

**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**

**SSP Data, Inc.
Agreement Number: 1000029027**

This Agreement is made this 22nd day of May, 2023, in the City and County of San Francisco (“City”), State of California, by and between SSP Data, Inc. (“Contractor”) and City.

Recitals

WHEREAS, the Department of Technology (“Department”) wishes to procure Palo Alto Networks Products including Software as a Service, cloud-delivered security services, hardware and software from Contractor; and

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

WHEREAS, Contractor was competitively selected pursuant to Sourcing Event ID 0000008252; and

WHEREAS, approval for the Agreement was obtained on March 6, 2023 from the Civil Service Commission under PSC number 44632-22/23 in the amount of \$8,500,000 for the period of five years; and

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/Supplier 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/Supplier’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 Department of Technology.

1.7 “City Data” or “the City Data” or “End User Data” as defined in Appendix D 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 and/or Supplier’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 SSP Data, Inc.

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

1.14 “Contractor/Supplier’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/Supplier (or its subcontractor) houses and operates the hardware (including computer servers, routers, and other related equipment) on which Contractor/Supplier hosts on the Internet the SaaS Application and City Data pursuant to this Agreement.

1.17 “Deliverables” means Contractor/Supplier’s work product resulting from the Services provided by Contractor/Supplier to City during the course of Contractor/Supplier’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 “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/Supplier’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.

1.19 “Documentation” means technical publications provided by Contractor/Supplier to City relating to use of the SaaS Application, such as reference, administrative, maintenance, and programmer manuals.

1.20 “End Users” means any Authorized User who accesses Contractor/Supplier’s Website and uses the SaaS Application and Services.

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

1.22 “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/Supplier.

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

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

1.25 “Performance Credit” means credit due to City by Contractor/Supplier with regard to Contractor/Supplier’s service level obligations.

1.26 “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.

1.27 “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/Supplier pre-printed document.

1.28 “Project Data” means data that is first produced in the performance of this Agreement.

1.29 “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/Supplier’s servers that provides the SaaS Services that may be accessed by Authorized Users through the Internet. The SaaS Application may include Contractor/Supplier 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.

1.30 “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.

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

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

1.33 “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.

1.34 “SaaS Services” means the Services performed by Contractor/Supplier to host the SaaS Application to provide the functionality listed in the Documentation in accordance with the Service Level Obligations as documented in Appendix B.

1.35 “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/Supplier. Until the SaaS Issue has been resolved, the Severity Level may be raised or lowered based on Contractor/Supplier’s analysis of impact to business.

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

1.37 “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.

1.38 “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.

1.39 “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.

1.40 “Scheduled SaaS Maintenance” means the time (in minutes) during the month, as measured by Contractor/Supplier, 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 in accordance with the Service Level Obligations as documented in Appendix B.

1.41 “Services” means the work performed by Contractor/Supplier under this Agreement in accordance with the Service Level Obligations as documented in Appendix B and the End User Agreement in Appendix D including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor/Supplier under this Agreement.

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

1.43 “Supplier” means Palo Alto Networks

1.44 “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 June 1, 2023 and expire three years from the start date, unless earlier terminated as otherwise provided herein.

2.2 **Options to Renew.** The City has three (3) options to renew the Agreement for a period of one year 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 \$4,353,000.00. The breakdown of charges associated with this Agreement appears in Appendix A, "Calculation of Charges." 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.

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/Supplier fails to provide goods and/or Services in accordance with Contractor/Supplier's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor/Supplier 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. Reserved

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[®] 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.

(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.

3.3.7 Grant Funded Contracts. Reserved

3.3.8 Payment Terms.

(a) **Payment Due Date:** Unless City notifies the Contractor that a dispute exists, Payment shall be made within 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) **Payments for Enterprise License and Support Agreement.** Payments for Enterprise License and Support shall be fixed and not subject to increases in Years 1, 2 and 3. City and Contractor may agree to negotiate pricing for Years 4, 5 and 6, should City extend the Agreement beyond its initial three-year term. Payment for each year shall be due annually.

(c) **Payments for As-needed Products:** Contractor's 33% Discount off of price negotiated between Manufacturer and City for as-needed products shall remain fixed for Years 1, 2 and 3 and cannot be increased during Years 4, 5 and 6. However, City and Contractor may agree to negotiate a or higher % Discount off of price negotiated between Manufacturer and they City for Years 4, 5 and 6, should City extend the Agreement beyond its initial three-year term

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/Supplier 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/Supplier’s Website and no “terms of use” or “privacy policy” referenced therein or conditioned for use of the SaaS Services or Contractor/Supplier’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/Supplier’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/Supplier include terms of use, terms or 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/Supplier, 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/Supplier'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/Supplier 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/Supplier Agrees to Perform.

4.2.1 Project Managers. Contractor/Supplier 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/Supplier. Contractor/Supplier shall use its best efforts to maintain the same Project Manager throughout the duration of the Agreement. However, if Contractor/Supplier needs to replace its Project Manager, Contractor/Supplier 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/Supplier will have the right to appoint temporary Project Managers in connection with short term unavailability, sick leave or reasonable vacations. Contractor/Supplier shall notify City in advance of any such temporary appointments. City may require Contractor/Supplier to replace its Project Manager, by giving Contractor/Supplier notification thereof and City's objective reasons therefor.

Contractor's Project Manager: Sandesh Mutha
SSP Data
1304 S 51st Street
Richmond, CA 94804
sandesh@ssp.com
510-215-3438

City's Project Manager: Matt Reeves, matt.reeves@sfgov.org
Deputy Director – CTO
Infrastructure/Operations/Architecture
Department of Technology
1 South Van Ness Ave., 2nd Floor
San Francisco, CA 94103
628-652-5193

4.2.2 Services Contractor/Supplier Agrees to Perform. During the Term of this Agreement, Contractor/Supplier 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:

(a) **Maintenance and Support.** Contractor/Supplier 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/Supplier shall provide hosting in accordance the following:

(i) **Hosting Infrastructure.** Contractor/Supplier 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/Supplier shall ensure that all electronic transmission or exchange of City Data will be encrypted using current industry standards. Contractor/Supplier 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/Supplier not involved in administration of this Agreement, unless otherwise permitted in this Agreement. Remote access to view City data by Contractor/Supplier 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/Supplier shall provide Authorized Users 24/7 access to the SaaS Application(s).

