

**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

Second Amendment

THIS AMENDMENT (this “Amendment”) is made as of September 20, 2021 in San Francisco, California, by and between Health Advocates, LLC. (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period, increase the contract amount, and update standard contractual clauses;

WHEREAS, the Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposal (“RFP”), RFP 16-2012, issued on November 28, 2012 and this modification is consistent therewith; and

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number 4119-09-10 on November 2, 2020;

WHEREAS, approval for Amendment One was obtained when the Board of Supervisors approved Resolution number 388-18 on November 20, 2018; and

WHEREAS, approval for this Amendment Two was obtained when the Board of Supervisors approved Resolution number _____ on _____.

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term “Agreement” shall mean the Agreement (Contract ID # 1000002744) dated the 1st day of January 2014, between Contractor and City, as amended by the:

First Amendment, dated November 1, 2017

1b. Contract Monitoring Division. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division (“CMD”). Wherever “Human Rights Commission” or “HRC” appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean “Contract Monitoring Division” or “CMD” respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Term of the Agreement. Section 2 of the Agreement currently reads as follows:

Subject to Section 1, the term of this Agreement shall be from January 1, 2014 to December 31, 2021.

Such section is hereby amended in its entirety to read as follows:

Subject to Section 1, the term of this Agreement shall be from January 1, 2014 to December 31, 2023.

2b. Compensation. Section 5 of the Agreement currently reads as follows:

Compensation shall be made in monthly payments on or before the 15th day of each month for work, as set forth in Section 4 of this Agreement, that the Director of the Department of Public Health, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed Eighteen Million Fourteen Thousand Five Hundred Forty-Six Dollars (\$18,014,546). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by Department of Public Health as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

Such section is hereby amended in its entirety to read as follows:

Compensation shall be made in monthly payments on or before the 15th day of each month for work, as set forth in Section 4 of this Agreement, that the Director of the Department of Public Health, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed Twenty-One Million Three Hundred Nineteen Thousand Four Hundred Sixty-One Dollars (\$21,319,461). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by Department of Public Health as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

2c. Section 10. Section 10.5. is hereby added to "Taxes" to read as follows:

10.5. 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.

2d. Insurance. Section 15 is hereby replaced in its entirety to read as follows:

15. Insurance.

a. **Required Coverages.** Insurance limits are subject to Risk Management review and revision, as appropriate, as conditions warrant. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000, general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) 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.

(4) 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.

(5) Contractor shall maintain in force during the full life of the agreement Cyber and Privacy Insurance with limits of not less than \$5,000,000 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 any form.

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

c. Contractor's Commercial General Liability and Commercial Automobile Liability Insurance policies shall provide that such policies are primary insurance to any other

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

- d. All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."
- e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- f. 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.
- g. 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.
- h. 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.
- i. The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.
- j. If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

2e. Limitations on Contributions. Section 42 is hereby replaced in its entirety as follows:

42. 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.

2f. Distribution of Beverages and Water. Section 65 is hereby replaced to the Agreement as follows:

65. Distribution of Beverages and Water.

65a. Sugar-Sweetened Beverage Prohibition. Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

65b. Packaged Water Prohibition. Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

2g. Business Associate Agreement. Section 66 is hereby replaced in its entirety as follows:

66. 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").

The parties acknowledge that CONTRACTOR will:

1. Do **at least one** or more of the following:
 - A. Create, receive, maintain, or transmit PHI for or on behalf of CITY/SFDPH (including storage of PHI, digital or hard copy, even if Contractor does not view the PHI or only does so on a random or infrequent basis); or
 - B. Receive PHI, or access to PHI, from CITY/SFDPH or another Business Associate of City, as part of providing a service to or for CITY/SFDPH,

including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial; or

C. Transmit PHI data for CITY/SFDPH and require access on a regular basis to such PHI. (Such as health information exchanges (HIEs), e-prescribing gateways, or electronic health record vendors)

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

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

2. **NOT do any of the activities listed above in subsection 1;**
Contractor is not a Business Associate of CITY/SFDPH. Appendix E and attestations are not required for the purposes of this Agreement.

2h. Third Party Beneficiaries. Section 67 is hereby replaced in its entirety as follows:

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

2i. Management of City Data and Confidential Information. Section 68 is hereby is hereby added to read as follows:

68. Management of City Data and Confidential Information

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

b. **Use of City Data and Confidential Information.** Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor’s staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non- exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor’s own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor,

subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

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

2j. Contract Amendments; Budgeting Revisions. Section 69 is hereby added to read as follows:

69. Contract Amendments; Budgeting Revisions

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

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

c. City Program Scope Reduction. Given the local emergency, the pandemic, and the City’s resulting budgetary position, and in order to preserve the Agreement and enable Contractor to continue to perform work albeit potentially on a reduced basis, the City shall have authority during the Term of the Agreement, without the execution of a Formal Amendment, to reduce scope, temporarily suspend the Agreement work, and/or convert the Term to month-to-month (Program Scope Reduction), by use of a written Revision to Program Budgets, executed by the Director of Health, or his or her designee, and Contractor. Contractor understands and agrees that the City’s right to affect a Program Scope Reduction is intended to serve a public purpose and to protect the public fisc and is not intended to cause harm to or penalize Contractor. Contractor provides City with a full and final release of all claims arising from a Program Scope Reduction. Contractor further agrees that it will not sue the City for damages arising directly or indirectly from a City Program Scope Reduction.

