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

OCA Technology Marketplace Master Agreement for Technology Goods and Services between the City and County of San Francisco

and
CCT Technologies, Inc. dba ComputerLand of Silicon Valley
TC99410
Contract ID 1000031407

AGREEMENT

This Agreement is made this first day of January, 2024, in the City and County of San Francisco ("City"), State of California, by and between CCT Technologies, Inc. dba ComputerLand of Silicon Valley ("Contractor") with City Supplier ID 0000022410 and City.

Recitals

WHEREAS, the Office of Contract Administration ("Department") wishes to procure information technology products and services on an as-needed basis through the Technology Marketplace (as defined below) from Contractor; and

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

WHEREAS, Contractor was competitively selected pursuant to San Francisco Sourcing Event ID [enter number]; and

WHEREAS, the Local Business Entity ("LBE") subcontracting participation requirement with respect to the Services under this Agreement is 18%; and

WHEREAS, approval for the Agreement was obtained on September 18, 2023 from the Civil Service Commission under PSC number 44539-22/23 in the amount of $180,000,000 for the period of five; and

WHEREAS, the City's 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 all City Departments authorized to utilize this Agreement for the purpose of securing the Goods and/or Services described herein.

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 Contractor as defined above and any sub-Contractor(s) providing services under this Agreement (“Sub-Contractor”), accompanying Purchase Order (as defined under Chapter 21) and corresponding documents of the services to be performed under this Agreement.

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 as described in attached Appendices and any Purchase Orders executed under this Agreement.

1.8 “Goods” or “Commodities” means the products, materials, equipment or supplies to be provided by Contractor under this Agreement.

1.9 “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.

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

1.11 “Purchase Order” means the authorization document designated as such by the Purchaser for a procurement resulting from a Technology Marketplace Transaction, whether

issued in a paper or electronic format, including blanket purchase orders for purchases involving multiple payments, and shall also include the scope of work for that particular purchase.

1.12 “Services” means the work performed by Contractor under this Agreement including all services, labor, supervision, maintenance, materials, equipment, actions, and other requirements to be performed and furnished by Contractor under this Agreement.

1.13 "Technology Marketplace" means a virtual marketplace comprised of the multiple award pool of contracts made available to City ordering departments and other governmental agencies and jurisdictions for the efficient and cost-effective procurement of IT Goods and Services.

1.14 "Technology Marketplace Transaction" means an event resulting in a purchase of Goods and/or Services through the Technology Marketplace.

1.15 “Term Sheet” means a document that may be attached to a Purchase Order issued under this Agreement containing terms specific to an individual purchase of Goods and Services under the Technology Marketplace.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on January 1, 2024 and expire on December 31, 2028, 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 **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 for Goods delivered and/or Services completed in accordance with the accompanying Purchase Order and corresponding documents. Compensation shall be made for Goods and Services identified in the invoice that the City, in its sole discretion, concludes has been satisfactorily delivered and/or performed. In no event shall the amount of this Agreement exceed Twenty Million dollars ($20,000,000). The breakdown of charges associated with this Agreement appears in the accompanying Purchase Order and corresponding documents. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order under 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 Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Goods and/or cure Services provided in an unsatisfactory manner, even if the unsatisfactory character may have been apparent or detected at the time such payment was made. Goods and 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 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. Contractor shall not stop providing Goods and Services as a result of City's withholding of payments, as provided herein.

3.3.4 **Invoice Format**. Invoices furnished by Contractor under this Agreement for Goods delivered and Services performed under Purchase Orders must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Contractor's invoices shall include detailed time sheets to support all hourly rate charges or, for fixed-price Purchase Orders, detailed list(s) of completed or partially-completed Deliverables with reference to the schedule in the scope of work. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of Goods delivered or Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information may not be processed for payment.

3.3.5 **LBE Payment and Utilization Tracking System.** If LBE Subcontracting Participation Requirements apply to a Contract awarded pursuant to this Solicitation, the Awarded Contractor shall: (a) Within three (3) business days of City's payment of any invoice to Contractor, pay LBE subcontractors as provided under Chapter 14B.7(H)(9); and (b) Within ten (10) business days of City's payment of any invoice to Contractor, confirm its payment to subcontractors using the City's Supplier Portal Payment Module, unless instructed otherwise by

CMD. Failure to submit all required payment information to the City's Supplier Portal Payment Module with each payment request may result in the withholding of 20% of subsequent payments due. Self-Service Training is located at this link: https://sfcitypartnersfgov.org/pages/training.aspx.

3.3.6 **Getting paid by the City for Goods and 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 **Reserved (Grant Funded Contracts).**

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**. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Goods and Services. Contractor will permit City to audit, examine and make copies of such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years, 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.

3.5 **Submitting False Claims**. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or

approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 **Payment of Prevailing Wages**

3.6.1 **Covered Services.** Any Purchase Order issued under this Agreement that includes services valued in excess of $1,000 for either (a) maintenance of a public facility, or (b) installation of machinery and equipment that becomes affixed to a public facility ("Covered Services") shall be subject to California Labor Code Sections 1720 and 1782, as incorporated within Section 6.22(e) of the San Francisco Administrative Code. Contractor shall pay the prevailing wage rates for the work as set by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations ("DIR").

3.6.2 **Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and DIR, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Copies of the applicable prevailing wage rates are available from the Office of Labor Standards and Enforcement ("OLSE"). See also https://sf.gov/resource/2022/citywide-contractor-labor-laws. Contractor agrees that it shall pay not less than the prevailing wage rates, as determined by the Board of Supervisors and DIR, to all workers employed by Contractor who perform Covered Services under this Agreement.

3.6.3 **Subcontract Requirements.** Contractor shall insert in every subcontract made for the performance of Covered Services under this Agreement a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services not less than the highest general prevailing rate of wages as determined by the Board of Supervisors and DIR for such labor and services.

3.6.4 **Posted Notices.** As required by Section 1771.4 of the California Labor Code, Contractor shall post job site notices prescribed by DIR at all job sites where Covered Services are to be performed**.**

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

3.6.6 **Certified Payrolls.** Contractor shall prepare certified payrolls pursuant to California Labor Code Section 1776 for the period involved for all employees, including those of

subcontractors, who performed the Covered Services. Contractor and each subcontractor performing Covered Services shall electronically submit certified payrolls to the City and to DIR as specified by the City and DIR. Contractor and all subcontractors that will perform Covered Services shall attend a training session provided by the City. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

3.6.7 **Compliance Monitoring.** Covered Services performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by DIR and/or OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with DIR and/or OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements. Contractor agrees that (i) OLSE shall have the right to engage in random inspections of job sites and have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (ii) Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iii) Contractor shall prominently post at each job-site a sign informing employees that the project is subject to the City's prevailing wage requirements and that these requirements are enforced by OLSE; and (iv) OLSE may audit such records of Contractor as it reasonably deems necessary. Failure to comply with these requirements may result in penalties and forfeitures pursuant to the California Labor Code, including Section 1776(g), as amended from time to time, and San Francisco Administrative Code Section 6.22(e).