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

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

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, City and Contractor/Supplier shall conduct user acceptance testing as outlined in Appendices A, 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/Supplier in writing, and Contractor/Supplier 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/Supplier with written notice of satisfactory completion of Acceptance testing. If City notifies Contractor/Supplier after the Acceptance Testing Period that the SaaS Services do not

meet the Acceptance criteria outlined in Appendices A, 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/Supplier 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/Supplier shall utilize only competent personnel under the supervision of, and in the employment of, Contractor/Supplier (or Contractor/Supplier'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/Supplier. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.4.2 [Reserved] Contractor Vaccination Policy.

4.5 Subcontracting

4.5.1 Contractor/Supplier may subcontract portions of the Services only upon prior written approval of City. Contractor/Supplier 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 Reserved (Liquidated Damages)

4.9 Reserved (Bonding Requirements)

Article 5 Insurance; Indemnity and Warranties

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

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

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

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

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

(e) Technology Errors and Omissions Liability coverage, with limits of \$20,000,000 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 \$20,000,000 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/Supplier 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 Contractor/Supplier warrants that it will use

reasonable care and skill. All services shall be performed in a professional, competent and timely manner by Contractor/Supplier 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/Supplier shall, at its sole cost and expense, re-perform such services.

5.3.3 Compliance with Description of Services. Contractor/Supplier 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/Supplier represents and warrants to City that it is the lawful owner or license holder of all Software, materials and property identified by Contractor/Supplier as Contractor/Supplier-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/Supplier 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/Supplier 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/Supplier, 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/Supplier shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor/Supplier'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:

8.4.1 Contractor/Supplier may immediately discontinue the SaaS Services and City shall immediately cease accessing the SaaS Application and Services. Contractor/Supplier 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/Supplier. Such data transfer shall be done at no cost to the City. Once Contractor/Supplier has received written confirmation from City that City's Data has been successfully transferred to City, Contractor/Supplier 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/Supplier 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/Supplier 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/Supplier 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/Supplier 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/Supplier'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 the City may only be used by Contractor/Supplier 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/Supplier 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/Supplier 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/Supplier 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/Supplier 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/Supplier or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor/Supplier hereby assigns all Contractor/Supplier'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/Supplier 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/ .

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”).

10.7 Reserved (Minimum Compensation Ordinance).

10.8 Reserved (Health Care Accountability Ordinance).

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).

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

ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 [Reserved] Slavery Era Disclosure

10.13 [Reserved] Working with Minors

10.14 Consideration of Criminal History in Hiring and Employment Decisions

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

10.15 [Reserved] Public Access to Nonprofit Records and Meetings

10.16 [Reserved] Food Service Waste Reduction Requirements

10.17 [Reserved] Distribution of Beverages and Water Reserved

10.18 [Reserved] Tropical Hardwood and Virgin Redwood Ban

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:	Department of Technology Contract Administration, dt.contracts@sfgov.org 1 South Van Ness Ave., 2nd Floor San Francisco, CA 94103
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To Contractor: SSP Data, 1304 S 51st Street, Richmond CA 94804 legal@ssp.com

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

11.2 Compliance with American with Disabilities Act.

11.2.1 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.

11.2.2 Contractor/Supplier 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.

11.2.3 All documentation, user guides, training materials and services, and challenge response password and other identity-verification systems must meet the requirements. Contractor/Supplier 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.

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

11.2.5 In accordance with Cal. Gov. Code section 7405(b), Contractor/Supplier 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/Supplier, to the satisfaction of the City.

11.2.6 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.

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

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. 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 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.

11.6.2 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 [Reserved] Health and Human Service Contract Dispute Resolution Procedure

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 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").

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

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

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated May 1, 2023. 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/Supplier 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/Supplier agrees to hold City Data received from, or created or collected on behalf of, the City in strictest confidence. Contractor/Supplier 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/Supplier's staff assigned to this project on a need-to-know basis only. Contractor/Supplier is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor/Supplier'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/Supplier, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

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/Supplier 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 C and/or D, Contractor/Supplier shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Agreement and as outlined in Appendix C and maintaining the security of City Data as further described herein. Contractor/Supplier'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/Supplier that relate to the protection of the security, confidentiality, or integrity of City Data, Contractor/Supplier 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/Supplier'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/Supplier has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and
- (v) what corrective action Contractor/Supplier has taken or will take to prevent future unauthorized access, use or disclosure.

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

(c) Contractor/Supplier 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/Supplier 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/Supplier 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/Supplier 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/Supplier'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/Supplier 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/Supplier.

(j) Contractor/Supplier 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/Supplier, 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/Supplier to do so.

13.2 **Proprietary or Confidential Information**

13.2.1 **Proprietary or Confidential Information of City.** Contractor/Supplier 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/Supplier 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/Supplier'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/Supplier pursuant to Chapters 6 or 21 of the Administrative Code, or debar Contractor/Supplier. Contractor/Supplier 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/Supplier 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/Supplier 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/Supplier 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/Supplier shall take all necessary steps to ensure that the Confidential Information is securely maintained. Contractor/Supplier's obligations set forth herein shall survive the termination or expiration of this Agreement. In the event Contractor/Supplier 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/Supplier 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/Supplier, independent of where the City Data is stored.

13.2.5 Notification of Legal Requests. Contractor/Supplier 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/Supplier 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/Supplier 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/Supplier, independent of where the City Data is stored.

