

CITY AND COUNTY OF SAN FRANCISCO

GRANT AGREEMENT

between

CITY AND COUNTY OF SAN FRANCISCO

and

HOMEBRIDGE, INC.

**THIS GRANT AGREEMENT** (this “Agreement”) is made this **1<sup>st</sup>** day of **July 2016**, in the City and County of San Francisco, State of California, by and between **Homebridge, Inc., 1035 Market Street, L-1, San Francisco, CA 94103** (“Grantee”) and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“City”) acting by and through the Agency (as hereinafter defined),

**WITNESSETH:**

**WHEREAS**, Grantee has submitted to the Agency the Application Documents (as hereinafter defined) , for the purpose of funding the matters set forth in the Grant Plan (as hereinafter defined) and summarized briefly as follows:

**In-Home Supportive Services – Contract Mode and Provider Skill Development Training and Supports; and**

WHEREAS, the Grant is funded with Federal dollars, CFDA #93.778; and

**WHEREAS**, City desires to provide such a grant on the terms and conditions set forth herein:

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1  
DEFINITIONS**

**1.1 Specific Terms.** Unless the context otherwise requires, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

(a) “**ADA**” shall mean the Americans with Disabilities Act (including all rules and regulations thereunder) and all other applicable federal, state and local disability rights legislation, as the same may be amended, modified or supplemented from time to time.

(b) “**Agency**” shall mean Human Services Agency or Department of Human Services

(c) “**Application Documents**” shall mean collectively: (i) the grant application submitted by Grantee, including all exhibits, schedules, appendices and attachments thereto; (ii) all documents,

correspondence and other written materials submitted in respect of such grant application; and (iii) all amendments, modifications or supplements to any of the foregoing approved in writing by City.

(d) “**Budget**” shall mean either the budget attached hereto as part of Appendices B and B-1, if any, or the budget included in the Application Documents, to the extent expressly approved by the Agency.

(e) “**Charter**” shall mean the Charter of City.

(f) “**Controller**” shall mean the Controller of City.

(g) “**Eligible Expenses**” shall have the meaning set forth in Appendices A and A-1.

(h) “**Event of Default**” shall have the meaning set forth in Section 11.1.

(i) “**Fiscal Quarter**” shall mean each period of three (3) calendar months commencing on July 1, October 1, January 1 and April 1, respectively.

(j) “**Fiscal Year**” shall mean each period of twelve (12) calendar months commencing on July 1 and ending on June 30 during all or any portion of which this Agreement is in effect.

(k) “**Funding Request**” shall have the meaning set forth in Section 5.3(a).

(l) “**Grant Funds**” shall mean any and all funds allocated or disbursed to Grantee under this Agreement.

(m) “**Grant Plan**” shall have the meaning set forth in Appendices A, A-1, B and B-1 or

shall mean the plans, performances, events, exhibitions, acquisitions or other activities or matter described in the Application documents; provided, however, that in the event of any inconsistency in such description, the most recent of the conflicting documents shall govern.

(n) “**HRC**” shall mean the Human Rights Commission of City, or, in light of legal changes in the governing structure, shall mean “**CMD**” or the Contract Monitoring Division of the City.

(o) “**Indemnified Parties**” shall mean: (i) City, including the Agency and all commissions, departments, agencies and other subdivisions of City; (ii) City's elected officials, directors, officers, employees, agents, successors and assigns; and (iii) all persons or entities acting on behalf of any of the foregoing.

(p) “**Losses**” shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.

(q) “**Publication**” shall mean any report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, web page, audio or visual material or other communication for public dissemination, which relates to all or any portion of the Grant Plan or is paid for in whole or in part using Grant Funds.

(r) “**Contractor**” shall mean “**Grantee**” as certain City Contracting requirements also apply to Grants of the City of San Francisco.

**1.2 Additional Terms.** The terms “as directed,” “as required” or “as permitted” and similar terms shall refer to the direction, requirement, or permission of the Agency. The terms “sufficient,” “necessary” or “proper” and similar terms shall mean sufficient, necessary or proper in the sole judgment of the Agency. The terms “approval,” “acceptable” or “satisfactory” or similar terms shall mean approved by, or acceptable to, or satisfactory to the Agency. The terms “include,” “included” or “including” and similar terms shall be deemed to be followed by the words “without limitation”. The use of the term “subcontractor” “successor” or “assign” herein refers only to a subcontractor (“subgrantee”), successor or assign expressly permitted under Article 13.

**1.3 References to this Agreement.** References to this Agreement include: (a) any and all appendices, exhibits, schedules, attachments hereto; (b) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (c) any and all amendments, modifications or supplements hereto made in accordance with Section 17.2. References to articles, sections, subsections or appendices refer to articles, sections or subsections of or appendices to this Agreement, unless otherwise expressly stated. Terms such as “hereunder,” herein or “hereto” refer to this Agreement as a whole.

## **ARTICLE 2 APPROPRIATION AND CERTIFICATION OF GRANT FUNDS; LIMITATIONS ON CITY'S OBLIGATIONS**

**2.1 Risk of Non-Appropriation of Grant Funds.** This Agreement is subject to the budget and fiscal provisions of the Charter. City shall have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Grantee acknowledges that City budget decisions are subject to the discretion of its Mayor and Board of Supervisors. Grantee assumes all risk of possible non-appropriation or non-certification of funds, and such assumption is part of the consideration for this Agreement.

**2.2 Certification of Controller; Guaranteed Maximum Costs.** No funds shall be available under this Agreement until prior written authorization certified by the Controller. In addition, as set forth in Section 21.10-1 of the San Francisco Administrative Code: City's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, City and its employees and officers are not authorized to request Grantee to perform services or to provide materials, equipment and supplies that would result in Grantee performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City is not required to pay Grantee for services, materials, equipment or supplies that are provided by Grantee which are beyond the scope of the services, materials, equipment and supplies agreed upon herein and which were not approved by a written amendment to this Agreement having been lawfully executed by City. City and its employees and officers are not authorized to offer or promise to Grantee additional funding for this Agreement which would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. City is not required to honor any offered or promised additional funding which exceeds the maximum provided in this Agreement which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

**2.3 Automatic Termination for Nonappropriation of Funds.** This Agreement shall automatically 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 any

Fiscal Year, this Agreement shall terminate, without penalty, liability or expense of any kind to City, at the end of such portion of the Fiscal Year.

**2.4 SUPERSEDURE OF CONFLICTING PROVISIONS.** IN THE EVENT OF ANY CONFLICT BETWEEN ANY OF THE PROVISIONS OF THIS ARTICLE 2 AND ANY OTHER PROVISION OF THIS AGREEMENT, THE APPLICATION DOCUMENTS OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, THE TERMS OF THIS ARTICLE 2 SHALL GOVERN.

### **ARTICLE 3 TERM**

**3.1 Effective Date.** This Agreement shall become effective when the Controller has certified to the availability of funds as set forth in Section 2.2 and the Agency has notified Grantee thereof in writing.

**3.2 Duration of Term.** The term of this Agreement shall commence on the later of (a) July 1, 2016 and (b) the effective date specified in Section 3.1. Such term shall end at 11:59 p.m. San Francisco time on June 30, 2019.

Grant term can be extended at the sole discretion of the Agency for an additional **one** year, subject to the performance of the contractor and the availability of funding.

### **ARTICLE 4 IMPLEMENTATION OF GRANT PLAN**

**4.1 Implementation of Grant Plan; Cooperation with Monitoring.** Grantee shall, in good faith and with diligence, implement the Grant Plan on the terms and conditions set forth in this Agreement and the Application Documents. Grantee shall not materially change the nature or scope of the Grant Plan during the term of this Agreement without the prior written consent of City. Grantee shall promptly comply with all standards, specifications and formats of City, as they may from time to time exist, related to evaluation, planning and monitoring of the Grant Plan and shall cooperate in good faith with City in any evaluation, planning or monitoring activities conducted or authorized by City.

**4.2 Grantee's Personnel.** The Grant Plan shall be implemented only by competent personnel under the direction and supervision of Grantee.

**4.3 Grantee's Board of Directors.** Grantee shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in Grantee's bylaws and other governing documents and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Grantee's board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by Grantee of its obligations under this Agreement.

#### **4.4 Publications and Work Product.**

(a) Grantee understands and agrees that City has the right to review, approve, disapprove or conditionally approve, in its sole discretion, the work and property funded in whole or part with the Grant Funds, whether those elements are written, oral or in any other medium. Grantee has the burden of demonstrating to City that each element of work or property funded in whole or part with the Grant Funds is directly and integrally related to the Grant Plan as approved by City. City shall have the sole and final discretion to determine whether Grantee has met this burden.

(b) Without limiting the obligations of Grantee set forth in subsection (a) above, Grantee shall submit to City for City's prior written approval any Publication, and Grantee shall not disseminate any such Publication unless and until it receives City's consent. In addition, Grantee shall submit to City for approval, if City so requests, any other program material or form that Grantee uses or proposes to use in furtherance of the Grant Plan, and Grantee shall promptly provide to City one copy of all such materials or forms within two (2) days following City's request. The City's approval of any material hereunder shall not be deemed an endorsement of, or agreement with, the contents of such material, and the City shall have no liability or responsibility for any such contents. The City reserves the right to disapprove any material covered by this section at any time, notwithstanding a prior approval by the City of such material. Grantee shall not charge for the use or distribution of any Publication funded all or in part with the Grant Funds, without first obtaining City's written consent, which City may give or withhold in its sole discretion.

(c) Grantee shall distribute any Publication solely within San Francisco, unless City otherwise gives its prior written consent, which City may give or withhold in its sole discretion. In addition, Grantee shall furnish any services funded in whole or part with the Grant Funds under this Agreement solely within San Francisco, unless City otherwise gives its prior written consent, which City may give or withhold in its sole discretion.

(d) City may disapprove any element of work or property funded in whole or part by the Grant Funds that City determines, in its sole discretion, has any of the following characteristics: is divisive or discriminatory; undermines the purpose of the Grant Plan; discourages otherwise qualified potential employees or volunteers or any clients from participating in activities covered under the Grant Plan; undermines the effective delivery of services to clients of Grantee; hinders the achievement of any other purpose of City in making the Grant under this Agreement; or violates any other provision of this Agreement or applicable law. If City disapproves any element of the Grant Plan as implemented, or requires any change to it, Grantee shall immediately eliminate the disapproved portions and make the required changes. If City disapproves any materials, activities or services provided by third parties, Grantee shall immediately cease using the materials and terminate the activities or services and shall, at City's request, require that Grantee obtain the return of materials from recipients or deliver such materials to City or destroy them.

(e) City has the right to monitor from time to time the administration by Grantee or any of its subcontractors of any programs or other work, including, without limitation, educational programs or trainings, funded in whole or part by the Grant Funds, to ensure that Grantee is performing such element of the Grant Plan, or causing such element of the Grant Plan to be performed, consistent with the terms and conditions of this Agreement.

(f) Grantee shall acknowledge City's funding under this Agreement in all Publications. Such acknowledgment shall conspicuously state that the activities are sponsored in whole or in part through a grant from the Agency. Except as set forth in this Section, Grantee shall not use the name of the Agency or City (as a reference to the municipal corporation as opposed to location) in any Publication without prior written approval of City.