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

3.7 **Reserved (Displaced Worker Protection Act).**

Article 4 Goods and Services

4.1 **Reserved (Primary and Secondary Contractors).**

4.2 **Reserved (Term Agreement – Indefinite Quantities).**

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

4.4 **Goods.**

4.4.1 **Place of Manufacture.** No article furnished hereunder shall have been made in prison or by convict labor, except Goods purchased for use by City's detention facilities. The City may require Contractor to provide within seven (7) working business days from the date they are requested to do so, information and documentation requested by Purchaser, including but not limited to: sources of supply, distribution, dealership or agency agreements and authorizations from manufacturer(s) they claim to represent, lines of credit with financial institutions for manufacturer(s) they claim to represent, lines of credit with financial institutions and suppliers, numbers of employees, trade references and any other information to determine the Contractor's fitness to supply the Agreement requirements.

4.4.2 **Electrical Products.** Goods must comply with all applicable laws, ordinances and other legal requirements, including (among others) the Cal-OSHA regulations in Title 8 of the Code of Regulations and, for electrical products, Sections 110.2 and 110.3 (B) of the S.F. Electrical Code.

4.4.3 **Condition of Goods.** Goods offered and furnished must be new and previously unused, and of manufacturer's latest model, unless otherwise specified herein. Contractor shall establish quality control measures, as applicable to department's operations, and promptly provide documented reports to City of any product defects or premature failures.

4.4.4 **Inspection.** All Goods supplied shall be subject to inspection and acceptance or rejection by Purchasing or any department official responsible for inspection. Non-conforming or rejected Goods may be subject to reasonable storage fees.

4.4.5 **F.O.B.** Goods shall be shipped Freight on Board, to any destination named in a Purchase Order issued by City against this Agreement. *The cost of shipment must be incorporated into the offered unit costs.*

4.4.6 **Failure to Deliver.** If Contractor fails to deliver Goods of the quality, in the manner or within the time called for by this Agreement, then City may cancel the order at no cost to the City and acquire such Goods from any source. If City is required to pay a price that exceeds the price agreed upon by this Agreement, the excess price may be charged to and collected from Contractor (or sureties on its bond, if bond has been required); or, the City may terminate the Agreement for default; or, the City may return deliveries already made and receive a refund.

4.4.7 **Safety Data Sheets.** Where required by law or by City, Contractor will include Safety Data Sheets (SDSs) with delivery for applicable items. Failure to include the SDSs for such items will constitute a material breach of contract and may result in refusal to accept delivery.

4.4.8 **Awarded Goods.** If during the term of the Agreement, a contract item is determined to be unacceptable for a particular use, and such is documented by a City Department and as determined by Purchasing, it is understood and agreed that the item will be canceled and removed from the Agreement without penalty to the City. The City's sole obligation to the supplier is payment of deliveries made prior to the cancellation date. City shall give the supplier ten days' notice prior to any cancellation. The City will purchase the required replacement item from any source and in the manner as determined by Purchasing. If a contracted item has been discontinued by the manufacturer or is deemed temporarily unavailable, it will be the responsibility of the Contractor to search the marketplace and find an

acceptable equal substitute in the time required for delivery and at the Agreement price. Contractor must notify Purchasing in writing, which can include email, certified mail, registered mail, or other trackable mail, of any changes in the description of article, brand, product code or packaging. Any changes made without the approval of City will constitute a Default.

4.4.9 **Warranty.** Contractor warrants to City that the manufacturer's warranty and service will be passed on to the City at the time of delivery.

4.5 **Services.**

4.5.1 **Services Contractor Agrees to Perform**. Contractor agrees to provide the Goods and perform the Services stated in the Appendices attached to this Agreement, and each Purchase Order executed pursuant to this Agreement. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Goods and Services beyond the Goods and Services listed in the Appendices and executed Purchase Order, unless the Appendices are modified as provided in Section 11.5, "Modification of this Agreement", or the Purchase Order is modified in writing by the City and Contractor.

4.5.2 **Subcontracting**. 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. Contractor agrees City shall have the right to communicate directly with any subcontractor(s) in connection with Technology Marketplace Transactions under this Agreement. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. In connection with performing work under this Agreement, Contractor and any authorized subcontractors shall not enter non-compete agreements prohibited by California Business and Professions Code section 16600 in which either Contractor or subcontractor are prohibited from entering into or starting a similar profession or trade in competition against the other related to the Services Contractor or any subcontractor(s) have agreed to perform under this Agreement. Services performed by Contractor or any subcontractor(s) outside of the United States must be disclosed to City with all quotes and scopes of work and shall not be permitted without prior written approval of City. Any agreement made in violation of this provision shall be null and void.

4.5.3 **Awarded Services.** If, during the term of the Agreement, a contract service is determined to be unacceptable for a particular department, and such is documented by Purchasing, it is understood and agreed that the service will be canceled and removed from the Agreement without penalty to City. City's sole obligation to Contractor is payment for Services performed prior to the cancellation date. City shall give Contractor ten days' notice prior to any cancellation. City will contract for the required service from any source and in the manner as determined by Purchasing. Contractor must notify Purchasing in writing, which can include email, certified mail, registered mail, or other trackable mail, 30 days in advance of any changes in the Services required in the Agreement. Any changes made without the approval of Purchasing will constitute a Default.

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

(a) **Independent Contractor**. For the purposes of this Section 4.5, "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 delivers the Goods and Services required by this Agreement 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 any of the obligations pursuant to this Agreement, 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.

(b) **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 4.5 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 hold

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.

4.6 **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.

4.7 **Liquidated Damages.** Contractor acknowledges that certain Technology Marketplace Transactions may require that Contractor meet specific dates for providing Deliverables under the Agreement. In such cases, Contractor agrees that its failure to adhere to the schedule specified in the Purchase Order may subject City to actual damages that are impractical or extremely difficult to ascertain. Contractor understands and agrees that City may specify in the Purchase Order, as a reasonable estimate of the loss City will incur because of Contractor's delay, a daily rate of liquidated damages. By accepting the Purchase Order, Contractor agrees that this sum shall not be considered a penalty and is an agreed upon sum of monetary damages sustained by City because of Contractor's failure to furnish Deliverables to City within the time period fixed or such extensions of time permitted in writing by City.