13.2.6 Cooperation to Prevent Disclosure of Confidential Information. Contractor/Supplier 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/Supplier shall advise the City immediately in the event Contractor/Supplier 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/Supplier 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/Supplier 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/Supplier 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/Supplier on behalf of the City, which are in Contractor/Supplier'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/Supplier shall at all times during the Term provide and maintain up-to-date security with respect to (a) the Services, (b) Contractor/Supplier's Website, (c) Contractor/Supplier's physical facilities, (d) Contractor/Supplier's infrastructure, and (e) Contractor/Supplier's networks.

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

(d) For information disclosed in electronic form, Contractor/Supplier 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/Supplier 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/Supplier 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/Supplier 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/Supplier’s obligation of confidentiality as further described herein, Contractor/Supplier 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/Supplier’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/Supplier fails or has failed to meet its obligations under this Article 13.

13.2.12 Data Transmission. Contractor/Supplier 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/Supplier 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/Supplier. Contractor/Supplier 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/Supplier 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/Supplier 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/Supplier is using a hosting service provider, Contractor/Supplier 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/Supplier. If Contractor/Supplier receives a so-called “negative assurance opinion,” or the annual Audit Report finds a material data privacy or information security issue, Contractor/Supplier shall notify City of such opinion within three (3) days of receipt by Contractor/Supplier. Contractor/Supplier shall implement reasonably required safeguards as identified by any audit of Contractor/Supplier’s data privacy and information security program or promptly notify City in writing if Contractor/Supplier 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/Supplier, to terminate this Agreement. Any failure by Contractor/Supplier to comply with this Section shall be a material breach of this Agreement.

13.3.2 **Audit of Contractor/Supplier’s Policies.** Contractor/Supplier 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/Supplier 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/Supplier shall implement reasonably required safeguards as identified by City or by any audit of Contractor/Supplier’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 **Protected Health Information.** Contractor/Supplier, all subcontractors, all agents and employees of Contractor/Supplier, 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/Supplier by City in the performance of this Agreement. Contractor/Supplier 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/Supplier or its subcontractors or agents by City, Contractor/Supplier 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 **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"). Contractors/suppliers providing that are creating, maintaining, transmitting, receiving, or obtaining access in a continuous or regular manner, to protected health information (PHI) on behalf of, or for, the City 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 E. 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/Supplier 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/Supplier as of a date specified by City in a written notice of termination to Contractor/Supplier. Contractor/Supplier shall not have the right to any additional payments from City for costs or expenses incurred by Contractor/Supplier 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/Supplier shall be provide disaster recovery services in accordance with the provisions of the disaster recovery plan attached as Appendix C 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/Supplier of its obligations for performing disaster recovery services as provided in this Section. In the event that a disaster occurs and Contractor/Supplier 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/Supplier 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/Supplier 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.** 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. Calculation of Charges
- B. Service Level Obligations
- C. Disaster Recovery Plan
- D. Palo Alto End User License Agreement

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:

SSP Data, Inc.

DocuSigned by:
Linda Gerull
5F172D9980A04F7...

Linda Gerull
City Chief Information Officer
Department of Technology

DocuSigned by:
[Signature]
F7B56F5E9F964EC...

Sandesh Mutha
President
PO Box 1486
El Cerrito, CA 94530

City Supplier Number: 0000010594

Approved as to Form:

David Chiu
City Attorney

By: DocuSigned by:
Margarita Gutierrez
3AA5640935284BE...

Margarita Gutierrez
Deputy City Attorney

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

By: DocuSigned by:
Daniel Sanchez
36604DF85002453...

Taraneh Moayed

Appendix A Calculation of Charges

Total Bid Price		\$ 4,353,000.00
Enterprise Software and Support		
	Qty	UOM
Year 1		
Enterprise License Agreement, ATP, DNS, ADV URL, ADV WF, GP, 3 year, Tier B	1	LOT
Enterprise Support Agreement, 3 years Platinum Support, Tier B	1	LOT
Extended Expertise (PA-Series) - Year 1	1	LOT
Prorated Credit for unused subscriptions	1	LOT
Year 1 Total		\$ 1,250,000.00
Year 2		
Enterprise License Agreement, ATP, DNS, ADV URL, ADV WF, GP, 3 year, Tier B	1	LOT
Enterprise Support Agreement, 3 years Platinum Support, Tier B	1	LOT
Year 2 Total		\$ 1,250,000.00
Year 3		
Enterprise License Agreement, ATP, DNS, ADV URL, ADV WF, GP, 3 year, Tier B	1	LOT
Enterprise Support Agreement, 3 years Platinum Support, Tier B	1	LOT
Year 3 Total		\$ 1,250,000.00
As-Needed Products Not Named Above		
Total Estimated Spend Years 1-3		\$ 900,000.00
% Discount off of-Price Negotiated between Manufacturer and City (enter discounts as a negative value).		-33%
Total Projected Cost		\$ 603,000.00

Appendix B Service Level Obligations

A. Time is of the Essence. For the term of this Agreement, Contractor/Supplier 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.**
 - 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 (15th) calendar day of the subsequent month following the reporting month, Contractor/Supplier shall provide reports to City describing the performance of the SaaS Services and of Contractor/Supplier 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/Supplier 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/Supplier and City will meet as often as shall be reasonably requested by City, but no less than monthly, to review the performance of Contractor/Supplier as it relates to the service level standards described herein. Where Contractor/Supplier 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/Supplier 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/Supplier does not meet a service level standard described herein, Contractor/Supplier 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/Supplier 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/Supplier 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/Supplier 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/Supplier'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/Supplier shall immediately owe to City the applicable Performance Credit.

Appendix C Disaster Recovery Plan

Contractor/Supplier 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/Supplier 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/Supplier will provide City's Chief Information Security Officer with access to review business continuity and disaster recovery plan.

