

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

Agreement between the City and County of San Francisco and

**Toyon Associates, Inc.
CID #1000025682**

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This Agreement is made this 1st day of October 2022, in the City and County of San Francisco (“City”), State of California, by and between Toyon Associates, Inc., 1800 Sutter Street, Suite 600, Concord, CA 94520 (“Contractor”) and City.

Recitals

WHEREAS, the Department of Public Health (“Department”) wishes to provide Regulatory Report and Reimbursement and Revenue Optimization Services; and

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

WHEREAS, Contractor was competitively selected pursuant to Sourcing Event ID 0000006396; and

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

WHEREAS, approval for the Agreement was obtained on 4/27/2022 from the Civil Service Commission under PSC number 4050 – 04/05 in the amount of \$17,000,000 for the period commencing 04/01/2005 and ending 12/31/2027; and

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

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

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

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

1.4 **“CMD”** means the Contract Monitoring Division of the City.

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

1.6 **“Contractor” or “Consultant”** means Toyon Associates, Inc., 1800 Sutter Street, Suite 600, Concord, CA 94520.

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

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

1.9 **“Party” and “Parties”** means the City and Contractor either collectively or individually.

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

Article 2 Term of the Agreement

2.1 **Term.** The term of this Agreement shall commence on October 1, 2022, and expire on September 30, 2027, unless earlier terminated as otherwise provided herein.

Article 3 Financial Matters

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

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

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

3.3 **Compensation.**

3.3.1 **Calculation of Charges.** Contractor shall provide an invoice to the City on a monthly basis for goods delivered and/or Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, “Calculation of Charges.” Compensation shall be made for goods and/or Services identified in the invoice that the City, in his or her sole discretion, concludes has been satisfactorily performed. In no event shall the amount of this Agreement exceed **Eight Million Four**

Hundred Ninety-Two Thousand Three Hundred Thirty-Nine Dollars (\$8,492,339). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." A portion of payment may be withheld until conclusion of the Agreement if agreed to by both Parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

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

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

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of goods delivered or Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.5 Reserved (LBE Payment and Utilization Tracking System).

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

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

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

3.3.7 Grant Funded Contracts.

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

(b) **Reserved (Grant Terms).**

(c) **Reserved.**

3.3.8 Payment Terms.

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

(b) **Reserved (Payment Discount Terms).**

3.4 Audit and Inspection of Records.

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

Contractor shall annually have its books of accounts audited by a Certified Public Accountant and a copy of said audit report and the associated management letter(s) shall be transmitted to the Director of Public Health or his /her designee within one hundred eighty (180) calendar days following Contractor's fiscal year end date. If Contractor expends \$750,000 or more in Federal funding per year, from any and all Federal awards, said audit shall be conducted in accordance with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Said requirements can be found at the following website address: https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl.

3.4.2 If Contractor expends less than \$750,000 a year in Federal awards, Contractor is 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. Contractor agrees to reimburse the City any cost adjustments necessitated by this audit report. Any audit report which addresses all or part of the period covered by this Agreement shall treat the service components identified in the detailed descriptions attached to Appendix A and referred to in the Program Budgets of Appendix B as discrete program entities of the Contractor.

3.4.3 The Director of Public Health or his / her designee may approve a waiver of the audit requirement in Section 3.4.2 above, if the contractual Services are of a consulting or personal services nature, these Services are paid for through fee for service terms which limit the City's risk with such contracts, and it is determined that the work associated with the audit would produce undue burdens or costs and would provide minimal benefits. A written request for a waiver must be submitted to the DIRECTOR ninety (90) calendar days before the end of the Agreement term or Contractor's fiscal year, whichever comes first.

3.4.4 Any financial adjustments necessitated by this audit report shall be made by Contractor to the City. If Contractor is under contract to the City, the adjustment may be made in the next

subsequent billing by Contractor to the City, or may be made by another written schedule determined solely by the City. In the event Contractor is not under contract to the City, written arrangements shall be made for audit adjustments.

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

3.6 Payment of Prevailing Wages (Reserved)

3.7 Contract Amendments; Budgeting Revisions.

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

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

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

Article 4 Services and Resources

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

4.2 Personnel

4.2.1 **Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor’s authorized subcontractors) to perform the Services. Contractor will comply with City’s reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City’s request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.2.2 **Contractor Vaccination Policy.**

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

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

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

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

(ii) If Contractor grants Covered Employees an exemption based on medical or religious grounds, Contractor will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form (“Exemptions Form”), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

(d) The City reserves the right to impose a more stringent COVID-19 vaccination policy for the San Francisco Department of Public Health, acting in its sole discretion.

4.3 **Subcontracting.**

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 “Additional Requirements Incorporated by Reference” of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

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

Contractor will not employ subcontractors.

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

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

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

4.5 **Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an “Assignment”) unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the

Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

4.6 Warranty. Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

Article 5 Insurance and Indemnity

5.1 Insurance.

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

- (a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.
- (b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.
- (d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Services.
- (e) Reserved (Technology Errors and Omissions Liability).
- (f) Cyber and Privacy Insurance with limits of not less than \$15,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in any form.
- (g) Reserved. (Pollution Liability Insurance).

5.1.2 Additional Insured Endorsements

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

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

(c) Reserved (Auto Pollution Additional Insured Endorsement and MCS-90)

5.1.3 Waiver of Subrogation Endorsements

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

5.1.4 Primary Insurance Endorsements

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

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

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

5.1.5 Other Insurance Requirements

(a) Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City email address: insurance-contractsrms410@sfdph.org.

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

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

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

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

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

5.2 Indemnification.

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

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

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

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED

TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

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

Article 7 Payment of Taxes

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

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

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

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

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

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

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San

Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.2 Termination for Default; Remedies.

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

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

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

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

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

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

8.2.3 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, in accordance with San Francisco Administrative Code Section 21.33 (Procedure Upon Contractor's Failure to Deliver) where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Further, in accordance with San Francisco Administrative Code Section 10.27.1 (Controller may Offset), City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.3 shall survive termination of this Agreement.

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

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

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

8.4 **Rights and Duties upon Termination or Expiration.**

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

3.3.2	Payment Limited to Satisfactory Services	9.1	Ownership of Results
3.3.7(a)	Grant Funded Contracts – Disallowance	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement

6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	Article 13	Data and Security
		Appendix E	Business Associate Agreement

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights In Deliverables

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

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

Article 10 Additional Requirements Incorporated by Reference

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

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

10.3 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds

appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

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

10.5 Nondiscrimination Requirements.

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

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

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

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

10.8 Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter

12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

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

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

10.12 Reserved (Slavery Era Disclosure).

10.13 Reserved (Working with Minors).

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

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

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

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

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

10.17 **Reserved (Distribution of Beverages and Water).**

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

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

Article 11 General Provisions

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

- To CITY: Office of Contract Management and Compliance
Department of Public Health
101 Grove Street, Room 410
San Francisco, California 94102 e-mail: cynthia.wu@sfdph.org
- And: Matthew Sur
Fiscal Office
2789 25th Street, Room 419c
San Francisco, CA 94110 e-mail: matthew.sur@sfdph.org
- To CONTRACTOR: Toyon Associates, Inc.
1800 Sutter Street, Suite 600
Concord, CA 94520 e-mail: ron.knapp@toyonassociates.com

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

11.2 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not

limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

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

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

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

11.6 Dispute Resolution Procedure.

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

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

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

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

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

11.10 Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in

any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

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

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated February 10, 2022. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

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

Article 12 Department Specific Terms

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

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

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

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

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

13.2 Reserved (Payment Card Industry (“PCI”) Requirements).

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

The parties acknowledge that CONTRACTOR will:

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

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

- a. **Appendix E** SFDPH Business Associate Agreement (BAA) (04-12-2018)
 1. SFDPH Attestation 1 PRIVACY (06-07-2017)
 2. SFDPH Attestation 2 DATA SECURITY (06-07-2017)
2. **NOT do any of the activities listed above in subsection 1;**

Contractor is not a Business Associate of CITY/SFDPH. Appendix E and attestations are not required for the purposes of this Agreement.

13.4 Management of City Data and Confidential Information.

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

13.4.2 Disposition of Confidential Information. Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all data given to or collected by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.5 Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

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

Article 14 MacBride And Signature

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

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

CITY

CONTRACTOR

Recommended by:

Toyon Associates, Inc.

Grant Colfax, MD
Director of Health
Department of Public Health

DocuSigned by:
Ronald G. Knapp 09/14/2022 | 12:29 PM PDT
53C13F8E99524D7...

Ronald G. Knapp
Chief Operating Officer

Supplier ID: 0000009305

Approved as to Form:

David Chiu
City Attorney

By: _____
Louise S Simpson
Deputy City Attorney

Approved:

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

Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Reserved
- D: Data Access and Sharing Terms
- E: HIPAA Business Associate Agreement
- F: Invoice

Appendix A Scope of Services

1. Terms

A. Contract Administrator:

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

B. Reports:

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

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

C. Evaluation:

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

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

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

D. Possession of Licenses/Permits:

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

E. Adequate Resources:

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

F. Infection Control, Health and Safety:

(1) Contractor must have a Bloodborne Pathogen (BBP) Exposure Control plan for its employees, agents and subcontractors as defined in the California Code of Regulations, Title 8, Section 5193, Bloodborne Pathogens (<http://www.dir.ca.gov/title8/5193.html>), and demonstrate compliance with all requirements including, but not limited to, exposure determination, training, immunization, use of

personal protective equipment and safe needle devices, maintenance of a sharps injury log, post-exposure medical evaluations, and recordkeeping.

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

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

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

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

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

(7) Contractor assumes responsibility for procuring all medical equipment and supplies for use by its employees, agents and subcontractors, including safe needle devices, and provides and documents all appropriate training.

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

G. Aerosol Transmissible Disease Program, Health and Safety:

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

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

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

(4) Contractor assumes responsibility for procuring all medical equipment and supplies for use by their employees, agents, subcontractors including Personnel Protective Equipment such as respirators, and provides and documents all appropriate training.

H. Acknowledgment of Funding:

Contractor agrees to acknowledge the San Francisco Department of Public Health in any printed material or public announcement describing the San Francisco Department of Public Health-funded Services. Such documents or announcements shall contain a credit substantially as follows: "This

program/service/activity/research project was funded through the Department of Public Health, City and County of San Francisco.”

I. Hospital Policy 16.27:

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

J. Hospital Policy 3.28:

To ensure that care, treatment, and clinical services provided through contractual agreements are provided safely and effectively. Contractors for Zuckerberg San Francisco Hospital must comply with Hospital Policy 3.28 “CONTRACTING PATIENT CARE SERVICES”

2. Description of Services

Contractor agrees to perform the following Services:

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

Detailed description of services are listed below and are attached hereto

Appendix A-1 Scope of Work (ZSFGH/COPC)

Appendix A-2 Scope of Work (LHH)

Appendix A-3 Scope of Work (HAH)

Appendix A-4 Contingency Fee Based (IME & GME Managed Care Appeal)

Appendix A-5 Rural Floor Budget Neutrality Appeal

Appendix A-6 Medicare Appeal Services for the “Two-Midnight Rule/Policy” Dispute

Appendix A-7 Medicare Appeal of CY 2015 Market Basket Update Decision by CMS dated May 1, 2015

Appendix A-8 IPPS Standardized Rate Appeal

Appendix A-9 Medicare Appeal Services for the “ATRA/MACRA 0.7% Adjustment Dispute”

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

Attachment 1 to Appendix A
PERFORMANCE IMPROVEMENT PLAN
AND PERFORMANCE MEASURE GRID

Contract Services

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

Contract Name	Services Provided	Measure Name	Metric (What data is being collected?)
1. Toyon Associates, Inc.	Financial Reimbursement Consulting Services	File Federal and State Financial Reports on time	NUM: # of reports filed on time DENOM: total # of reports
2. Toyon Associates, Inc.	Financial Reimbursement Consulting Services	Resolve Federal and State audits with no significant findings	NUM: # of Audits without significant finding DENOM: total # of audits

APPENDIX A-1

Zuckerberg San Francisco General Hospital/Community Primary Care (ZSFGH/CPC) SCOPE OF WORK

SUMMARY

Toyon will provide regulatory reporting and reimbursement and revenue optimization services to the San Francisco Department of Public Health, for the benefit of Zuckerberg San Francisco General Hospital/Community Primary Care, Laguna Honda Hospital, and Health at Home. Toyon's reimbursement services will help increase the Medicaid and Medicare reimbursement, increase the reimbursement from the Medicare group appeal services, and other related goals under services to be agreed upon as, and in the manner, described below.