## **ARTICLE 5 USE AND DISBURSEMENT OF GRANT FUNDS**

### **5.1 Maximum Amount of Grant funds.**

The amount of the Grant Funds disbursed hereunder shall not exceed **Eighty Million, Two Hundred One Thousand Four Hundred Fifty Seven Dollars (\$80,201,457)** for the period **from July 1, 2016 to**

**June 30, 2019, plus any contingent amount authorized by City and certified as available by the Controller.**

**Contingent amount:** Up to **Eight Million Twenty Thousand One Hundred Forty Six Dollars (\$8,020,146)** for the period from **July 1, 2018 to June 30, 2019 (Y3)**, **may be available, in the City's sole discretion as a contingency but only subject to written authorization by the City and if monies are certified as available by the Controller.**

The maximum amount of Grant Funds disbursed hereunder shall not exceed **Eighty Eight Million Two Hundred Twenty One Thousand Six Hundred Three Dollars (\$88,221,603)** for the period from **July 1, 2016 to June 30, 2019 (Y1-Y3)**.

Grantee understands that the maximum amount of Grant Funds disbursement identified above in Section 5.1 of this Agreement, includes the amount shown as the contingent amount and may not to be used in Program Budget(s) attached to this Agreement as Appendix B, and is not available to Grantee without a written revision to the Program Budgets of Appendix B approved by Agency. Grantee further understands that no payment of any portion of this contingency amount will be made unless and until such funds are certified as available by Controller. Grantee agrees to fully comply with these laws, regulations, and policies and procedures.

**5.2 Use of Grant Funds.** Grantee shall use the Grant Funds only for Eligible Expenses as set forth in Appendix A, Appendix B and defined as eligible expenses in 2 CFR Part 200 Subpart E, Cost Principles, if the source of funding for this program is Federal, and for no other purpose. Grantee shall expend the Grant Funds in accordance with the Budget, if any, and shall obtain the prior approval of City before transferring expenditures from one line item to another within the Budget.

**5.3 Disbursement Procedures.** Grant Funds shall be disbursed to Grantee as follows:

(a) Grantee shall submit to the Agency, in the manner specified for notices pursuant to Article 15, a document (a "Funding Request") substantially in the form attached as Appendix C. Any Funding Request that is submitted and is not approved by the Agency shall be returned by the Agency to Grantee with a brief statement of the reason for the Agency's rejection of such Funding Request. If any such rejection relates only to a portion of Eligible Expenses itemized in such Funding Request, the Agency shall have no obligation to disburse any Grant Funds for any other Eligible Expenses itemized in such Funding Request unless and until Grantee submits a Funding Request that is in all respects acceptable to the Agency.

(b) The Agency shall make all disbursements of Grant Funds pursuant to this Section by check payable to Grantee, sent via U.S. mail or by Automated Clearing House (ACH) payments authorized by the City Controller's Office in accordance with Article 15, unless the Agency otherwise agrees in writing, in its sole discretion. The Agency shall make disbursements of Grant Funds no more than once during each month for the term of the grant.

**5.4 State or Federal Funds:**

(a) Disallowance. With respect to Grant Funds, if any, which are ultimately provided by the state or federal government, Grantee agrees that if Grantee claims or receives payment from City for an Eligible Expense, payment or reimbursement of which is later disallowed by the state or federal government, Grantee shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Grantee under this Agreement or any other Agreement. Any such offset with respect to a portion of the disallowed amount shall not release Grantee from Grantee's obligation hereunder to refund the remainder of the disallowed amount.

(b) **Single Audit Requirements.** Grantees that expend \$750,000 or more in a fiscal year that began after December 26, 2014 from any and all Federal awards shall have a single audit conducted in each of those fiscal years accordance with 2 CFR Part 200 Subpart F . Grantees that expend less than \$750,000 a year in Federal awards are exempt from the single audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal Agency, pass-through entity and General Accounting Office, and are still subject to other audit requirements as specified in 2 CFR Subpart F §200.501

(c) **Grant Terms.** The funding for this agreement is provided in full or in part by a Federal or State grant to the City. As part of the terms of receiving the funds, the City is required to incorporate some of the terms into this Agreement and include certain reporting requirements. The incorporated terms and requirements may be found in Appendix G. By executing this Agreement, Grantee certifies that Grantee is not suspended, debarred or otherwise excluded from participation in state or federal assistance programs. Grantee acknowledges that this certification of eligibility to receive state or federal funds is a material term of the Agreement.

## **ARTICLE 6 REPORTING REQUIREMENTS; AUDITS; PENALTIES FOR FALSE CLAIMS**

**6.1 Regular Reports.** Grantee shall provide, in a prompt and timely manner, financial, operational and other reports, as requested by the Agency, in form and substance satisfactory to the Agency. Such reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages, to the maximum extent possible.

**6.2 Organizational Documents.** If requested by City, on or before the date of this Agreement, Grantee shall provide to City the names of its current officers and directors and certified copies of its Articles of Incorporation and Bylaws as well as satisfactory evidence of the valid nonprofit status described in Section 8.1.

**6.3 Notification of Defaults or Changes in Circumstances.** Grantee shall notify City immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; and (b) any change of circumstances that would cause any of the representations and warranties contained in Article 8 to be false or misleading at any time during the term of this Agreement.

**6.4 Financial Statements.** Within sixty (60) days following the end of each Fiscal Year, Grantee shall deliver to City an unaudited balance sheet and the related statement of income and cash flows for such Fiscal Year, all in reasonable detail acceptable to City, certified by an appropriate financial officer of Grantee as accurately presenting the financial position of Grantee. If requested by City, Grantee shall also deliver to City, no later than one hundred twenty (120) days following the end of any Fiscal Year, an audited balance sheet and the related statement of income and cash flows for such Fiscal Year, certified by a reputable accounting firm as accurately presenting the financial position of Grantee, and in compliance with 2 CFR Part 200 Subpart F, as applicable.

**6.5 Books and Records.** Grantee shall establish and maintain accurate files and records of all aspects of the Grant Plan and the matters funded in whole or in part with Grant Funds during the term of this Agreement. Without limiting the scope of the foregoing, Grantee shall establish and maintain accurate financial books and accounting records relating to Eligible Expenses incurred and Grant Funds received and expended under this Agreement, together with all invoices, documents, payrolls, time records and other data related to the matters covered by this Agreement, whether funded in whole or in part with

Grant Funds. Grantee shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until any final audit has been fully completed, whichever is later.

**6.6 Inspection and Audit.** Grantee shall make available to City, its employees and authorized representatives, and its Federal and State funders, during regular business hours all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by Grantee under Section 6.5. Grantee shall permit City, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of City pursuant to this Section shall remain in effect so long as Grantee has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 6.

**6.7 Submitting False Claims; Monetary Penalties.** Any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (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.

**6.8 Ownership of Results.** Any interest of Grantee or any subgrantee, in drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, or other documents or Publications prepared by Grantee or any subgrantee in connection with this Agreement or the implementation of the Grant Plan or the services to be performed under this Agreement, shall become the property of and be promptly transmitted to City. Notwithstanding the foregoing, Grantee may retain and use copies for reference and as documentation of its experience and capabilities.

**6.9 Works for Hire.** If, in connection with this Agreement or the implementation of the Grant Plan, Grantee or any subgrantee creates artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship or Publications, such creations shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such creations shall be the property of City. If it is ever determined that any such creations are not works for hire under applicable law, Grantee hereby assigns all copyrights thereto to City, and agrees to provide any material, execute such documents and take such other actions as may be necessary or desirable to effect such assignment. With the prior written approval of City, Grantee may retain and use copies of such creations for reference and as documentation of its experience and capabilities. Grantee shall obtain all releases, assignments or other agreements from subgrantees or other persons or entities implementing the Grant Plan to ensure that City obtains the rights set forth in this Article 6.



**ARTICLE 7  
TAXES**

**7.1 Grantee to Pay All Taxes.** Grantee shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, the Grant Plan, the Grant Funds or any of the activities contemplated by this Agreement.

**7.2 Use of City Real Property.** If at any time this Agreement entitles Grantee to the possession, occupancy or use of City real property for private gain, the following provisions shall apply:

(a) Grantee, on behalf of itself and any subgrantees, successors and assigns, recognizes and understands that this Agreement may create a possessory interest subject to property taxation and Grantee, and any subgrantee, successor or assign, may be subject to the payment of such taxes.

(b) Grantee, on behalf of itself and any subgrantees, successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or other extension of this Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Grantee shall report any assignment or other transfer of any interest in this Agreement or any renewal or extension thereof to the County Assessor within sixty (60) days after such assignment, transfer, renewal or extension.

(c) Grantee shall provide such other information as may be requested by City to enable City to comply with any reporting requirements under applicable law with respect to possessory interests.

**7.3. Earned Income Credit (EIC) Forms. Reserved**

**ARTICLE 8  
REPRESENTATIONS AND WARRANTIES**

Grantee represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

**8.1 Organization; Authorization.** Grantee is a nonprofit corporation, duly organized and validly existing and in good standing under the laws of the jurisdiction in which it was formed. Grantee has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section. Grantee has duly authorized by all necessary action the execution, delivery and performance of this Agreement. Grantee has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Grantee, enforceable against Grantee in accordance with the terms hereof.

**8.2 Location.** Grantee's operations, offices and headquarters are located at the address for notices set forth in Section 15. All aspects of the Grant Plan will be implemented at the geographic location(s), if any, specified in the Grant Plan.

**8.3 No Misstatements.** No document furnished or to be furnished by Grantee to City or City in connection with the Application Documents, this Agreement, any Funding Request or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

#### **8.4 Conflict of Interest.**

(a) Through its execution of this Agreement, Grantee acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

(b) Not more than one member of an immediate family serves or will serve as an officer, director or employee of Grantee, without the prior written consent of City. For purposes of this subsection, "immediate family" shall include husband, wife, domestic partners, brothers, sisters, children and parents (both legal parents and step-parents).

**8.5 No Other Agreements with City.** Except as expressly itemized in Appendix D, neither Grantee nor any of Grantee's affiliates, officers, directors or employees has any interest, however remote, in any other agreement with City including any commission, department or other subdivision thereof).

**8.6 Subcontracts.** Except as may be permitted under Section 13.3, Grantee has not entered into any agreement, arrangement or understanding with any other person or entity pursuant to which such person or entity will implement or assist in implementing all or any portion of the Grant Plan.

**8.7 Eligibility to Receive Federal Funds.** By executing this Agreement, Grantee certifies that Grantee is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Grantee acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

### **ARTICLE 9 INDEMNIFICATION AND GENERAL LIABILITY**

**9.1 Indemnification.** Grantee shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection with or caused by: (a) a material breach of this Agreement by Grantee; (b) a material breach of any representation or warranty of Grantee contained in this Agreement; (c) any personal injury caused, directly or indirectly, by any act or omission of Grantee or its employees, subgrantees or agents; (d) any property damage caused, directly or indirectly by any act or omission of Grantee or its employees, subgrantees or agents; (e) the use, misuse or failure of any equipment or facility used by Grantee, or by any of its employees, subgrantees or agents, regardless of whether such equipment or facility is furnished, rented or loaned to Grantee by an Indemnified Party; (f) any tax, fee, assessment or other charge for which Grantee is responsible under Article 7; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any person or entity in consequence of the use by any Indemnified Party of any goods or services furnished to such Indemnified Party in connection with this Agreement. Grantee's obligations under the immediately preceding sentence shall apply to any Loss that is caused in whole or in part by the active or passive negligence of any Indemnified Party, but shall exclude any Loss caused solely by the willful misconduct of the Indemnified Party. 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.

**9.2 Duty to Defend; Notice of Loss.** Grantee acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 9.1: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of

Section 9.1, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to Grantee by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give Grantee prompt notice of any Loss under Section 9.1 and Grantee shall have the right to defend, settle and compromise any such Loss; provided, however, that the Indemnified Party shall have the right to retain its own counsel at the expense of Grantee if representation of such Indemnified Party by the counsel retained by Grantee would be inappropriate due to conflicts of interest between such Indemnified Party and Grantee. An Indemnified Party's failure to notify Grantee promptly of any Loss shall not relieve Grantee of any liability to such Indemnified Party pursuant to Section 9.1, unless such failure materially impairs Grantee's ability to defend such Loss. Grantee shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if Grantee contends that such Indemnified Party shares in liability with respect thereto.