Contractor/Supplier 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 D

Palo Alto End User License Agreement

END USER AGREEMENT

THIS AGREEMENT GOVERNS THE USE OF PALO ALTO NETWORKS PRODUCTS INCLUDING SOFTWARE-AS-A-SERVICE, CLOUD-DELIVERED SECURITY SERVICES, HARDWARE AND SOFTWARE. PRODUCT BRANDS INCLUDE, BUT ARE NOT LIMITED TO, CORTEX, PRISMA, AND STRATA.

THIS IS A LEGAL AGREEMENT BETWEEN YOU (REFERRED TO HEREIN AS “CUSTOMER”, “END USER”, “YOU” or “YOUR”) AND (A) PALO ALTO NETWORKS, INC. AND ITS AFFILIATES, 3000 TANNERY WAY, SANTA CLARA, CALIFORNIA 95054, UNITED STATES, IF YOU ARE LOCATED IN NORTH OR LATIN AMERICA; (B) PALO ALTO NETWORKS (NETHERLANDS) B.V. AND ITS AFFILIATES, OVAL TOWER, DE ENTRÉE 99-197, 5TH FLOOR, 1101 HE AMSTERDAM, IF YOU ARE LOCATED OUTSIDE NORTH OR LATIN AMERICA; OR (C) PALO ALTO NETWORKS PUBLIC SECTOR LLC, IF YOU ARE A UNITED STATES FEDERAL GOVERNMENT ENTITY OR ORGANIZATION (“PALO ALTO NETWORKS”).

BY DOWNLOADING, INSTALLING, REGISTERING, ACCESSING, EVALUATING OR OTHERWISE USING PALO ALTO NETWORKS PRODUCTS, YOU ACKNOWLEDGE AND AGREE THAT YOU ARE BOUND TO THIS AGREEMENT. IF YOU DO NOT ACCEPT ALL ITS TERMS, IMMEDIATELY CEASE USING OR ACCESSING THE PRODUCT. THIS AGREEMENT GOVERNS YOUR USE OF PALO ALTO NETWORKS PRODUCTS HOWEVER THEY WERE ACQUIRED INCLUDING WITHOUT LIMITATION THROUGH AN AUTHORIZED DISTRIBUTOR, RESELLER, ONLINE APP STORE, OR MARKETPLACE. MAINTENANCE AND SUPPORT SERVICES ARE GOVERNED BY THE END USER SUPPORT AGREEMENT FOUND AT [HYPERLINK "http://www.paloaltonetworks.com/legal/eusa"](http://www.paloaltonetworks.com/legal/eusa) www.paloaltonetworks.com/legal/eusa HYPERLINK "http://www.paloaltonetworks.com/legal/eusa" WHICH IS HEREBY INCORPORATED BY REFERENCE INTO THIS AGREEMENT.

If you use a Product for proof of concept, trial, evaluation or other similar purpose (“Evaluations”), you may do so for 30 days only unless Palo Alto Networks issues an extension. Palo Alto Networks reserves the right to terminate Evaluations at any time. Upon expiration or termination of the Evaluation, you shall cease using the Product(s) provided for Evaluation and must return any Evaluation Hardware to Palo Alto Networks in the same condition as when first received, except for reasonable wear and tear. For Evaluations and products provided pursuant to a Product Donation Agreement, only sections 1, 2, 3, 7, 9, 10, and 11 of this Agreement shall apply, as well as section 6 for products provided pursuant to a Product Donation Agreement, and PALO ALTO NETWORKS DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AGAINST INFRINGEMENT OF THIRD-PARTY RIGHTS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

1. DEFINITIONS

“**Affiliate**” means any entity that Controls, is Controlled by, or is under common Control with Customer or Palo Alto Networks, as applicable, where “Control” means having the power, directly or indirectly, to direct or cause the direction of the management and policies of the entity, whether through ownership of voting securities, by contract or otherwise.

“**End User Data**” means data that is provided by or on behalf of You to Palo Alto Networks during the relationship governed by this Agreement. For the avoidance of doubt, End User Data does not include Systems Data.

“**Enterprise Program**” means a volume licensing arrangement, valid for a specified term, during which End User may access certain Software, Subscriptions, and/or related technical support.

“**Hardware**” means hardware-based products listed on Palo Alto Networks’ then-current price list or supplied by Palo Alto Networks regardless of whether a fee is charged for such hardware.

“**Product**” means, collectively, Hardware, Software, Subscription, or any combination thereof, regardless of whether or not the Product was procured under an Enterprise Program.

“**Published Specifications**” mean the applicable user manual, the WildFire Acceptable Use Policy found at <https://www.paloaltonetworks.com/resources/datasheets/wildfire-acceptable-use-policy>, the applicable Service Level Agreement found at <https://www.paloaltonetworks.com/services/support/support-policies.html>, and other

corresponding materials published by Palo Alto Networks that are customarily made available to End Users of the applicable Product.

“Software” means any software embedded in Hardware and any standalone software that is provided without Hardware, including updates, regardless of whether a fee is charged for the use of such software.

“Subscription” means Software-as-a-Service and cloud-delivered security services, including updates, provided by Palo Alto Networks including, but not limited to, Cortex, Prisma, Threat Prevention, Advanced URL Filtering, WildFire, regardless of whether a fee is charged for its use. Technical support, customer success plans, and professional services are not considered Subscriptions under this Agreement.

“Systems Data” means data generated and/or collected in connection with Your use of the Products, such as logs, session data, telemetry data, support data, usage data, threat intelligence or actor data, statistics, aggregated data, netflow data, copies of potentially malicious files detected by the Product, and derivatives thereof.

2. USE AND RESTRICTIONS

a. Software Use Grant

This section 2a applies to Software only. Subject to your compliance with this Agreement, Palo Alto Networks grants you a limited, non-exclusive right to use the Software:

- i. in accordance with Published Specifications for the Product; ii. solely within the scope of the license purchased (e.g., number of users); iii. solely for your internal use, unless agreed otherwise in a separate written contract with Palo Alto Networks; and iv. through your third-party contractor providing IT services solely for your benefit, subject to their compliance with this Agreement.