Toyon's "Public Hospital Services Team or Group" is a team of 12-13 consultants, analysts and programmers, led by an Executive Director, focused on helping public hospitals optimize their cost reports and maximize reimbursements from government sponsored programs. The Public Hospital Services Group has specific expertise in Medi-Cal Certified Public Expenditure (CPE) and Intergovernmental Transfer (IGT) funded programs specific to public hospitals including the Medi-Cal waiver specific programs, Medi-Cal DSH, AB915 – Hospital Outpatient Supplemental Reimbursement, and Rate Range IGT funding. In addition, they also assist county health systems with AB85 Realignment Redirection reporting and analysis.

Toyon's "Appeal Services Practice Team or Group" is a team of 8 consultants and analysts, led by the President and owner of Toyon Associates, focused on the recovery of Medicare & Medi-Cal reimbursements through the appeals process to obtain additional reimbursements for various types of hospitals. The Appeal Services Practice Group provides seamless integration of expert cost report preparation with proactive identification of issues which will require appeal.

Zuckerberg San Francisco General Hospital/Community Primary Care (ZSFGH/CPC)

All reports, responses, recommendations, information, settlements, or analysis developed by Toyon described herein, shall be provided to the City to the SFHN Reimbursement Director.

A. GENERAL SERVICES

Task 1 – Management Meetings

A Toyon V.P. or Senior Director will attend all engagement progress meetings as scheduled and as directed by ZSFGH/CPC Management. Toyon will also participate in scheduled conference calls regarding review the status of projects being performed and findings from contractual allowance

review analyses, establish priorities, discuss audit or cost report preparation issues or any other issues arising during the course of the engagement.

Task 2 – Contractual Allowance Review

Toyon will prepare quarterly contractual allowance reviews for ZSFGH and CPC, for fiscal years ending (FYE) June 30, 2022 through June 30, 2027 and subsequent calendar quarters ending in September, November, February and June. The review will involve assessment of the adequacy of contractual allowance reserves and cost report settlements recorded on the general ledger for financial reporting purposes.

Task 3 – Interim Rate Review

Toyon will prepare interim rate reviews to ensure ZSFGH is reimbursed at proper interim rates that include validation of the biweekly Periodic Interim Payments received by ZSFGH for Inpatient PPS acute services. Toyon will also reconcile ZSFGH prior year third-party cost report settlement accounts as of June 30, 2022, June 30, 2023, June 30, 2024, June 30, 2025, June 30, 2026, and June 30, 2027 to the Intermediary's Statement of Account Status. This reconciliation includes Tentative Settlement Notices, Notices of Program Reimbursement, and other appropriate sources to ensure all settlement transactions have been properly recorded in the general ledger. As part of this process, Toyon will provide estimated liability/receivable settlement amounts for the Medi-Cal and Medicare Programs to establish proper account balances for the year-end audit process for FYEs June 30, 2022 through June 30, 2027. Toyon will respond and resolve all external audit inquiries.

B. REIMBURSEMENT SERVICES

Task 4 – Laws and Regulation Analysis

Toyon will provide ZSFGH/CPC weekly correspondence and on-going analysis and benchmarking from new and emerging regulations. This includes summaries and analysis, related to, but not limited to, annual Medi-Cal DSH payments, Proposed and Final Medicare PPS rates, Wage Index Public Use File (PUF) changes, Provider Relief Funding reporting and guidance, opportunities for new graduate medical education teaching slots (IME and GME), and any other regulation impacting Federal and State reimbursement at ZSFGH/CPC.

Task 5 – Short Doyle Cost Report Preparation

Toyon will review the annual Short-Doyle cost reports for FYEs June 30, 2022 through June 30, 2027 to ensure timely submission to the DPH. The purpose of the review is to analyze the accuracy and compliance with the State regulations and manual instructions for timely reporting. Upon request, Toyon will assist with the preparation of the report and will respond to all external audit inquiries.

Task 6 – HCAi Financial Disclosure Report Preparation

Toyon will prepare the annual Health Care Access and Information (HCAi) reports (formerly OSHPD) for FYEs June 30, 2022 through June 30, 2027, using Toyon's proprietary automation software. During preparation of the HCAi/OSHPD report, Toyon will analyze information specifically impacting other Medi-Cal reimbursements that include the Low-Income Utilization Ratio (LIUR) calculation. The report will be prepared to ensure accuracy and compliance, as required by HCAi/OSHPD instructions. Toyon will report to ZSFGH/CPC staff the updates needed in quarterly HCAi/OSHPD reports to reconcile to the annual HCAi/OSHPD filing, and will respond to all external audit inquiries from HCAi/OSHPD reviewers. Upon request, Toyon will prepare and/or review the quarterly HCAi/OSHPD reports.

Task 7 – Medicare and Medi-Cal Cost Report Preparation

Toyon will prepare the annual ZSFGH Medicare/Medi-Cal cost reports for FYEs June 30, 2022 through June 30, 2027 using Toyon's proprietary automation software and prepare the Curry Senior Center Medicare/Medi-Cal cost and reconciliation reports for timely filing. The reports will be prepared in compliance with all applicable laws, regulations and instructions, to be filed within the reporting guidelines required by the respective programs (typically 5 months after the end of a fiscal year). All applicable cost report schedules will be completed, including acute, acute psychiatric, teaching program, FQHC, renal dialysis, etc., for filing to the Medicare Administrative Contractor (MAC) and State of California Department of Health Care Services (DHCS). Appeal rights will be preserved through the use of the protested amounts section of the cost report, and issues that are annually identified and updated by Toyon's Appeals practice group. Other areas of analysis, review and follow-up related to these cost reports include, but are not limited to:

1. Review wage data used for cost report filing and subsequent comparison and reconciliation of wage data during the CMS annual process for the development of new Medicare wage indices
2. Prepare wage index and occupational mix data for accuracy
3. Review and reconciliation of wage data during the CMS annual process for the development of new Medicare wage indices
4. Prepare Worksheet S-10 uncompensated care costs worksheet
5. Prepare DSH eligible day listing
6. Evaluate Medicare payment logging system alternatives (as ZSFGH does not have an automated system)
7. Reconcile PS&R summary reports to financial revenue reports
8. Monitor PPS Psych for proper entitlement
9. Validate available bed and interns and residents counts (including overlap issues)
10. Allocate physician compensation between Part A administration, teaching and Part B direct patient care. Additionally, assign physician compensation to cost report cost centers
11. Prepare the renal dialysis Medicare cost report worksheets and FQHC cost report series schedules

12. Review the accounting department's master mapping of general ledger cost centers to the cost accounting system to ensure the Medicare and HCAi/OSHPD formats (cost center and financial class groupings) are in conformity with prescribed instructions
13. Establish appeal rights for disputed issues
14. Prepare revenue projections, as requested
15. Respond to all external audit inquiries
16. Prepare the Medicare crossover bad debt listing, upon request

Task 8 – Medicare and Medi-Cal Cost Report Analysis

Based on the results of the cost report preparations (Task 7), Toyon will prepare the necessary quantitative analyses and recommendations, including but not limited to the following:

1. Developing and evaluating the appropriate Medicare and Medi-Cal cost report receivable/payable for general ledger reconciliation purposes
2. Improving SFGH and CPC records and/or supporting documentation
3. Improving ZSFGH and CPC future reimbursement, including reimbursement under the Section 1115 and/or Section 1915(b) Waiver and any subsequent Waivers
4. Preparing for Medicare MAC audits of all open cost reports including FYE June 30, 2015 and subsequent years reports
5. Preparing for the Medi-Cal intermediaries audits of all open cost reports including FYE June 30, 2021 and subsequent years reports

Task 9 – Medicare and Medi-Cal Cost Report Audit Support

Toyon will respond to questions raised by MACs or state agencies after filing and during the audits of the cost reports. Toyon will evaluate the impact of proposed audit adjustments relative to ZSFGH/CPC's Medicare cost reports for FYE June 30, 2015 and subsequent fiscal years and Medi-Cal cost reports for FYE June 30, 2021 subsequent fiscal years. Additionally, Toyon will review the auditors' work papers to determine the propriety of proposed adjustments. The purpose of this review is to minimize adjustments to ZSFGH/CPC reimbursement claimed and to determine issues to dispute through appeal.

Task 10 – Medi-Cal Administrative Activities Claim Preparation

Toyon will prepare the Medi-Cal Administrative Activities (MAA) quarterly financial claims covering the FYEs June 30, 2022 through June 30, 2027. The purpose of this review is to ensure accuracy, completeness and compliance of the reports with the policy and procedure letters and State Claiming Plans. Toyon will respond to and resolve all audit inquiries.

Task 11 – Medicare and Medi-Cal Cost Report Appeals (Hourly)

Toyon will pursue all Medicare and Medi-Cal appeals related to fiscal years 1996-2014 and all subsequently audited cost reports. This process includes evaluating issues, research, developing documentation, preparing position papers, and representing ZSFGH/CPC at appeal or mediation hearings. The goals will be to obtain administrative resolutions on appealed issues whenever possible, and to ensure ZSFGH/CPC's appeal rights are protected. Toyon will seek to maximize all appeal recoveries under the current reimbursement rules and regulations.

Task 12 – Medi-Cal Supplemental Cost Claiming Preparation

Toyon will prepare the AB915 Medi-Cal outpatient fee-for-service supplemental claims covering the FYEs June 30, 2022 through June 30, 2027. This funding is available to California governmental providers. Toyon will also assist in the SNF wage pass-through and DP/NF supplemental claiming activities for those periods. The purpose of the reviews is to ensure compliance with claiming regulations and to ensure accuracy in the information reported. As part of the review, Toyon will analyze the information specific to the Medi-Cal Outpatient Upper Payment Limit. Toyon will also respond to and resolve all audit inquiries.

Task 13 – P14 and AB85 Cost Claiming and Reconciliation Report Preparation

Toyon will assist with the annual preparation of the P14 Workbook and subsequent AB85 Realignment submission for public hospital systems to ensure accuracy and compliance with all reporting requirements. Upon request, Toyon will prepare the P14 and/or respond to and resolve all audit inquiries.

Task 14 – FQHC Prospective Payment System Reconciliation Support

Toyon will assist with the resolution of the CPC audit adjustments related to the filing of the annual FQHC Reconciliation reports. Toyon will work with the auditors to minimize audit adjustments. Should an appeal be necessary, Toyon will evaluate the issues and documentation for the adjustments and file the appeal from the finalized reports. Toyon will represent CPC at appeal through the informal, and if necessary, the formal level processes afforded providers with the State. If needed at the formal level, Toyon will engage a mutually agreed-upon attorney to represent CPC at the formal level.

Task 15 – General Consulting Services

Upon request of ZSFGH/CPC, Toyon will assist on other reimbursement-related projects that could increase reimbursements to the organization. This may include, but not limited to, temporary staff coverage (in the event of staff shortage), Global Payment Program (GPP), Enhanced Payment Program (EPP), Quality Incentive Program (QIP), California

Advancing and Innovating Medi-Cal (Cal AIM), and Federal/State funding related to Coronavirus Aid Relief.

C. SERVICES TO INCREASE THE MEDICAID RATIO AND SSI RATIO COMPONENTS OF MEDICARE DISPROPORTIONATE REIMBURSEMENT (DSH)

Toyon will pursue increases to the Medicaid and SSI ratios used to calculate Medicare DSH entitlements for fiscal years 1986 and after. Further, Toyon will develop strategies to ensure optimization of data used to allocate the new DSH Uncompensated Care DSH reimbursements effective October 1, 2013. DSH-related issues Toyon will pursue through appeal include, but are not limited to:

1. Dual Eligible – Medicare Part C days
2. Dual Eligible – Medicare Part A exhausted days
3. Dual Eligible – Medicare Part A non-covered days
4. Restricted eligibility days adjusted in audit
5. Additional identified eligible days
6. Understated SSI days from CMS match

Toyon will utilize its DSH and Appeal Services Group to perform the following:

1. Prepare Medi-Cal eligible day documentation for all open cost reporting periods using Toyon's proprietary DSH eligibility matching system
2. Pursue all viable DSH eligible day and SSI ratio appeals through either individual or group appeals
3. File Medicare appeals, preliminary and final position papers, jurisdictional briefs and administrative resolutions proposals. Any and all challenges made by the Intermediary or CMS will be handled by Toyon
4. As needed, Toyon will represent ZSFGH in Provider Reimbursement Review Board (PRRB) hearings, if the issues cannot be administratively resolved. This includes the presentation of expert witness testimony
5. Should an unfavorable PRRB decision be issued, Toyon will notify ZSFGH/CPC and provide a recommendation as to whether to institute litigation. However, before any lawsuit is filed, Toyon must first advise the City Attorney and obtain approval from the City Attorney both for the filing of the lawsuit and for the selection of the law firm to be used. Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services. If a settlement is proposed, Toyon will provide a summary of such settlement to the City Attorney along with its recommendations
6. Absorb all expenses associated with any legal proceedings under the provision that the pursuit of the issue is handled by contingent fee arrangement
7. Provide reports, as required

Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid

unless the attorney or law firm received advance written approval from the City Attorney for such services.