2k. Nondisclosure of Private, Proprietary or Confidential Information. Section 70 is hereby replaced to read as follows:

70. Nondisclosure of Private, Proprietary or Confidential Information.

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

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

2l. Consideration of Salary History. Section 71 is hereby added to read as follows:

71. 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.

2m. Notification of Legal Requests. Section 72 is hereby added to read as follows:

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

2n. Exclusion Lists and Employee Verification. Section 73 is hereby added to read as follows:

73. Exclusion Lists and Employee Verification. Upon hire and monthly thereafter, Contractor will check the exclusion lists published by the Office of the Inspector General

(OIG), General Services Administration (GSA), and the California Department of Health Care Services (DHCS) to ensure that any employee, temporary employee, volunteer, consultant, or governing body member responsible for oversight, administering or delivering state or federally-funded services who is on any of these lists is excluded from (may not work in) your program or agency. Proof of checking these lists must be retained for seven years.

The Appendices listed below are amended as follows:

- 2o.** Delete Appendix A-1 and replace in its entirety with Appendix A-1 to Agreement as amended. Dated: 05/17/2021.
- 2p.** Delete Appendix B, and replace in its entirety with Appendix B and to Agreement as amended. Dated: 05/17/2021.
- 2q.** Delete Appendix B-1, and replace in its entirety with Appendix B-1 and to Agreement as amended. Dated: 05/17/2021.
- 2r.** Delete Appendix D, and reserve in Agreement as amended.
- 2s.** Delete Appendix E, and replace in its entirety with Appendix E to Agreement as amended. Dated: 04/12/2018.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

Recommended by:

Grant Colfax, MD
Director of Health
Department of Public Health

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

Approved:

Sailaja Kurella
Acting City Purchaser and Director of the
Office of Contract Administration

CONTRACTOR

Health Advocates, LLC



Steve Levine
21540 Plummer Street, Suite B
Chatsworth, CA 91311

City vendor number: 70234
Supplier ID#: 0000018958

Appendix A-1
STATEMENT OF WORK

CONTRACTOR: Health Advocates, LLC (**CONTRACTOR**)
21540 Plummer Street, Suite B
Chatsworth, CA 91311

CONTRACT TERM: January 1, 2018 through December 31, 2023

COMPENSATION: COMPREHENSIVE FIXED FEE PER DISCHARGE.

CONTRACTOR will be paid in accordance with the contingency and/or fixed rates outlined in Appendix B-1.

I. PERFORMANCE REQUIREMENTS (ELIGIBILITY)

1. CONTRACTOR will provide the following:

CONTRACTOR is relieved of any fixed or minimum staffing commitments included elsewhere in this Agreement pending mutual discussion of equitable adjustments to staffing based upon experience with the implementation of Healthcare Reform. Staff assigned will be trained, bilingual, Eligibility workers, Spanish speaking as priority and Chinese speaking preferred.

- A.
- i. Trained, bilingual, on-site eligibility workers including Spanish speaking as a priority and Chinese speaking on-site eligibility workers.
 - ii. The goal is to include eligibility worker with a minimum of one (1) to **two (2) years** public or teaching hospital or Department of Social Services.
 - iii. Additionally, personnel identified in (i) and (ii) above must have **three (3) or more years** of actual experience in qualifying patients for Medi-Cal in a public and/or teaching hospital setting.

B. The eligibility workers will:

- i. Screen 100% of all unsponsored patient admissions after **CITY** Eligibility Staff have interviewed and determined if Medi-Cal or the potential for other reimbursement sources exist.
- ii. Secure authorization to represent the patient and complete Medi-Cal applications or applications for other programs such as Victims of Crime at the bedside or, if appropriate, at the patient's residence or wherever the patient may be located after discharge.
- iii. Represent the patient in Fair Hearings or appeals proceedings, if applications are denied.
- iv. Appeal Medi-Cal Field Office or other Pre-Treatment Authorization Program denials for care.
- v. Investigate possible third party liability or Workers' Compensation reimbursement. File liens to protect the City and County's interest whenever appropriate or possible.
- vi. Referred accounts may be recalled in writing only within five (5) business days of the referral date.