4.8 **Bonding Requirements.** The Contractor may be required on a case-by-case basis to furnish a performance bond in a form acceptable to the City, to guarantee the faithful performance of this Agreement. The bonds must be approved as to sufficiency and qualifications of the surety by the Controller and City Attorney.

4.9 **Reserved (Fidelity Bond).**

4.10 **Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Goods and Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver products using all modes of transportation available. Contractor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and process orders for immediate delivery or will call in the event of an emergency. In addition, the Contractor shall charge fair and competitive prices for Goods and Services ordered during an emergency and not covered under the awarded Agreement.

4.11 **Usage Reports by Contractor.**

4.11.1 Upon request, Contractor shall prepare and submit to City an electronic report of the total Goods delivered and/or Services rendered under this Agreement during the period of time requested by City. The report must list by City department the following: (1) all Goods and Services ordered ("Order") (2) all Goods and Services delivered; (3) the date on which each Order was placed; (4) the date on which each Order was delivered; and (5) total quantity and unit price of the Goods and/or Services contained within each Order. Contractor must also furnish a separate similar report for the total of all items and/or Services ordered by City which are not part of this Agreement.

4.11.2 Reserved.

4.11.3 Reserved.

4.12 **Warranty**. If equipment maintenance is required under this Agreement, Contractor warrants to City that the maintenance 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 maintenance services are performed so as to ensure that all maintenance services performed are correct and appropriate for the purposes contemplated in this Agreement. Contractor warrants to City that the manufacturer's warranty and service will be passed on to the City at the time of delivery.

Article 5 Insurance and Indemnity

5.1 **Insurance.**

5.1.1 The following insurance requirements are the minimum coverages required under this Agreement. At the individual purchase level, on a project-by-project basis, these requirements may be modified based on the Goods and/or Services the City is procuring under this Agreement. Such modifications may include the type of insurance, the required minimum limits of insurance, as well as exclusions or inclusions related to coverage. Any such changes will be stated in the accompanying Purchase Order issued under this Agreement.

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

(a) Commercial General Liability Insurance with limits not less than $2,000,000 or more as determined by the Department 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 or more as determined by the Department 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 or more as determined by the Department each accident, injury, or illness.

(d) Technology Errors and Omissions Liability coverage, with limits of $5,000,000 or more as determined by the Department for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of the Agreement and shall also provide coverage for the following risks:

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

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

(e) Cyber and Privacy Insurance with limits of not less than $5,000,000 or more as determined by the Department per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(f) Reserved (Pollution Liability Insurance).

5.1.3 **Additional Insured Endorsements.**

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

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

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

5.1.4 **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.

5.1.5 **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).

5.1.6 **Other Insurance Requirements.**

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

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

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

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

(e) Before delivering any Goods and/or 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 deliver Goods and/or 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. 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 and/or delivery of Goods pursuant to this Agreement.

5.2.4 Under no circumstances will the City indemnify or hold harmless Contractor.

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 OR GOODS DELIVERED 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 Goods and 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 obligations 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 Goods, 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 obligations 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 the cost of all Goods and Services delivered prior to City's notice of termination. City's payment obligation pursuant to this Subsection 8.1.3 shall be subject to Section 3.3.2 of this Agreement. With respect to reimbursement for Contractor's services in connection with the maintenance of equipment, in no event will the compensation paid for the month in which termination occurs be greater than the scheduled monthly fee multiplied by a fraction, the numerator of which will be the days in the month elapsed prior to the termination and the denominator of which shall be 31. Upon approval and payment of this invoice by City, City shall be under no further obligation to Contractor monetarily or otherwise.

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 8.1.2. Such non-recoverable costs include, but are not limited to, anticipated profits on the Goods delivered and/or Services rendered by Contractor 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 8.1.2.

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 the Goods delivered and/or Services rendered 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 Goods delivered and/or Service rendered by Contractor under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Goods and Services, the difference between the invoiced amount and City's estimate of the reasonable cost of delivering the invoiced Goods and/or 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.

8.1.7 Contractor agrees and acknowledges that cancellation or termination of any Purchase Orders issued under this Agreement are governed by provisions stated in Appendix A.

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 or any Purchase Order issued under this Agreement:

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

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.6	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

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

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

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property; (ii) constituting an order for relief or

approving a petition for relief, or reorganization, arrangement or any other petition in bankruptcy or for liquidation, or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; or (iii) ordering the dissolution, winding-up, or liquidation of Contractor.

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

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

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

8.2.5 Contractor agrees and acknowledges that cancellation or termination of any Purchase Orders issued under this Agreement are governed by provisions stated in Appendix A.

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 or of any Purchase Order issued under this Agreement 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 or any Purchase Order issued under this Agreement:

3.3.2	Payment Limited to Satisfactory Services and Delivery of Goods		9.2	Works for Hire
3.3.7	Grant Funded Contracts		11.6	Dispute Resolution Procedure
3.4	Audit and Inspection of Records		11.7	Agreement Made in California; Venue

3.5	Submitting False Claims		11.8	Construction
Article 5	Insurance and Indemnity		11.9	Entire Agreement
6.1	Liability of City		11.10	Compliance with Laws
6.3	Liability for Incidental and Consequential Damages		11.11	Severability
Article 7	Payment of Taxes		Article 12	Department Specific Terms
8.1.6	Payment Obligation		Article 13	Data and Security
9.1	Ownership of Results		Appendix B	Business Associate Agreement

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement or any Purchase Order issued under this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement or any Purchase Order issued under 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 or any Purchase Order issued under this Agreement, and any completed or partially completed work which, if this Agreement or any Purchase Order issued under 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 or delivering the Goods, 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. If LBE subcontracting participation applies, Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

10.7 **Minimum Compensation Ordinance.** If Administrative Code Chapter 12P applies to this Agreement, 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 Agreement, 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.** If Chapter 83 of the San Francisco Administrative Code applies to this Agreement, Contractor must comply with all of the provisions of the First Source Hiring Program, 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, proposal 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 **Public Access to Nonprofit Records and Meetings.** If Contractor is a non-profit organization; provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries); and receives a cumulative total per year of at least $250,000 in City funds or City-administered funds, 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; and receives a cumulative total per year of at least $250,000 in City or City-administered funds and 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.

10.18.1 Reserved.

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

10.20 **Reserved (Sweat Free Procurement).**

10.21 **Environment Code Chapter 5, Resource Conservation Ordinance.**

10.21.1**Reserved (Printing Services and/or Writing Paper Products).**

10.21.2 **Reserved (Collection of Recyclable Materials).**

10.22 **Reserved (Prop J Approval).**

10.23 **Use of City Opinion.** Contractor shall not quote, paraphrase, or otherwise refer to or use any opinion of City, its officers or agents, regarding Contractor or Contractor's performance under this Agreement without prior written permission of Purchasing.

