agreement, without City's prior written consent and any attempt to do so shall be void and without further effect and shall be a material breach of this Agreement. Contractor's use of subcontractors shall not relieve Contractor of any of its duties or obligations under this Agreement.

## **III. SaaS Maintenance Services.**

**A.** The SaaS Software maintained under this Agreement shall be the SaaS Software set forth in [Appendix A](#) to this Agreement.

**B.** The following SaaS Maintenance Services are included as part of this Agreement:

**1. Contractor Software Version Upgrades, Software Revisions and Patches.** Contractor shall provide and implement all SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches to ensure: (a) that the functionality of the SaaS Software and Services, as described in the Documentation, is available to Authorized Users; (b) that the functionality of the SaaS Software and Services is in accordance with the representations and warranties set forth herein, including but not limited to, the SaaS Software and Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the Documentation; (c) that the Service Level Standards can be achieved; and (d) that the SaaS Software Services work with the non-hosted browser version.

- i. **Planning:** Contractor must assist the City with the planning and logistics of upgrades and updates.
- ii. **Technical Assistance.** Contractor must provide technical assistance regarding release notes, new functionality, and new application workflows.
- iii. **Deployment:** Deployment of these revisions will be mutually agreed upon between Contractor and City.
- iv. **Software Releases:** Release of Software revisions as defined will be conducted on a schedule as determined by Contractor. Contractor shall provide no less than a thirty (30) calendar day prior written notice of when any such revision is scheduled to be released. City will be granted a fifteen (15) calendar day evaluation window to review release documentation regarding software modules being impacted and general revision changes.
- v. **Testing.** After the evaluation period, Contractor shall conduct a deployment of the revision to the City test environment. The Software deployment will be scheduled in writing five (5) calendar days prior to actual deployment activities. As part of the upgrade activities within the Test Environment, Contractor may provide nominal testing to ensure all systems are functional and the revision deployment was successful. Post deployment activities include an e-mail or portal post to serve as written notification that

this service has been completed. City shall have forty-five (45) calendar day test window in which City has ability to test and raise issues with Contractor. Test environment deployment activities will be conducted during a mutually agreed-to time window and may not necessarily align with the production maintenance windows as described within this document.

- vi. **Severity 1 and Severity 2 Incident Correction:** If a SaaS Severity Level 1 or Severity Level 2 Issue is identified and appropriately triaged and classified by both Contractor and City during the test environment deployment test window, Contractor shall correct the SaaS Issue. The severity of a SaaS Issue will be initially defined by the City and confirmed by Contractor. Until the SaaS Issue has been resolved, the Severity Level may be raised or lowered based on Contractor's analysis of impact to business. If the SaaS Issue can be corrected and can be redeployed within the remainder of the deployment test window, City will have an additional five (5) testing days in which to evaluate and further test for the SaaS Issue resolution. If the SaaS Issue cannot be corrected within the remainder of the test window, Contractor will deploy immediately upon availability with as much notice as practicable. City will be allowed an additional five (5) testing days to evaluate the correction post the test window if desired.
- vii. **Testing Suspension:** If at any time during the testing window City identifies the presence of multiple SaaS Severity Level 1 or Severity Level 2 Issues that can be shown to materially impact City ability to continue testing, City may in writing elect to suspend testing until corrections for the SaaS Issues can be provided. Contractor will deploy corrections immediately upon availability with as much notice as practicable. Upon release of corrections, City will have five (5) calendar days to commence the testing within the then available remaining testing window.
- viii. **Software Promotion:** Contractor will promote revision from Test Environment to Production and Back-up environments after the provided test window has elapsed. The Software promotion will be scheduled in writing five (5) calendar days prior to actual deployment activities. As part of the promotion activities within the Production and Back-up environment, Contractor may provide nominal testing to ensure all systems are functional and the

revision promotion was successful. Post promotion activities include an e-mail or portal post to serve as written notification that this service has been completed. At the point of e-mail or portal posting, the new revision will be considered “in production” and supported under the maintenance service terms described here within.

- ix. **Documentation.** In support of such SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software patches, Contractor shall provide updated user technical documentation reflecting the SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software patches as soon as reasonably practical after the SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches have been released. Updated user technical documentation that corrects SaaS Software Errors or other minor discrepancies will be provided to Contractor’s customers when available.
- x. **Training.** Contractor must provide standard training using Contractor’s upgrade tools and provide ongoing knowledge transfer to the City.