All other rights in the Software are expressly reserved by Palo Alto Networks.

b. Access to Subscriptions

This section 2b applies to Subscriptions only. During the term of the Subscriptions purchased, Palo Alto Networks will use commercially reasonable efforts to make them available 24 hours a day, 7 days a week except for published downtime or any unavailability caused by circumstances beyond our control including, but not limited to, a force majeure event described in section 11g below. Palo Alto Networks grants you a non-exclusive right to access and use the Subscriptions: i. in accordance with Published Specifications for the Product; ii. solely within the usage capacity purchased (e.g., number of workloads); iii. solely for your internal use, unless agreed otherwise in a separate written contract with Palo Alto Networks; and iv. through your third-party contractor providing IT services solely for your benefit, subject to their compliance with this Agreement.

All other rights to the Subscriptions are expressly reserved by Palo Alto Networks.

c. Use Restrictions

You shall not:

- i. Use any Product that is procured under a Lab or NFR (not for resale) SKU in a production environment.
- ii. Use the Products beyond the scope of the license and/or capacity purchased;
- iii. Modify, translate, adapt or create derivative works from the Products, in whole or in part; iv. disassemble, decompile, reverse engineer or otherwise attempt to derive the source code, methodology, analysis, or results of the Products, in whole or in part, unless expressly permitted by applicable law in the jurisdiction of use despite this prohibition;
 - Remove, modify, or conceal any product identification, copyright, proprietary or intellectual property notices or other such marks on or within the Product;
 - Disclose, publish or otherwise make publicly available any benchmark, performance or comparison tests that you

(or a third-party contracted by you) run on the Products, in whole or in part; vii. Transfer, sublicense, or assign your rights under this Agreement to any other person or entity except as expressly provided in section 2d below, unless expressly authorized by Palo Alto Networks in writing; viii. Sell, resell, sublicense, assign, or otherwise transfer the Products or any rights or interests in the Products to any third party except in accordance with the express terms herein. Products purchased from unauthorized resellers or other unauthorized entities shall be subject to the [HYPERLINK](https://www.paloaltonetworks.com/support/support-policies/secondary-market-policy.html)

["https://www.paloaltonetworks.com/support/support-policies/secondary-market-policy.html"](https://www.paloaltonetworks.com/support/support-policies/secondary-market-policy.html) Palo Alto

[Networks license transfer procedure](https://www.paloaltonetworks.com/support/support-policies/secondary-market-policy.html) HYPERLINK "https://www.paloaltonetworks.com/support/support-policies/secondary-market-policy.html", HYPERLINK "https://www.paloaltonetworks.com/support/support-policies/secondary-market-policy.html"{"https://www.paloaltonetworks.com/support/support-policies/secondary-market-policy.html"}; ix. Use Software that is licensed for a specific device, whether physical or virtual, on another device, unless expressly authorized by Palo Alto Networks in writing;

- Duplicate the Software, its methodology, analysis, or results unless specifically permitted in accordance with Published Specifications for such Software or for the specific purpose of making a reasonable number of archival or backup copies, and provided in both cases that you reproduce in the copies the copyright and other proprietary notices or markings that appear on the original copy of the Software as delivered to you;
- Use the Subscriptions to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or intellectual property rights;
- Use the Subscriptions in any manner not authorized by the Published Specifications for the Product;

xiii. Interfere with, disrupt the integrity or performance of, or attempt to gain unauthorized access to the Subscriptions, their related systems or networks, or any third-party data contained therein; or

xiv. Provide access to or otherwise make the Products or the functionality of the Products available to any third party through any means, including without limitation, by uploading the Software to a network or file-sharing service or through any hosting, managed services provider, service bureau or other type of service unless specifically permitted by the Published Specifications or agreed otherwise in a separate managed services agreement with Palo Alto Networks.

d. Affiliates

If you purchase Product for use by your Affiliate, you shall:

- i. provide the Affiliate with a copy of this Agreement;
- ii. ensure that the Affiliate complies with this Agreement;
- iii. be responsible and liable for any breach of this Agreement by such Affiliate; and iv. where applicable, be responsible and liable for any local law that imposes any tariffs, fees, penalties, or fines arising from your Affiliates' use of the Product in such jurisdictions.

e. Authentication Credentials

You shall keep accounts and authentication credentials providing access to Products secure and confidential. You must notify Palo Alto Networks without undue delay about any misuse of your accounts or authentication credentials.

3. OWNERSHIP

Palo Alto Networks and its suppliers retain all rights to intellectual and intangible property relating to the Product, including but not limited to copyrights, patents, trade secret rights, and trademarks and any other intellectual property rights therein unless otherwise indicated. You shall not delete or alter the copyright, trademark, or other proprietary rights notices or markings that appear on the Product. To the extent you provide any suggestions or comments related to the Products, Palo Alto Networks shall have the right to retain and use any such suggestions or comments in current or future products or subscriptions, without your approval or compensation to you.

4. PAYMENT AND TAXES (Sub-sections 4(a) and 4(b) do not apply to you if you purchased Product from an authorized distributor or reseller)

a. Fees

Applicable fees will be set forth on the website or based on a quotation at the time of purchase or in the applicable invoice. Note, however, that fees which are payable in advance for volume or capacity usage (e.g., number of accounts, credits, endpoints, devices, points, seats, terabytes of data, tokens, users, workloads, etc.) must be reconciled with actual usage at the end of each month or applicable service period. Palo Alto Networks reserves the right to perform true-up reconciliation and charge for any usage above the volume or capacity purchased. You will issue a purchase order to Palo Alto Networks and once accepted by Palo Alto Networks, all purchase orders shall be non-cancellable, non-refundable, and nonreturnable. Unless you have chosen monthly billing (if

available), fees will be due net thirty (30) days from invoice date. All sums due and payable that remain unpaid after any applicable cure period herein will accrue interest at the highest rate permissible by applicable law. Palo Alto Networks reserves the right to assign its right to receive payments hereunder to a third party with notice but without your consent. For purposes of such assignment, such third party shall be considered a third-party beneficiary of the payment obligation under this Agreement. All fees are non-refundable unless otherwise specified.