Compensation For These Services Will Be On A Contingency Fee & No Fees Or Expenses Are Due TOYON Unless Additional Reimbursement Is Realized

Period when appeal was originally filed	Cumulative Additional Reimbursement Generated Each Contract Year April Through March	Contingency Fee Percentage
Prior to 4/1/2014	\$1 though \$2,500,000	20%
On or After 4/1/2014	\$1 though \$2,500,000	15%

Payments for these services will be calculated per the above schedule as a percentage of the additional Medicare DSH reimbursement realized as a result of Toyon's work. The additional reimbursement will either be a payment to ZSFGH by the Medicare Intermediary or a reduction of an outstanding liability

D. INDIVIDUAL OR GROUP APPEALS

TOYON will advise ZSFGH of additional appeal issue(s) that it believes should be pursued. If ZSFGH agrees to pursue the issue(s), DPH will sign and execute an Amendment to this Agreement with TOYON, in the same manner and upon the same essential terms as this Agreement. If ZSFGH agrees to pursue the issues(s) on a fee-for-service basis, those fees will fall under Section B, Task 10 above.

If ZSFGH agrees to pursue the issue(s) on a contingent fee basis, the applicable percentage rate will be set forth in the Amendment and will be subject to the same provisions as in Task 10.

Currently, there are group appeals which are being pursued on a contingent fee basis in addition to the various Medicaid Ratio and SSI Ratio appeals. These three different appeals are: IME & GME Managed Care, Budget Neutrality, IPPS Standardized Amount, Market Basket Update, ATRA/MACRA 0.7% Adjustment and Two-Midnight Rule/Policy Appeals. The scope of work and contingency fee percentage rates are included beginning with appendix A-4.

Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services.

E. PROFESSIONAL SERVICES

There are times when DPH will require additional professional services. DPH shall submit a written request to TOYON with a Scope of Service. TOYON and DPH shall sign and execute an Amendment to this Agreement, in the same manner and upon the same essential terms as this Agreement, and agree on number of hours and the estimated fees required to complete the project(s). DPH will supplement this contract with additional funds to cover the additional services.

Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services.

APPENDIX A-2

Laguna Honda Hospital (LHH) SCOPE OF WORK

All reports, responses, recommendations, information, settlements, or analysis developed by Toyon described herein, shall be provided to the City to LHH's Revenue/Reimbursement Manager or LHH Chief Financial Officer.

A. GENERAL SERVICES

Task 1 – Management Meetings

Toyon's engagement executive will attend four on-site meetings to be scheduled annually with LHH Management. Conference calls will be scheduled on an as-needed basis regarding audits, cost report preparation, or other significant reimbursement issues.

B. REIMBURSEMENT SERVICES

Task 2 – Laws and Regulation Analysis

Toyon will assist Administrative Staff to analyze, interpret, and determine potential financial impact associated with new and proposed laws/regulations.

Task 3 – Medicare and Medi-Cal Cost Report Preparation

Toyon will prepare a timed phased workplan and will follow and monitor that workplan to prepare the annual LHH Medicare/Medi-Cal cost reports for the FYEs June 30, 2022 through June 30, 2027 using Toyon's proprietary automation software. The reports will be prepared in compliance with all applicable laws, regulations and instructions and within the filing deadlines required. A workplan will be developed with LHH's Revenue/Reimbursement Manager and CFO and regular progress reports will be provided. The report will be filed to ensure all areas impacting reimbursements are accurately reported. LHH is primarily a skilled nursing (SNF) provider. The focus of preparation will involve proper reporting of SNF costs for future Medi-Cal reimbursement purposes. An executive summary including any recommendations for optimization or conformity to Federal and State regulations will be provided including, but not limited to:

1. Review Wage Index and Occupational Mix Data for accuracy.
2. Prepare Worksheet S-10 – uncompensated care costs worksheet
3. Prepare revenue analysis and projections, as requested. LHH does not have an automated logging system
4. Reconcile general ledger revenues to PS&R summary.
5. Develop a methodology to extract ASC; Radiology and Other Part B charges.
6. Develop a methodology to allocate physician compensation and Part A vs. Part B vs. teaching time to assigned cost centers.

Task 4 – HCAi Financial Disclosure Reporting

Toyon will prepare a timed phased workplan and will follow and monitor that workplan to prepare the annual HCAi/OSHPD cost reports for the FYEs June 30, 2022 through June 30, 2027 using Toyon's proprietary automation software. The reports will be prepared in compliance with all applicable laws, regulations and instructions and within the filing deadlines required. A workplan will be developed with LHH's Revenue/Reimbursement Manager and CFO and regular progress reports will be provided.

Task 5 – Medicare and Medi-Cal Cost Report Analysis

Based on results of the cost report preparations (Task 3), Toyon will prepare and present a management report. Our report will include a quantitative analysis and recommendations that will assist in the following:

1. Develop appropriate Medicare cost report receivable/payable (filed vs. reserved)
2. Prepare for intermediaries' audits of all cost reports yet to be audited, including wage pass-through Medi-Cal audits, and uncompensated care, Medicare wage index, occupational case mix survey and other necessary audits, upon request
3. Assist in improving its records for preparation of the FYE June 30, 2022 through June 30, 2027 cost reports and improve future reimbursements

Task 6 – Medicare and Medi-Cal Cost Report Audit Support

Toyon will reply to questions from the MAC or State Agencies concerning the cost reports filed and support the audit process performed on the cost reports. Toyon will evaluate the impact of proposed audit adjustments relative to LHH's Medicare and Medi-Cal cost reports for all fiscal years yet to be audited, review intermediary audit workpapers and determine the propriety of proposed adjustments. Toyon will work to minimize the audit adjustments and identify issues for potential appeal.

Task 7 – Interim Rate Review

Toyon will prepare interim rate reviews and cost settlement analyses for review by LHH's external financial auditors as part of their year-end audit process for FYEs June 30, 2022 through June 30, 2027. The review will be completed in collaboration with LHH's Revenue/Reimbursement manager.

Task 8 – Medicare and Medi-Cal Cost Report Appeals (Hourly)

Toyon will pursue all viable Medicare and Medi-Cal appeals related to all open cost report settlements. Toyon will research all issues and develop documentation for preparation of position papers to Medicare and Medi-Cal. The purpose is to recover entitled reimbursement dollars through the appeal process. If settlement agreements are proposed, Toyon will provide a summary of the agreements to LHH and the City Attorney, along with its recommendations. If Toyon decides to retain an attorney or a law firm to perform any services under this Agreement, including services related to administrative or legal proceedings, Toyon will notify the City Attorney in writing, in the manner described in the Notices Section (Section 11.1) of this Agreement. Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services.

Task 9 – DP/NF Supplemental Claim Preparation

Toyon will review the DP/NF supplemental claims methodology to ensure conformity with regulations and optimize allowable reimbursement under the guidelines of the program, including the consideration of any subsequent impact to/from other reimbursement programs and related adjustments.

Task 10 – AB915 Supplemental Claim Preparation

Toyon will prepare the AB915 Medi-Cal outpatient fee-for-service supplemental claims covering FYEs June 30, 2022 through June 30, 2027. The purpose of the review is to ensure compliance with and accuracy in the reported filing. Upon request, Toyon will respond to and resolve audit inquiries.

Task 11 – Contractual Allowance Review

Toyon will prepare quarterly contractual allowance reviews for LHH, covering FYEs June 30, 2022 through June 30, 2027 and subsequent calendar quarters ending in September, November, February and June. The review will involve assessing the adequacy of contractual allowance reserves on the general ledger for financial reporting purposes.

Task 12 – General Consulting Services

Toyon will assist LHH with various other projects that will increase reimbursement upon request from LHH management. Toyon will also assist LHH with other reimbursement programs and/or supplemental claims submitted by the hospital, in the event of any disallowances by the State or federal agencies, to research on related legislations and perform financial analysis in order to appeal or resubmit claims to optimize reimbursements. This may include by not limited to:

1. Review the ability to change the life of the new building for depreciation calculation and refile Medi-Cal Cost Report if necessary.
2. Review the ability to change the number of years used for amortization of the capitalized interest.
3. Create schedules to remove depreciation and interest associated with the bond funding that were reimbursed under SB1128 program from Medi-Cal Cost Report, but include the amortized capitalized interest.
4. Recalculate and refile Medi-Cal Cost Reports as needed.
5. Recalculate the revenue reserve for the periods prior to correct filing.
6. Note: basic cost report analysis work should be covered by Task 3, and other activities related to the refiling of Medi-Cal Cost Reports should be charged Fee-for-Service under Task 12.

Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services. If a settlement is proposed, Toyon will provide a summary of such settlement to the City Attorney along with its recommendations.

C. INDIVIDUAL OR GROUP APPEALS

TOYON will advise LHH of appeal issue(s) that it believes should be pursued. If LHH agrees to pursue the issue(s), DPH will sign and execute an Amendment to this Agreement with TOYON, in the same manner and upon the same essential terms as this Agreement, for each of the appeals which it wishes to participate on a contingency fee basis. If LHH agrees to pursue the issues(s) on a fee-for-service basis, those fees will fall under Section B, Task 8 above. This will include all appeals that are formed prior and during the length of this agreement for which LHH wishes to participate.

Compensation For Services On A Contingency Fee Basis & No Fees Or Expenses Are Due TOYON Unless Additional Reimbursement Is Realized

Period when appeal was originally filed	Cumulative Additional Reimbursement Generated Each Contract Year April Through March	Contingency Fee Percentage
Prior to 4/1/2014	\$1 though \$666,666	20%
On or After 4/1/2014	\$1 though \$666,666	No more than 15%

Payments for these services will be calculated per the above schedule as a percentage of the additional reimbursement realized as a result of Toyon's work. The additional reimbursement will either be a payment to LHH by the Intermediary or a reduction of an outstanding liability.

Individual or Group appeal services provided by Toyon (not related to DSH), prior to 4/1/2014 as defined in this contract, will be paid under the agreed upon Contingency Fee Percentage Rate during the contract period for which the original appeal was filed.

Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services. If a settlement is proposed, Toyon will provide a summary of such settlement to the City Attorney along with its recommendations.

D. PROFESSIONAL SERVICES

There are times when DPH will require additional professional services. LHH shall submit a written request to TOYON with a Scope of Service. TOYON and DPH shall sign and execute an Amendment to this Agreement, in the same manner and upon the same essential terms as this Agreement, and agree on number of hours and the estimated fees required to complete the project(s). DPH will supplement this contract with additional funds to cover the additional services.

Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services. If a settlement is proposed, Toyon will provide a summary of such settlement to the City Attorney along with its recommendations.

APPENDIX A-3

Health at Home Agency (HAH) SCOPE OF WORK

All reports, responses, recommendations, appeals, information, settlements, or analysis developed by Toyon described herein, shall be provided to the City to the HAH Revenue Manager.

A. HOME CARE REIMBURSEMENT AND COST REPORTING

Task 1 – Laws and Regulation Analysis

Toyon will assist administrative and business/reimbursement staff to analyze, interpret, and determine potential financial impact associated with new and proposed laws/regulations. This includes, but is not limited to, regulations concerning CMS's Patient-Driven Grouping Model (PDGM), variables (i.e., wage index) impacting the 30-day period of care threshold, changes to regulation from the CARES Act, and DHCS's new Cal-AIM program focused on providing care outside of hospital walls.

Task 2 – Medicare Cost Report Preparation

Toyon will prepare HAH's Medicare cost report for FYEs June 30, 2022 through June 30, 2027, ensuring there is adequate time allowed for appropriate review, approval and submission by the regulatory deadline to the fiscal intermediary. In preparing the cost report, Toyon will make recommendations for proper entitlement and appropriate compliance with government regulations, test accuracy of PPS logs and reconcile PPS logs to PS&R summary.

Task 3 – Medicare and Medi-Cal Cost Report Audit Support

Toyon will respond to inquiries regarding the Medicare cost reports for FYEs June 30, 2022 through June 30, 2027 during the desk review or audit process.