**2. Third-Party Software Revisions [use this paragraph as appropriate if Contractor is providing 3rd party software].** At its election, Contractor will provide periodic software revisions of Third-Party Software with the SaaS Software without further charge provided the following conditions are met: (i) the Third-Party Software revision corrects a malfunction or significant publicly disclosed security threat in the Third-Party Software that affects the operation or ability to provide secure use of the SaaS Software; and (ii) the Third-Party Software Revision has, in the opinion of Contractor, corrected malfunctions or a significant security threat identified in Contractor’s Technology System and has not created any additional malfunctions; and (iii) the Third-Party Software revision is available to Contractor. City is responsible for obtaining and installing or requesting installation of the Third-Party Software revision if the Third-Party Software was not licensed to City by or through Contractor. Contractor Software revisions provided by Contractor are specifically limited to the Third-Party Software identified and set forth in **Appendix B** to this Agreement.

**C. Response to SaaS Issues.** Contractor shall provide verbal or written responses to SaaS Issues identified by City in an expeditious manner. Such responses shall be provided in accordance with the Target Response Times defined under Section V (Technical Support).

**D. SaaS Software Maintenance Acceptance Period.** Unless otherwise agreed to by City on a case-by-case basis, for non-emergency maintenance, City shall have a twenty (20)

business day period to test any maintenance changes prior to Contractor introducing such maintenance changes into production. If the City rejects, for good cause, any maintenance changes during the SaaS Software Maintenance Acceptance Period, Contractor shall not introduce such rejected maintenance changes into production. At the end of the Maintenance Acceptance Period, if City has not rejected the maintenance changes, the maintenance changes shall be deemed to be accepted by City and Contractor shall be entitled to introduce the maintenance changes into production.

**E. SaaS Hardware:** Contractor shall use commercially reasonable efforts to ensure that all hardware (including servers, routers, and other related equipment) on which the SaaS Application is deployed are attached to back-up power systems sufficient to maintain the site's availability for so long as any power outage could reasonably be expected to occur, based on the experience of Contractor at its deployment location and consistent with the Tier rating of the Data Center required under Section (I)(E) of this Appendix.

#### **IV. City Responsibilities**

**A.** City shall provide Contractor with timely notification of any SaaS Issues or SaaS Software Errors by either of these methods:

1. **Contacting Contractor's Customer Support at 1-800-xxx-xxxx.**
2. **By entering the problem on Contractor's Service Portal [figure out if Contractor provides such a portal. If not, then delete sections 2 and 3.].** Notifications can be submitted through the City Portal. This is the preferred method by which to contact Contractor.
3. If City cannot readily access Contractor's portal, City may contact Contractor at the "800" number listed above.

**B. Support for Problem Investigation.** City shall support all reasonable requests by Contractor as may be required in problem investigation and resolution.

**C. SaaS Incident Manager: Designation of Point of Contact.** City shall assign an individual or individuals to serve as the designated contact(s) for all communication with Contractor during SaaS Issue investigation and resolution.

**D. Discovery of SaaS Software Errors.** Upon discovery of a SaaS Software Error, City agrees, if requested by Contractor, to submit to Contractor a listing of output and any other data that Contractor may require in order to reproduce the SaaS Software Error and the operating conditions under which the SaaS Software Error occurred or was discovered.

#### **V. 24X7 Technical Support:**

**A. 24x7 Technical Support:** Authorized Users will make Technical Support requests 24/7 by calling or submitting a request via Contractor’s service desk web portal. The Technical Support staff shall assign to the request the Incident Severity Level indicated by the City. Severity Level 1 and 2 Incidents items will be addressed 24/7/365. Severity Level 3 and 4 Incidents will be addressed during the standard business hours of 6:00 a.m. - 6:00 p.m. US Pacific Time.

Incident Severity Level	Target Response Time
<p><b>Severity Level 1:</b> Requires immediate attention– Critical production functionality is not available or a large number of users cannot access the SaaS Application. Causes a major business impact where service is lost or degraded and no workaround is available, preventing operation of the business.</p>	<p>Request Response Time: 15 minutes. Request Resolution Time Target: &lt; 2 hours. Maximum Permitted Request Resolution Time: &lt; 12 hours</p> <p><i>City shall be entitled to a Service Credit of 15% of the Monthly Hosting Fee paid for each failure timely to achieve resolution. If Fees are paid annually, the 15% shall apply to 1/12 of that annual fee.</i></p>
<p><b>Severity Level 2:</b> Requires priority attention - Some important production functionality is not available, or a small number of users cannot access the system. Causes significant business impact where service is lost or degraded and no workaround is available; however, the business can continue to operate in a limited fashion.</p>	<p>Request Response Time: 30 minutes Request Resolution Time Target: &lt; 4 hours Maximum Permitted Request Resolution Time: &lt; 48 hours</p> <p><i>City shall be entitled to a Service Credit of 10% of the Monthly Hosting Fee paid for each failure timely to achieve resolution. If Fees are paid annually, the 10% shall apply to 1/12 of that annual fee.</i></p>
<p><b>Severity Level 3:</b> Requires attention –There is a problem or inconvenience. Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.</p>	<p>Request Response Time: 1 hr. Request Resolution Time Target: &lt; 8 hours Maximum Permitted Request Resolution Time: &lt; 96 hours</p> <p><i>City shall be entitled to a Service</i></p>