- C. A supervisor with a minimum of **three (3) years** eligibility worker experience and **three (3) or more years** experience identifying and securing payment from programs such as Victims of Crime and/or Workers' Compensation and/or California Children's Services must be on-site at least **four (4) hours** per day to oversee the operations of the contract program, supervise on-site eligibility staff, coordinate with on-site lead worker, supervise field workers and be available to meet with **CITY** management and staff on a mutually agreed upon schedule.
- D. "Field Workers" dedicated to case management of homeless or transient patients for whom Medi-Cal applications are pending. The Field Worker will also assist patients in arranging transportation to and from Appeals and Hearings, assist patients in obtaining necessary documents, and provide direct support of any means to help with the Medi-Cal application process.
- E. **CONTRACTOR** will provide verification of Medi-Cal approval and insurance details for DPH Patient Financial Services for billing and follow-up to secure payment. . Upon request, **CONTRACTOR** will assist the Utilization Review Department to pursue retroactive treatment authorization for service.,.
- F. **CONTRACTOR** shall prepare weekly, monthly, quarterly and annual status, accounts receivable and other reports, as required by **CITY**.
- G. **CONTRACTOR** shall provide its on-site staff with all required office equipment, including telephones, computers, printers, fax machines, copy machines, desks, chairs and courier services. **CITY** provides only limited office space and access to records and patients relating only to the cases referred.
- H. **CONTRACTOR** must provide the following services within their service scope and expertise at no additional charge:
- i. In-service training to Hospital staff on government program changes.
 - ii. Telephone and personal consultation with attorneys and healthcare experts for answers to any questions, which have an impact on **CITY** 's accounts receivables.
 - iii. Information systems technology to enhance or ensure monitoring of Host's system for referred Medi-Cal cases, including support of programming.
 - iv. Assistance with implementing major program changes related to the State/Federal Medi-Cal Medicaid program, including State and County programs.
- I. **CONTRACTOR** must have on staff or through formal agreements with individuals with legal expertise of a minimum of **three (3) years**, who have appeared on behalf of clients/patients before an Administrative Law Judge for the purpose of appealing denied Medi-Cal/Disability claims. **CONTRACTOR** must show that it has attorneys at law, admitted to the California Bar on staff or available to file legal action, if necessary, to secure benefits and reimbursement for their clients.
- J. In consultation with the City Attorney's Office, licensed attorneys employed by **CONTRACTOR** will prepare and file legal actions, as necessary, and when justified, to obtain reimbursement for medical treatment.

- K. Provide a qualified Project Manager, who will oversee the operations of the contract program, supervise assigned and on-site staff, and be available to meet with **CITY** management and staff on a mutually agreed upon schedule.
- L. Performance under this contract shall be overseen by a **CONTRACTOR's** Partner or Manager and **CITY** Assistant Administrator for Patient Finance.
- M. **CITY** retains the right to request replacement of any of **CONTRACTOR's** employees assigned to **CITY's** contract.
- N. **CONTRACTOR's** on-site staff is expected to maintain regular office hours, providing coverage, as necessary, for lunch and rest breaks, dress and behave in a professional manner, respect the rights of patients, the public and **CITY** employees, paying close attention to patient confidentiality at all times. **CONTRACTOR** is responsible for managing its on-site staff to ensure professional work ethics are adhered to at all times.
- O. **CONTRACTOR's** on-site employees must provide proof of negative TB (tuberculosis) tests for employees or have employees obtain and pass TB tests from **CITY** Employee Health prior to first day of work, as well as any other immunizations required by the Department of Public Health. If testing is performed by **CITY**, **CONTRACTOR** shall be billed for tests, x-rays, etc. Also, its on-site employees may be required to have periodic tuberculosis testing or other Hospital, Health and Safety required immunizations, as well as attend mandatory training designed to protect staff from infection exposure and injury.
- P. **CONTRACTOR** will be expected to maximize revenues for **CITY**. Collection targets are 1,900 days per year. One ED case is the equivalent of one day.

It is understood that conditions beyond **CONTRACTOR's** control may impact this target, e.g., Welfare and Immigration reform, mandated Managed Care, declining inpatient census, timely referrals, a change in referral philosophy or practice by **CITY**, and/or changing State and Federal regulations, and that this target may be adjusted to reflect these occurrences.

CONTRACTOR must meet performance targets, as mutually established. Expected performance will be set to no less than prior year's collection performance.

- Q. **CONTRACTOR** will not be required to bill and secure Medi-Cal payments for referred mental health inpatients. For retroactive Medi-Cal approved past twelve (12) months **CONTRACTOR** will provide necessary Eligibility Letters of Authorization (LOA Form MC-190) to Community Mental Health. Community Mental Health Services is responsible for billing and securing payments on retroactive Medi-Cal eligible mental health inpatients to the State. Contract Administrator for this contract or designee will act as a liaison only on behalf of **CONTRACTOR** for referrals to **CITY's** Community Mental Health Services.

II. PERFORMANCE REQUIREMENTS (ADDITIONAL SERVICES)

- **Contractor** will manage the RAC review and appeal process for assigned accounts from request for intervention through resolution based upon the **City's** policy.