Task 4 – Medicare and Medi-Cal Cost Report Appeals (Hourly)

Toyon will pursue Medicare and Medi-Cal appeals related to fiscal years 1996-2019 and all subsequent audited cost reports. This includes evaluation of issues, research, development of documentation, preparation of position papers, representation of HAH at appeal administrative resolution on appealed issues and ensuring HAH appeal rights are protected. The purpose will be to recover additional reimbursement for HAH through the established appeals process. If settlement agreements are proposed, Toyon will provide a summary of the agreements to HAH and the City Attorney, along with its recommendations. If Toyon decides to retain an attorney or a law firm to perform any services under this Agreement, including services related to administrative or legal proceedings, Toyon will notify the City Attorney in writing, in the manner described in the Notices Section (Section 11.1) of this Agreement. Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in

advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services.

Task 5 – Medicare and Medi-Cal Cost Report Process Improvement Analysis

Based on the results of the cost report, Toyon will present to SFHN and HAH business and administrative staff written recommendations which will help HAH improve record-keeping for the cost report filing and possibly assist with improving future reimbursements.

Task 6 – General Consulting Services

Toyon will assist HAH with other projects that could help improve reimbursement upon request from HAH management. TOYON and DPH shall sign and execute an Amendment to this Agreement, in the same manner and upon the same essential terms as this Agreement, and agree on number of hours and the estimated fees required to complete the project(s). DPH will supplement this contract with additional funds to cover the additional services.

If Toyon decides to retain an attorney or a law firm to perform any services under this Agreement, including services related to administrative or legal proceedings, Toyon will notify the City Attorney in writing, in the manner described in the Notices Section (Section 11.1) of this Agreement. Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services. If a settlement is proposed, Toyon will provide a summary of such settlement to the City Attorney along with its recommendations.

Appendix A-4
(Contingency Fee based)
IME & GME MANAGED CARE APPEAL

Pursuant to the provisions of Section D of Appendix A-1 of the Agreement, Toyon proposes to pursue additional Medicare indirect medical education (IME) and/or graduate medical education (GME) reimbursement applicable to Medicare managed care enrollees through a group appeal.

1. Background

The Medicare Program has established procedures which Providers of healthcare services must follow to pursue appeals of Medicare cost report audit adjustments. The Medicare regulations governing the administrative appeal process may be found at 42 CFR 405.1801-1889. The entity in charge of the appeal process is called the Provider Reimbursement Review Board (PRRB) and it has the authority to render decisions on all Provider cost report appeals. If the PRRB renders a decision that a Provider disagrees with, the Provider may pursue the matter through the judicial system.

2. Scope of Services

Toyon will pursue additional Medicare IME and/or GME reimbursement related to Medicare managed care enrollees on behalf of San Francisco General Hospital (ZSFGH). Toyon's services will include, but are not limited to the following:

1. Prepare and file appeal letters to the Provider Reimbursement Review Board (PRRB) to establish Medicare appeals for additional Medicare IME and/or GME reimbursement related to Medicare managed care enrollees.
2. Establish a Group Appeal for the pursuit of additional Medicare IME and/or GME reimbursement related to Medicare managed care enrollees.
3. Develop appeal strategy, perform research, and obtain documentation needed to pursue the disputed issue.
4. Prepare and file preliminary and final position papers.
5. Review the Intermediary's preliminary and final position papers.
6. Attempt to obtain an administrative resolution with the Intermediary in advance of a PRRB hearing.
7. Represent ZSFGH at the PRRB hearing if an administrative resolution cannot be obtained. This includes preparation of testimony, evidence, and hearing strategy.
8. If Toyon decides to retain an attorney or a law firm to perform any services under this Appendix, including services related to administrative or legal proceedings, Toyon will notify the City Attorney in writing, in the manner described in the Notices Section (Section 11.1) of the Agreement. Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services.
9. Perform all follow up needed with the Medicare Program with respect to this appeal.

10. Review any revised settlements resulting from this appeal and any hearing decisions and provide recommendations to San Francisco General Hospital.
11. Should an unfavorable PRRB decision be issued, Toyon will notify ZSFGH and provide a recommendation as to whether to institute litigation. However, before any lawsuit is filed, Toyon must first advise the City Attorney and obtain approval from the City Attorney both for the filing of the lawsuit and for the selection of the law firm to be used. Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services. If a settlement is proposed, Toyon will provide a summary of such settlement to the City Attorney along with its recommendations.

3. Fiscal Periods

The terms of this Appendix will cover all cost reporting periods ending in calendar years 1998 through 2027.

4. Compensation

Payment for the services set forth in this Appendix will be calculated at 20% of the additional Medicare reimbursement realized by ZSFGH as a result of Toyon's work. The additional reimbursement will either be a payment to ZSFGH by the Medicare Intermediary or a reduction of an outstanding liability. Payment is due to Toyon within 30 days of the ZSFGH's receipt of reimbursement from the Medicare Intermediary or notification that its liability has been decreased. No fees or expenses are due to Toyon unless additional reimbursement is realized.

5. Term

The terms in this Agreement will be effective from November 4, 2008 until the expiration or earlier termination of the professional services Agreement of which this Appendix is made a part of.

Appendix A-5

RURAL FLOOR BUDGET NEUTRALITY APPEAL

Pursuant to the provisions of Section D of Appendix A-1 of the Agreement, Toyon proposes to pursue additional Medicare indirect medical education (IME) and/or graduate medical education (GME) reimbursement applicable to Medicare managed care enrollees through a group appeal.

1. Background

The Medicare Program has established procedures which Providers of healthcare services must follow to pursue appeals of Medicare cost report audit adjustments. The Medicare regulations governing the administrative appeal process may be found at 42 CFR 405.1801-1889. The entity in charge of the appeal process is called the Provider Reimbursement Review Board (PRRB) and it has the authority to render decisions on all Provider cost report appeals. If the PRRB renders a decision that a Provider disagrees with, the Provider may pursue the matter through the judicial system.

2. Scope of Services

Toyon will pursue additional Medicare IME and/or GME reimbursement related to Medicare managed care enrollees on behalf of San Francisco General Hospital (ZSFGH). Toyon's services will include, but are not limited to the following:

1. Prepare and file appeal letters to the Provider Reimbursement Review Board (PRRB) to establish Medicare appeals for additional Medicare IME and/or GME reimbursement related to Medicare managed care enrollees.
2. Establish a Group Appeal for the pursuit of additional Medicare IME and/or GME reimbursement related to Medicare managed care enrollees.
3. Develop appeal strategy, perform research, and obtain documentation needed to pursue the disputed issue.
4. Prepare and file preliminary and final position papers.
5. Review the Intermediary's preliminary and final position papers.
6. Attempt to obtain an administrative resolution with the Intermediary in advance of a PRRB hearing.
7. Represent ZSFGH at the PRRB hearing if an administrative resolution cannot be obtained. This includes preparation of testimony, evidence, and hearing strategy.
8. If Toyon decides to retain an attorney or a law firm to perform any services under this Appendix, including services related to administrative or legal proceedings, Toyon will notify the City Attorney in writing, in the manner described in the Notices Section (Section 11.1) of the Agreement. Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services.
9. Perform all follow up needed with the Medicare Program with respect to this appeal.

10. Review any revised settlements resulting from this appeal and any hearing decisions and provide recommendations to San Francisco General Hospital.
11. Should an unfavorable PRRB decision be issued, Toyon will notify ZSFGH and provide a recommendation as to whether to institute litigation. However, before any lawsuit is filed, Toyon must first advise the City Attorney and obtain approval from the City Attorney both for the filing of the lawsuit and for the selection of the law firm to be used. Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services. If a settlement is proposed, Toyon will provide a summary of such settlement to the City Attorney along with its recommendations.

3. Fiscal Periods

The terms of this Appendix will cover all cost reporting periods ending in calendar years 1998 through 2027.

4. Compensation

Payment for the services set forth in this Appendix will be calculated at 20% of the additional Medicare reimbursement realized by ZSFGH as a result of Toyon's work. The additional reimbursement will either be a payment to ZSFGH by the Medicare Intermediary or a reduction of an outstanding liability. Payment is due to Toyon within 30 days of the ZSFGH's receipt of reimbursement from the Medicare Intermediary or notification that its liability has been decreased. No fees or expenses are due to Toyon unless additional reimbursement is realized.

5. Term

The terms in this Agreement will be effective from November 4, 2008 until the expiration or earlier termination of the professional services Agreement of which this Appendix is made a part of.

Appendix A-6

MEDICARE APPEAL SERVICES for the “TWO-MIDNIGHT RULE/POLICY” DISPUTE

Pursuant to the provisions of Section D of Appendix A-1 of the Agreement, Toyon proposes to provide Medicare Program appeal related services for the Two-Midnight Rule/Policy Dispute.

1. Background

Within the FY 2014 IPPS Final Rule published on August 19, 2013, CMS instituted a 0.2 percent rate cut. CMS justified this rate cut as necessary in order to ensure that the application of the new "two-midnight" rule / policy did not lead to an aggregate increase in yearly IPPS payments for the Medicare program. During the notice and comment period for the FY 2014 IPPS rule, comments were made that identified the existence of statistical errors in CMS' underlying calculations that supported the rate cut. CMS justified the rate cut on the basis that the two-midnight rule (which presumes that hospital inpatient stays of two days are longer are medically necessary) would lead to a net increase of 40,000 inpatient cases per year. However, an independent analysis of CMS's own data has been made and the overwhelming conclusion is the two-midnight rule would lead to a substantial decrease in inpatient stays and a large increase in outpatient encounters. Many hospital systems have analyzed the impact on their own reimbursement and have reached the same conclusion. In other words, the financial impact of the two midnight rule on providers should result in a payment *increase*, not a payment decrease. There is no substantial evidence to support CMS' conclusion, thus making the rule legally invalid.

The Medicare Program allows hospitals to appeal final determinations that originate through Medicare Administrative Contractor (MAC) determinations and *Federal Register* notifications. The regulation is 42 C.F.R. § 405.1835. The services set forth in this agreement are for the purpose of increasing the hospital's Medicare reimbursement through the Medicare appeal process.

2. Scope of Services

Medicare Appeal Services

TOYON will pursue Medicare cost report appeals, cost report reopenings and/or appeals of final determinations issued by CMS on behalf of San Francisco General Hospital (ZSFGH) in pursuit of its challenge to CMS' implementation of the two-midnight rule/policy. Toyon's services will include, but are not limited to the following:

- Review the audited cost reports, Intermediary Workpapers, and *Federal Register* notices to determine the issues to be appealed and/or reopened. All issues that impact Medicare reimbursement may be pursued. The issues to be appealed / reopened may include, but are not limited to, disproportionate share, bad debts, wage index, PPS standardized amounts, allowable costs, cost finding statistics, and cost apportionment statistics. Issues may be pursued even if the time period for administrative appeal rights has been exhausted.
- Prepare and file appeal letters to the Provider Reimbursement Review Board (PRRB) to establish Medicare appeals (if not already done), to add issues to existing appeals, and/or to transfer issues to group appeals.

- Develop appeal strategy, perform research, and obtain documentation needed to pursue disputed issues.
- Prepare and file cost report reopening requests if appropriate.
- Prepare and file preliminary and final position papers.
- Review the Intermediary's preliminary and final position papers.
- Attempt to obtain administrative resolutions with the Intermediary in advance of scheduled hearings.
- If Toyon decides to retain an attorney or a law firm to perform any services under this Appendix, including services related to administrative or legal proceedings, Toyon will notify the City Attorney in writing, in the manner described in the Notices Section (Section 11.1) of the Agreement. Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services.
- Perform all follow up needed with the Medicare Program with respect to appeals and reopening requests.
- Review any revised settlements resulting from appeals or reopenings and any hearing decisions and provide recommendations to ZSFGH.
- Should an unfavorable PRRB decision be issued, Toyon will notify ZSFGH and provide a recommendation as to whether to institute litigation. However, before any lawsuit is filed, Toyon must first advise the City Attorney and obtain approval from the City Attorney both for the filing of the lawsuit and for the selection of the law firm to be used. Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services. If a settlement is proposed, Toyon will provide a summary of such settlement to the City Attorney along with its recommendations.
- Pursue issues directly to court or use expedited jurisdictional review if, in TOYON'S opinion, such action is deemed warranted.

3. San Francisco General Hospital Fiscal Periods

This Appendix applies to the dispute described in Section 1 and the appeal services described in Section 2 for San Francisco General Hospital, federal fiscal periods beginning 10/1/2013 through 3/31/2019. Additional federal fiscal years may be added to this agreement by written amendment executed by both parties.