Incident Severity Level	Target Response Time
	<i>Credit of 5% of the Monthly Hosting Fee paid for each failure timely to achieve resolution. If Fees are paid annually, the 15% shall apply to 1/12 of that annual fee.</i>
<b>Severity Level 4:</b> There is a problem or issue with no loss of service and no business impact.	Request Response Time: 4 hr. Request Resolution Time Target: < 96 hours Maximum Permitted Request Resolution Time: < 7 days

## 1. SERVICE CREDIT ESCALATION.

In the event of a Severity Level 1 issue that is not resolved sufficiently quickly as determined in the City's sole discretion, City may escalate the problem to Contractor's Chief Technology Officer.

## 2. ROOT CAUSE ANALYSIS

Following the resolution of a Severity Level 1 OR Level 2 incident, Contractor will discuss with City the cause of the failure, the actions Contractor took to resolve the failure, a timeline of the event and the actions Contractor plans to take to prevent such failure from recurring, and, if requested, Contractor will provide City a written summary of such discussion. Contractor will, on request, provide detailed documentation of the root cause analysis and preventative actions taken or planned with clear dates for completion of the action(s).

## **Appendix C**

### **Calculation of Charges**

## **Appendix D**

### **Service Level Obligations**

**A. Time is of the Essence.** For the term of this Agreement, Contractor shall provide SaaS Services, Force Majeure events excepted, during the applicable Service Windows and in accordance with the applicable Service Levels as described herein, time being of the essence.

**B. Service Levels.**

**1. Availability Service Level:**

**a. Definitions:**

- i. Actual Uptime:** The total minutes in the reporting month that the Services were actually available to Authorized Users for normal use.
- ii. Scheduled Downtime:** The total minutes in the reporting month during which Scheduled SaaS Maintenance was performed.
- iii. Scheduled Uptime:** The total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.

**b. Service Level Standard.** Services shall be available to Authorized Users for normal use 100% of the Scheduled Uptime.

- i. Calculation:**  $(\text{Actual Uptime} / \text{Scheduled Uptime}) * 100 = \text{Percentage Uptime}$  (as calculated by rounding to the second decimal point)
- ii. Performance Credit.**

**[If the hosted services are for healthcare, public safety, financial information, airport, or enterprise department/utilities the City requires a 99.9999 availability.]**

- 1) Where Percentage Uptime is greater than 99.9%:** No Performance Credit will be due to City.
- 2) Where Percentage Uptime is equal to or less than 99.9%:** City shall be due a Performance Credit in the amount of 20% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Uptime.

**2. Response Time Service Level.**

**a. Definition(s).**

i. **Response Time:** The interval of time from when an Authorized User requests, via the Services, a Transaction to when visual confirmation of Transaction completion is received by the Authorized User. For example, Response Time includes the period of time representing the point at which an Authorized User enters and submits data to the Services and the Services display a message to the Authorized User that the data has been saved.

ii. **Total Transactions:** The total of Transactions occurring in the reporting month.

iii. **Transaction(s):** Services web page loads, Services web page displays, and Authorized User Services requests.

b. **Service Level Standard.** Transactions shall have a Response Time of two (2) seconds or less 99.9% of the time each reporting month during the periods for which the Services are available.

i. **Calculation.**  $((\text{Total Transactions} - \text{Total Transactions failing Standard}) / \text{Total Transactions}) * 100 = \text{Percentage Response Time}$  (as calculated by rounding to the second decimal point).

ii. **Performance Credit.**

1) **Where Percentage Response Time is greater than 99.9%:** No Performance Credit will be due to City.

2) **Where Percentage Response Time is equal to or less than 99%:** City shall be due a Performance Credit in the amount of 20% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Response Time.

### 3. **Technical Support Problem Response Service Level.**

a. **Definition.**

i. **Total Problems:** The total number of problems occurring in the reporting month.

**b. Service Level Standard.** Problems shall be confirmed as received by Contractor 100% of the time each reporting month, in accordance with the Request Response Time associated with the SaaS Severity Level.