- **Contractor** Nurse(s), Physician(s), and/or Coding professional(s) will perform audits on behalf of the **City** for assigned claims that the RAC has requested recoupment via the demand letter.
- **Contractor** will prepare and submit any necessary correspondence including letters of appeal, grievance, and/or resubmission to request reconsideration of a claim. All applicable timely filing/appeal deadlines will be met.
- **Contractor** will note account activity in the **City's** patient accounting software system.
- **Where appropriate and needed to obtain correct payment**, **Contractor** will prepare accounts for Administrative Law Judge hearing and/or legal action by **City** or Legal Counsel based on the **City's** policy.
- **Contractor** will provide a *Root Cause Analysis Report* broken down by RAC denial type, area of the hospital, and reason for denial on a mutually agreed upon reporting schedule.
- **City** will provide **Contractor** remote access to information needed to determine correct expected payments and account status. These items include, but are not limited to, contracts, information systems, medical records and documents, payor correspondence, UB04s, itemized statements, and remittance advices.
- **City** agrees to provide all applicable correspondence and/or communication to **Contractor** in timely manner (usually within 48 hours of receipt by **City**). This ensures that **Contractor** has the requisite time to respond to the appropriate entity.
- **Contractor** will utilize *RAC Appeal Status* reporting. This robust and interactive report allows for real time visibility of accounts throughout the appeals process. This will be provided on a mutually agreed upon reporting schedule.

Denials Management Services will include the following services for any claims denied post-billing for Medicare, Medicaid Managed Care, Managed Care or Commercial acute or behavioral health accounts:

- **CONTRACTOR** will manage the retrospective clinical denials management process for assigned accounts from request for intervention through resolution based upon **City's** policy.
- **CONTRACTOR** will prepare and submit any necessary letters to request reconsideration of a claim by a payor.
- **Where appropriate and needed to obtain correct payment**, **CONTRACTOR** will prepare accounts for grievance by **City** or Legal Counsel based on the **City's** policy.
- **CONTRACTOR** Nurse(s), Physician(s), and/or Coding professional(s) will perform audits on behalf of the **City** for assigned claims that have paid less than expected for reasons believed to be clinically related, documenting support for billed charges, medical necessity, and/or appropriate levels of care in an effort to facilitate correct payment.
- **CITY** will provide **CONTRACTOR** access to information needed to determine correct expected payments and account status such as, but not limited to, contracts, information systems, medical records, UB04s, itemized statements, and remittance advices. **CITY** will also provide **CONTRACTOR** a transaction file including payments and adjustments recorded on referred

accounts to facilitate **CONTRACTOR's** monitoring of transactions (given that **CONTRACTOR** is not responsible of billing or payment follow-up) and to help with accurate reporting of reimbursement value to **CITY** in required reports.

- **CONTRACTOR** will use the **City's** systems to note account activity.
- **Contractor** will utilize proprietary "Account Tracking" reporting. This robust and interactive report allows for real time visibility of accounts approaching timely filing deadlines.
- **Contractor** will provide a *Root Cause Analysis Report* broken down by type of denial, area of the hospital, and reason for denial on a mutually agreed upon reporting schedule.

2. **CONTRACTOR** and **CITY** will continue to provide/perform the following:

- A. Quarterly reconciliation of all cases referred by **CITY** Eligibility Manager, Director of Patient Finance or Director of Utilization Management or their designees utilizing Acknowledgements, Referral, Status and Close reports.
- B. **CITY** will identify accounts referred to **CONTRACTOR** by adding an identifier to the account in the **CITY** Financial Management System (EPIC). For reconciliation purposes, a report of open/active referred accounts will be provided to **CONTRACTOR** on a monthly basis. **CITY** agrees to remove the aforementioned identifier within fifteen (15) business days of being notified by **CONTRACTOR** that the account has been closed by **CONTRACTOR**. Failure by **CITY** to remove this identifier will suspend the quarterly reconciliation of referred accounts.
- C. **CONTRACTOR** will monitor for payments collected by **CITY** staff on referrals where **CONTRACTOR's** fee is based upon payments. For referrals subject to a contingency and not a fixed fee, **CONTRACTOR** shall be entitled to its fee for all payments received more than seven (7) business days after the initial referral of an account.
- D. **CONTRACTOR** will submit an invoice for services bi-monthly within fifteen (15) days from the close of each bi-monthly period. The invoice must include the following:
 - 1) **CONTRACTOR's** name and mailing address
 - 2) Current Contract Number
 - 3) Date of Invoice
 - 4) Invoice Number
 - 5) Period of Billing
 - 6) Amount of ACTUAL Net Payments Received (prior to deductions of fees)
 - 7) Fee due in accordance with the terms and conditions of this Agreement
 - 8) A detail of accounts for which **CONTRACTOR** has perfected eligibility or obtained approval for payment. The detail must be separated by Payor Type and must include the following
 - a. Patient Name
 - b. Patient Account Number
 - c. **CONTRACTOR's** account number
 - d. Dates of Service
 - e. Remittance or payment date
 - f. Payment amount
 - g. Balance due after payment, if any
 - h. Fees due to **CONTRACTOR**