**9.3 Incidental and Consequential Damages.** Losses covered under this Article 9 shall include any and all incidental and consequential damages resulting in whole or in part from Grantee's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any Indemnified Party may have under applicable law with respect to such damages.

**9.4 LIMITATION ON LIABILITY OF CITY.** CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF GRANT FUNDS ACTUALLY DISBURSED HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT, THE APPLICATION DOCUMENTS OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON GRANT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE GRANT FUNDS, THE GRANT PLAN OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

## **ARTICLE 10 INSURANCE**

**10.1 Types and Amounts of Coverage.** Without limiting Grantee's liability pursuant to Article 9, Grantee shall maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

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

(b) 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; policy must include Abuse and Molestation coverage, and

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

(d) Professional liability insurance for negligent acts, errors or omission with respect to professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) each claim.

**10.2 Additional Requirements for General and Automobile Coverage.** Commercial General Liability and Commercial Automobile Liability insurance policies shall:

(a) Name as additional insured City and its officers, agents and employees.

(b) 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 insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to limits of liability.

**10.3 Additional Requirements for All Policies.** All policies shall be endorsed to provide at least thirty (30) days' advance written notice to City of cancellation of policy for any reason, nonrenewal or reduction in coverage and specific notice mailed to City's address for notices pursuant to Article 15.

**10.4 Required Post-Expiration Coverage.** Should any of the insurance required hereunder be provided under a claims-made form, Grantee shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the term hereof give rise to claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.

**10.5 General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs.** Should any of the insurance required hereunder 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.

**10.6 Evidence of Insurance.** Before commencing any operations under this Agreement, Grantee shall furnish to City certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City's request. Before commencing any operations under this Agreement, Grantee 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. Failure to maintain insurance shall constitute a material breach of this Agreement.

**10.7 Effect of Approval.** Approval of any insurance by City shall not relieve or decrease the liability of Grantee hereunder.

**10.8 Insurance for Subcontractors and Evidence of this Insurance.** If a subcontractor will be used to complete any portion of this agreement, the grantee shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents, and employees and the grantee listed as additional insureds.

**10.9** Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy 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.

**10.10** 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.

#### **10.11 Insurance Waiver. Reserved**

### **ARTICLE 11 EVENTS OF DEFAULT AND REMEDIES**

**11.1 Events of Default.** The occurrence of any one or more of the following events shall constitute an “Event of Default” under this Agreement:

(a) **False Statement.** Any statement, representation or warranty contained in this Agreement, in the Application Documents, in any Funding Request or in any other document submitted to City under this Agreement is found by City to be false or misleading.

(b) **Failure to Provide Insurance.** Grantee fails to provide or maintain in effect any policy of insurance required in Article 10.

(c) **Failure to Comply with Applicable Laws.** Grantee fails to perform or breaches any of the terms or provisions of Article 16.

(d) **Failure to Perform Other Covenants.** Grantee fails to perform or breaches any other agreement or covenant of this Agreement to be performed or observed by Grantee as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.

(e) **Cross Default.** Grantee defaults under any other agreement between Grantee and City (after expiration of any grace period expressly stated in such agreement).

(f) **Voluntary Insolvency.** Grantee (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 Grantee or of any substantial part of Grantee's property or (v) takes action for the purpose of any of the foregoing.

(g) **Involuntary Insolvency.** Without consent by Grantee, a court or government authority enters an order, and such order is not vacated within ten (10) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Grantee or with respect to any substantial part of Grantee'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 Grantee.

(h) **Failure to Protect Private Information.** Grantee discloses information it is required to protect under Section 12.1.

#### **11.2 Termination for Convenience**

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Grantee 30 day

written notice of termination. The notice shall specify the date on which termination shall become effective.

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

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subgrants for materials, services, equipment or other items.

(3) Terminating all existing orders and subgrants.

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

(5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subgrants.

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

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

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

(1) The reasonable cost to Grantee, without profit, for all services and other work City directed Grantee to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Grantee's direct costs for services or other work. Any overhead allowance shall be separately itemized. Grantee may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Grantee can establish, to the satisfaction of City, that Grantee would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

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

d. In no event shall City be liable for costs incurred by Grantee or any of its subgrantees after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Grantee under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Grantee's final invoice; (2) any claim which City may have against Grantee in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

**11.3 Remedies Upon Event of Default.** Upon and during the continuance of an Event of Default, City may do any of the following, individually or in combination with any other remedy:

(a) **Termination.** City may terminate this Agreement by giving a written termination notice to Grantee and, on the date specified in such notice, this Agreement shall terminate and all rights of Grantee hereunder shall be extinguished. In the event of such termination, Grantee will be paid for Eligible Expenses in any Funding Request that was submitted and approved by City prior to the date of termination specified in such notice.

(b) **Withholding of Grant Funds.** City may withhold all or any portion of Grant Funds not yet disbursed hereunder, regardless of whether Grantee has previously submitted a Funding Request or whether City has approved the disbursement of the Grant Funds requested in any Funding Request. Any Grant Funds withheld pursuant to this Section and subsequently disbursed to Grantee after cure of applicable Events of Default shall be disbursed without interest.

(c) **Offset.** City may offset against all or any portion of undisbursed Grant Funds hereunder or against any payments due to Grantee under any other agreement between Grantee and City the amount of any outstanding Loss incurred by any Indemnified Party, including any Loss incurred as a result of the Event of Default.

(d) **Return of Grant Funds.** City may demand the immediate return of any previously disbursed Grant Funds that have been claimed or expended by Grantee in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

**11.4 Remedies Nonexclusive.** Each of the 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 remedies contained herein are in addition to all other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

**ARTICLE 12**  
**DISCLOSURE OF INFORMATION AND DOCUMENTS**

**12.1 Protection of Private Information.**

**a. Personal Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

**b. Protected Social Service and Personal Health Information.** Contractor, all subgrantees, and all agents and employees of Contractor and any subgrantee shall comply with any and all privacy laws regarding social service recipient information and/or the transmission, storage and protection of all private health information disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Contract. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected social service or protected health information given to Contractor or its subgrantees or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract.

**c. Proprietary and Confidential Information of City.** Grantee understands and acknowledges that, in the performance of this Agreement or in contemplation thereof, Grantee may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential information, the disclosure of which to third parties may be damaging to City. Grantee agrees that all information disclosed by City to Grantee shall be held in confidence and used only in the performance of this Agreement. Grantee shall exercise the same standard of care to protect such information as a reasonably prudent nonprofit entity would use to protect its own proprietary or confidential data.

**12.2 Sunshine Ordinance.** Grantee acknowledges and agrees that this Agreement and the Application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that grants, including this Agreement, grantee's bids, responses to Requests for Proposals (RFPs) and all other records of communications between City and persons or entities seeking grants, shall be open to inspection immediately after a grant has been awarded. Nothing in such Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a grant or other benefit until and unless that person or organization is awarded the grant or benefit. All information provided by Grantee that is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request.

**12.3 Financial Projections.** Pursuant to San Francisco Administrative Code Section 67.32, Grantee has on or before the date hereof provided to City financial projections, including profit and loss figures, for the Project. For the term of the Agreement, Grantee shall within one hundred twenty (120) days after the end of Grantee's fiscal year end provide to City annual financial statements for the Project certified by the Grantee as complete and accurate and audited by an independent accounting firm. The Grantee



acknowledges and agrees that the financial projections and audited financial statements shall be public records subject to disclosure upon request.

### **ARTICLE 13 ASSIGNMENTS AND SUBCONTRACTING**

**13.1 No Assignment by Grantee.** Grantee shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of Grantee hereunder without the prior written consent of City. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of Grantee involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of Grantee or a sale or transfer of substantially all of the assets of Grantee shall be deemed an assignment for purposes of this Agreement.

**13.2 Agreement Made in Violation of this Article.** Any agreement made in violation of Section 13.1 shall confer no rights on any person or entity and shall automatically be null and void.

**13.3 Subcontracting.** If Appendix E lists any permitted subgrantees, then notwithstanding any other provision of this Agreement to the contrary, Grantee shall have the right to subcontract on the terms set forth in this Section. If Appendix E is blank or specifies that there are no permitted subgrantees then Grantee shall have no rights under this Section.

(a) **Limitations.** In no event shall Grantee subcontract or delegate the whole of the Grant Plan. Grantee may subcontract with any of the permitted subgrantees set forth on Appendix E without the prior consent of City; provided, however, that Grantee shall not thereby be relieved from any liability or obligation under this Agreement and, as between City and Grantee, Grantee shall be responsible for the acts, defaults and omissions of any subgrantees or its agents or employees as fully as if they were the acts, defaults or omissions of Grantee. Grantee shall ensure that its subgrantees comply with all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Grant Plan. All references herein to duties and obligations of Grantee shall be deemed to pertain also to all subgrantees to the extent applicable. A default by any subcontractor shall be deemed to be an Event of Default hereunder. Nothing contained in this Agreement shall create any contractual relationship between any subgrantee and City.

(b) **Terms of Subcontract.** Each subcontract shall be in form and substance acceptable to City and shall expressly provide that it may be assigned to City without the prior consent of the subgrantee. In addition, each subcontract shall incorporate all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Grant Plan. Without limiting the scope of the foregoing, each subcontract shall provide City, with respect to the subgrantee the audit and inspection rights set forth in Section 6.6. Upon the request of City, Grantee shall promptly furnish to City true and correct copies of each subcontract permitted hereunder.

**13.4 Grantee Retains Responsibility.** Grantee shall in all events remain liable for the performance by any assignee or subgrantee of all of the covenants terms and conditions contained in this Agreement.

**ARTICLE 14**  
**INDEPENDENT CONTRACTOR STATUS**

**14.1 Nature of Agreement.** Grantee shall be deemed at all times to be an independent grantee and is solely responsible for the manner in which Grantee implements the Grant Plan and uses the Grant Funds. Grantee shall at all times remain solely liable for the acts and omissions of Grantee, its officers and directors, employees and agents. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment or agency relationship between City and Grantee.

**14.2 Direction.** Any terms in this Agreement referring to direction or instruction from the Agency or City shall be construed as providing for direction as to policy and the result of Grantee's work only, and not as to the means by which such a result is obtained.

**14.3 Consequences of Recharacterization.**

(a) 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 Grantee 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 Grantee which can be applied against this liability). City shall subsequently forward such amounts to the relevant taxing authority.

(b) Should a relevant taxing authority determine a liability for past services performed by Grantee for City, upon notification of such fact by City, Grantee shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Grantee under this Agreement (again, offsetting any amounts already paid by Grantee which can be applied as a credit against such liability).

(c) A determination of employment status pursuant to either subsection (a) or (b) of this Section 14.3 shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Grantee shall not be considered an employee of City. Notwithstanding the foregoing, if any court, arbitrator, or administrative authority determine that Grantee is an employee for any other purpose, Grantee agrees to a reduction in City's financial liability hereunder such that the aggregate amount of Grant Funds under this Agreement does not exceed what would have been the amount of such Grant Funds had the court, arbitrator, or administrative authority had not determined that Grantee was an employee.

**ARTICLE 15**  
**NOTICES AND OTHER COMMUNICATIONS**

**15.1 Requirements.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided below):

If to the Agency or City:	Human Services Agency Office of Contract Management, G- 000 P.O. Box 7988 San Francisco, CA 94120-7988 Facsimile No. 415-557-5679
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If to Grantee:

Homebridge, Inc.  
1035 Market Street, L-1  
San Francisco, CA 94103  
Attn: Mark Burns  
Email: mburns@homebridgeca.org

**15.2 Effective Date.** All communications sent in accordance with Section 15.1 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. postal service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via facsimile, the date of telephonic confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such confirmation is not reasonably practicable, the date indicated in the facsimile machine transmission report of the party giving such notice.