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:	**Jonathan Jew, Senior Purchaser** **Office of Contract Administration** **1 Dr. Carlton B. Goodlett Place, Rm 430** **San Francisco, CA 94110** **Jonathan.jew@sfgov.org**

To Contractor:	Cathy Souza Executive Vice President CCT Technologies, Inc. dba ComputerLand of Silicon Valley 808 W San Carlos Street, Suite 20 San Jose, CA 95126 csouza@cland.com (408) 519-3230

Any notice of default must be sent by certified 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 and/or Goods 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 or delivery of the Goods, and City's payment are subject to the California Public Records Act, (California Government Code §7920 et seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. If LBE subcontracting goals apply and the contract amount is $50,000 or more, Contractor shall cooperate with the 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 or delivery of the Goods under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the

performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

11.6.3 **Reserved (Health and Human Service Contract Dispute Resolution Procedure).**

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

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

11.9 **Entire Agreement.** This 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's obligations for Technology Marketplace Transactions occurring under this Agreement are set forth in the following documents: this Agreement; the Purchase Order issued under this Agreement; any Term Sheets incorporated into the Purchase Order; Contractor's bid, quote, or proposal accepted by the City and incorporated into the Purchase Order (collectively, "TMBid"); Contractor's terms of use and support if applicable and accepted by the City; and, if applicable, any scope of work agreed upon between

the City and Contractor for Services. Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and conditions and Contractor's terms included in the TMBid or Contractor's terms of use, the City's terms shall take precedence. When applicable and upon City's sole and absolute discretion, City reserves the right to incorporate additional terms and conditions to each accompanying Purchase Order and applicable Term Sheet(s). All changes to Purchase Orders must be done in writing through the re-issuance of a revised Purchase Order.

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.

11.15 **Cooperative Agreement.** Contractor agrees that during the term of this Agreement and any authorized extension, the Director of Purchasing may allow other public agencies or non-profits made up of multiple public agencies to utilize this Agreement to obtain some or all of the Services and/or Goods to be provided by Contractor under the same terms and conditions as the City.

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.

12.2.1 Contractor acknowledges that some or all of Services or Commodities that Contractor furnishes to City under this Agreement may be included, directly or indirectly, in whole or in part, in claims submitted by City to Federal or State health care programs. By executing this Agreement Contractor certifies that it is not currently, and shall not during the term of this Agreement become, excluded, directed to be excluded, suspended, ineligible or otherwise sanctioned from participation in any Federal or State assistance programs. Contractor shall notify City, as provided in Section 11.1 ("Notices to the Parties"), within thirty (30) days of any such exclusion, suspension, ineligibility, or other sanction. This is a material term of this Agreement. Contractor agrees to indemnify and hold harmless City and City's officers, directors, employees, agents, successors and permitted assigns from and against any and all (including but not limited to Federal, State, or third party) civil monetary penalties, assessments, repayment obligations, losses, damages, settlement agreements and expenses (including reasonable attorneys' fees) arising from the exclusion, suspension, ineligibility, or other sanction of Contractor and/or Contractor's workforce (including those who oversee Contractor's workforce,

supervisors and governing body members) from participation in any Federal or State assistance program.

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 or delivery of the Goods under this Agreement. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 **Confidential Information.** In the performance of Services or delivery of the Goods pursuant to this Agreement, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, 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 **Payment Card Industry ("PCI") Requirements.** Contractors collecting electronic payments on behalf of the City or providing Services and products that handle, transmit, or store cardholder data are subject to the following requirements.

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

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

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

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

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

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

13.3 **Business Associate Agreement.**

The Parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is required to comply with the HIPAA Privacy Rule governing the access, use, disclosure, transmission, and storage of protected health information (PHI) and the Security Rule under the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"). Contractor or, where applicable, its Subcontractor(s) will be required to enter into a Business Associate Agreement, substantially in the form attached hereto as Appendix B, if the Contractor or, where applicable, its Subcontractor(s) will do at least one or more of the following:

1. Create, receive, maintain, or transmit PHI for or on behalf of City (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
2. Receive PHI, or access to PHI, from City or another Business Associate of City, as part of providing a Goods and Services to or for City including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial; or
3. Transmit PHI data for City and require access on a regular basis to such PHI. (Such as health information exchanges (HIEs), e-prescribing gateways, or electronic health record vendors)

Under such circumstances, and for purposes of this Agreement, Contractor is a Business Associate of City, as defined under HIPAA. As such, Contractor must comply with and complete the Business Associate Agreement and attestations attached to this Agreement.

13.4 **Protected Health Information.** Where applicable, 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, if any, 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 Agreement. 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 Agreement.

13.5 **Management of City Data**

13.5.1 **Use of City Data.** Contractor agrees to hold City Data received from, or collected on behalf of, the City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the continental United States is prohibited, absent prior written authorization by the City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. 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, 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.

13.6 **Disposition of City Data**. 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 City Data given to, or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City 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.

13.7 **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. Use of Artificial Intelligence (AI) to perform professional services under this Agreement shall be permitted solely upon written approval of City. Use of City Data to train AI under this Agreement shall be permitted solely upon written approval of the City.

13.8 **Cybersecurity Risk Assessment.** Where applicable, City may require Cybersecurity Risk Assessment (CRA) be performed for each entity manufacturing the Goods, performing technical functions related to the performance of the Goods, and/or accessing City's networks and systems under this Agreement. Where Contractor performs an active role in any of these activities, CRA may also be required for Contractor.

To conduct a CRA, City may collect prior to execution or at any time throughout the duration of this Agreement, one of the following two reports:

1. **SOC-2 Type 2 Report:** Report on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy; or
2. **City's Cyber Risk Assessment Questionnaire:** Contractor's responses to City's Cyber Risk Assessment Questionnaire.

The above reports may be requested prior to execution or at any time throughout the duration of this Agreement. The reports will be evaluated by the awarding Department and the City's Department of Technology to identify existing or potential cyber risks to City. Should such risks be identified, City shall afford Contractor an opportunity to cure such risk within a period of time deemed reasonable to City. Failure by Contractor to remedy the identified risks within such period of time shall constitute a material breach of this Agreement, and City may

terminate this Agreement for Default. Such remediation and continuing compliance shall be subject to City's on-going review and audit through industry-standard methodologies, including but not limited to: on-site visits, review of the entities' cybersecurity program, penetration testing, and/or code reviews.