- E. **CITY** agrees that upon termination or cancellation of this Agreement, **CONTRACTOR** has the right of completion to final disposition on each case previously referred by **CITY**, including but not limited to, collection of liens, completion of eligibility, TAR and billing, appeals, and litigation, etc., and shall be entitled to its fees on all monies paid to **CITY**.
- F. **CITY** reserves the right to audit each invoice for accuracy and verification of the cases that were referred to **CONTRACTOR**. Any disputed amounts will be adjusted from the invoice and negotiated between the parties, and the undisputed portion shall be paid immediately. Any adjusted amounts will be included on a separate invoice when **CONTRACTOR** is successful in substantiating the disputed amounts. No dispute shall be raised if an account has been referred to **CONTRACTOR**, has not been recalled in writing within five (5) business days of the referral and payment was received more than seven (7) business days after the initial referral of an account.
- G. **CONTRACTOR** will not be paid in advance of collections of funds except as expressly authorized for successful Medi-Cal enrollments as evidenced per the requirements of this Agreement. Should **CONTRACTOR** receive any payments directly, **CONTRACTOR** agrees to immediately submit full payment to **CITY**.
- H. **CONTRACTOR** will invoice their contingency fees based only on NET payments received by **CITY** (subject to any applicable caps listed in Appendix B-1) and will not be reimbursed for any expenses (other than after prior written approval by **CITY** for **CONTRACTOR** to advance premiums to secure retroactive insurance for COBRA or for Independent Bill Review (IBR) fees advanced on Workers' Compensation payment appeals) incurred in connection with their performance under this contract.

3. CONTRACTOR agrees to perform under the terms of Section II, Scope of Work, and stipulates to the following, relative to the practice of law under the terms of the contract:

- A. **CONTRACTOR** will not pursue any claim against any City Department or file any legal actions on behalf of represented clients in pursuit of reimbursement for services rendered without the express approval of the Department and the City Attorney's Office, with the exception of Social Security Disability (SSD), Social Security Supplemental Security Income (SSI), Conservatorships, etc., required to qualify patients for public or private benefits.
- B. **CONTRACTOR** will pursue Fair Hearings and Appeals for eligibility, treatment authorization, and/or insurance denials on any and all appropriate cases within the statute of limitations as provided by regulation or law. No unique Departmental approval is required for these actions.
- C. **CONTRACTOR** will coordinate with other **CITY** departments or agencies on referred patient cases to avoid overlap of patient cases already assigned to other agencies or **CITY** departments.

II. SCOPE OF WORK

- A. **CITY**, Director of Patient Finance or Patient Access Manager will review all inpatient admissions, related outpatient visits for Fair Hearing cases where **CITY** Eligibility Workers have been unsuccessful in identifying a source of payment. After determining that staff has exhausted all reasonable efforts the case may be referred to **CONTRACTOR**, which will make reasonable efforts, including but not limited, to making home calls, assisting the applicant to secure required documentation, providing interpreter services and assistance with arranging transportation, etc., so that the applicant can complete the application, Fair Hearing or Appeal process. Referrals shall be at the discretion of managers authorized to make such referrals.

- B. The Director of Utilization Review may refer select Treatment Authorization (TAR) denials, together with copies of the medical records, to **CONTRACTOR** for administrative appeals or legal action where justified and substantiated by medical records, regulation or law. **CONTRACTOR** shall make the final determination if there is legal merit for an administrative appeal or further legal action. **CONTRACTOR** shall be responsible for initiating and for follow through of Treatment Authorization approvals with **CITY**'s Utilization Review Department.
- C. When **CONTRACTOR** establishes third-party eligibility (Medi-Cal, Workers' Compensation, California Children's Services, Victim of Crime, etc.) **CONTRACTOR** will provide to **CITY** supporting evidence of Notice of Eligibility or Letter of Authorization (whichever applies).
- D. For referrals for which Medi-Cal was denied or those for which Medi-Cal applications were not initiated, **CONTRACTOR** will provide written explanation of why an application was not initiated or why a Fair Hearing was not pursued, and if a Fair Hearing was pursued, why it was unsuccessful. This information will be provided on the monthly Close report provided by **CONTRACTOR**.
- E. **CONTRACTOR** will provide verification of Medi-Cal approval and insurance details to DPH Patient Financial Services for billing and follow-up to secure payment. **CONTRACTOR** will not be required to bill and secure Medi-Cal payments for referred mental health inpatients. Community Mental Health Services is responsible for billing and securing payments on retroactive Medi-Cal eligible mental health inpatients to the State. **CONTRACTOR** understands that the Contract Administrator or designee for the services will act as a liaison only on behalf of **CONTRACTOR** for referrals to **CITY**'s Community Mental Health Services.
- F. **CONTRACTOR** will perform a timely review of referred cases and potential Fair Hearing cases. Cases determined to be Medi-Cal ineligible due to no linkage with no other potential source of payment shall be returned to **CITY** as soon as the screening, application or Fair Hearing process is completed, together with a Close report indicating why the account was being closed. If no Medi-Cal application, Fair Hearing or lien is initiated within three (3) months following the month of treatment, or longer by Medi-Cal program allowance or administrative error with written explanation provided to the **CITY**. Otherwise the case shall be closed and returned immediately. **CITY** reserves the right to engage other consultants to perform a second review of returned accounts after they appear on the **CONTRACTOR**'s Close report.
- G. **CONTRACTOR** is to provide on-site access of **CONTRACTOR**'s systems for the status of cases referred, during its regular business hours.
- H. **CONTRACTOR**'s designated management will meet with **CITY** management on a mutually agreeable schedule to provide oral and written assessments of **CONTRACTOR**'s performance, including account audits and statistical analysis. These meetings also will provide the opportunity to address any concerns and/or project recommendations.
- I. **CONTRACTOR** will provide **CITY** with a means of measuring our efforts through our management reports. In particular, **CONTRACTOR**'s Status Report and case notes shall serve as an audit trail of all activity applied to each account and the Remittance Report shall serve as an audit for all payments received.
- J. **CONTRACTOR** will provide **CITY** with a monthly Status Report reflecting those accounts which are still active and a monthly Close report reflecting accounts closed during the reporting month, which will include in alpha sequence, patient name, account number, referral date, account amount, latest activity and/or the reason for closing the account. **CONTRACTOR** also will provide weekly Acknowledgement Reports, verifying each referral, monthly Remittance Reports summarizing all payments and statistical analysis reports.