**15.3 Change of Address.** From time to time any party hereto may designate a new address for purposes of this Article 15 by notice to the other party.

## **ARTICLE 16 COMPLIANCE**

**16.1 Local Business Enterprise Utilization; Liquidated Damages. Reserved.**

**16.2 Nondiscrimination; Penalties.**

(a) **Grantee Shall Not Discriminate.** In the performance of this Agreement, Grantee agrees not to discriminate against any employee, City and County employee working with such grantee or subgrantee, applicant for employment with such grantee or subgrantee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) **Subcontracts.** Grantee 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 subgrantees to comply with such provisions. Grantee's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) **Non-Discrimination in Benefits.** Grantee 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 or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Grant Agreement.** As a condition to this Agreement, Grantee shall execute the "Chapter 12B Declaration: Nondiscrimination in Grants and Benefits" form (Form CMD-12B-101) with

supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Grantee shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including the remedies provided in such Chapters. Without limiting the foregoing, Grantee understands that pursuant to Sections 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of fifty dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Grantee and/or deducted from any payments due Grantee.

**16.3 MacBride Principles--Northern Ireland.** Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Grantee acknowledges and agrees that he or she has read and understood this section

**16.4 Tropical Hardwood and Virgin Redwood Ban.** Pursuant to § 804(b) of the San Francisco Environment Code, City urges all grantees not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**16.5 Drug-Free Workplace Policy.** Grantee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Grantee and its employees, agents or assigns shall comply with all terms and provisions of such Act and the rules and regulations promulgated thereunder.

**16.6 Resource Conservation; Liquidated Damages.** Chapter 5 of the San Francisco Environment Code (Resource Conservation) is incorporated herein by reference. Failure by Grantee to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract. If Grantee fails to comply in good faith with any of the provisions of Chapter 5, Grantee shall be liable for liquidated damages in an amount equal to Grantee's net profit under this Agreement, or five percent (5%) of the total contract amount, whichever is greater. Grantee acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be offset against any monies due to Grantee from any contract with City.

**16.7 Compliance with ADA.** Grantee acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a grantee, must be accessible to the disabled public. Grantee shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Grantee agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Grantee, its employees, agents or assigns will constitute a material breach of this Agreement.

Chapter 21-100 Nondiscrimination in State and Federally Assisted Programs require that Grantees administer their program(s) in a nondiscriminatory manner and in compliance with civil rights obligations and to accommodate non-English-speaking or limited-English-proficient individuals and individuals with disabilities or impairments. At a minimum, grantees must provide the following:

- Procedures for informing clients of their civil rights under Chapter 21-100;

- Policies and procedures for handling complaints filed with or against a Grantee;
- Policies and procedures that ensure Grantees accommodate individuals with hearing impairments, visual impairments and other disabilities;
- Policies and procedures that ensure that Grantees provide appropriate language services, including a breakdown of bilingual/interpreter staff and a description of how written information is communicated to non-English speaking clients; and
- Policies and procedures for ensuring that Grantee staff are adequately trained in the requirements of Chapter 21 under California Department of Social Services standards.

## **16.8. Requiring Minimum Compensation for Covered Employees**

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the grant, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to

cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

**16.9 Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who grants with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the grant must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the grant until the later of either the termination of negotiations for such grant or six months after the date the grant is approved. Contractor acknowledges that the foregoing restriction applies only if the grant or a combination or series of grants approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the grant; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or grant; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

#### **16.10 First Source Hiring Program.**

**a. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

**b. First Source Hiring Agreement.** As an essential term of, and consideration for, any grant or property grant with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the grant or property grant. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or

brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of grants and property grants handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City grant or property grant has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy grants.

**c. Hiring Decisions.** Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

**d. Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

**e. Liquidated Damages.** Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of grants based on violations of grant provisions required by this Chapter as set forth in this section;

(3) That the Contractor's commitment to comply with this Chapter is a material element of the City's consideration for this grant; that the failure of the Contractor to comply with the grant provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the Contractor from the first source hiring process, as determined by the FSHA during its first investigation of a Contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the Contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a Contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the Contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;



therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a Contractor to comply with its first source referral contractual obligations.

(6) That the failure of Contractors to comply with this Chapter, except property Contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the grant or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

**f. Subcontracts.** Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**16.11 Prohibition on Political Activity with City Funds.** In accordance with S. F. Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, “Political Activity”). The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference. Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Agreement be used for any Political Activity. In the event Grantee, or any staff member in association with Grantee, engages in any Political Activity, then (i) Grantee shall keep and maintain appropriate records to evidence compliance with this section, and (ii) Grantee shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. Grantee agrees to cooperate with any audit by the City or its designee in order to ensure compliance with this section. In the event Grantee violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement and any other agreements between Grantee and City, (ii) prohibit Grantee from bidding on or receiving any new City grant for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to Grantee under this Agreement.

**16.12 Preservative-treated Wood Containing Arsenic.** Grantee may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Grantee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Grantee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**16.13 Supervision of Minors.** Grantee, and any subgrantees, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Grantee, or any subgrantee, in which

he or she would have supervisory or disciplinary power over a minor under his or her care. If Grantee, or any subgrantee, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Grantee shall not hire, and shall prevent its subgrantees from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3). If Grantee, or any of its subgrantees, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Grantee shall comply, and cause its subgrantees to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Grantee shall provide, or cause its subgrantees to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian. Grantee shall expressly require any of its subgrantees with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its grant with the subgrantee. Grantee acknowledges and agrees that failure by Grantee or any of its subgrantees to comply with any provision of this section of the Agreement shall constitute an Event of Default.

**16.14 Public Access to Meetings and Records.** If the Grantee receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, the Grantee shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Grantee agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Grantee further agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Grantee acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Grantee further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

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

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

(b) The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and 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.

(c) Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(d) Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(e) Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(f) Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

(h) Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

**16.16 Food Service Waste Reduction Requirements.** Effective June 1, 2007, Grantee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Grantee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Grantee agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Grantee's failure to comply with this provision.

**16.17 Sugar-Sweetened Beverage Prohibition.** Contractor agrees that it will 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.

**16.18 Slavery Era Disclosure. Reserved**

**16.19 Compliance with Other Laws.** Without limiting the scope of any of the preceding sections of this Article 16, Grantee shall keep itself fully informed of City's Charter, codes, ordinances and regulations and all state, and federal laws, rules and regulations affecting the performance of this Agreement and shall at all times comply with such Charter codes, ordinances, and regulations rules and laws.

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

**16.21 Compliance with California Department on Aging.** If grant is in excess of \$100,000 in California Department of Aging Funding, grantee is required to complete and submit of Standard Form LLL, "Disclosure Form to Report Lobbying", Form LLL to be found at: <http://www.adp.ca.gov/NNA/files/Documents1X.doc>

**16.22 Additional Provisions for Shelter and Resource Center Grants – Standard of Care. Reserved**

**16.23 Additional Requirements for Federally-Funded Awards**

- 1) The Grantee shall establish a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number as a universal identifier as per 2 CFR Part 25.
- 2) The Grant Agreement is subject to 2 CFR Part 175, Award Term for Trafficking in Persons. Federal funding under this Grant Agreement may be terminated without penalty if the Grantee
  - a. Engages in severe forms of trafficking in persons during the period of time that the award is in effect;
  - b. Procures a commercial sex act during the period of time that the award is in effect; or
  - c. Uses forced labor in the performance of the award or sub-awards under the award.

**ARTICLE 17  
MISCELLANEOUS**

**17.1 No Waiver.** No waiver by the Agency or City of any default or breach of this Agreement shall be implied from any failure by the Agency or City to take action on account of such default if such default persists or is repeated. No express waiver by the Agency or City shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by City or the Agency of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the Agency or City of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

**17.2 Modification.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

**17.3 Administrative Remedy for Agreement Interpretation.** Should any question arise as to the meaning or intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the director or president, as the case may be, of the Agency who shall decide the true meaning and intent of the Agreement. Such decision shall be final and conclusive.

**17.4 Governing Law; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**17.5 Headings.** All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

**17.6 Entire Agreement.** This Agreement and the Application Documents set forth the entire Agreement between the parties, and supersede all other oral or written provisions. If there is any conflict between the terms of this Agreement and the Application Documents, the terms of this Agreement shall govern. The following appendices are attached to and a part of this Agreement:

- Appendices A, A-1, Services to be Provided
- Appendices B, B-1, Budget
- Appendix C, Method of Payment
- Appendix D, Interests in Other City Grants
- Appendix E, Permitted Subgrantees
- Appendix F, Federal Award Information
- Appendix G, Federal Requirements for Subcontractors
- Appendix H, HIPPA Business Associate Addendum

**17.7 Certified Resolution of Signatory Authority.** Upon request of City, Grantee shall deliver to City a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the secretary or assistant secretary of Grantee.

**17.8 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.

**17.9 Successors; No Third-Party Beneficiaries.** Subject to the terms of Article 13, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 9, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

**17.10 Survival of Terms.** The obligations of Grantee and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement:

Section 6.4      Financial Statements.                      Section 6.5      Books and Records.

Section 6.6	Inspection and Audit.	Article 12	Disclosure of Information and Documents
Section 6.7	Submitting False Claims; Monetary Penalties	Section 13.4	Grantee Retains Responsibility.
Section 6.8	Ownership of Results.	Section 14.3	Consequences of Recharacterization.
Article 7	Taxes	This Article 17	Miscellaneous
Article 9	Indemnification and General Liability		
Section 10.4	Required Post-Expiration Coverage.		

**17.11 Further Assurances.** From and after the date of this Agreement, Grantee agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

**17.12 Dispute Resolution Procedure.** The following Dispute Resolution Procedure provides a process to resolve any disputes or concerns relating to the administration of an awarded professional services grant or grant between the City and County of San Francisco and nonprofit health and human services grantees. Grantees and City staff should first attempt to come to resolution informally through discussion and negotiation with the designated contact person in the department. If informal discussion has failed to resolve the problem, grantees and departments should employ the following steps:

**Step 1** The grantee will submit a written statement of the concern or dispute addressed to the Grant/Program Manager who oversees the agreement in question. The writing should describe the nature of the concern or dispute, i.e., program, reporting, monitoring, budget, compliance or other concern. The Grant/Program Manager will investigate the concern with the appropriate department staff that are involved with the nonprofit agency's program, and will either convene a meeting with the grantee or provide a written response to the grantee within 10 working days.

**Step 2** Should the dispute or concern remain unresolved after the completion of Step 1, the grantee may request review by the Division or Department Head who supervises the Grant/Program Manager. This request shall be in writing and should describe why the concern is still unresolved and propose a solution that is satisfactory to the grantee. The Division or Department Head will consult with other Department and City staff as appropriate, and will provide a written determination of the resolution to the dispute or concern within 10 working days.

**Step 3** Should Steps 1 and 2 above not result in a determination of mutual agreement, the grantee may forward the dispute to the Executive Director of the Department or their designee. This dispute shall be in writing and describe both the nature of the dispute or concern and why the steps taken to date are not satisfactory to the grantee. The Department will respond in writing within 10 working days.

In addition to the above process, grantees have an additional forum available only for disputes that concern implementation of the thirteen policies and procedures recommended by the Nonprofit Granting Task Force and adopted by the Board of Supervisors. These recommendations are designed to improve and streamline granting, invoicing and monitoring procedures. For more information about the Task Force's recommendations, see the June 2003 report at [http://www.sfgov.org/site/npgrantingtf\\_index.asp?id=1270](http://www.sfgov.org/site/npgrantingtf_index.asp?id=1270).