b. Taxes

Prices quoted are exclusive of all sales, use, value-added, goods and services, withholding and other taxes or duties. You will pay or self-assess all taxes and duties assessed in connection with this Agreement and its performance, except for taxes payable on Palo Alto Networks' net income. To the extent that any amounts payable by you are subject to withholding taxes, the amount payable shall be grossed up such that the amount paid to Palo Alto Networks net of withholding taxes equals the amount invoiced by Palo Alto Networks. If you pay any withholding taxes based on payments made by you to Palo Alto Networks hereunder, you will furnish Palo Alto Networks with written documentation of all such tax payments, including receipts and other customary documentation, to demonstrate to the relevant tax authorities that you have paid such taxes. If applicable, you shall also provide Palo Alto Networks with appropriate VAT/GST registration numbers and other documentation satisfactory to the applicable taxing authorities to substantiate any claim of exemption from any tax or duties. You agree to indemnify Palo Alto Networks from liabilities, damage, costs, fees and expenses, arising out of or resulting from any third-party claims based on or otherwise attributable to your breach of this section 4b. If you are located in Australia, the terms in this section 4 shall be binding between you and Palo Alto Networks (Australia) Pty Ltd.

c. Third-Party Payments

Palo Alto Networks may at its discretion terminate or suspend your access to or use of Software or Subscriptions if you are in default with any payment obligations concerning the Product due to Palo Alto Networks, an Affiliate of Palo Alto Networks, or an authorized distributor or reseller or any third-party finance company that financed the Product on your behalf.

5. TERM; TERMINATION; AND EFFECT OF TERMINATION

This Agreement is effective until terminated or, as applicable, in accordance with the term of your Software term or Subscription. Palo Alto Networks may terminate this Agreement at any time in the event you breach any material term, including but not limited to use restrictions set forth herein or in applicable Published Specifications, and fail to cure such breach within thirty (30) days following notice. Upon termination, you shall immediately cease using the Product. Palo Alto Networks reserves the right to terminate or suspend Customer's access to or use of Software or Subscriptions if Palo Alto Networks reasonably believes that Customer is using the services in manner or for a purpose that is likely to cause harm to Palo Alto Networks or a third party.

6. WARRANTY, EXCLUSIONS AND DISCLAIMERS

a. Warranty

Palo Alto Networks warrants that:

- i. Hardware shall be free from defects in material and workmanship for one (1) year from the date of shipment;
- ii. Software shall substantially conform to Palo Alto Networks' Published Specifications for three (3) months from fulfillment; and
- iii. Subscriptions shall perform materially to Published Specifications for the entire duration of the selected term.

As your sole and exclusive remedy and Palo Alto Networks' and its suppliers' sole and exclusive liability for breach of warranty, Palo Alto Networks shall, at its option and expense, repair or replace the Hardware or correct the Software or the Subscriptions, as applicable. All warranty claims must be made on or before the expiration of the warranty period specified herein, if any. Replacement Products may consist of new or remanufactured parts that are equivalent to new. All Products that are returned to Palo Alto Networks and replaced become the property of Palo Alto Networks. Palo

Alto Networks shall not be responsible for your or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Palo Alto Networks for repair or upon termination, whether under warranty or not. You will pay the shipping costs for return of Products to Palo Alto Networks. Palo Alto Networks will pay the shipping costs for repaired or replaced Products back to you.

b. Exclusions

The warranty set forth above shall not apply if the failure of the Product results from or is otherwise attributable to:

- i. repair, maintenance or modification of the Product by persons other than Palo Alto Networks or its designee;
- ii. accident, negligence, abuse or misuse of a Product;
- iii. use of the Product other than in accordance with Published Specifications;
- iv. improper installation or site preparation or your failure to comply with environmental and storage requirements set forth in the Published Specifications including, without limitation, temperature or humidity ranges; or
- v. causes external to the Product such as, but not limited to, failure of electrical systems, fire or water damage.

c. Disclaimers

EXCEPT FOR THE WARRANTIES EXPRESSLY STATED AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCTS ARE PROVIDED "AS IS". PALO ALTO NETWORKS AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. PALO ALTO NETWORKS DOES NOT WARRANT THAT (I) THE PRODUCTS WILL MEET YOUR REQUIREMENTS, (II) THE USE OF PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE, OR (III) THE PRODUCTS WILL PROTECT AGAINST ALL POSSIBLE THREATS WHETHER KNOWN OR UNKNOWN.

7. LIMITATION OF LIABILITY

a. Disclaimer of Indirect Damages

To the fullest extent permitted by applicable law, in no event shall either party or Palo Alto Networks' suppliers be liable for any special, indirect, incidental, punitive, exemplary or consequential damages of any kind (including but not limited to loss of business, data, profits, or use or for the cost of procuring substitute products, services or other goods), arising out of or relating to the Products to which this Agreement relates, regardless of the theory of liability and whether or not each party was advised of the possibility of such damage or loss.

b. Direct Damages

To the fullest extent permitted by applicable law, in no event shall the total liability of either party or Palo Alto Networks' suppliers, from all claims or causes of action and under all theories of liability arising out of or relating to the Products to which this Agreement relates, exceed the greater of one million United States dollars or the total amount you paid for the entire term of the Subscription or Enterprise Program on which the claim is based. The foregoing limitation in this section 8b shall not apply to liability arising from:

- i. death or bodily injury;
- ii. sections 2 (Use and Restrictions) and 8 (Indemnification); and
- iii. Customer's payment obligations for the Product and related services, if any.