4. Compensation

Payment for Medicare appeal services set forth in this Agreement will be calculated as 10% of the additional Medicare reimbursement realized by ZSFGH as a result of Toyon's work. Any previously executed Medicare appeal agreements that overlap this agreement remain in full force and effect and are not superseded or modified by the parties' execution of this agreement.

The additional reimbursement resulting from a successful appeal will either be a payment to ZSFGH by the Medicare Program or a reduction of an outstanding liability. Payment is due to Toyon within 30 days of ZSFGH'S receipt of additional reimbursement or notification that its liability has been decreased. No fees or expenses are due to Toyon unless additional reimbursement is realized.

5. Term

The terms in this Agreement will be effective from April 1, 2014 until the expiration or earlier termination of the professional services Agreement of which this Appendix is made a part of.

Appendix A-7

Medicare Appeal of CY 2015 Market Basket Update Decision by CMS dated May 1, 2015

Pursuant to the provisions of Section D of Appendix A-1 of the Agreement, Toyon propose to pursue an appeal of the CMS decision dated May 1, 2015, denying the full market basket update for calendar year 2015 on a contingent fee basis. A copy of the CMS decision which will be appealed is enclosed.

Services:

Toyon will perform the following services:

1. Research facts and develop arguments.
2. File an appeal with the PRRB.
3. Take care of all communications with the PRRB and CMS on this matter.
4. Prepare position papers as needed.
5. Develop strategy for PRRB hearing.
6. If Toyon decides to retain an attorney or a law firm to perform any services under this Appendix, including services related to administrative or legal proceedings, Toyon will notify the City Attorney in writing, in the manner described in the Notices Section (Section 11.1) of the Agreement. Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services.
7. Represent San Francisco General Hospital (ZSFGH) at the PRRB hearing.
8. Review any PRRB decision and advise ZSFGH as to any further recommended actions.

Compensation:

Payment for the services set forth in this Appendix will be calculated as 15% of the additional Medicare reimbursement realized by ZSFGH as a result of Toyon's work. The additional reimbursement will either be a payment to the Hospital by the Medicare Intermediary or a reduction of an outstanding liability. Payment is due to Toyon within 30 days of the Hospital's receipt of reimbursement from the Medicare Intermediary or notification that its liability has been decreased. No fees or expenses are due to Toyon unless additional reimbursement is realized.

Appendix A-8

IPPS STANDARDIZED RATE APPEAL

Pursuant to the provisions of Section D of Appendix A-1 of the Agreement, Toyon proposes to pursue additional reimbursement through the Medicare appeals process by disputing CMS' IPPS Standardized Rate.

1. **Background**

The U.S. Court of Appeals for the District of Columbia Circuit invalidated the Centers for Medicare and Medicaid Services' (CMS) longstanding prohibition on appealing "predicate facts," opening the door for providers to appeal additional issues relating to significant reimbursement opportunities. In *Saint Francis Medical Center, et al. v. Azar*, 894 F.3d 290 (D.C. Cir. 2018), the court interpreted 42 CFR 405.1885(a)(1), the regulation governing reopening a contractor determination or reviewing entity decision. The regulation sets a three-year limit for requesting "reopenings" of determinations, and CMS has long used that regulation as grounds for its position that providers cannot challenge "predicate facts" in either reopenings or appeals. A predicate fact is a "factual underpinning of a specific determination of the amount of reimbursement due to a provider [that] may first arise in, or be determined for, a different fiscal period than the cost reporting period under review." 78 Federal Register 74826, 75162 (Dec. 10, 2013).

CMS has always argued that 42 CFR 405.1885(a)(1) bars providers from challenging in a reopening or an appeal any predicate facts that involve determinations outside of the three-year limit. However, the D.C. Circuit Court has held 42 CFR 405.1885(a)(1) does NOT bar providers from appealing predicate facts that are outside of the three year limit even if they may affect reimbursement of closed years.

One such predicate fact is the Inpatient Prospective Payment System (IPPS) Standardized Rate. Since 1983, the amount of Medicare reimbursement provided to hospitals for inpatient services has been based on fixed and prospectively determined rates, and CMS' calculation begins with a figure called the "standardized amount," or average cost incurred by hospitals nationwide for each patient they treat and discharge. 42 U.S.C. § 1395ww(d)(2). CMS established a standardized amount for a 1983 "base year," using actual hospital cost report data submitted by hospitals for federal fiscal year 1981. That standardized amount is then adjusted for geographic wage variations and then multiplied by a factor intended to account for the varying costs of treating patients with different acuities. In 1981, hospitals were reimbursed the "reasonable cost" of providing care to Medicare patients, but that cost calculation did not differentiate the transfer of a patient with true "discharges." The PPS final rule established that "in cases where a patient is transferred to another hospital paid under the prospective payment system, the transfer will not be considered a discharge." 48 Federal Register 39759, (September 1, 1983). Thus, the 1981 cost report data used to calculate the

1983 base year standardized amount overstated discharges and effectively reduced the per discharge standardized amount payment. Subsequently, because the standardized rate is simply carried forward year after year and only updated for inflation, CMS has wrongfully perpetuated that arbitrary and flawed calculation of the 1983 standardized rate year after year. While the Secretary has acknowledged since 1983 that the “treatment of transfers in the discharge count is problematic,” 56 Federal Register 43358, 43387 (Aug. 30, 1991), the rate has not been corrected, nor have hospitals been permitted to appeal the rate under CMS improper interpretation of 42 CFR 405.1885(a)(1). Toyon contends that CMS’ calculation of the 1983 base year rate is incorrect and unlawfully results in a negative financial impact to PPS hospitals.

2. Scope of Services

TOYON will file and pursue Medicare appeals on behalf of HOSPITAL in pursuit of its challenge to CMS’ calculations of the IPPS STANDARDIZED RATE. TOYON’S services will include, but are not limited to the following:

- Prepare and file appeals with the Provider Reimbursement Review Board (PRRB) on the IPPS Standardized Rate issue, to add the issue to existing appeals if applicable, and to transfer the issue to group appeals.
- Develop appeal strategy, perform research, and obtain documentation needed to pursue the issue.
- Prepare and file cost report reopening requests if appropriate.
- Prepare and file preliminary and final position papers.
- Review the Intermediary’s preliminary and final position papers.
- Respond to any jurisdictional challenges.
- Engage an attorney to assist in handling the case at the PRRB and in court. If Toyon decides to retain an attorney or a law firm to perform any services under this Appendix, including services related to administrative or legal proceedings, Toyon will notify the City Attorney in writing, in the manner described in the Notices Section (Section 11.1) of the Agreement. Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services.
- Perform all follow up needed with the Medicare Program with respect to appeals and reopening requests.
- Should an unfavorable PRRB decision be issued or if Toyon intends to seek expedited jurisdictional review, Toyon will notify ZSFGH and provide a recommendation as to whether to institute litigation. However, before any lawsuit is filed, Toyon must first advise the City Attorney and obtain approval from the City Attorney both for the filing of the lawsuit and for the selection of the law firm to be used. Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services.

- Negotiate a settlement with CMS, if appropriate, after consulting with HOSPITAL. If a settlement is proposed, Toyon will provide a summary of such settlement to the City Attorney along with its recommendations.
- Provide periodic status reports to HOSPITAL regarding pursuit of the issue.

3. Data Requirements

Toyon will need to receive copies of Notices of Medicare Program Reimbursement (NPRs) as soon as they are received by Hospital in order to make sure the proper appeal is filed within 180 days of its receipt. Other documents will be requested on an as-needed basis.

4. Reliance upon Facility Records

Toyon will rely upon the accuracy of all information provided to Toyon by HOSPITAL. Toyon will not audit this information.

5. Fiscal Periods

This Appendix applies to all cost reporting periods where Medicare appeal rights exist and will continue until expiration or termination of the Agreement.

6. Compensation

Payment for Medicare appeal services set forth in this Appendix will be calculated as 15% of the additional Medicare reimbursement realized by HOSPITAL resulting from the appeal services set forth in this Appendix.

The additional reimbursement resulting from a successful appeal will either be a payment to HOSPITAL by the Medicare Program or a reduction of an outstanding liability. Payment is due to TOYON within 30 days of HOSPITAL's receipt of additional reimbursement or notification that its liability has been decreased. No fees or expenses are due to TOYON unless additional reimbursement is realized.

7. Cooperation of San Francisco General Hospital

HOSPITAL shall cause their agents and employees to comply with all reasonable requests for information and documents from TOYON in connection with TOYON fulfilling its obligation to complete services set forth under this agreement.

8. Access to Books and Records

Until the expiration of five years after final payment under this Agreement or until after final audit, whichever is later, Toyon will make available to the Secretary, U.S. Department of Health and Human Services, and the U.S. Comptroller General, and their representatives, this Agreement and all books, documents, and records necessary to certify the nature and extent of the costs of those services.

9. Term

The term included in this Appendix are effective when signed by both parties and will remain in effect until the expiration or earlier termination of the professional services Agreement of which this Appendix is made part of.

Appendix A-9

MEDICARE APPEAL SERVICES for the “ATRA/MACRA 0.7% ADJUSTMENT” DISPUTE

Pursuant to the provisions of Section D of Appendix A-1 of Amendment 2 to the Agreement, TOYON proposes to pursue additional reimbursement through the Medicare appeals process by disputing CMS’ ATRA/MACRA 0.7% Adjustment.

1. Background

Under the American Taxpayer Relief Act (“ATRA”) of 2012, the Centers of Medicare and Medicaid Services (“CMS”) was required to project and implement an \$11 billion documentation and coding reduction to hospital Medicare Inpatient Prospective Payment System (“IPPS”) payments over four years based on estimated discharges. In accordance with ATRA, CMS implemented between 2014 and 2017 an annual 0.8 percent negative adjustment, which should have resulted in a total negative adjustment of 3.2 percent in 2017. The entire negative ATRA adjustment was then required to be eventually eliminated through a one-time increase in IPPS payments to hospitals in FFY 2018. However, in FFY 2017, CMS implemented an additional 0.7 percent negative adjustment, effecting a total negative adjustment of 1.5 percent, in a last-minute attempt to meet Congress’s required \$11 billion documentation and coding reduction amount. This increased the total negative adjustment to 3.9 percent in FFY 2017. Meanwhile, the Medicare Access and Childrens Health Insurance Program (“CHIP”) Reauthorization Act of 2015 (“MACRA”) instructed CMS to delay restoration of the negative adjustments and instead implemented a schedule of restorative adjustments over six years. At the time the Medicare Access and CHIP Reauthorization Act of 2015 (“MACRA”) was enacted, CMS had not yet proposed increasing the FFY 2017 negative adjustment to 1.5 percent, and as a result, MACRA’s language expressly identified that the adjustment requiring restoration was the original (outdated) 3.2 percent negative adjustment proposed by CMS. In addition, Congress enacted the 21st Century Cures Act (“Cures Act”) in late 2016 that reduced the FFY 2018 standard adjustment to IPPS payment rates by 0.0412 percent. Again, the Cures Act in its discussion of the documentation and coding reduction referenced the original (outdated) 3.2 percent negative adjustment amount proposed by CMS.

As a result, CMS wrongfully contended in the IPPS Final Rule for FFY 2018 that MACRA and the Cures Act prohibit it from restoring the extra 0.7 percent negative adjustment it implemented in FFY 2017. (Federal Register, Vol. 82, No. 155, 38009 (August 14, 2017)). CMS has not provided sufficient rationale for its decision to retain the 0.7 percent negative adjustment for FFY 2018 forward, and TOYON believes the 0.7 percent adjustment must be properly restored to hospitals. TOYON contends that CMS’ interpretation of the MACRA is incorrect and unlawful and results in reduced reimbursement.

The services set forth in this agreement are for the purpose of assisting the hospital in receiving appropriate reimbursement from the Medicare IPPS program through pursuing an appeal of the IPPS Rate with respect to the ATRA/MACRA adjustment.

2. Scope of Services

TOYON will pursue Medicare appeals on the ATRA/MACRA Adjustment Issue. TOYON's services will include, but are not limited to the following:

1. Prepare and file appeals with the Provider Reimbursement Review Board ("PRRB") on the IPPS Rate issue, to add the issue to existing appeals if applicable, and to transfer the issue to group appeals
2. Develop appeal strategy, perform research, and obtain documentation needed to pursue the issue
3. Prepare and file cost report reopening requests if appropriate
4. Prepare and file preliminary and final position papers
5. Review the CMS fiscal intermediary's preliminary and final position papers
6. Respond to any jurisdictional challenges
7. Engage an attorney to assist in handling the case at the PRRB and in court
8. Perform all follow up needed with the Medicare Program with respect to appeals and reopening requests
9. Pursue issues directly to court using expedited jurisdictional review if, in TOYON'S opinion, such action is deemed warranted
10. Pursue unfavorable or overturned PRRB decisions to court if, in TOYON'S opinion, there is sufficient likelihood of success and sufficient reimbursement value in relation to the cost of pursuing the case
11. Negotiate a settlement with CMS if appropriate after consulting with HOSPITAL, subject to the HOSPITAL obtaining all requisite final City approvals including formal adoption of legislation approving the settlement by the San Francisco Board of Supervisors
12. Provide periodic status reports to HOSPITAL regarding pursuit of the issue.