**17.13 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, 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.

**17.14 Services During a City-Declared Emergency.** In case of an emergency that affects the San Francisco Bay Area, Grantee will make a good faith effort to continue to provide services to the Department's clients on a priority basis. Contactor shall provide fair prices for services that may not be covered under the awarded grant but are necessary as a direct result of the City-declared emergency. Grantee will document the expenses incurred and submit a prompt request for payment to the Department.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

**CITY**

HUMAN SERVICES AGENCY

By: \_\_\_\_\_  
 Trent Rhorer Date  
 Executive Director  
 Human Services Agency

**Approved as to Form:**

Dennis J. Herrera  
 City Attorney

By: \_\_\_\_\_  
 Anne Pearson Date  
 Deputy City Attorney

**GRANTEE:**

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 16.3, the City’s statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

**HOMEBRIDGE, INC.**

By: \_\_\_\_\_  
 Date

Print Name: Mark Burns  
 Title: Executive Director  
 Address: 1035 Market Street, L-1  
 City, State ZIP: San Francisco, CA 94103

Phone: 415-659-5319

Federal Tax ID #: 94-2985244  
 City Vendor Number: 09689  
 DUNS Number : 836142224



## Appendix A – Services to be Provided

### Homebridge In-Home Supportive Services - Contract Mode

Effective July 1, 2016 – June 30, 2019

#### I. Purpose of Grant

The purpose of this grant is to provide In-Home Supportive Services (IHSS). The IHSS Program provides assistance to those eligible aged, blind and disabled individuals who are unable to remain safely in their own homes without this assistance. The City has approved this grant to maximize options and ensure alternatives to out-of-home care for eligible aged, blind and disabled individuals. This Grant is let in accordance with Title XIX and Title XX, of the Social Security Act; California State Welfare and Institutions Code, Sections 12300 et seq., California State Department of Social Services (CDSS) Manual of Policy and Procedures (MPP), Divisions 10, 19, 21, 22, 23, 25, 30 and 46, et seq., Office of Management and Budget (OMB) Circulars. Grantee shall comply with all provisions specified in this Grant.

#### II. Definitions

City	City and County of San Francisco
CMIPS II	Case Management, Information and Payrolling System II
DHS	San Francisco Department of Human Services, a division of HSA
HSA	Human Services Agency of the City and County of San Francisco
Medi-Cal	The California Medical Assistance Program is a California Medicaid welfare program serving low-income individuals, with incomes below 138% of federal poverty level.
IHSS	In-Home Supportive Services
Intensive Supervision	Frequent contact and support to both IHSS recipient and home care providers in order to overcome barriers to service delivery
OSHA	Refers to California Occupational Safety and Health Administrations

#### III. Target Population

1. To be eligible for IHSS, recipients must be living either in their own homes, SRO hotels, shelters, or public or senior housing within the boundaries of San Francisco County, and must meet the following conditions:
  - a. Be sixty-five years or older and/or a person with disabilities

- b. Currently receive Full-Scope Medi-Cal
- c. Receive approval from a Licensed Health Care Professional to receive IHSS through IHSS Health Certification Form SOC 873, per Welfare and Institutions Code section 12309.1

2. Grantee will serve IHSS recipients who are unable to hire and supervise their own home care providers, as well as IHSS recipients who have behavioral issues that create barriers to service delivery. Ongoing and intensive supervisory intervention is necessary to identify strategies to overcome these barriers. An example of a recipient in this category is someone formerly homeless; a hoarder and clutterer; someone with anger management problems or who has history of being physically and/or verbally abusive towards his/her providers.

#### **IV. Description of Services**

Grantee shall provide the following services during the term of this contract:

Provide supervised IHSS for a maximum of 645,865 hours for fiscal year 2016-17. HSA will determine the maximum hours for subsequent years during the grant period for fiscal years 2017-2018 and 2018-2019.

In all respects the grantee shall comply with Federal, State and City reporting requirements.

#### **Description of In-Home Supportive Services**

1. Domestic services, which includes: Sweeping, vacuuming, washing and waxing the floor surfaces; Washing kitchen counters and sinks; Cleaning the bathroom; Storing food and supplies; Taking out garbage; Dusting and picking up; Cleaning oven and stove; Cleaning and defrosting refrigerator; Bringing in fuel for heating or cooking purposes from a fuel bin in the yard; Changing bed linen; and Miscellaneous domestic services such as changing light bulbs.

2. Heavy cleaning that involves thorough cleaning of the home to remove hazardous debris or dirt. The City shall have the authority to authorize this service, only at the time IHSS is initially granted, to enable the provider to perform continuous maintenance, or, if a lapse in eligibility occurs, eligibility is reestablished and IHSS services have not been provided within the previous 12 months. The City shall have the authority to authorize this service should the recipient's living conditions result in a substantial threat to his/her health/safety. Such service may also be authorized when a recipient is at risk of eviction for failure to prepare his/her home or abode for fumigation as required by statute or ordinance.

3. Related services limited to: Planning of meals; Preparation of meals includes such tasks as washing vegetables, trimming meat, cooking, setting the table, servicing the meal, cutting the food into bite-size pieces; Meal cleanup including washing drying, and putting away dishes, pots, utensils and culinary appliances; Routing mending, laundry, ironing, folding, and storing clothes on shelves or in drawers; Reasonable food shopping and other shopping/errands limited to the nearest available stores or other facilities consistent with the recipient's economy and needs;

4. Non-medical personal services limited to:

- a. Bowel and bladder care such as assistance with enemas, emptying of catheter or ostomy bags, assistance with bed pans, application of diapers, changing rubber sheets, assistance with getting on and off commode or toilet;
- b. Respiration limited to nonmedical services such as assistance with self-administration of oxygen and cleaning of intermittent positive pressure breathing (IPPB) machines;
- c. Consumption of food consisting of feeding or related assistance to recipients who cannot feed themselves or who require assistance with special devices in order to feed themselves;
- d. Routine bed baths;
- e. Bathing, oral hygiene, grooming;
- f. Dressing;
- g. Rubbing of skin to promote circulation, turning in bed and other types of repositioning, assistance on and off the seats and wheelchairs, or into or out of vehicles, and range of motion exercises, which shall be limited to the following:
  - 1) General supervision of exercises, which have been taught to the recipient by a licensed therapist or other health care professional to restore mobility restricted because of injury, disuse or disease.
  - 2) Maintenance therapy when the specialized knowledge and judgment of a qualified therapist is not required and the exercises are consistent with the patient's capacity and tolerance. Such exercises shall include the carrying out of maintenance programs; i.e., the performance of the repetitive exercises required to maintain function, improve gait, maintain strength, or endurance; passive exercises to maintain range of motion in paralyzed extremities; and assistive walking.
- h. Moving into and out of bed;
- i. Care of and assistance with prosthetic devices and assistance with self-administration of medications. Assistance with self-administration of medications consists of reminding the recipient to take prescribed and/or over-the-counter medications when they are to be taken and setting up medi-sets;
- j. Routine menstrual care limited to application of sanitary napkins and external cleaning;

- k. Ambulation consisting of assisting the recipient with walking or moving the recipient from place to place.
5. Accompaniment services when the recipient's presence is required at the appointment and assistance is necessary to accomplish the appointment are limited to:
- a. Accompaniment to and from appointments with physicians, dentists and other health practitioners;
  - b. Accompaniment necessary for fitting health related appliances/devices and special clothing;
  - d. Accompaniment to the site where alternative resources provide in-home supportive services to the recipient in lieu of IHSS.
6. Yard hazard abatement, which is light work in the yard, may be authorized for:
- a. Removal of high grass or weeds and rubbish when this constitutes a fire hazard;
  - b. Removal of ice, snow or other hazardous substances from entrances and essential walkways when access to the home is hazardous.
7. Protective supervision consisting of observing recipient behavior in order to safeguard the recipient against injury, hazard, or accident.
- a. This service is available for monitoring the behavior of non-self-directing, confused, mentally impaired, or mentally ill persons with the following exceptions:
    - 1) Protective supervision does not include friendly visiting or other social activities;
    - 2) Supervision is not available when the need is caused by a medical condition and the form of the supervision required is medical;
    - 3) Supervision is not available in anticipation of a medical emergency;
    - 4) Supervision is not available to prevent or control antisocial or aggressive recipient behavior.
  - b. Protective supervision is available under the following conditions:
    - 1) County IHSS staff has determined that a 24-hour need exists for protective supervision and that the recipient can remain at home safely if protective supervision is provided; and
    - 2) Services staff determines that the entire 24-hour need for protective supervision can be met through any of the following or combination of the following:
      - a) In-Home Supportive Services; and
      - b) Alternative resources; and
      - c) A reassurance phone service when feasible and appropriate.

Feasibility and appropriateness will be determined exclusively by the County IHSS staff.

The proposed method of meeting protective supervision need **MUST** be approved by San Francisco County. Discretion of the Grantee is not allowed.

8. Teaching and demonstration services are provided by IHSS providers to enable recipients to perform for themselves, services which they currently receive from IHSS.

Teaching and demonstration services are limited to instruction in those tasks listed in CDSS MPP 30-757.11, .13, .14, and .16.

- a. This service shall be provided by persons who have successfully completed at least an appropriate number of hours of training, as approved by the Agency and as evidenced by a valid certificate;
- b. This service shall only be provided when the provider has the ability to do so effectively and safely.

9. Paramedical services are provided under the following conditions:

- a. The services shall have the following characteristics:
  - 1) The activities, which persons would normally perform for themselves but for their functional limitations;
  - 2) The activities, which, due to the recipient's physical or mental condition, are necessary to maintain the recipient's health.
- b. The services shall be provided when ordered by a licensed health care professional who is lawfully authorized to do so. The recipient shall select the licensed healthcare professional;
- c. The services shall be provided under the direction of the licensed health care professional;
- d. The licensed health care professional shall indicate to social services staff the time necessary to perform the ordered services.

10. IHSS in the Workplace will be provided according to AB 925, which amended Welfare and Institutions Code (WIC) section 12300 and added WIC section 14132.955.

- a. IHSS recipients are allowed to transfer service hours authorized for use in the recipient's home to a workplace in order to enable the recipients to obtain, retain, or return to work. The IHSS recipients are not allowed additional service hours in the workplace beyond those authorized for the home.
- b. The COUNTY will designate which, if any, of the authorized services are to be provided in a recipient's workplace.

## **V. Service Objectives**

On an annual basis, the Contractor will meet the following Service Objectives:

1. Grantee will provide an annual average of at least 65% of Total Authorized Hours of IHSS.
2. Grantee will provide an annual average of at least 95% of Authorized Hours of IHSS when recipients are available for and accept service.
3. Grantee will provide services to new recipients within the HSA-required 5-day period or 24 hour emergency period, as specified by HSA worker.
4. Grantee will dispatch replacement workers to recipients needing non-personal care within four (4) hours of notification that the scheduled worker did not show up.
5. Grantee will dispatch replacement workers to recipients needing personal care within two (2) hours of notification that the scheduled worker did not show up.
6. Grantee will follow HSA protocols to notify IHSS of problems with service delivery at least 99% of the time.