- K. **CONTRACTOR** will provide three (3) hard copies and/or e-mail files of the following weekly or monthly reports, within fifteen (15) days from the close of the calendar month, that include the following data:
- i. Client Status Report - detailed listing and status/aging of outstanding accounts
 - ii. Close Report - cases cancelled/closed and reason for closing
 - iii. Acknowledgement Report – a weekly detailed listing of accounts referred to **CONTRACTOR** by **CITY** in the prior calendar month
 - iv. Invoices and Remittance Reports (See Appendix A-1, Section I.2.D.)
 - v. Other reports as required by **CITY**
- L. **CONTRACTOR** agrees to provide at no additional cost:
- i. In-service trainings and/or procedural updates to hospital staff on government program changes on new/revised public assistance programs.
 - ii. Assistance with interpretations of new/revised regulations and laws affecting eligibility and billing. Telephone and personal consultation with attorneys and healthcare experts and other professional/legal assistance deemed appropriate by both parties to be in our mutual interest and benefit for answers to any questions, which have an impact on **CITY**'s accounts receivables.
 - iii. Assistance with implementing major program changes such as Managed Care for Medi-Cal.
 - iv. Information systems specialists, programmers and equipment necessary to keep an on line database tracking system current.

III. GOALS, OBJECTIVES AND REVIEWS

- A. The objective of this contract is to maximize revenues from all sources covered under this Agreement. Other objectives include:
- i. Provide assistance to **CITY** in gathering meaningful data reflecting patient financial mix; estimating future revenues from expanded eligibility programs; developing statistical data needed for government program reporting requirements and analyzing program impacts on staffing.
 - ii. Increase staff productivity and knowledge through training and support.
- B. A specific goal is to increase approved Medi-Cal days and meet and/or exceed revenue targets as indicated in Appendix A-1, Section I. 1.P.
- C. Reviews will include:
- i. Monthly revenue analysis
 - ii. Monthly analysis of referral trends
 - iii. Monthly review of DSS performance on pending cases
 - v. Quarterly review of overall performance
 - vi. Quarterly review of **CITY**'s DSS staff productivity
 - vii. Meetings, as necessary, with local and State program representatives
 - viii. Ongoing review and reporting to **CITY** and **CITY** Administration on **CONTRACTOR's** performance

Appendix B
Calculation of Charges

1. Method of Payment

A. Contractor shall submit monthly invoices in the format agreed upon in the Original Agreement, by the fifteenth (15th) working day of each month for reimbursement of the actual costs for Services of the immediately preceding month. All costs associated with the Services shall be reported on the invoice each month. All costs incurred under this Agreement shall be due and payable only after Services have been rendered and in no case in advance of such Services.

2. Program Budgets and Final Invoice

A. Program Budgets are listed below and are attached hereto.

Budget Summary

Appendix B-1 – Fees (Rates) Schedule

B. Contractor understands that, of the maximum dollar obligation listed in section 3.3.1 of this Agreement, \$1,013,253 is included as a contingency amount and is neither to be used in Program Budgets attached to this Appendix, or available to Contractor without a modification to this Agreement executed in the same manner as this Agreement or a revision to the Program Budgets of Appendix B, which has been approved by Contract Administrator. Contractor further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable City and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by Controller. Contractor agrees to fully comply with these laws, regulations, and policies/procedures.

Year	Actuals
January 1, 2014 – December 31, 2014	\$1,234,145
January 1, 2015 – December 31, 2015	\$1,650,597
January 1, 2016 – December 31, 2016	\$1,625,805
January 1, 2017 – December 31, 2017	\$563,287
January 1, 2018 – December 31, 2018	\$1,411,473
January 1, 2019 – December 31, 2019	\$1,755,637
January 1, 2020 – December 31, 2020	\$3,621,487
January 1, 2021 – December 31, 2021	\$2,731,818
January 1, 2022 – December 31, 2022	\$2,813,773
January 1, 2023 – December 31, 2023	\$2,898,186
Sub-total:	\$20,306,208
Contingency 2021-2023	\$1,013,253
TOTAL: January 1, 2014 – December 31, 2023	\$21,319,461

C. Contractor agrees to comply with its Program Budgets of Appendix B in the provision of Services. Changes to the budget that do not increase or reduce the maximum dollar obligation of the City are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. Contractor agrees to comply fully with that policy/procedure.