3. Timing of Project

TOYON will work with HOSPITAL to identify what cost reporting periods can be appealed as soon as it receives a copy of the executed formal contract Amendment and will begin filing appeals as soon as practical thereafter.

4. Data Requirements

TOYON will need to receive copies of Notices of Medicare Program Reimbursement ("NPRs") as soon as they are received by HOSPITAL in order to make sure the proper appeal is filed within 180 days of its receipt. Other documents will be requested on an as-needed basis.

5. Fiscal Periods

This agreement applies to federal fiscal periods beginning 10/1/17 and continues through all future periods until the issue is resolved.

6. Compensation – Contingency Fee (Section D of Appendix A-1 of the Agreement)

Payment for Medicare appeal services set forth in this contract will be calculated as 15% of the additional Medicare reimbursement realized by HOSPITAL resulting from the appeal services set forth in this agreement.

The additional reimbursement resulting from a successful appeal will either be a payment to HOSPITAL by the Medicare Program or a reduction of an outstanding liability. Payment is due to

TOYON within 30 days of HOSPITAL's receipt of additional reimbursement or notification that its liability has been decreased. No fees or expenses are due to TOYON unless additional reimbursement is realized.

7. Services Provided by Attorneys (Appendix A Section 3 of the Agreement)

Pursuant to Appendix A Section 3 of the Agreement, any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will not be paid unless the attorney or law firm received advance written approval from the City Attorney for such services.

The terms included in this agreement are effective beginning on October 1, 2017 and will remain in effect until the expiration or earlier termination of the professional services Agreement of which this Appendix is made part of.

Appendix B Calculation of Charges

1. Method of Payment

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

2. Program Budgets and Final Invoice

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

Budget Summary

Appendix B-1 Zuckerberg San Francisco General Hospital / Community Primary Care Clinics

Appendix B-2 Laguna Honda Hospital

Appendix B-3 Health at Home

B. Contractor understands that, of the maximum dollar obligation listed in section 3.3.1 of this Agreement, **\$909,894** is included as a contingency amount and is neither to be used in Program Budgets attached to this Appendix, or available to Contractor without a modification to this Agreement as specified in Section 3.7 Contract Amendments; Budgeting Revisions. Contractor further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable City and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by Controller. Contractor agrees to fully comply with these laws, regulations, and policies/procedures.

D. A final closing invoice, clearly marked "FINAL," shall be submitted no later than forty-five (45) calendar days following the closing date of the Agreement, and shall include only those Services rendered during the referenced period of performance. If Services are not invoiced during this period, all unexpended funding set aside for this Agreement will revert to City. City's final reimbursement to the Contractor at the close of the Agreement period shall be adjusted to conform to actual units certified multiplied by the unit rates identified in the Program Budgets attached hereto, and shall not exceed the total amount authorized and certified for this Agreement.

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

Appendix B
Calculation of Charges - (Budget Summary)

	2023	2024	2025	2026	2027	Total
ZSFG/CPC						
Fee for Service	\$ 716,050.00	\$ 740,775.00	\$ 766,100.00	\$ 791,425.00	\$ 816,750.00	\$ 3,831,100.00
Contingent Fee	\$ 375,000.00	\$ 375,000.00	\$ 375,000.00	\$ 375,000.00	\$ 375,000.00	\$ 1,875,000.00
12% Contingency	\$ 130,926.00	\$ 133,893.00	\$ 136,932.00	\$ 139,971.00	\$ 143,010.00	\$ 684,732.00
ZSFG/CPC Total	\$ 1,221,976.00	\$ 1,249,668.00	\$ 1,278,032.00	\$ 1,306,396.00	\$ 1,334,760.00	\$ 6,390,832.00
LHH						
Fee for Service	\$ 227,350.00	\$ 235,410.00	\$ 243,640.00	\$ 253,320.00	\$ 263,000.00	\$ 1,222,720.00
Contingent Fee	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 100,000.00	\$ 500,000.00
12% Contingency	\$ 39,282.00	\$ 40,249.20	\$ 41,236.80	\$ 42,398.40	\$ 43,560.00	\$ 206,726.40
LHH Total	\$ 366,632.00	\$ 375,659.20	\$ 384,876.80	\$ 395,718.40	\$ 406,560.00	\$ 1,929,446.40
HAH						
Fee for Service	\$ 28,515.00	\$ 29,605.00	\$ 30,720.00	\$ 31,835.00	\$ 32,950.00	\$ 153,625.00
Contingent Fee	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
12% Contingency	\$ 3,421.80	\$ 3,552.60	\$ 3,686.40	\$ 3,820.20	\$ 3,954.00	\$ 18,435.00
HAH Total	\$ 31,936.80	\$ 33,157.60	\$ 34,406.40	\$ 35,655.20	\$ 36,904.00	\$ 172,060.00
Total						
Fee for Service	\$ 971,915.00	\$ 1,005,790.00	\$ 1,040,460.00	\$ 1,076,580.00	\$ 1,112,700.00	\$ 5,207,445.00
Contingent Fee	\$ 475,000.00	\$ 475,000.00	\$ 475,000.00	\$ 475,000.00	\$ 475,000.00	\$ 2,375,000.00
12% Contingency	\$ 173,630.00	\$ 177,695.00	\$ 181,855.00	\$ 186,190.00	\$ 190,524.00	\$ 909,894.00
Grand Total	\$ 1,620,545.00	\$ 1,658,485.00	\$ 1,697,315.00	\$ 1,737,770.00	\$ 1,778,224.00	\$ 8,492,339.00

APPENDIX B-3c

BUDGET

October 1, 2024 – September 30, 2025

Health at Home

Team Member	Name
Engagement Executive:	Carrie Yee
Financial/Reimbursement Team Leader:	Sheryl Samonte

Task	Description	Engagement Team Hours / Fees		
		Executive	Team Leader	Professional Staff
1	Laws and Regulation Analysis	1	2	0
2	Medicare Cost Report Preparation	1	4	20
3	Medicare and Medi-Cal Cost Report Audit Support	1	4	4
4	Medicare and Medi-Cal Cost Report Appeals (Hourly)	0	0	0
5	Medicare and Medi-Cal Cost Report Process Improvement Analysis	2	5	0
6	General Consulting Services	0	10	40
Total Hours		5	25	64
Hourly Billing Rate		\$460	\$380	\$280
Total Fees		\$2,300	\$9,500	\$17,920
		Fees	Expenses	Grand Total
Total Not-to-Exceed Tasks 1 – 6		\$29,720	\$1,000	\$30,720

Note:

1. Staff Rates Composite Average of staff levels expected to provide service. Actual Rates by staff level position will be billed on invoices.
2. Expenses include travel, postage, ordered reports, cost report/OSHPD related software & eligiblity lookup fees and procurement of \$5M in Cyber insurance. City shall contribute 50% of the additional \$5M in excess Cyber insurance coverage above \$10M (total \$15M coverage). Total cost shall not exceed \$50,000 annually.

APPENDIX B-4**BUDGET****October 1, 2022 – September 30, 2027****Appendices A-4 -through A-9****Zuckerberg San Francisco General Hospital / Community Primary Care Clinics**

CONTRACTOR will advise SFGH/COPC of appeal issue(s) that it believes should be pursued. If SFGH/COPC agrees to pursue the issue(s), it will sign and execute an agreement with the CONTRACTOR for each of the appeals which it wishes to participate on a contingency fee basis. If SFGH/COPC agrees to pursue the issues(s) on a fee-for-service basis, those fees will fall under Task 11. This will include all appeals that are formed prior and during the length of this agreement for which SFGH/COPC wishes to participate.

Contract Term	Amount of Additional Reimbursement DPH Realized as a Result of Contractor's Efforts	Contractor's Fee (% of Additional Reimbursement)	Comments
10/1/22 - 09/30/23	\$1 to \$2,500,000	15%	New Appeals
10/1/23 - 09/30/24	\$1 to \$2,500,000	15%	New Appeals
10/1/24 - 09/30/25	\$1 to \$2,500,000	15%	New Appeals
10/1/25 - 09/30/26	\$1 to \$2,500,000	15%	New Appeals
10/1/26 - 09/30/27	\$1 to \$2,500,000	15%	New Appeals

Note:

1. All new appeals filed on or after 10/1/22 will be subject to a 15% contingent fee with a maximum fee of \$600,000 per contract year

Laguna Honda Hospital

CONTRACTOR will advise SFGH/COPC of appeal issue(s) that it believes should be pursued. If SFGH/COPC agrees to pursue the issue(s), it will sign and execute an agreement with the CONTRACTOR for each of the appeals which it wishes to participate on a contingency fee basis. If SFGH/COPC agrees to pursue the issues(s) on a fee-for-service basis, those fees will fall under Task 8. This will include all appeals that are formed prior and during the length of this agreement for which SFGH/COPC wishes to participate.

Contract Term	Amount of Additional Reimbursement DPH Realized as a Result of Contractor's Efforts	Contractor's Fee (% of Additional Reimbursement)	Comments
10/1/22 - 09/30/23	\$1 to \$666,667	15%	New Appeals
10/1/23 - 09/30/24	\$1 to \$666,667	15%	New Appeals
10/1/24 - 09/30/25	\$1 to \$666,667	15%	New Appeals
10/1/25 - 09/30/26	\$1 to \$666,667	15%	New Appeals
10/1/26 - 09/30/27	\$1 to \$666,667	15%	New Appeals

Note:

1. All new appeals filed on or after 10/1/2022 will be subject to a 15% contingent fee with a maximum fee of \$100,000 per contract year

Appendix C
Reserved

APPENDIX D

Data Access and Sharing Terms

Article 1 Access

1.1 Revision to Scope of Access (RSA):

Any added access may be granted by the City to Agency and each Agency Data User through a Revision to Scope of Access in writing and executed by both parties. Any Revision to Scope of Access shall be considered a part of and incorporated into this Agreement, governed by all its terms, by reference.

1.2 Primary and Alternate Agency Site Administrator.

Before System(s) access is granted, Agency must appoint a primary and alternate Agency Site Administrator responsible for System(s) access tasks, including but not limited to the following:

1.2.1 Completing and obtaining City approval of the Account Provisioning Request documents and/or Data Set Request documents;

1.2.2 Communicating with the SFDPH IT Service Desk;

1.2.3 Providing Agency Data User(s) details to the City;

1.2.4 Ensuring that Agency Data User(s) complete required SFDPH trainings annually;

1.2.5 Ensuring that Agency Data User(s) understand and execute SFDPH's data access confidentiality agreement; and

1.2.6 Provisioning and deprovisioning Agency Data Users as detailed herein. To start the process, the Agency Site Administrator must contact the SFDPH IT Service Desk at 628-206-7378, dph.helpdesk@sfdph.org.

1.3 SFDPH IT Service Desk.

For new provisioning requests, only Agency Site Administrators are authorized to contact the SFDPH IT Service Desk. The City reserves the right to decline any call placed by other than the Agency Site Administrator. Individual Agency Data Users are not authorized to contact the SFDPH IT Service Desk.

1.4 Deprovisioning Schedule.

Agency, through the Agency Site Administrator, has sole responsibility to deprovision Agency Data Users from the System(s) as appropriate on an ongoing basis. Agency must immediately deprovision an Agency Data User upon any event ending that Data User's need to access the System(s), including job duty change and/or termination. Agency remains liable for the conduct of Agency Data Users until deprovisioned. When deprovisioning employees via the SFDPH IT Service Desk, Agency must maintain evidence that the SFDPH IT Service Desk was notified.

1.5 Active Directory.

Agency Data Users will need an SFDPH Active Directory account in order to access each System(s). These Active Directory Accounts will be created as part of the provisioning process.

1.6 Role Based Access.

Each Agency Data User's access to the System(s) will be role-based and access is limited to that necessary for treatment, payment, and health care operations. The City will assign Agency Data User roles upon provisioning and reserves the right to deny, revoke, limit, or modify Agency Data User's access acting in its sole discretion.