## **VI. Outcome Objectives**

On an annual basis, the Contractor will meet the following Outcome Objectives:

1. On the annual, comprehensive, anonymous written satisfaction survey of recipients (provided in the language spoken by the recipients), at least 95% of recipients will indicate the following:
  - a. the Grantee services helped them remain living independently at home
  - b. the Provider regularly arrived on time
  - c. the Provider provided the necessary authorized services
  - d. the Provider responded satisfactorily to recipient requests regarding preferred care methods
  - e. the recipient could communicate to Grantee staff in native language
  - f. the cultural and ethnic needs were met (e.g., food preparation)
  - g. the level of supervision and support to the recipient was adequate to meet recipient needs
  - h. the level of supervision and support to the Provider was adequate to meet recipient needs
  - i. if the recipient had encountered problems in service delivery, that the problems were resolved in a timely and satisfactory manner.
2. In the annual home care provider evaluations conducted by the Field Supervisors, at least 95% of recipients rate their Providers quality of work as “good” or “excellent” in the areas of
  - 1) quality of work
  - 2) ability to perform all authorized tasks

- 3) relationship to recipient
  - 4) communication skills with recipient
  - 5) sensitivity to recipient's needs
  - 6) timeliness
3. Quarterly compilation of 20% of recipient timesheets (Recipient Time Tracking) will show that at least 95% of recipients will have indicated on their timesheets "the Provider came within the time frame needed."

**VII. Reporting and Other Requirements**

In all respects the grantee shall comply with Federal, State and City reporting requirements.

**1. Annual Reporting Requirements:**

a. A Contract Mode Quality Assurance Plan and Report that details annual findings from the ongoing comprehensive quality assurance activities designed to objectively and systematically monitor the quality of IHSS provided to recipients. The report must include proposals for addressing any areas in which Grantee/Contractor did not meet its own standards for the coming year.

b. A Recipient Satisfaction Survey report, including at least the measurements stated in Section VI, Outcome Objectives.

**2. Quarterly Reporting Requirements:**

a. Quarterly reporting will include data on progress toward each service and outcome objective as required in Section VI, Outcome Objectives.

b. The Grantee shall submit within 30 (thirty) days following each three-month period a detailed accounting of the actual costs incurred in providing the IHSS services under this contract/grant. This accounting report shall tie to the year-end audited report.

c. Grantee/Contractor shall submit a Utilization Management (UM) quarterly report that includes analysis of service utilization trend, rationale of underutilization, and projection of future utilization.

**3. Monthly Reporting Requirements:**

Monthly reporting will include: 1) actual costs incurred for the provision of services in the invoicing format specified at time of grant award, and 2) a wide range of program information. The following is a list of the information to be reported on a monthly basis. Reports must be submitted via both email and in a format provided by HSA.

- a. Hours Authorized
- b. Hours Served
- c. Hours requested
- d. Hours cancelled and/or locked out

- e. Number of recipients served
- f. Number of recipients served on the weekend

Grantee will provide Ad Hoc reports as required by the Department. All required reports must be loaded into HSA's Contracts Administration, Reporting, and Billing Online (CARBON) system.

For assistance with reporting requirements or submission of reports, contact:

Elena.Baranoff@sfgov.org  
Senior Administrative Analyst, Office of Contract Management

or

Megan.Elliott@sfgov.org  
Program Director, IHSS Program Director

#### **4. CMIPS II Contractor Interface (COIN) Procedure Requirement**

The purpose of the Contractor Interface is to audit contractor invoices and assist with monitoring their performance in providing services to IHSS recipients. The Grantee will produce a file of payroll invoices and submit these invoices electronically into CMIPS II; invoices can be processed after files are created in CMIPS II.

- a. The contracting agency bills the county electronically through CMIPS II for each IHSS recipient's served hours. Each IHSS recipient's case will be billed based on the following periods:
  - 1) The 1st through 15th due before the 25th of the calendar month;
  - 2) The 16th through 31st due before the 6th of the following calendar month;
- b. The invoice processing will result in authorized or rejected records, which will be accessible by the counties through CMIPS II Reports. Authorized hours will be posted in each recipient's CMIPS II case. The CMIPS II County Contractor Invoice screen will show each recipient's updated amount approved for payment, per pay period.
- c. The validated claims are processed for payment and will be posted to the recipient case. The CMIPS II County Contractor Invoice screen for each recipient is updated with the amount approved for payment for each pay period. The error information is reported back to County Contractor Coordinator who will coordinate reconciliation with the Grantee for the next submission pay period.

**Please Note:** HSA will make payment to contractor/grantee based on a cost reimbursement line item invoice, which shall be based on an approved line



item budget. The payments may be adjusted for the hours approved from the CMIPS II County Contractor Invoice.

## **5. SF HSA Mandatory Training and Meeting Requirements**

It is important to effective and efficient service delivery that the Grantee has a good understanding of State In-Home Supportive Services rules and regulations, as well as local IHSS program policies and procedures.

Grantee/Contractor must designate key management and supervisory staff to attend trainings annually with the HSA IHSS program and to demonstrate a clear understanding of IHSS regulations, the method by which services are authorized by the San Francisco IHSS program, as well as the HSA IHSS program's procedures for Contract Mode cases. Trained Grantee/Contractor staff will be responsible for training other staff on IHSS Program regulations and procedures.

HSA conducts case conferences on a weekly or as needed basis in its offices at 1650 Mission Street, San Francisco, with its IHSS Grantees. The purposes of these conferences are to discuss:

1. Service delivery issues about individual recipients; and
2. Other issues of concern of either SF HSA and/or the Grantee/Contractor.

Attendance of these meetings is mandatory and all appropriate information and minutes obtained from the meetings must be disseminated to all attendees. The Grantee/Contractor is responsible for maintaining information and minutes from these meetings in its recipient files.

## **6. Quality Assurance Requirements**

1. Grantee must develop an annual written Quality Assurance Program with clearly defined goals, measurements, mechanisms and frequencies of monitoring each year. Grantee/Contractor will report on this plan annually as stated above. The Quality Assurance Program must include at a minimum standards for the following service delivery elements:
  1. Rate of turnover of primary Home Care Provider for recipients
  2. Home Care Provider qualifications
  3. Number of Supervisory visits with recipients per year
  4. Rate of ability to match language and cultural needs of recipients
2. Grantee must develop and implement a Policy and Procedures manual that includes selection protocol and oversight of home care providers to ensure that the home care providers selected are competent in performing IHSS tasks according to the State mandates. The manual should also include procedures for working with recipients who refuse services, are violent or threatening towards home care providers, and who live in dangerous environments. This

manual is to be shared with the County annually. The Grantee must forward any changes in the Policy and Procedures manual to the County.

4. Grantee must develop and implement a recruitment program that clearly defines short and long term goals in recruiting qualified providers that will meet the needs of a diverse and at-risk population. Grantee must also develop and implement a recruitment program that clearly defines short and long term goals in recruiting Independent Providers and IHSS Public Authority Registry Providers to its skill development training courses.
5. Grantee must develop and implement a Grievance Policy and Procedure following HSA polices and listing required steps for a timely communication to HSA of all grievances filed, actions taken to resolve the grievances, the results, and the follow up plans, within a maximum of 30 days of grievances filed by recipients.
6. Grantee must develop and implement a clearly defined Utilization Management (UM) structure and processes including data collection mechanism, data analysis, executive summary, follow up action plans, and responsible individuals for tracking service hours. The analysis must be conducted on a quarterly basis and, at a minimum, include the trend of service utilization, rationale of underutilization, and projection of future utilization.
7. Grantee must develop and implement a written Confidentiality Program that complies with HIPPA and other SF City and HSA confidentiality requirements and describe in detail how the confidentiality of recipient information is maintained.
8. Grantee will develop and implement a Recipient Satisfaction Survey instrument to measure the quality of care received by the recipients on an annual basis. The instrument must be provided in the language spoken by the recipients and include indicators described in Section VI, Outcome Objectives.
9. Grantee will develop and implement a Home Care Provider Evaluations instrument annually measure the performance of the providers.
10. Grantee will develop and implement student evaluations for all Skill Development Training courses. The results of these evaluations will be compiled and included in the annual Skill Development Training Report.
10. Grantee will develop Post Training Support Goals annually, and develop methods to monitor progress towards these goals on a regular basis. Progress towards these goals will be compiled and included in the annual Skill Development Training Report.

## **7. Personal Care Services Program and IHSS Plus Waiver Enrollment**

1. The Grantee will become the enrolled provider in the contract mode for the Personal Care Service Program (PCSP) and IHSS Plus Waiver Enrollment

(IPW). This will occur as soon as San Francisco County has a signed enrollment form from the Grantee in its possession. The Grantee shall, at a minimum, certify the following:

- a. All employees of the grantee are qualified to provide the care authorized;
- b. All claims submitted to the San Francisco County for services to recipients of IHSS and provided by the grant, will be provided as authorized for the recipient;
- c. That payment of the claims will be from federal and/or state funds and that any false statement, claim, or concealment of information may be prosecuted under federal, and/or state laws; and
- d. That services will be offered and provided without discrimination based on race, religion, color, national or ethnic origin, sex, sexual orientation, age, or physical or mental disability.

### **VIII. Monitoring Activities**

- A. Program Monitoring: Program monitoring will include review of specific program standards or requirements as outlined above; back-up documentation for reporting progress towards meeting service and outcome objectives; internal policies and procedures; personnel files for homecare providers; training standards and requirements; and records maintenance.
- B. Fiscal Compliance and Contract Monitoring: Fiscal monitoring will include review of the Grantee's organizational budget, the general ledger, quarterly balance sheet, cost allocation procedures and plan, State and Federal tax forms, audited financial statement, fiscal policy manual, supporting documentation for selected invoices, cash receipts and disbursement journals. The compliance monitoring will include review of Personnel Manual, Emergency Operations Plan, Compliance with the Americans with Disabilities Act, subcontracts, and MOUs, and the current board roster and selected board minutes for compliance with the Sunshine Ordinance.

## Appendix A-1 – Services to be Provided

### Homebridge Provider Skill Development Training and Supports

July 1, 2016 – June 30, 2019

#### I. Purpose of Grant

The purpose of this grant is to must provide ongoing basic and advanced skill development training to IHSS providers. Skill development is training that has a direct relationship to job competencies required of a home care provider that will enable them to provide safe, efficient and appropriate domestic and personal care services. Grantee shall assess the skill level of each home care provider in relation to the domestic and personal care services they will be required to perform and shall provide training that relates to job competencies. Additionally, Grantee must offer post training supports to IHSS providers that have completed training. The Grantee shall maintain records of all home care providers' skill assessments and specific training provided to meet minimum standards of competency.

The primary service goal for Provider Skill Development Training and Supports is to strengthen the homecare workforce in San Francisco through the provision of standardized skill development training and supports to Contract Mode and Independent Providers of IHSS, as well as IHSS Registry Providers.

#### II. Definitions

City	City and County of San Francisco
DHS	San Francisco Department of Human Services, a division of HSA
HSA	Human Services Agency of the City and County of San Francisco
IHSS	In-Home Supportive Services
OSHA	Refers to California Occupational Safety and Health Administrations

#### III. Target Population

IHSS home care providers who are employed by the Grantee for IHSS – Contract Mode, who are currently working as IHSS Independent Providers, and/or are currently listed on the San Francisco IHSS Public Authority Registry.

#### **IV. Description of Services**

Grantee shall provide the following services during the term of this contract:

Standardized skill development training and supports to Contract Mode and Independent Providers of IHSS, as well as IHSS Registry Providers.

In all respects the grantee shall comply with Federal, State and City reporting requirements.