D. A final closing invoice, clearly marked "FINAL," shall be submitted no later than forty-five (45) calendar days following the closing date of the Agreement, [should state "following the final disposition of all cases referred prior to termination] and shall include only those costs incurred during the referenced period of performance. If costs are not invoiced during this period, all unexpended funding set aside for this Agreement will revert to City.

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

APPENDIX B-1

Rate Schedule

Section I - COMPREHENSIVE FIXED FEE PER DISCHARGE

	A1	A2	B1	B2	C1	C2	D1
YEAR Referrals Date	Acute, SNF & LTC Screening & Applications	Outpatient ED, Acute, SNF & LTC Fair Hearing & Appeals	Psych Screening & Applications	Psych Fair Hearing & Appeals	Acute, SNF & LTC Pending Applications (non-HPE) Follow-up	Fair Hearing Follow-up on C1 Accounts	Outpatient ED Screenings & Follow-up
1/1/18 - 12/31/18	\$1,914	\$2,472	\$2,472	\$2,812	\$1,350	\$1,688	\$1,350
1/1/19 - 12/31/19	\$1,971	\$2,546	\$2,546	\$2,896	\$1,391	\$1,739	\$1,391
1/1/20 - 12/31/20	\$2,030	\$2,623	\$2,623	\$2,983	\$1,433	\$1,791	\$1,433
1/1/21 - 12/31/21	\$2,091	\$2,701	\$2,701	\$3,073	\$1,476	\$1,845	\$1,476
1/1/22 - 12/31/22	\$2,154	\$2,782	\$2,782	\$3,165	\$1,520	\$1,900	\$1,520
1/1/23 - 12/31/23	\$2,218	\$2,865	\$2,865	\$3,260	\$1,566	\$1,957	\$1,566

Health Advocate - Scope of Service for fixed fee rate;

- A1 - Acute, SNF (Skilled Nursing Facility) & LTC (Long Term Care) Medical – Screen patients, Medi-Cal application filed, and approved.
- A2 - Acute Inpatient, SNF, LTC and Outpatient Medi-Cal - Screen patients, Medi-Cal application filed, approved through a fair hearing or other process to overcome denied coverage (i.e. an appeal).
- B1 - Acute Psych – Screen patients, Medi-Cal application filed, and approved.
- B2 - Acute Psych - Screen patients, Medi-Cal application filed, approved through a fair hearing or other process to overcome denied coverage (i.e. an appeal).
- C1 – Acute, SNF & LTC Pending Application - Referred Acute cases for Medi-Cal for application follow-up to obtain

Medi-Cal approval.

- C2 – Follow-up on C1 referrals that are denied Medi-Cal require fair hearing or other appeals follow-up.
- D1 – For all Outpatient referrals for any combination of screening, application filing, and processing to secure approval. If a Fair Hearing or other appeals processing for denied coverage, then A2 applies.

Fee Assessment Rules

- These above fixed fee rates are based upon Approvals (not Referrals or Payments) and apply to each Discharge. This is a comprehensive fee that includes all screening, application and Fair Hearings and other appeal processing on denied coverage as requested in Section C - "Services Solicited" of the RFP.
- If Medi-Cal denies the claim in full or in part for reasons unrelated to **CONTRACTOR's** efforts, **CONTRACTOR** will still be compensated for their efforts.
- **CONTRACTOR** shall be compensated at the highest applicable rate, based upon the level of service required to obtain Medi-Cal approval, which may be different from the level of effort anticipated at the time of referral.
- In instances where Medi-Cal approval is achieved through a Fair Hearing or other appeal process to resolve denied coverage and results in coverage for multiple accounts referred to **CONTRACTOR**, **CONTRACTOR** will be compensated at the applicable Fair Hearing/Appeal rate (A2, B2, or C2) for each referral.

E. Fee for Third Party Payer (includes Insurance, COBRA, TPL, Workers' Comp) accounts,

Third party referral for outpatient or outpatient ER pre-legal cases will be at 16% of all sums collected

Third party referral for inpatient pre-legal cases will be at 20% with a fee cap of \$100,000 per case (includes liens filed) and,

20% of all sums collected with a fee cap of \$500,000 on referred cases paid as an outcome of litigation including arbitration, Administrative Law Judge, or judicial proceedings. **CITY** will reimburse preapproved administrative costs incurred by **CONTRACTOR** to reinstate or establish COBRA or Insurance Exchange benefits or when **CITY** approves **CONTRACTOR** to pursue a Workers' Compensation Independent Bill Review (IBR) appeal.

Contingency fees for third party

- F. HA is relieved of any fixed or minimum staffing commitments included elsewhere in this Agreement pending mutual discussion of equitable adjustments to staffing based upon experience with the implementation of Healthcare Reform.