**i. Calculation.**  $((\text{Total Problems} - \text{Total Problems failing Standard}) / \text{Total Problems}) * 100 = \text{Percentage Problem Response}$  (as calculated by rounding to the second decimal point). Note: This Calculation must be completed for each SaaS Severity Level.

**ii. Performance Credit.**

**1) SaaS Severity Level 1 – 2.**

**i) Where Percentage Problem Response is greater than 99.9%:** No Performance Credit will be due to City.

**ii) Where Percentage Problem Response is equal to or less than 99%:** City shall be due a Performance Credit in the amount of 20% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.

**2) SaaS Severity Level 3 – 4.**

**i) Where Percentage Problem Response is greater than 99.9%:** No Performance Credit will be due to City.

**ii) Where Percentage Problem Response is equal to or less than 99%:** City shall be due a Performance Credit in the amount of 20% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.

**C. Service Level Reporting.** On a monthly basis, in arrears and no later than the fifteenth (15<sup>th</sup>) calendar day of the subsequent month following the reporting month, Contractor shall provide reports to City describing the performance of the SaaS Services and of Contractor as compared to the service level standards described herein. The reports shall be in a form agreed-to by City, and, in no case, contain no less than the following information: (a) actual performance compared to the Service Level Standard; (b) the cause or basis for not meeting the service level standards described herein; (c) the specific remedial actions Contractor has undertaken or will undertake to ensure that the service level standards described herein will be subsequently

achieved; and, (d) any Performance Credit due to City. Contractor and City will meet as often as shall be reasonably requested by City, but no less than monthly, to review the performance of Contractor as it relates to the service level standards described herein. Where Contractor fails to provide a report for a service level standard described herein in the applicable timeframe, the service level standard shall be deemed to be completely failed for the purposes of calculating a Performance Credit. Contractor shall, without charge, make City's historical service level standard reports to City upon request.

**D. Failure to Meet Service Level Standards.** In the event Contractor does not meet a service level standard described herein, Contractor shall: (a) owe to City any applicable Performance Credit, as liquidated damages and not as a penalty; and, (b) use its best efforts to ensure that any unmet service level standard described herein is subsequently met. Notwithstanding the foregoing, Contractor will use its best efforts to minimize the impact or duration of any outage, interruption, or degradation of Service. In no case shall City be required to notify Contractor that a Performance Credit is due as a condition of payment of the same.

**E. Termination for Material and Repeated Failures.** City shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees where Contractor fails to meet any service level standards described herein: (a) to such an extent that the City's ability, as solely determined by City, to use the SaaS Services is materially disrupted, Force Majeure events excepted; or, (b) for four (4) months out of any twelve (12) month period.

**F. Audit of Service Levels.** No more than quarterly, City shall have the right to audit Contractor's books, records, and measurement and auditing tools to verify service level obligations achievement and to determine correct payment of any Performance Credit. Where it is determined that any Performance Credit was due to City but not paid, Contractor shall immediately owe to City the applicable Performance Credit.

## **Appendix E**

### **Disaster Recovery Plan**

[SaaS provider shall provide a business continuation strategy that can be implemented in the event of a catastrophic failure at the hosting primary site. Such a strategy should provide how quickly the backup site will be live and function, e.g. 48 hrs. The business continuity strategy must include documented drills. The first drill must happen within 2 months of contract signing and then once per year thereafter. The drill plans, action items and project plan for follow-ups must be shared with the City.]

Contractor shall maintain a high availability configuration in the primary data center, with a mirrored instance of the City production system and supporting infrastructure in the secondary data center. Contractor shall maintain a standard procedure that governs the management of business continuity events. A disaster recovery test plan must be reviewed and exercised at least annually. Upon reasonable notice from City, disaster recovery testing documentation shall be made available to the City. Contractor will provide City's Chief Information Security Officer with access to review business continuity and disaster recovery plan.

Contractor shall provide City with a business continuity strategy and disaster recovery plan and procedures that can be implemented in the event of a catastrophic failure at the primary hosting site. Such a strategy should provide how quickly the secondary site will be available to Authorized Users. The business continuity strategy must include drills and exercises to test the readiness to execute the disaster recovery plan. If requested, the first drill must happen within six months of contract signing and then once per year thereafter. The drill plans, action items and project plan for follow-ups must be shared with the City.



**Appendix F**  
**[“Business Associate Addendum” or “Insurance Waiver”, as applicable]**

**➔ Use as appropriate and only if an insurance waiver has been signed and granted by the Risk Manager.**