1.7 Training Requirements.

Before System(s) access is granted, and annually thereafter, each Agency Data User must complete SFDPH compliance, privacy, and security training. Agency must maintain written records evidencing such annual training for each Agency Data User and provide copies upon request to the City. For questions about how to complete SFDPH's compliance, privacy, and security training, contact Compliance.Privacy@sfdph.org, (855) 729-6040.

Before Agency Data User first access to System(s), system-specific training must be completed. For training information, Agency Site Administrator may contact the SFDPH IT Service Desk,

1.8 Agency Data User Confidentiality Agreement.

Before System(s) access is granted, as part of SFDPH's compliance, privacy, and security training, each Agency Data User must complete SFDPH's individual user confidentiality, data security and electronic signature agreement form. The agreement must be renewed annually.

1.9 Corrective Action.

Agency shall take corrective action, including but not limited to termination and/or suspension of any System(s) access by any Agency Data User who acts in violation of this Agreement and/or applicable regulatory requirements.

1.10 User ID and Password.

Each Agency Data User will be assigned or create a User ID and password. Agency and each Agency Data User shall protect the confidentiality of User IDs and passwords and shall not divulge them to any other person(s). Agency is responsible for the security of the User IDs and passwords issued to or created by Agency Data Users and is liable for any misuse.

1.11 Notification of Compromised Password.

In the event that a password assigned to or created by an Agency Data User is compromised or disclosed to a person other than the Agency Data User, Agency shall upon learning of the compromised password immediately notify the City, at Compliance.Privacy@sfdph.org, (855) 729-6040. Agency is liable for any such misuse. Agency's failure to monitor each Agency Data User's ID and/or password use shall provide grounds for the City to terminate and/or limit Agency's System(s) access.

1.12 Multi Factor Authentication.

Agency and each Agency Data User must use multi-factor authentication as directed by the City to access the System(s).

1.13 Qualified Personnel.

Agency shall allow only qualified personnel under Agency's direct supervision to act as Agency Data Users with access to the System(s).

1.14 Workstation/Laptop encryption.

All workstations and laptops that process and/or store City Data must be encrypted using a current industry standard algorithm. The encryption solution must be full disk unless approved by the SFDPH Information Security Office.

1.15 Server Security.

Servers containing unencrypted City Data must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

1.16 Removable media devices.

All electronic files that contain City Data must be encrypted using a current industry standard algorithm when stored on any removable media or portable device (i.e. USB thumb drives, CD/DVD, smart devices tapes etc.).

1.17 Antivirus software.

All workstations, laptops and other systems that process and/or store City Data must install and actively use a comprehensive anti-virus software solution with automatic updates scheduled at least daily.

1.18 Patch Management.

All workstations, laptops and other systems that process and/or store City Data must have operating system and application security patches applied, with system reboot if necessary. There must be a documented patch management process that determines installation timeframe based on risk assessment and vendor recommendations.

1.19 System Timeout.

The system must provide an automatic timeout, requiring reauthentication of the user session after no more than 20 minutes of inactivity.

1.20 Warning Banners.

All systems containing City Data must display a warning banner each time a user attempts access, stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.

1.21 Transmission encryption.

All data transmissions of City Data outside the Agency's secure internal network must be encrypted using a current industry standard algorithm. Encryption can be end to end at the network level, or the data files containing City Data can be encrypted. This requirement pertains to any type of City Data in motion such as website access, file transfer, and e-mail.

1.22 No Faxing/Mailing.

City Data may not be faxed or mailed.

1.23 Intrusion Detection.

All systems involved in accessing, holding, transporting, and protecting City Data that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

of the City.

1.24 Security of PHI.

Agency is solely responsible for maintaining data security policies and procedures, consistent with those of the City that will adequately safeguard the City Data and the System. Upon request, Agency will provide such security policies and procedures to the City. The City may examine annually, or in response to a security or privacy incident, Agency's facilities, computers, privacy and security policies and procedures and related records as may be necessary to be assured that Agency is in compliance with the terms of this Agreement, and as applicable HIPAA, the HITECH Act, and other federal and state privacy and security laws and regulations. Such examination will occur at a mutually acceptable time agreed upon by the parties but no later than ten (10) business days of Agency's receipt of the request.

1.25 Data Security and City Data

Agency shall provide security for its networks and all internet connections consistent with industry best practices, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. For information disclosed in electronic form, Agency agrees that appropriate safeguards include electronic barriers (e.g., "firewalls", Transport Layer Security (TLS), Secure Socket Layer [SSL] encryption, or most current industry standard encryption, intrusion prevention/detection or similar barriers).

1.26 Data Privacy and Information Security Program.

Without limiting Agency's obligation of confidentiality as further described herein, Agency shall be responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (i) ensure the security and confidentiality of the City Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the City Data; (iii) protect against unauthorized disclosure, access to, or use of the City Data; (iv) ensure the proper disposal of City Data; and, (v) ensure that all of Agency's employees, agents, and subcontractors, if any, comply with all of the foregoing. In no case shall the safeguards of Agency's data privacy and information security program be less stringent than the safeguards and standards recommended by the National Institute of Standards and Technology (NIST) Cybersecurity Framework and the Health Information Technology for Economic and Clinical Health Act (HITECH).

1.27 Disaster Recovery.

Agency must establish a documented plan to protect the security of electronic City Data in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this agreement for more than 24 hours.

1.28 Supervision of Data.

City Data in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an Agency Data User authorized to access the information. City Data in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.

1.29 As Is Access.

The City provides Agency and each Agency Data User with System(s) access on an "as is" basis with no guarantee as to uptime, accessibility, or usefulness. To the fullest extent permissible by applicable law, the City disclaims all warranties, express or implied, including, without limitation, implied warranties of merchantability, fitness for a particular purpose, title and non-infringement.

1.30 No Technical or Administrative Support.

Except as provided herein, the City will provide no technical or administrative support to Agency or Agency Data Users for System(s) access.

1.31 City Audit of Agency and Agency Data Users.

The City acting in its sole discretion may audit Agency and Agency Data Users at any time. If an audit reveals an irregularity or security issue, the City may take corrective action including but not limited to termination of such Agency's and/or Agency Data User's access to the System(s) permanently or until the City determines that all irregularities have been satisfactorily cured. Agency and each Agency Data User understands that the City may create and review an audit trail for each Agency Data User, including but not limited to, noting each Agency Data User's ID(s), the patient information accessed, and/or the date accessed. Agency and each Agency Data User understands that any inappropriate access or use of patient information, as determined by the City, may result in the temporary and/or permanent termination of Agency's or such Agency Data User's access to the System(s). Agency remains liable for all inappropriate System(s) access, misuse and/or breach of patient information, whether in electronic or hard-copy form.

1.32 Minimum Necessary.

Agency and each Agency Data User shall safeguard the confidentiality of all City Data that is viewed or obtained through the System(s) at all times. Agency and each Agency Data User shall access patient information in the System(s) only to the minimum extent necessary for its assigned duties and shall only disclose such information to persons authorized to receive it, as minimally necessary for treatment, payment and health care operations.

1.33 No Re-Disclosure or Reporting.

Agency may not in any way re-disclose SFDPH Data or otherwise prepare reports, summaries, or any other material (in electronic or hard-copy format) regarding or containing City Data for transmission to any other requesting individuals, agencies, or organizations without prior written City approval and where such re-disclosure is otherwise permitted or required by law.

1.34 Health Information Exchange.

If Agency is qualified to enroll in a health information exchange, the City encourages Agency to do so in order to facilitate the secure exchange of data between Agency's electronic health record system (EHR) and the City's Epic EHR.

1.35 Subcontracting.

Agency may not subcontract any portion of Data Access Agreement, except upon prior written approval of City. If the City approves a subcontract, Agency remains fully responsible for its subcontractor(s) throughout the term and/or after expiration of this Agreement. All Subcontracts must incorporate the terms of this Data Access Agreement. To the extent that any subcontractor would have access to a System, each such subcontractor's access must be limited and subject to the same governing terms to the same extent as Agency's access. In addition, each contract between Agency and that subcontractor must, except as the City otherwise agrees, include a Business Associate Agreement requiring such subcontractor to comply with all regulatory requirements regarding third-party access, and include a provision obligating that subcontractor to (1) defend, indemnify, and hold the City harmless in the event of a data

breach in the same manner in which Agency would be so obligated, (2) provide cyber and technology errors and omissions insurance with limits identified in Article 5, and (3) ensure that such data has been destroyed, returned, and/or protected as provided by HIPAA at the expiration of the subcontract term.

Article 2 Proprietary Rights and Data Breach

2.1 Ownership of City Data.

The Parties agree that as between them, all rights, including all intellectual property rights in and to the City Data and any derivative works of the City Data shall remain the exclusive property of the City.

2.2 Data Breach; Loss of City Data.

The Agency shall notify City immediately by telephone call plus email upon the discovery of a breach (as herein). For purposes of this Section, breaches and security incidents shall be treated as discovered by Agency as of the first day on which such breach or security incident is known to the Agency, or, by exercising reasonable diligence would have been known to the Agency. Agency shall be deemed to have knowledge of a breach if such breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee or agent of the Agency.

Agency shall take:

- i. prompt corrective action to mitigate any risks or damages involved with the breach or security incident and to protect the operating environment; and
- ii. any action pertaining to a breach required by applicable federal and state laws.

2.2.1 Investigation of Breach and Security Incidents: The Agency shall immediately investigate such breach or security incident. As soon as the information is known and shall inform the City of:

- i. what data elements were involved, and the extent of the data disclosure or access involved in the breach, including, specifically, the number of individuals whose personal information was breached; and
- ii. a description of the unauthorized persons known or reasonably believed to have improperly used the City Data and/or a description of the unauthorized persons known or reasonably believed to have improperly accessed or acquired the City Data, or to whom it is known or reasonably believed to have had the City Data improperly disclosed to them; and
- iii. a description of where the City Data is believed to have been improperly used or disclosed; and
- iv. a description of the probable and proximate causes of the breach or security incident; and
- v. whether any federal or state laws requiring individual notifications of breaches have been triggered.

2.2.2 Written Report: Agency shall provide a written report of the investigation to the City as soon as practicable after the discovery of the breach or security incident. The report shall include, but not be limited to, the information specified above, as well as a complete, detailed corrective action plan, including information on measures that were taken to halt and/or contain the breach or security

incident, and measures to be taken to prevent the recurrence or further disclosure of data regarding such breach or security incident.

2.2.3 Notification to Individuals: If notification to individuals whose information was breached is required under state or federal law, and regardless of whether Agency is considered only a custodian and/or non-owner of the City Data, Agency shall, at its sole expense, and at the sole election of City, either:

- i. make notification to the individuals affected by the breach (including substitute notification), pursuant to the content and timeliness provisions of such applicable state or federal breach notice laws. Agency shall inform the City of the time, manner and content of any such notifications, prior to the transmission of such notifications to the individuals; or
- ii. cooperate with and assist City in its notification (including substitute notification) to the individuals affected by the breach.

2.2.4 Sample Notification to Individuals: If notification to individuals is required, and regardless of whether Agency is considered only a custodian and/or non-owner of the City Data, Agency shall, at its sole expense, and at the sole election of City, either:

- i. electronically submit a single sample copy of the security breach notification as required to the state or federal entity and inform the City of the time, manner and content of any such submissions, prior to the transmission of such submissions to the Attorney General; or
- ii. cooperate with and assist City in its submission of a sample copy of the notification to the Attorney General.

2.3 Media Communications

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

**Attachment 1 to Appendix D
System Specific Requirements**

I. For Access to SFDPH Epic through Care Link the following terms shall apply:

A. SFDPH Care Link Requirements:

1. Connectivity.

- a) Agency must obtain and maintain connectivity and network configuration and required hardware and equipment in accordance with specifications provided by Epic and must update the configuration of all first and third-party software as required. Technical equipment and software specifications for accessing SFDPH Care Link will change over time. Current required browser, system and connection requirements can be found on the Target Platform Roadmap and Target Platform Notes sections of the Epic Galaxy website galaxy.epic.com. Agency is responsible for all associated costs. Agency shall ensure that Agency Data Users access the System only through equipment owned or leased and maintained by Agency.

2. Compliance with Epic Terms and Conditions.

- a) Agency will at all times access and use the System strictly in accordance with the Epic Terms and Conditions. The following Epic Care Link Terms and Conditions are embedded within the SFDPH Care Link application, and each Data User will need to agree to them electronically upon first sign-in before accessing SFDPH Care Link:

3. Epic-Provided Terms and Conditions

- a) Some short, basic rules apply to you when you use your EpicCare Link account. Please read them carefully. The Epic customer providing you access to EpicCare Link may require you to accept additional terms, but these are the rules that apply between you and Epic.
- b) Epic is providing you access to EpicCare Link, so that you can do useful things with data from an Epic customer's system. This includes using the information accessed through your account to help facilitate care to patients shared with an Epic customer, tracking your referral data, or otherwise using your account to further your business interests in connection with data from an Epic customer's system. However, you are not permitted to use your access to EpicCare Link to help you or another organization develop software that is similar to EpicCare Link. Additionally, you agree not to share your account information with anyone outside of your organization.