Section II

A. RAC Review and Appeals

- 1st and 2nd level (Initial Review, Reconsideration Letter, and Appeal): **\$400/account**
- 3rd Level Appeal, Administrative Law Judge (ALJ): **+ \$350 /account**
- 4th Level Appeal, Departmental Appeal Board (DAB): **+ \$ 195/account**

- 5th Level Appeal, Preparation for District Court: + \$ 195/account

B. Non-RAC Denials Management Services

- Twenty five percent (25%) of all sums recovered

C. Clinical Authorization Denials: Pre-Billing

- \$75 per approved day for accounts reimbursed on a per diem basis
- \$400 per account for accounts reimbursed on a DRG basis

D. Utilization Management/Process Improvement Consulting and Education or Special Projects

- RN UM Consultant/Educator \$115/hour
- Consulting/Educating Project Director \$175/hour

Travel

- All travel will be preapproved and will be paid by City for professional consulting service only.

Special Considerations

- Some items listed in Appendix A-1 and B-1 may require the use of subcontractor(s), at bidders discretion.

Contractor Name:		Contractor City Vendor ID	
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DATA SECURITY ATTESTATION

INSTRUCTIONS: Contractors and Partners who receive or have access to health or medical information or electronic health record systems maintained by SFPDH must complete this form. Retain completed Attestations in your files for a period of 7 years. Be prepared to submit completed attestations, along with evidence related to the following items, if requested to do so by SFPDH.

Exceptions: If you believe that a requirement is Not Applicable to you, see instructions in Section III below on how to request clarification or obtain an exception.

I. All Contractors.

DOES YOUR ORGANIZATION...						Yes	No*
A	Conduct assessments/audits of your data security safeguards to demonstrate and document compliance with your security policies and the requirements of HIPAA/HITECH at least every two years? [Retain documentation for a period of 7 years]						
B	Use findings from the assessments/audits to identify and mitigate known risks into documented remediation plans?						
	Date of last Data Security Risk Assessment/Audit:						
	Name of firm or person(s) who performed the Assessment/Audit and/or authored the final report:						
C	Have a formal Data Security Awareness Program?						
D	Have formal Data Security Policies and Procedures to detect, contain, and correct security violations that comply with the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH)?						
E	Have a Data Security Officer or other individual designated as the person in charge of ensuring the security of confidential information?						
	If yes:	Name & Title:	Phone #	Email:			
F	Require Data Security Training upon hire and annually thereafter for all employees who have access to health information? [Retain documentation of trainings for a period of 7 years.] [SFPDH data security training materials are available for use; contact OCPA at 1-855-729-6040.]						
G	Have proof that employees have signed a form upon hire and annually, or regularly, thereafter, with their name and the date, acknowledging that they have received data security training? [Retain documentation of acknowledgement of trainings for a period of 7 years.]						
H	Have (or will have if/when applicable) Business Associate Agreements with subcontractors who create, receive, maintain, transmit, or access SFPDH's health information?						
I	Have (or will have if/when applicable) a diagram of how SFPDH data flows between your organization and subcontractors or vendors (including named users, access methods, on-premise data hosts, processing systems, etc.)?						

II. ATTEST: Under penalty of perjury, I hereby attest that to the best of my knowledge the information herein is true and correct and that I have authority to sign on behalf of and bind Contractor listed above.

ATTESTED by Data Security Officer or designated person	Name: (print)		Signature	Date
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III. *EXCEPTIONS: If you have answered "NO" to any question or believe a question is Not Applicable, please contact OCPA at **1-855-729-6040** or compliance.privacy@sfdph.org for a consultation. All "No" or "N/A" answers must be reviewed and approved by OCPA below.

EXCEPTION(S) APPROVED by OCPA	Name (print)		Signature	Date
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San Francisco Department of Public Health

Business Associate Agreement

This Business Associate Agreement (“BAA”) supplements and is made a part of the contract by and between the City and County of San Francisco, the Covered Entity (“CE”), and Contractor, the Business Associate (“BA”) (the “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 San Francisco Department of Public Health (“SFDPH”), 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, 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 a contract 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. Parts 160 and 164, Subparts A and D.



San Francisco Department of Public Health

Business Associate Agreement

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.



San Francisco Department of Public Health

Business Associate Agreement

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. Attestations. Except when CE's data privacy officer exempts BA in writing, the BA shall complete the following forms, attached and incorporated by reference as though fully set forth herein, SFDPH Attestations for Privacy (Attachment 1) and Data Security (Attachment 2) within sixty (60) calendar days from the execution of the Agreement. If CE makes substantial changes to any of these forms during the term of the Agreement, the BA will be required to complete CE's updated forms within sixty (60) calendar days from the date that CE provides BA with written notice of such changes. BA shall 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. 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.

c. 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)].

d. 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



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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)].

e. 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.

f. 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).

g. 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.

h. 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



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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 seven (7) 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.

i. 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.

j. 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)].

k. 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.

l. 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



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what constitutes “minimum necessary” to accomplish the intended purpose in accordance with HIPAA and HIPAA Regulations.

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

n. 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)]

o. 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 Contract 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.



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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 of 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 access, 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.

APPENDIX E



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Attachment 2 – SFDPH Data Security Attestation, version 06-07-2017

Office of Compliance and Privacy Affairs
San Francisco Department of Public Health
101 Grove Street, Room 330, San Francisco, CA 94102
Email: compliance.privacy@sfdph.org
Hotline (Toll-Free): 1-855-729-6040