13.9 **Loss or Unauthorized Access to City's Data; Security Breach Notification.** Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City's Data (any "Leak") within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved personally identifiable information. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. Contractor shall pay for the provision to the affected individuals of twelve (12) months of free credit monitoring services, if the Leak involved information of a nature reasonably necessitating such credit monitoring. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

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

Recommended by:

_____

Daniel Sanchez
Supervising Purchaser
Office of Contract Administration

Approved as to Form:

David Chiu
City Attorney

By: _____
Dee Nguyen
Deputy City Attorney

Approved:

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

CONTRACTOR

CCT Technologies, Inc. dba ComputerLand of Silicon Valley

_____

Connie Tang
CEO

City Supplier Number: **0000022410**

A:	Procedures and Requirements
B:	HIPAA Business Associate Agreement, Privacy Attestation and Data Security Attestation
C:	Technology Specific Term Sheets

Appendix A

Procedures and Requirements

The Technology Marketplace is a pool of IT contractors that provide Goods and/or Services to City departments on an as-needed basis. Contractor is responsible for responding to City's requests for quotations, bids or proposals for Goods and Services. When a Technology Marketplace Transaction results in a Purchase Order ("PO"), Contractor shall be responsible for procuring the Good and/or Service and for ensuring that all Goods are delivered and Services provided in accordance with the City's specifications, terms and conditions. POs are awarded to Technology Marketplace contractors in accordance with the policies of the Office of Contract Administration ("OCA" or "Purchasing") and applicable laws and regulations of City as they may be amended from time to time.

After contract award, a competitive solicitation will be required for all Technology Marketplace Transactions greater than a $10,000 threshold, which may be revised during the term of this Agreement. Transactions shall not exceed $2,500,000 unless otherwise authorized by the Purchaser – such limit may be revised during the term of this Agreement at the sole discretion of the City.

All terms and conditions in this Appendix A shall be incorporated into every Technology Marketplace Transaction PO.

A. Ordering, delivery, invoicing, and related procedures

1. Ordering

a. Goods and Services shall be ordered by the City solely by means of a PO. All orders must be approved and issued by Purchasing or as authorized by Purchasing in writing.
b. Contractors shall not accept verbal orders from City or any order that is not in the form of a written PO.
c. Within three (3) business days after receipt of an order, Contractor must verify the accuracy of the order and provide written or electronic notification of Contractor's acceptance or rejection of the order and delivery dates.
d. If an item is discontinued, Contractor must notify Purchasing and the end user Department within three (3) business days of receipt of an order or upon notification by the manufacturer or distributor (whichever comes first) that the order cannot be filled. Contractor must not fill the order with a substitute item without the prior written approval of Purchasing. Items that are substituted without approval may be returned at no cost to the City and the order cancelled.

2. Delivery of Goods

a. **Location of Delivery:** All Goods shall be delivered inside the building designated in the Purchase Order, and the delivery shall require a signature from a City staff or representative confirming receipt.
b. **Delivery Lead Time:** Goods shall be delivered in accordance with the terms of Contractor's Quote and City's Purchase Order.

c. **Notice of Delivery:** Prior to all deliveries, Contractor shall provide scheduled delivery dates to the ordering department. Any deliveries made without prior scheduling will be rejected by the department with no additional costs incurred.
d. **Hours of Delivery** Unless requested otherwise by City in the Purchase Order, all deliveries shall be made and accepted at the City location indicated by the ordering department between the hours of 8:00 A.M. and 2:00 P.M.
e. **Substitutions:** No substitutions will be allowed unless approved in advance in writing by City.
f. **Emergency Deliveries:** Emergency deliveries shall be delivered by best means possible. Should the emergency delivery cause City to incur additional costs not contemplated by this Agreement, Contractor shall obtain City's prior approval. Contractor shall notify City of the estimated time of delivery.
g. **Complete Orders:** Orders must be delivered in total, unless a prior written authorization for partial shipment has been received from the ordering department.
h. **Back Orders:** Contractor shall notify the ordering department immediately if it is unable to deliver the items and/or quantity ordered. Contractor must notify and obtain approval from the ordering department prior to delivery of any back-ordered items. Department may reject back-ordered items at no additional costs incurred to the City. If back-ordered items are delayed in excess of five (5) business days, City may reject partial shipment or cancel the item(s) at no additional cost to the City.
i. **Packing Slips for Goods:** All deliveries must include a packing slip and provide the following information:
    1. Complete description including manufacturer's name and part number
    2. Quantity ordered
    3. Agreement number and contract item numbers
    4. Back-ordered items and amount back-ordered
    5. Date back-ordered items will be delivered
    6. Purchase Order Number

3. Invoicing

a. Invoices may be submitted only after delivery of Goods or provision of Services as set forth in the scope of work is complete.
b. **With respect to Goods,** a packing slip must be included with each shipment of Goods and must show the order number, a complete list of items delivered, and the Department name and contact person. The order number must also appear on the outside of the package.
c. **With respect to Services,** a detailed list of Services performed, Deliverables met, the Department name and contact person and, where applicable, timesheets signed by the Department authorizing payment for the Services, must be included with each invoice.

4. Change Orders.

a. "**Change Order**" means a written instrument signed by City that modifies the applicable Term Sheet and the Agreement through an adjustment to one or more of the following: (i) the project schedule, (ii) the scope of work, (iii) the acceptance criteria, or (iv) other requirements specified in the applicable Term Sheet and the Agreement.

b. **City Proposed Change Order.** The City may at any time, by written order, and without notice to Contractor's sureties, submit a Change Order to Contractor. Within ten (10) working days of receiving a proposed Change Order, Contractor shall submit to City a written cost estimate, which shall include any adjustments to the project price, the project schedule, the scope of work, the acceptance criteria, or any other obligations of Contractor as applicable.

5. Cancellations of Purchase Orders

a. **Before Delivery of Goods or Performance of Services.** City may, without incurring any fees, penalties or other costs, cancel any PO for Goods and/or Services, other than POs of customized Goods, prior to scheduled delivery of a Good or, with respect to the performance of Services, any time prior to the performance of the Services. With respect to customized Goods, City may terminate the PO at any time but shall compensate Contractor for reasonable expenses incurred by Contractor in the performance of fulfilling the PO between the dates of issuance and cancellation.

b. **For Convenience.** City shall have the option, in its sole discretion, to terminate any PO, at any time during the term thereof, for City's convenience and without cause by giving Contractor written notice of such termination. In the event of such termination, Contractor will be paid for the Goods delivered and Services performed pursuant to the PO to the satisfaction of the City up to the date of termination. City will not be liable for costs incurred by Contractor after receipt of notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the PO, post-termination employee salaries, post-termination administrative expenses, or any other cost that is not authorized or reasonable.

c. **For Cause.** If Contractor fails to perform any of its obligations under a PO, City may terminate the PO and all of Contractor's rights thereunder. Termination will be effective after ten (10) days written notice to Contractor. If a PO is terminated for cause, City will pay Contractor for Goods delivered and/or services performed to the satisfaction of the City up to the date of termination. City may offset from any such amounts due Contractor any costs City has or will incur due to Contractor's non-performance. Any such offset by City will not constitute waiver of any other remedies City may have against Contractor for financial injury or otherwise under this Agreement or the PO.