II. For Access to SFDPH Epic through Epic Hyperspace and Epic Hyperdrive the following terms shall apply:

A. SFDPH Epic Hyperspace and Epic Hyperdrive:

1. Connectivity.

- a) Agency must obtain and maintain connectivity and network configuration and required hardware and equipment in accordance with specifications provided by Epic and SFDPH and must update the configuration of all first and third-party software as required. Technical equipment and software specifications for accessing SFDPH Epic Hyperspace will change over time. Epic Hyperdrive is a web-based platform that will replace Epic Hyperspace in the future. You may request a copy of current required browser, system and connection requirements from the SFDPH IT team. Agency is responsible for all

associated costs. Agency shall ensure that Agency Data Users access the System only through equipment owned or leased and maintained by Agency.

2. Application For Access and Compliance with Epic Terms and Conditions.

- a) Prior to entering into agreement with SFDPH to access SFDPH Epic Hyperspace or Epic Hyperdrive, Agency must first complete an Application For Access with Epic Systems Corporation of Verona, WI. The Application For Access is found at: <https://userweb.epic.com/Forms/AccessApplication>. Epic Systems Corporation must notify SFDPH, in writing, of Agency's permissions to access SFDPH Epic Hyperspace or Epic Hyperdrive prior to completing this agreement. Agency will at all times access and use the system strictly in accordance with the Epic Terms and Conditions.

III. For Access to SFDPH myAvatar through WebConnect and VDI the following terms shall apply:

A. SFDPH myAvatar via WebConnect and VDI:

1. Connectivity.

- a. Agency must obtain and maintain connectivity and network configuration and required hardware and equipment in accordance with specifications provided by SFDPH and must update the configuration of all first and third-party software as required. Technical equipment and software specifications for accessing SFDPH myAvatar will change over time. You may request a copy of current required browser, system and connection requirements from the SFDPH IT team. Agency is responsible for all associated costs. Agency shall ensure that Agency Data Users access the System only through equipment owned or leased and maintained by Agency.

2. Information Technology (IT) Support.

- a. Agency must have qualified and professional IT support who will participate in quarterly CBO Technical Workgroups.

3. Access Control.

- a. Access to the BHS Electronic Health Record is granted based on clinical and business requirements in accordance with the Behavioral Health Services EHR Access Control Policy (6.00-06). The Access Control Policy is found at: <https://www.sfdph.org/dph/files/CBHSPolProcMnl/6.00-06.pdf>
- b. Each user is unique and agrees not to share accounts or passwords.
- c. Applicants must complete the myAvatar Account Request Form found at https://www.sfdph.org/dph/files/CBHSdocs/BHISdocs/UserDoc/Avatar_Account_Request_Form.pdf
- d. Applicants must complete the credentialing process in accordance with the DHCS MHSUDS Information Notice #18-019.
- e. Applicants must complete myAvatar Training.
- f. Level of access is based on "Need to Know", job duties and responsibilities.

APPENDIX E



San Francisco Department of Public Health

Business Associate Agreement

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

RECITALS

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

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

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

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

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

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

1. Definitions.

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

b. Breach Notification Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.



San Francisco Department of Public Health

Business Associate Agreement

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

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

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

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

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

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

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

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

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

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

APPENDIX E



San Francisco Department of Public Health

Business Associate Agreement

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

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

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

2. Obligations of Business Associate.

a. Attestations. Except when CE's data privacy officer exempts BA in writing, the BA shall complete the following forms, attached and incorporated by reference as though fully set forth herein, SFDPH Attestations for Privacy (Attachment 1) and Data Security (Attachment 2) within sixty (60) calendar days from the execution of the Agreement. If CE makes substantial changes to any of these forms during the term of the Agreement, the BA will be required to complete CE's updated forms within sixty (60) calendar days from the date that CE provides BA with written notice of such changes. BA shall retain such records for a period of seven years after the Agreement terminates and shall make all such records available to CE within 15 calendar days of a written request by CE.

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

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

d. Permitted Disclosures. BA shall disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the



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Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2 (n) of this BAA, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)]. BA may disclose PHI to a BA that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Information on its behalf, if the BA obtains satisfactory assurances, in accordance with 45 C.F.R. Section 164.504(e)(1), that the subcontractor will appropriately safeguard the information [45 C.F.R. Section 164.502(e)(1)(ii)].

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

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

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

h. Accounting of Disclosures. Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to



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provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least seven (7) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure [45 C.F.R. 164.528(b)(2)]. If an individual or an individual's representative submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five (5) calendar days.

i. Access to Protected Information. BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within (5) days of request by CE to enable CE to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains Protected Information in electronic format, BA shall provide such information in electronic format as necessary to enable CE to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. 164.524.

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

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

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



San Francisco Department of Public Health

Business Associate Agreement

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

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

n. Notification of Breach. BA shall notify CE within 5 calendar days of any breach of Protected Information; any use or disclosure of Protected Information not permitted by the BAA; any Security Incident (except as otherwise provided below) related to Protected Information, and any use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BA to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 42 U.S.C. Section 17932; 45 C.F.R. 164.410; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

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

3. Termination.

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

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



San Francisco Department of Public Health

Business Associate Agreement

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

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

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

4. Amendment to Comply with Law.

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

5. Reimbursement for Fines or Penalties.

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

APPENDIX E



San Francisco Department of Public Health

Business Associate Agreement

Attachment 1 – SFDPH Privacy Attestation, version 06-07-2017

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

Office of Compliance and Privacy Affairs

San Francisco Department of Public Health

101 Grove Street, Room 330, San Francisco, CA 94102

Email: compliance.privacy@sfdph.org

Hotline (Toll-Free): 1-855-729-6040

Contractor Name:		Contractor City Vendor ID	
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PRIVACY ATTESTATION

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

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

I. All Contractors.

DOES YOUR ORGANIZATION...							Yes	No*
A	Have formal Privacy Policies that comply with the Health Insurance Portability and Accountability Act (HIPAA)?						<input type="checkbox"/>	<input type="checkbox"/>
B	Have a Privacy Officer or other individual designated as the person in charge of investigating privacy breaches or related incidents?						<input type="checkbox"/>	<input type="checkbox"/>
	If yes:	Name & Title:		Phone #		Email:		<input type="checkbox"/>
C	Require health information Privacy Training upon hire and annually thereafter for all employees who have access to health information? [Retain documentation of trainings for a period of 7 years.] [SFPDH privacy training materials are available for use; contact OCPA at 1-855-729-6040.]						<input type="checkbox"/>	<input type="checkbox"/>
D	Have proof that employees have signed a form upon hire and annually thereafter, with their name and the date, acknowledging that they have received health information privacy training? [Retain documentation of acknowledgement of trainings for a period of 7 years.]						<input type="checkbox"/>	<input type="checkbox"/>
E	Have (or will have if/when applicable) Business Associate Agreements with subcontractors who create, receive, maintain, transmit, or access SFPDH's health information?						<input type="checkbox"/>	<input type="checkbox"/>
F	Assure that staff who create, or transfer health information (via laptop, USB/thumb-drive, handheld), have prior supervisorial authorization to do so AND that health information is only transferred or created on encrypted devices approved by SFPDH Information Security staff?						<input type="checkbox"/>	<input type="checkbox"/>

II. Contractors who serve patients/clients and have access to SFPDH PHI, must also complete this section.

If Applicable: DOES YOUR ORGANIZATION...							Yes	No*
G	Have (or will have if/when applicable) evidence that SFPDH Service Desk (628-206-SERV) was notified to de-provision employees who have access to SFPDH health information record systems within 2 business days for regular terminations and within 24 hours for terminations due to cause?						<input type="checkbox"/>	<input type="checkbox"/>
H	Have evidence in each patient's / client's chart or electronic file that a Privacy Notice that meets HIPAA regulations was provided in the patient's / client's preferred language? (English, Cantonese, Vietnamese, Tagalog, Spanish, Russian forms may be required and are available from SFPDH.)						<input type="checkbox"/>	<input type="checkbox"/>
I	Visibly post the Summary of the Notice of Privacy Practices in all six languages in common patient areas of your treatment facility?						<input type="checkbox"/>	<input type="checkbox"/>
J	Document each disclosure of a patient's/client's health information for purposes <u>other than</u> treatment, payment, or operations?						<input type="checkbox"/>	<input type="checkbox"/>
K	When required by law, have proof that signed authorization for disclosure forms (that meet the requirements of the HIPAA Privacy Rule) are obtained PRIOR to releasing a patient's/client's health information?						<input type="checkbox"/>	<input type="checkbox"/>

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

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

EXCEPTION(S) APPROVED by OCPA	Name (print)		Signature		Date	
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Contractor Name:		Contractor City Vendor ID	
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DATA SECURITY ATTESTATION

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

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

I. All Contractors.

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

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

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

EXCEPTION(S) APPROVED by OCPA	Name (print)		Signature		Date	
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Contractor Name:		Contractor City Vendor ID	
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PRIVACY ATTESTATION

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

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

I. All Contractors.

DOES YOUR ORGANIZATION...							Yes	No*
A	Have formal Privacy Policies that comply with the Health Insurance Portability and Accountability Act (HIPAA)?						<input type="checkbox"/>	<input type="checkbox"/>
B	Have a Privacy Officer or other individual designated as the person in charge of investigating privacy breaches or related incidents?						<input type="checkbox"/>	<input type="checkbox"/>
	If yes:	Name & Title:		Phone #		Email:		
C	Require health information Privacy Training upon hire and annually thereafter for all employees who have access to health information? [Retain documentation of trainings for a period of 7 years.] [SFPDH privacy training materials are available for use; contact OCPA at 1-855-729-6040.]						<input type="checkbox"/>	<input type="checkbox"/>
D	Have proof that employees have signed a form upon hire and annually thereafter, with their name and the date, acknowledging that they have received health information privacy training? [Retain documentation of acknowledgement of trainings for a period of 7 years.]						<input type="checkbox"/>	<input type="checkbox"/>
E	Have (or will have if/when applicable) Business Associate Agreements with subcontractors who create, receive, maintain, transmit, or access SFPDH's health information?						<input type="checkbox"/>	<input type="checkbox"/>
F	Assure that staff who create, or transfer health information (via laptop, USB/thumb-drive, handheld), have prior supervisory authorization to do so AND that health information is only transferred or created on encrypted devices approved by SFPDH Information Security staff?						<input type="checkbox"/>	<input type="checkbox"/>

II. Contractors who serve patients/clients and have access to SFPDH PHI, must also complete this section.

If Applicable: DOES YOUR ORGANIZATION...							Yes	No*
G	Have (or will have if/when applicable) evidence that SFPDH Service Desk (628-206-SERV) was notified to de-provision employees who have access to SFPDH health information record systems within 2 business days for regular terminations and within 24 hours for terminations due to cause?						<input type="checkbox"/>	<input type="checkbox"/>
H	Have evidence in each patient's / client's chart or electronic file that a Privacy Notice that meets HIPAA regulations was provided in the patient's / client's preferred language? (English, Cantonese, Vietnamese, Tagalog, Spanish, Russian forms may be required and are available from SFPDH.)						<input type="checkbox"/>	<input type="checkbox"/>
I	Visibly post the Summary of the Notice of Privacy Practices in all six languages in common patient areas of your treatment facility?						<input type="checkbox"/>	<input type="checkbox"/>
J	Document each disclosure of a patient's/client's health information for purposes <u>other than</u> treatment, payment, or operations?						<input type="checkbox"/>	<input type="checkbox"/>
K	When required by law, have proof that signed authorization for disclosure forms (that meet the requirements of the HIPAA Privacy Rule) are obtained PRIOR to releasing a patient's/client's health information?						<input type="checkbox"/>	<input type="checkbox"/>

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

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

EXCEPTION(S) APPROVED by OCPA	Name (print)		Signature		Date	
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Contractor Name:		Contractor City Vendor ID	
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DATA SECURITY ATTESTATION

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

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

I. All Contractors.

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

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

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

EXCEPTION(S) APPROVED by OCPA	Name (print)		Signature		Date	
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Appendix F

Invoices shall be in a format acceptable to the Contract Administrator and include all information as requested by the City including the requirements listed in Section 3.3.4 of the Agreement.