#### **Description of Provider Skill Development Training and Supports**

- A. Grantee must provide ongoing basic and advanced skill development training to IHSS providers. Skill development is training that has a direct relationship to job competencies required of a home care provider that will enable them to provide safe, efficient and appropriate domestic and personal care services.
  - a. Basic Provider Training consists of courses aiming to help students master key areas of domestic and personal care. Topics to be included must contain at least the following: emergency preparedness, infection and exposure control, food and medication interaction, food safety and sanitation, home safety, OSHA requirements, CPR and First Aid, and personal care and home care standards. Basic Provider Training for IHSS Independent Providers or Registry Providers must include courses on IHSS Timesheets, Overtime, and Payment processes.
  - b. Advanced Provider Training consists of courses that focus on specific areas providers may need to learn more about such as fall prevention, using durable medical equipment, mental illness and substance abuse in recipients, and nutrition.
- B. Grantee shall assess the skill level of each home care provider in relation to the domestic and personal care services they will be required to perform and shall provide training that relates to job competencies.
  - a. The Grantee shall maintain records of all home care providers' skill assessments and specific training provided to meet minimum standards of competency.
- C. Grantee must offer post training supports to IHSS providers that have completed training.
  - a. Post Training Supports consists of services to ensure IHSS home care providers are using skills they learned after receiving training successfully such as post training mentoring, on-the-job training, and/or career counseling.
- D. Grantee shall ensure training is easily accessible to home care providers.

#### **V. Service Objectives**

On an annual basis, the Contractor will meet the following Service Objective:

1. Grantee will provide basic Skill Development Training to 100% of its staff providers.
2. Grantee will provide advanced Skill Development Training to at least 75% of its staff providers.
3. Grantee will provide basic training to at least 99% of IHSS Registry providers.
4. Grantee will provide basic and specialized training to at least 15% of non-Registry affiliated Independent Providers.

## **VI. Outcome Objectives**

On an annual basis, the Grantee will meet the following Outcome Objectives:

- A minimum of 95% of providers completing basic and/or specialized Skills Development Training indicates they "agree" or "strongly agree" that the training helped them to take better care of their recipients on the student evaluation forms.

## **VII. Reporting and Other Requirements**

### **1. Annual Reporting Requirements:**

- a. A Skill Development Training Plan and Report including curriculum, schedules, staff qualifications, and projected and actual attendance of training sessions, as well as post-training support goals and outcomes. This report shall include the results of student evaluations of trainings received as well as post training skill assessment records.
- b. A Training Evaluation report completed by providers who have attended Skills Development Training, including at least the measurements stated in Section VI, Outcome Objectives

### **2. Quarterly Reporting Requirements:**

IHSS Provider Skills Development Training quarterly report to include the following:

- 1) Total Number of providers trained
- 2) Subjects covered
- 3) Instructor Hours of training
- 4) Total Unduplicated Number of Contractor Employees, IHSS Independent Providers, and IHSS Registry providers who received training

5) Total number of IHSS providers who received post training support

Grantee will provide Ad Hoc reports as required by the Department. All required reports must be loaded into HSA's Contracts Administration, Reporting, and Billing Online (CARBON) system.

For assistance with reporting requirements or submission of reports, contact:

Elena.Baranoff@sfgov.org  
Senior Administrative Analyst, Office of Contract Management

or

Megan.Elliott@sfgov.org  
Program Director, IHSS Program Director

### 3. Quality Assurance Requirements

- a. Grantee will develop and implement student evaluations for all Skill Development Training courses. The results of these evaluations will be compiled and included in the annual Skill Development Training Report.
- b. Grantee will develop Program Post Training Support Goals annually, and develop methods to monitor progress towards these goals on a regular basis. Progress towards these goals will be compiled and included in the annual Skill Development Training Report.
- c. Grantee must develop and implement a recruitment program that clearly defines short and long term goals in recruiting Independent Providers and IHSS Public Authority Registry Providers to its skill development training courses.

## VIII. Monitoring Activities

- A. Program Monitoring: Program monitoring will include review of specific program standards or requirements as outlined above; back-up documentation for reporting progress towards meeting service and outcome objectives; internal policies and procedures; personnel files for homecare providers; training standards and requirements; and records maintenance.
- B. Fiscal Compliance and Contract Monitoring: Fiscal monitoring will include review of the Grantee's organizational budget, the general ledger, quarterly balance sheet, cost allocation procedures and plan, State and Federal tax

forms, audited financial statement, fiscal policy manual, supporting documentation for selected invoices, cash receipts and disbursement journals. The compliance monitoring will include review of Personnel Manual, Emergency Operations Plan, Compliance with the Americans with Disabilities Act, subcontracts, and MOUs, and the current board roster and selected board minutes for compliance with the Sunshine Ordinance.



**Homebridge Budget (12/16)**

	<u>FY 16/17</u>	<u>FY 17/18</u>	<u>FY 18/19</u>	<u>Total</u>
Contract Mode (including Heavy Cleaning)	\$24,761,183	\$25,735,182	\$26,720,735	\$77,217,100
Provider Skills & Development	\$994,786	\$994,786	\$994,786	\$2,984,357
<b>TOTAL BUDGET</b>	<b>\$25,755,969</b>	<b>\$26,729,968</b>	<b>\$27,715,521</b>	<b>\$80,201,457</b>

	A	B	C	D	E
1					Appendix B, Page 1
2					Document Date: 12/8/2016
3	<b>HUMAN SERVICES AGENCY BUDGET SUMMARY</b>				
4	<b>BY PROGRAM</b>				
5	Name			Term	
6	Homebridge			July 1, 2016 - June 30, 2019	
7	(Check One) New <input checked="" type="checkbox"/> Renewal <input type="checkbox"/> Modification <input type="checkbox"/>				
8	If modification, Effective Date of Mod.		No. of Mod.		
9	Program: <b>IHSS Contract Mode Services</b>	IHSS Contract Mode	IHSS Contract Mode	IHSS Contract Mode	IHSS Contract Mode
10	Budget Reference Page No.(s)				
11	Program Term	7/1/2016-6/30/2017	7/1/2017-6/30/2018	7/1/2018-6/30/2019	Total
12	<b>Expenditures</b>				
13	Salaries & Benefits	\$20,166,424	\$21,051,876	\$21,947,833	\$63,166,133
14	Operating Expense	\$2,343,744	\$2,343,744	\$2,343,744	\$7,031,232
15	<b>Subtotal</b>	<b>\$22,510,166</b>	<b>\$23,395,620</b>	<b>\$24,291,577</b>	<b>\$70,197,363</b>
16	Indirect Percentage (%)	10.0%	10.0%	10.0%	10%
17	Indirect Cost (Line 16 X Line 15)	\$2,251,017	\$2,339,562	\$2,429,158	\$7,019,736
18	Capital Expenditure	\$0	\$0	\$0	\$0
19	Total Expenditures	\$24,761,183	\$25,735,182	\$26,720,735	\$77,217,100
20	<b>HSA Revenues</b>				
21	General Fund	\$5,199,848	\$5,404,388	\$5,611,354	\$16,215,591
22	Federal Fund	\$13,866,263	\$14,411,702	\$14,963,612	\$43,241,576
23	State Fund	\$5,695,072	\$5,919,092	\$6,145,769	\$17,759,933
24					
25					
26					
27					
28					
29	TOTAL HSA REVENUES	\$24,761,183	\$25,735,182	\$26,720,735	\$77,217,100
30	<b>Other Revenues</b>				
31					
32					
33					
34					
35					
36	Total Revenues				
37	Full Time Equivalent (FTE)	379	379	379	
39	Prepared by:	Juliana Terheyden	Telephone No.:	415-659-5345	12/8/2016
40	HSA-CO Review Signature: _____				
41	HSA #1				







	A	B	C	D	E
1	Appendix B-1, Page 1				
2	Document Date: 12/08/2016				
3	<b>HUMAN SERVICES AGENCY BUDGET SUMMARY</b>				
4	<b>BY PROGRAM</b>				
5	Name			Term	
6	Homebridge			July 1, 2016 - June 30, 2019	
7	(Check One) New <input checked="" type="checkbox"/> Renewal <input type="checkbox"/> Modification <input type="checkbox"/>				
8	If modification, Effective Date of Mod.		No. of Mod.		
9	Program: <b>Provider Skill Development Training and Supports</b>	Provider Training	Provider Training	Provider Training	Provider Training
10	Budget Reference Page No.(s)				
11	Program Term	7/1/2016-6/30/2017	7/1/2017-6/30/2018	7/1/2018-6/30/2019	Total
12	<b>Expenditures</b>				
13	Salaries & Benefits	\$535,632	\$535,632	\$535,632	\$1,606,896
14	Operating Expense	\$368,719	\$368,719	\$368,719	\$1,106,157
15	<b>Subtotal</b>	\$904,351	\$904,351	\$904,351	\$2,713,052
16	Indirect Percentage (%)	10.0%	10.0%	10.0%	\$0
17	Indirect Cost (Line 16 X Line 15)	\$90,435	\$90,435	\$90,435	\$271,305
18	Capital Expenditure	\$0	\$0	\$0	\$0
19	Total Expenditures	\$994,786	\$994,786	\$994,786	\$2,984,357
20	<b>HSA Revenues</b>				
21	General Fund	\$208,905	\$208,905	\$208,905	\$626,715
22	Federal Fund	\$557,080	\$557,080	\$557,080	\$1,671,240
23	State Fund	\$228,801	\$228,801	\$228,801	\$686,402
24					
25					
26					
27					
28					
29	TOTAL HSA REVENUES	\$994,786	\$994,786	\$994,786	\$2,984,357
30	<b>Other Revenues</b>				
31					
32					
33					
34					
35					
36	Total Revenues				
37	Full Time Equivalent (FTE)	6.0	6.0	6.0	
39	Prepared by: Juliana Terheyden	Telephone No.:	415-659-5345	12/8/2016	
40	HSA-CO Review Signature: _____				
41	<b>HSA #1</b>				







## Appendix C – Method of Payment

- I. In accordance with Section 5 of the Grant Agreement, payments shall be made for actual costs incurred and reported for each month. Under no circumstances shall payment exceed the amount set forth in Section 5 Compensation of the Agreement.
- II. Grantee will submit all bills, invoices and related documentation in the format specified by SFHSA within 15 days after the month of service to SFHSA's web-based Contracts Administration, Reporting, and Billing Online (CARBON) System at: <https://contracts.sfhsa.org>  
  
Grantee may submit bills, invoices and related documentation in the format specified by SFHSA via paper or email only upon special permission by their assigned Contract Manager.
- III. Grantee must sign up to receive payments electronically via Automated Clearing House (ACH). Remittance information will be provided through Paymode-X. Additional information and sign up is available at: <http://www.sfgov.org/ach>
- IV. The Executive Director or CFO must submit a letter of authorization designating specific users who will have access to CARBON to electronically submit and sign for invoices, budget revision requests, program reports, and view other information that is in CARBON.
  - A. Submittal of the invoice by designated authorized personnel with proper login credentials constitutes an electronic signature and certification of the invoice.
  - B. Authorized personnel with CARBON login credentials shall not share or internally reassign logins.
  - C. Grantee shall notify SFHSA Contract Manager immediately regarding any need for the restriction or termination of a previously authorized CARBON login.
- V. Invoices shall include actual expenditures incurred during the month, unless otherwise specified.
  - A. The invoice supplied shall include the total dollar amount claimed for the month.
  - B. There shall be no variance from the line item budget submitted which adversely affects program performance as contained in the Grantee's proposal and specified in the grant.
  - C. The invoice shall show by line item:
    1. Budgeted amount (per approved grant budget or modification)
    2. Expenses for invoice period
    3. Expenses year-to-date
    4. % of budget expended
    5. Remaining balance
    6. Adjustments, including advance payment recovery
    7. Program income when specified in the grant agreement.
  - D. Personnel expenditures will show same line item categories by position detail. Detail will show name of employee, position name, %FTE and budgeted salary.
  - E. With written approval from SFHSA Program/Contract Manager, Grantee may adjust items within the existing budget of the grant in accordance with SFHSA Office of Contract Management Policy for Budget Line Item Revisions.
  - F. Supporting Documentation, except as discussed below need not be submitted with the invoice. However, Grantee must keep and make available as requested such supporting documentation for all expenditures for which reimbursement is requested for all costs so claimed. All charges incurred shall be due and payable only after services have been

rendered, except as stated otherwise. Supporting documentation must be uploaded into CARBON and submitted along with the invoice.