6. Title and Warranties

a. **Warranties.** Contractors shall transfer all warranties offered by manufacturers to the City on all Goods within forty-eight (48) hours (excluding weekends) of delivery to City. The Contractor must also offer any additional warranty services offered by a manufacturer for purchase.

b. **Passage of Title**

1. Contractor must pass title of licenses to software purchased to the City within forty-eight (48) hours (excluding weekends) of delivery and the City must be eligible for all benefits of ownership including free services provided under manufacturer's warranties within forty-eight (48) hours (excluding weekends) of delivery of Goods.

2. If after forty-eight (48) hours the City cannot obtain service under the manufacturer's warranty, because title has not been properly passed to the City by the Contractor or the Contractor has not properly recorded ownership, the City shall immediately notify the Contractor. Contractor will have twenty-four (24) hours to record title of the Good properly, repair the Good, or replace the non-working Good with a comparable working product.

c. **Liquidated Damages.** The timely transfer to City of manufacturer warranties and title to licenses procured through a PO is a material term of this Agreement. Contractor acknowledges that City, in its sole discretion, may include a liquidated damages provision in any PO to compensate City for actual damages that will be impractical or extremely difficult to determine. Contractor agrees that any such liquidated damages clause is not a penalty, but a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time the PO was issued. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between City and Contractor.

7. No Automatic Renewal. To the extent a Purchase Order issued under this Agreement involves the maintenance of equipment, and notwithstanding anything to the contrary contained in this Agreement or the Purchase Order (including, without limitation, any terms and conditions of Contractor attached hereto): (a) in no event shall the term of the Purchase Order be longer than the initial term expressly stated in the Purchase Order; (b) any automatic renewal or extension (whether or not conditioned upon any notice or absence thereof from either Party) or any similar "evergreen" provision shall be deemed null and void ab initio; and (c) the term of the Purchase Order shall not be extended or renewed except by written agreement duly authorized, executed, and delivered by City. In the event of any inconsistency within this Agreement or the Purchase Order relating to the duration of the initial term hereof, the shorter initial term shall govern. If no initial term is stated in the Purchase Order, then the term shall be one year from the date on which the term commences.

B. Communications with the City

1. General Communications with the City

a. Hours of Operation: Contractor must maintain normal business hours of at least 8:00 A.M. to 5:00 P.M. Pacific Time, Monday through Friday throughout the term of the Agreement, and be open at all times during that period.

b. **Support:** Contractor shall be responsible for providing technical support and assistance to the City through Contractor's own personnel, equipment, and facilities as well as through manufacturer's technical representatives. As part of this technical support and assistance, the Contractor shall provide personnel with in-depth technical knowledge of the products the Contractor is providing under this Agreement, to answer questions and offer any assistance required by City personnel, during City business hours (8:00 A.M. to 5:00 P.M. Pacific Time, Monday through Friday).

c. **Response Time:** Contractor shall make reasonable efforts to respond to inquiries from City Departments within one business day. City inquiries may include requests

for consultation, design, pricing, order status, product comparisons, compatibility information and return information.

d. **Toll-Free Telephone Number:** Contractor shall provide a toll-free number to accommodate telephone inquiries staffed by adequate personnel to provide prompt, courteous, and informed answers to City inquiries within two hours of the customer's initial call. Contractor shall offer a "Help Desk" option to City departments using the Technology Marketplace.

e. **E-mail:** Contractor shall provide E-mail communication capacity with the City. Such E-mail communication must be compatible with that used by the City.

2. Account Manager

a. Contractor shall provide an Account Manager to function as the single point of contact with the City who will be responsible for all aspects of the Agreement and its facilitation.

b. The Account Manager shall be available to the City by phone and e-mail.

c. The Account Manager shall meet with City as the need arises and at no additional cost to the City to ensure that Contractor's performance of the Agreement continually meet the City's needs.

C. General Goods Policies

1. New Goods

a. Unless requested otherwise by City, Contractors shall sell only new products to the City. Contractors shall offer the latest commercially available versions of any and all hardware and software sold to the City. The City will not accept "gray market products."

b. If a new product is no longer available, then a remanufactured product will only be considered for acceptance upon prior written notification from Contractor to the City. A remanufactured product will not be shipped to the City unless Purchasing has issued a written letter of acceptance. Remanufactured equipment will only be accepted if it includes the full manufacturer's warranty, is eligible for inclusion under any applicable maintenance contracts and can be certified (as applicable) for maintenance purposes at no additional cost to the City.

2. Prohibited Goods and Minimum Specifications. From time to time, the City reserves the right to prohibit Contractor from selling to the City certain products, and to prohibit user Departments from purchasing the same. The City may also set minimum specifications for performance or energy efficiency that may be updated from time to time. Contractor will be required to provide products that comply with these specifications. A Contractor found to be selling products that do not comply with these specifications may be suspended from selling to the City under this Agreement for a period of up to three (3) months.

3. Green Purchasing Requirements

a. Contractor shall offer processes and commit to ensure compliance with City green purchasing requirements. Contractor agrees to comply with the City's Green Purchasing policies established by the Department of the Environment as updated from time to time.

i. **Client Education:** Contractor shall educate departments on environmentally preferable ('green') product offerings designated by the City at the following link: https://www.sfapproved.org/.

ii. **Free Take Back and Recycling of Packaging Materials**: Upon request, Contractor shall provide free take back and recycling of packaging materials to City departments.

b. The Green Purchasing Requirements applicable to this Agreement are as follows, but are subject to change during the term of this Agreement and may be found here: Green Purchasing Requirements:

i. **Computers & Monitors.** All desktops, laptops, tablets, workstations, thin clients, and computer monitors are required to be in the EPEAT registry at the time of purchase at Gold level.

ii. **Imaging equipment.** All imaging equipment purchased or leased by City departments, including copiers, digital duplicators, facsimile machines, multifunction devices, printers, mailing machines and scanners (as defined by the U.S. ENERGY STAR® Imaging Equipment Specification), are required to achieve Gold registration in the EPEAT system.