8. INDEMNIFICATION

a. Indemnification and Procedure

Palo Alto Networks will defend, at its expense, any third-party action or suit against you alleging that a Product infringes or misappropriates such third party's patent, copyright, trademark, or trade secret (a "Claim"), and Palo Alto Networks will pay damages awarded in final judgment against you or agreed to in settlement by Palo Alto Networks to the extent attributable to any such Claim; provided that you (i) promptly notify Palo Alto Networks in writing of the Claim; (ii) give Palo Alto Networks sole control of the defense and settlement of the Claim; and (iii)

reasonably cooperate with Palo Alto Networks' requests for assistance with the defense and settlement of the Claim. Palo Alto Networks will not be bound by any settlement or compromise that you enter into without Palo Alto Networks' prior written consent.

b. Remedy

If a Product becomes, or in Palo Alto Networks' opinion is likely to become, the subject of a Claim, then Palo Alto Networks may, at its sole option and expense:

- i. procure the right for you to continue using the Product;
- ii. replace or modify the Product to avoid the Claim; or
- iii. if options (i) and (ii) cannot be accomplished despite Palo Alto Networks' reasonable efforts, then Palo Alto Networks may accept return of the Product and grant you credit for the price of the Product as depreciated on a straight-line five (5) year basis, commencing on the date you received such Product or, for Subscriptions, grant you credit for the portion of the Subscription paid but not used.

c. Exceptions

Palo Alto Networks' obligations under this section 8 shall not apply to the extent any Claim results from or is based on:

- i. modifications to a Product made by a party other than Palo Alto Networks or its designee;
- ii. the combination, operation, or use of a Product with hardware or software not supplied by Palo Alto Networks, if a Claim would not have occurred but for such combination, operation or use;
- iii. failure to use (1) the most recent version or release of a Product, or (2) an equally compatible and functionally equivalent, non-infringing version of a Product supplied by Palo Alto Networks to address such Claim;
- iv. Palo Alto Networks' compliance with your explicit or written designs, specifications or instructions; or
- v. use of a Product not in accordance with Published Specifications.

THE FOREGOING TERMS STATE PALO ALTO NETWORKS' SOLE AND EXCLUSIVE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY THIRD-PARTY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

9. CONFIDENTIALITY

"Confidential Information" means the non-public information that is exchanged between the parties, provided that such information is identified as confidential at the time of initial disclosure by the disclosing party ("**Discloser**"), or disclosed under circumstances that would indicate to a reasonable person that the information ought to be treated as confidential by the party receiving such information ("**Recipient**"). Confidential Information does not include Systems Data. Confidential Information also does not include information that Recipient can prove by credible evidence:

- i. Was in the public domain at the time it was communicated to Recipient;
- ii. Entered the public domain subsequent to the time it was communicated to Recipient through no fault of Recipient;
- iii. Was in Recipient's possession free of any obligation of confidentiality at the time it was communicated to Recipient;
- iv. Was disclosed to Recipient free of any obligation of confidentiality; or
- v. Was developed by Recipient without use of or reference to Discloser's Confidential Information.

Each party will not use the other party's Confidential Information, except as necessary for the performance of this Agreement, and will not disclose such Confidential Information to any third party, except to those of its employees and subcontractors who need to know such Confidential Information for the performance of this Agreement, provided that each such employee and subcontractor is subject to use and disclosure restrictions that are at least as protective as those set forth herein. Recipient shall maintain the confidentiality of Discloser's Confidential Information using the same effort that it ordinarily uses with respect to its own confidential information of similar nature and importance, but no less than reasonable care. The foregoing obligations will not restrict Recipient from disclosing Discloser's Confidential Information:

- a. Pursuant to an order issued by a court, administrative agency, or other governmental body, provided that the Recipient gives reasonable notice to Discloser to enable it to contest such order;
- b. On a confidential basis to its legal or professional financial advisors; or
- c. As required under applicable securities regulations.

Nothing herein shall prohibit the disclosure of Confidential Information by Recipient City of County of San Francisco ("City") that is required to be disclosed pursuant to the California Public Records Act (Cal. Gov't Code § 6250, et. seq.) or the City and County of San Francisco Sunshine Ordinance (S.F. Admin. Code ch. 67), provided that City gives Discloser Palo Alto Networks reasonable notice that such a request has been made and that the City intends to disclose the information. Discloser can then seek an exemption from disclosure by filing an action in the appropriate court seeking to prevent the disclosure of its Confidential Information.

The foregoing obligations of each Party shall continue for the period terminating three (3) years from the date on which the Confidential Information is last disclosed, or the date of termination of this Agreement, whichever is later.

10. END USER DATA AND DATA PROTECTION

Palo Alto Networks will process End User Data solely for the purposes of fulfilling its obligations under the terms of this Agreement. To the extent Palo Alto Networks processes personal data, as defined by applicable data protection laws, such personal data will be processed in accordance with the [Data Processing Agreement](https://www.paloaltonetworks.com/content/dam/pan/en_US/assets/pdf/legal/customer-data-processing-agreement.pdf), HYPERLINK "https://www.paloaltonetworks.com/content/dam/pan/en_US/assets/pdf/legal/customer-data-processing-agreement.pdf", which is incorporated by reference herein.

11. GENERAL

a. Assignment

Neither party may assign or transfer this Agreement or any obligation herein without the prior written consent of the other party, except that, upon written notice, Palo Alto Networks may assign or transfer this Agreement or any obligation herein to its Affiliate, or an entity acquiring all or substantially all assets of Palo Alto Networks, whether by acquisition of assets or shares, or by merger or consolidation without your consent. Any attempt to assign or transfer this Agreement (except as permitted under the terms herein) shall be null and of no effect. For purposes of this Agreement, a change of Control will be deemed to be an assignment. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

b. Auditing End User Compliance

You shall retain records pertaining to Product usage. You grant to Palo Alto Networks and its independent advisors the right to examine such records no more than once in any twelve-month period solely to verify compliance with this Agreement. In the event such audit reveals non-compliance with this Agreement, you shall promptly pay the appropriate license fees, plus reasonable audit costs, as determined by Palo Alto Networks.