- Documentation should be submitted with the invoice for all payroll expenses paid to budgeted personnel for the period covered by the invoice. Payroll information can be from a payroll service or a payroll ledger from the Grantee’s accounting system
- For any and all non-recurring expenditures (e.g. equipment purchases/capital upgrades and building repair and upgrades) and/or items that exceed \$5,000, Grantee shall supply back-up documentation in the form of a paid invoice(s).
- Indirect costs shall not be applied to non-reoccurring expenses.
- All subcontracted services must be documented by submission of the subcontractor’s paid invoice, regardless of dollar amount.
- If this grant agreement contains any Pass-Through funding requiring specific expense documentation from the source agency, Federal, State, Private or other then the following documentation shall also be included with each invoice submission:

Funding Agency: Federal\_\_\_\_\_ CFDA or other Identification #: 93.778

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

VI. Following SFHSA verification of submitted Invoice with required documentation of incurred expenses via CARBON, SFHSA will authorize payment within 10 business days after receipt of the invoice.

VII. Within 45 days after the end of the grant period, Grantee shall submit a final report reflecting actual expenditures, which will be supported by the Grantee’s accounting records. If a refund is due SFHSA, it will be submitted with the final report.

VIII. Advances or prepayments are allowable in order to meet the Grantee cash flow needs in certain unique circumstances. The Agency, at its sole discretion, shall make available to the Grantee upon written request an advance amount not to exceed two (2) months or 1/6<sup>th</sup> of the total annualized grant award, or as mutually agreed upon. The advanced sum shall be deducted from the Grantee’s monthly invoices at an equal rate each month that will enable repayment by the tenth month of the fiscal year. For a twelve-month grant the rate of repayment of the advance will be 1/10<sup>th</sup> per month from July to April. Requests for advance payment will be granted on a case-by-case basis and are not intended to be a regular “automatic” procedure. Approval will be a consensus of Program and Contract Staff.

Once the grant is certified, the Grantee, prior to distribution of any advanced payment, must fulfill the following conditions:

1. All contractual compliance requirements must be current, i.e., reports submitted and approved, corrective actions resolved, business tax and insurance certificates in place, prompt and fully documented billings.
  2. The Grantee shall submit a written request with a narrative justification that fully describes the unique circumstances to the Program Manager and Contract Manager for review and approval.
  3. Final invoice from the preceding fiscal year must be received prior to advance distribution.
- IX. Timely Submission of Reports – If reports/documents are required, Grantee shall submit these reports prior to submitting invoices. Failure to submit required reports/documents in CARBON by specified deadlines may result in withholding of grant payments.

**Appendix D-Interests In Other City Grants**

\*\*Subgrantees must also list their interests in other City contracts

City Department or Commission	Date of Grant	Amount of Grant
HSA – DAAS Case Management	7/1/14-6/30/17	\$274,803.00

**Appendix E-Permitted Subcontractors**

**NONE**

Appendix F

<b>Service</b>	<b>CFDA</b>	<b>CFDA Title</b>	<b>Other Name, if any</b>	<b>Federal awarding agency</b>
IHSS Contract Mode	93.778	Medical Assistance Program	Medi-Cal	Department of Health and Human Services

## Appendix G

### Federal Requirements: Provisions for All Federal Funds Subcontracts and Matching Funds to Federal Funds

#### I. Definitions

These are Federal definitions that come from Federal Uniform Guidance, 2 CFR Part 200, and are in addition to and may vary from definitions provided in the City's Grant Agreement, Grant Amendment, and Professional Services Agreement documents.

- A. **City** means the City and County of San Francisco.
- B. **Contract and/or Subcontract** means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award (2 CFR §200.22). Characteristics of Contracts, as opposed to Subawards (to Subrecipients), include but are not limited that to a Contractor
  - i. Has little or no programmatic decision-making responsibility in how it carries out the purpose of the contract
  - ii. Does not determine client eligibility for the federal program
  - iii. Provides goods or services that are ancillary to the operation of the Federal program and/or that help the City administer the Federal program. In contrast, the City passes through responsibility for administering all or part of a Federal program to a Subrecipient.
  - iv. See 2 CFR §200.330 for more guidance.
- C. **Third Party Subcontract** means a Subcontract at any tier entered into by Contractor or Subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal awarding agency.

#### II. Federal Changes

Contractor shall at all times comply with all applicable regulations, policies, procedures and Federal awarding agency directives, including without limitation those listed directly or by reference in the Master Agreement between the City and the Federal awarding agency or in the Grant Program Guidelines, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this contract.

#### III. Procurement Compliance (2 CFR §200.318 through .326)

- A. Subrecipient agrees to comply with the procurement standards set forth in 2 CFR § 200.318 through § 200.326. This includes but is not limited to the following
- B. General procurement standards, including using its documented procurement procedures which reflect all applicable laws, regulations, and standards; maintaining oversight of contractors; maintaining written standards of conflict covering conflicts of interest and organizational conflicts of interest; avoiding acquisition of duplicative

items; awarding contracts only to responsible contractors possessing the ability perform the terms and conditions of the proposed procurement successfully; and maintaining records sufficient to detail the history of procurements.

- C. Providing full and open competition as per 2 CFR § 200.319
- D. Complying with standards of the five methods of procurement described in 2 CFR § 200.320: micro-purchases, small purchases, sealed bids (formal advertising), competitive proposals, and non-competitive (sole source) proposals.

**IV. Cost Principles Compliance** (*2 CFR §200 Subpart E*)

Subrecipient agrees to comply with the Cost Principle specified in 2 CFR § 200 Subpart E for all costs that are allowable and included in this agreement with the City.

**V. Equal Employment Opportunity Compliance** (*applicable to all construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees; 2 CFR §200 Appendix II(c)*)

- A. Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60).

**VI. Davis-Bacon Act Compliance** (*applicable to construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation; 2 CFR §200 Appendix II(d)*)

Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. 3141-3418) as supplemented by Department of Labor regulations (29 CFR Part 5).

**VII. Copeland Anti-Kickback Act Compliance** (*applicable to construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation; 2 CFR §200 Appendix II(d)*)

Contractor agrees to comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR Part 3).

**VIII. Contract Work Hours and Safety Standards** (*applicable to all contracts awarded by grantees and subgrantees in excess of \$100,000, which involve the employment of mechanics or laborers; 2 CFR §200 Appendix II(e)*)

- A. **Compliance:** Contractor agrees that it shall comply with Sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.
- B. **Overtime:** No Contractor or Subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or



mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- C. Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph B, the Contractor and any Subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. Withholding for unpaid wages and liquidated damages:** The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.

**IX. Debarment and Suspension** (*applicable to all contracts and subcontracts; 2 CFR §200 Appendix II(h)*)

- A. Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension." Contractor agrees that neither Contractor nor any of its Third Party Subcontractors shall enter into any Third Party Subcontracts for any of the work under this Agreement with a Third Party Subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689. 2 CFR §180.220.
- B. Contractor and Third Party Contractors can meet this requirement with lower level contractors by requiring they sign a certification to its effect and by checking those contractors' status at the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov) under Search Records on a regular, but at least annual, basis.

**X. Byrd Anti-Lobbying Requirements** (*applicable for Subawards or Subcontracts in excess of \$100,000; 2 CFR §200 Appendix II(i) and by inclusion, 45 CFR Part 93*)

**A. Subcontractor hereby certifies**, to the best of his or her knowledge and belief, that

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the person signing this agreement, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal award or contract, the making of any Federal grant or contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
  - iii. The person signing this agreement shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and require that all recipients of such awards in excess of \$100,000 shall certify and disclose accordingly.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is imposed by section 1352, title 31, U.S. Code. Any person making an expenditure prohibited under this provision or who fails to file or amend the disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**XI. Procurement of Recovered Materials** (*applicable to all contracts and subcontracts for the procurement of recovered materials; 2 CFR §200 Appendix II(h) and 2 CFR §200.322*)

Contractor agrees to comply with all applicable standards, orders, or requirements issued pursuant to section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as supplemented by the Environmental Protection Agency regulations (40 CFR Part 247).

**XII. Incorporation of Uniform Administrative Requirements**

- A. The preceding provisions include, in part, certain standard terms and conditions required by the Federal awarding agency, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the Federal awarding agency, as set forth in 2 CFR Part 200, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all of the Federal awarding agency's mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests that would cause City to be in violation of the Federal awarding agency's terms and conditions.
- B. Further, all provisions of each Federal awarding agency's incorporation of the Uniform Guidance are also hereby incorporated as reference.
  - i. US Health and Human Services: 45 CFR Part 75 (includes some exceptions and additions)
  - ii. US Department of Housing and Urban Development: (no exceptions or additions)
  - iii. US Department of Education: (no exceptions).
  - iv. US Department of Agriculture: 2 CFR Part 400

### **XIII. Inclusion of Federal Requirements in Third Party Subcontracts**

The Subrecipient agrees to include all of the above clauses in each Third Party Subcontract financed in whole or in part with Federal assistance provided by the Federal awarding agency, unless the third party agreements do not meet the dollar thresholds indicated.

## Appendix H

### BUSINESS ASSOCIATE ADDENDUM

This Business Associate Agreement (“Agreement”) supplements and is made a part of the contract or Memorandum of Understanding (“CONTRACT”) by and between the City and County of San Francisco, Covered Entity (“CE”) and Contractor, Business Associate (“BA”). To the extent that the terms of the Contract are inconsistent with the terms of this Agreement, the terms of this Agreement shall control.

#### RECITALS

- A. CE wishes to disclose certain information to BA pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the CONTRACT 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”).
- C. 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 Agreement.
- D. 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 Agreement to permit BA to have access to such information and comply with the BA requirements of HIPAA, the HITECH Act, and the HIPAA Regulations.

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, 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.
- 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, 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 Agreement, 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 HITECT Act, including, but not limited to, 42 U.S.C. Section 17921.
- i. **Health Care Operations** means any of the following activities: i) conducting quality assessment and improvement activities; ii) reviewing the competence or qualifications of health care professionals; iii) underwriting, enrollment, premium rating, and other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits; iv) conducting or arranging for medical review, legal services, and auditing functions; v) business planning development; vi) business management and general administrative activities of the entity. This 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 Agreement, 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. **Permitted Uses.** BA may use, access, and/or disclose PHI only for the purpose of performing BA's obligations for or on behalf of the City and as permitted or required under the Contract [MOU] and Agreement, or as required by law. Further, BA shall not use PHI 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)].
- b. **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 Contract [MOU] and Agreement, 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 Agreement 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. k. of the Agreement, 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)].
- c. **Prohibited Uses and Disclosures.** BA shall not use or disclose PHI other than as permitted or required by the Contract and Agreement, 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 PHI 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 Contract.

- d. **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 Contract or this Agreement, 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).
- e. **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.d. 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.
- f. **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.
- g. **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.

- h. **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)].
- i. **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.
- j. **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.
- k. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.
- l. **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 Agreement; 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)]
- m. **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 Agreement, 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 Agreement 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 Agreement, as determined by CE, shall constitute a material breach of the CONTRACT and this Agreement and shall provide grounds for immediate termination of the CONTRACT and this Agreement, any provision in the CONTRACT to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Judicial or Administrative Proceedings.** CE may terminate the CONTRACT and this Agreement, 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 CONTRACT and this Agreement 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 Agreement 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 Agreement, 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 CONTRACT or this Agreement 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 Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable state or federal laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the CONTRACT or this Agreement when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Contract or this Agreement 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.