iii. **Televisions & Large Digital Displays.** All televisions or large displays purchased or leased by City departments are required to achieve at the time of purchase at least one of the following: Registration in the EPEAT system – OR – qualified under the current version of Energy Star® Program Requirements for Televisions – OR – qualified under the current version of Energy Star® Program Requirements for Displays.

iv. **Uninterruptible Power Supplies.** Uninterruptible power supplies must be Energy Star certified.

v. **Computer Servers.** Except for network infrastructure, appliances, and blades as defined by sfcoit.org/greenpolicy, City recommends that computer servers be registered as EPEAT Bronze or higher at the time of purchase. IT purchasers are encouraged to "right-size" their server specification in terms of memory and redundant power supplies, to review manufacturer data sheets of servers that meet the given need, and to choose models with high efficiency over a range of operating loads.

vi. **Appliances** City recommends that all appliances be listed at ClimateFriendlyCooling.com or meet specifications in Sustainable Purchasing Leadership Council's (SPLC) and the Institute for Governance and Sustainable Development's (IGSD) contract language for climate-friendlier products at bit.ly/2Wtp0Hb. In that link's Table of Contents, click Specifications. Other appliances should be Energy Star certified.

D. Maintenance and Repair Policies. All maintenance and repair work shall be performed by qualified and trained personnel. Contractor shall offer written quotes for all product repairs including an estimate of the time and cost of repairs.

E. Consulting and Professional Services Policies

1. Professional services provided under this Agreement may include project management, software development, hardware and software installation, system design, training, and other professional services related to the deployment of technology. City Departments will solicit bids, quotes, or proposals to Technology Marketplace Contractors identifying the particular professional services requested.
2. When submitting a proposed scope of work ("SOW") to a City department, Contractor must define the consulting or professional services project requested by the department. As applicable, the City may request that the project include a transition plan detailing how the project will eventually be transitioned to City personnel, including a designation of City employees and training plans.
3. Performance Bonds may be required by ordering departments on a project-by-project basis based on the level of risk associated with the project.
4. Unless otherwise requested by a department, Contractor's SOW shall include, but is not limited to, the following:
    b. A schedule with agreed upon deliverables and milestones.
    c. Any critical milestones that would be subject to liquidated damages for delay, if applicable.
    d. The name of the project management software that will be used (such as MS Project).
    e. Estimated cost of sub-contractors and materials.
    f. Any proposed training services should be specified as a separate line item and deliverable and shall include:
        i. A detailed description of the training and a list of skills that will be made available through the training to provide for the ongoing maintenance of said project.
        ii. Estimated timeframe for training.
        iii. Number of employees to be trained and the number of hours of training to be provided to each employee.
        iv. The cost associated with training.
5. Contractor agrees that City may in its sole discretion impose a 10% retention by the City on progress payments. The retention will be released for payment to Contractor when the project is accepted by the Department. Progress payments will be linked to a specific deliverable or the meeting of a specific milestone.

6. Contractor may be required to provide formal status reports during the life of the project. The format of the status report and the frequency of its preparation will be determined during the project approval process and will be dependent upon a number of variables such as:

a. Estimated cost
b. Project complexity
c. Estimated time
d. Other aspects of the project deemed relevant by the City

7. Any consulting or professional services project that exceeds $100,000 or is expected to require over 90 days to complete may require quarterly meetings that include representation from:
    e. The ordering department
    f. The City's Committee on Information Technology and/or Department of Technology
    g. Contract Monitoring Division ("CMD")
    h. Contractor
    i. All project sub-Contractors

F. Pricing Policies

1. **Pricing.** After contract award, a competitive solicitation will be required for all Technology Marketplace Transactions greater than a $10,000 threshold, which may be revised during the term of this Agreement. Transactions shall not exceed $2,500,000 unless otherwise authorized by the Purchaser – such limit may be revised during the term of this Agreement at the sole discretion of the City.
2. **Pricing offered to other customers.** Should Contractor participate in any government, educational, or other special pricing program, e.g., CMAS, GSA, Western States Contracting Alliance, etc., Contractor shall make the same pricing available to the City.
3. **Mandatory federal and state fees.** Contractor shall be responsible for collecting applicable federal and state mandatory fees with no additional cost mark-up to City, and shall be responsible for remitting the fees to the appropriate agency, including, but not limited to, the California Electronic Waste Recycling Fee: https://calrecycle.ca.gov/electronics/recyclingfee/.
4. **Payment for Travel Expenses and Other Direct Costs (ODC).**
    a. The need for travel under this Agreement, or an individual PO, or ODCs shall be approved in advance of the date of travel in writing by a memo stating the dates of the travel, the purpose, the planned expenses by person, with the City's Project Manager's dated signature indicating approval. Reimbursable expenses shall include actual direct costs (with no markup) of expenses directly incurred by Contractor. Payments will be made by City to Contractor within 30 days after the City has received Contractor's invoice for expenses, submitted in compliance with the United States General Services Administration per diem rates (CONUS) for San Francisco at http://www.gsa.gov.
    b. The following items will be eligible for reimbursement as ODCs:
        i. Contractor's out-of-town travel ("out-of-town" shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano);
        ii. Contractor's out-of-town meal, travel and lodging expenses for project-related business trips, including, but not limited to:

1. Rental vehicle: Contractor must select the most economical rental agency and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented;
2. Personal vehicle use: Contractor will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that is outside the nine Bay Area counties. Contractor shall submit to the City an approved mileage log with his/her expense sheet;
3. Contractor meal and lodging expenses shall be reasonable and actual but limited to CONUS per diem rates.

iii. Anything not listed above is not eligible for reimbursement.

5. **Subcontractor pricing.** Each quote, proposal, and invoice provided to City under this Agreement that includes work completed by a subcontractor must state the subcontractor's hourly rates and fees, and Contractor's mark-up amount.
6. **Taxes**. Prices shall be exclusive of any Federal, State, and local sales or use tax.

G. Reports

1. **Sales Reports.** Upon request, Contractor must deliver a report to Purchasing, of products and services sold to City, including: the type, quantity, manufacturer name, manufacturer's part number and description, price paid per item and name of Department. The City may make changes to the format or specifications for this report. Contractor must comply with all such changes. Contractor shall prepare and submit additional reports in accordance with format and content specifications to be provided by Purchasing.
2. **LBE report.** Contractor must provide CMD with CMD Form 7 demonstrating LBE participation and CMD Form 9, if applicable, by the tenth day of each month or the next workday thereafter.
3. **Proposed Subcontractors report.** Prior to commencing work on any project involving the use of subcontractors, Contractor shall submit a list of all proposed subcontractors to the ordering Department before that project can be approved by City. Contractor shall submit supplemental subcontractor reports during the course of the project to show any substitution or addition of subcontractors. The substitution and addition will be subject to Department's approval. The following information for each subcontractor must be provided: name, address, telephone number, contact name, summary of work to be performed, and mark-up percentage.