c. Authorization Codes; Grace Periods

Where applicable, you will be able to download Software via the server network located closest to you. Your Product may require an authorization code to activate or access Subscriptions and support. The authorization codes will be issued at the time of order fulfillment. The Subscription, warranty or support term will commence in accordance with the grace period policy at <https://www.paloaltonetworks.com/support/support-policies/grace-period.html> HYPERLINK "https://www.paloaltonetworks.com/support/support-policies/grace-period.html"

d. Compliance with Laws; Export Control

You shall comply with all applicable laws in connection with your activities arising from this Agreement. You further agree that you will not engage in any illegal activity and you acknowledge that Palo Alto Networks reserves the right to notify you or appropriate law enforcement in the event of such illegal activity. Both parties shall comply with the U.S. Export Administration Regulations, and any other applicable export laws, restrictions, and regulations to ensure that the Product and any technical data related thereto is not exported or re-exported directly or indirectly in violation of or used for any purposes prohibited by such laws and regulations.

e. Cumulative Remedies

Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies will be without prejudice to any other remedies under this Agreement or otherwise.

f. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understanding and communications between them with respect to the subject matter hereof. Any terms or conditions contained in your purchase order or other ordering document that are inconsistent with or in addition to the terms and conditions of this Agreement are hereby rejected by Palo Alto Networks and shall be deemed null and of no effect. Nothing herein is intended to apply to the agreement between the City and Palo Alto Networks' reseller, to which this agreement is attached as an appendix.

g. Force Majeure

Palo Alto Networks shall not be responsible for any cessation, interruption, or delay in the performance of its obligations hereunder due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott, availability of network and telecommunications services or other similar events beyond its reasonable control.

h. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California, including its conflict of laws principles. Any legal action or proceeding arising under this Agreement will be brought exclusively in the state or federal courts located in the City and County of San Francisco, California.

i. Headings

The headings, including section titles, are given solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of this document or any of its provisions.

j. Notices

All notices shall be in writing and delivered by overnight delivery service or by certified mail sent to the address published on the respective parties' websites or the address specified on the relevant order document (attention: Legal Department), and in each instance will be deemed given upon receipt.

k. Open Source Software

The Products may contain or be provided with components subject to the terms and conditions of open source software licenses ("**Open Source Software**"). A list of Open Source Software can be found at <https://www.paloaltonetworks.com/documentation/oss-listings/oss-listings.html> HYPERLINK "<https://www.paloaltonetworks.com/documentation/oss-listings/oss-listings.html>". These Open Source Software license terms are consistent with the license granted in section 2 (Use and Restrictions) and may contain additional rights benefiting you. Palo Alto Networks represents and warrants that the Product, when used in conformance with this Agreement, does not include Open Source Software that restricts your ability to use the Product nor requires you to disclose, license, or make available at no charge any material proprietary source code that embodies any of your intellectual property rights.

l. Reciprocal Waiver of Claims Related to United States SAFETY Act

Where a Qualified Anti-terrorism Technology (the "**QATT**") has been deployed in defense against, response to or recovery from an "act of terrorism" as that term is defined under the SAFETY Act, Palo Alto Networks and End User agree to waive all claims against each other, including their officers, directors, agents or other representatives, arising out of the manufacture, sale, use or operation of the QATT, and further agree that each is responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity arising out of such act of terrorism.

m. Reserved

n. Survival

Sections regarding license restrictions, ownership, term and termination, U.S. Government End Users, limitations of liability, governing law, and this General section shall survive termination of this Agreement.

o. Reserved

p. Waiver and Severability

The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver or amendment of any provision of this Agreement will be effective only if in writing and signed by authorized representatives of both parties. If any provision of this Agreement is held to be unenforceable or invalid, that provision will be enforced to the maximum extent possible and the other provisions will remain in full force and effect.

q. Reserved

Appendix E City and County of San Francisco Business Associate Agreement

This Business Associate Agreement (“BAA”) supplements and is made a part of the agreement by and between the City and County of San Francisco, the Covered Entity (“CE”), and SSP Data, Inc. (“Contractor”), the Business Associate (“BA”), dated May 22, 2023 (CMS #____) (“Agreement”). To the extent that the terms of the Agreement are inconsistent with the terms of this BAA, the terms of this BAA shall control.

RECITALS

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

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

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

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

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

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

1. Definitions.

a. Breach means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information, and shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402], as well as California Civil Code Sections 1798.29 and 1798.82.

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

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

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

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

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

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

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

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

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

k. Protected Health Information or PHI means any information, including electronic PHI, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Sections 160.103 and 164.501. For the purposes of this BAA, PHI includes all medical information and health insurance information as defined in California Civil Code Sections 56.05 and 1798.82.

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

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

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

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

2. Obligations of Business Associate.

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

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

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

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

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

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

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

h. Access to Protected Information. BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within (5) days of request by CE to enable CE to fulfill its obligations

under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains Protected Information in electronic format, BA shall provide such information in electronic format as necessary to enable CE to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. 164.524.

i. Amendment of Protected Information. Within ten (10) days of a request by CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA and its agents and subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment or other documentation to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

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

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

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

m. Notification of Breach. BA shall notify CE within 5 calendar days of any breach of Protected Information; any use or disclosure of Protected Information not permitted by the BAA; any Security Incident (except as otherwise provided below) related to Protected Information, and any use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BA to have been, accessed, acquired, used, or disclosed, as well as

any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 42 U.S.C. Section 17932; 45 C.F.R. 164.410; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

n. Breach Pattern or Practice by Business Associate's Subcontractors and Agents. Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(iii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or this BAA, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contractual arrangement with its subcontractor or agent, if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or this BAA within five (5) calendar days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

3. Termination.

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

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

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

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

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

4. Amendment to Comply with Law.

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the updated standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable state or federal laws. CE may terminate the Agreement upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Agreement or this BAA when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

5. Reimbursement for Fines or Penalties.

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