H. Local Presence

If Contractor certified during the Request for Proposals # 99410 (Sourcing Event # 0000007900) dated August 21, 2023 that they have a local presence, Contractor shall have a business presence within the City and County of San Francisco for the duration of this Agreement. A "business presence" means an office, retail location, warehouse, or service facility within the City limits, in a location that is not residentially zoned. Home offices or home warehouses will not satisfy this requirement. Firms certified by CMD as LBEs automatically meet this requirement**.**

I. Other Requirements.

A. Infectious Disease Terms: Contractors required to perform physical activities on City property that places Contractor or its employees in proximity to medical patients, including, but not limited to, San Francisco Department of Public Health facilities where patient care or counseling is performed, shall be subject to the following requirements, as applicable:

i. **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 must demonstrate personnel policies/procedures for COVID-19 exposure control consistent with CDC recommendations, Cal/OSHA regulations, SF DPH Health Orders, Directives, and Guidance. Contractor's attention is directed to Cal/OSHA's new 8 CCR 3205 COVID-19 Prevention Emergency Temporary Standard and/or any successor regulations.
5) Contractor is responsible for site conditions, equipment, and health and safety of their employees and all other persons who work or visit the job site.
6) Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as BBP and TB, demonstrating appropriate policies and procedures for reporting such events, and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.
7) Contractor shall comply with all applicable Cal-OSHA standards, including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.
8) 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.
9) Contractor shall demonstrate compliance with all state and local regulations with regard to handling and disposing of medical waste.

ii. **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, demonstrating 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 its employees, agents, and subcontractors including Personnel Protective Equipment such as respirators, and provides and documents all appropriate training.
5) If/when Contractor determines that they do not fall under the requirements of 8 CCR 5199, Contractor is directed to Cal/OSHA's Emergency Temporary Standard for COVID-19, 8 CCR 3205, which applies to all employers who do not fall under 8 CCR 5199 but for whose employees have potential for exposure to COVID-19.

B. ADA Compliance: Contractor's warehouse facility shall comply with Title III of the Americans with Disabilities Act Regulations (including Title 3 Accessibility Guidelines), and Title 24, State of California Building Code (California Accessibility Regulations) regarding access to people with disabilities.

J. Marketplace Transactions Surviving the Term of this Agreement

1. At least ninety (90) days before the Agreement expires, Contractor shall provide the City with a list of all Technology Marketplace Transactions for which obligations extend beyond expiration of this Agreement. At City's direction, Contractor shall assign to City all of the Contractor's right, title, and interest that will not be fully executed or performed by the Agreement expiration date, including, without limitation, ongoing software licenses and software maintenance agreements not previously assigned to City. City shall have the right, in its sole discretion, to direct the Contractor to assign any and all such orders and subcontracts.
2. If a Purchase Order issued against this Agreement is for Goods and/or Services that will be delivered or performed after the end date of this Agreement, the terms and conditions of this Agreement and the Purchase Order shall survive the end of the contract term until such time performance of the Purchase Order has been completed.

Appendix B
Business Associate Agreement
(Version 8/3/2022)

1. **Create, receive, maintain, or transmit PHI for or on behalf of City (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**
2. **Receive PHI, or access to PHI, from City or another Business Associate of City, as part of providing Goods and Services to or for City including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial; or**
3. **Transmit PHI data for City and require access on a regular basis to such PHI. (Such as health information exchanges (HIEs), e-prescribing gateways, or electronic health record vendors)**

If Contractor performs one or more of the above, Contractor shall complete Attachments 1 and 2 to this Appendix B. Otherwise the forms can be left blank.

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 City and County of San Francisco Department, 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.

c. Business Associate is a person or entity that performs certain functions or activities that involve the use or disclosure of PHI 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 (as defined below) 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 PHI that is maintained in or transmitted by electronic media and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103. For the purposes

of this BAA, Electronic PHI includes all computerized data, as defined in California Civil Code Sections 1798.29 and 1798.82.

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

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

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

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

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

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

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

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

2. Obligations of Business Associate.

a. 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, City 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 fifteen (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 (7) years after the Agreement terminates and shall make all such records available to CE within fifteen (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 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 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, and its agents and subcontractors shall request, use, and disclose only the minimum amount of Protected Information necessary to accomplish the intended purpose of such use, disclosure, or request. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)]. BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what

constitutes "minimum necessary" to accomplish the intended purpose in accordance with HIPAA and HIPAA Regulations.

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.

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. Per the Secretary's guidance, the City will accept destruction of electronic PHI in accordance with the standards enumerated in the NIST SP 800-88, Guidelines for Media Sanitization. The City will accept destruction of PHI contained in paper records by shredding, burning, pulping, or pulverizing the records so that the PHI is rendered unreadable, indecipherable, and otherwise cannot be reconstructed.

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

b. 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, penalties, or damages within thirty (30) calendar days from City's written notice to BA of such fines, penalties, or damages.

Attachment 1 – City Privacy Attestation, version 06-07-2017
Attachment 2 – City Data Security Attestation, version 06-07-2017

BAA ATTACHMENT 1 – PRIVACY ATTESTATION

INSTRUCTIONS: Contractors and Partners who receive or have access to health or medical information or electronic health record systems maintained by the City and County of San Francisco (City) 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 City. 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)?		
B	Have a Privacy Officer or other individual designated as the person in charge of investigating privacy breaches or related incidents?		
	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.] [City privacy training materials are available for use; contact the Office of Contract Administration		
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.]		
E	Have (or will have if/when applicable) Business Associate Agreements with subcontractors who create, receive, maintain, transmit, or access City's health information?		
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 City's Information Security staff**?		
	II. Contractors who serve patients/clients and have access to City PHI, must also complete this section. DOES YOUR ORGANIZATION:		
G	Have (or will have if/when applicable) evidence that City was notified to de-provision employees who have access to City's health information record systems within 2 business days for regular terminations and within 24 hours for terminations due to cause?		
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 City.)		
I	Visibly post the Summary of the Notice of Privacy Practices in all six languages in common patient areas of your treatment facility?		
J	Document each disclosure of a patient's/client's health information for purposes other than treatment, payment, or operations?		
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?		

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	

IV. EXCEPTIONS: If you have answered "NO" to any question or believe a question is Not Applicable, please contact the Office of Contract Administration for a consultation. All "No" or "N/A" answers must be reviewed and approved by OCPA below

EXCEPTION(S) APPROVED by CITY	Name: (print)		Signature		Date	

BAA ATTACHMENT 2 – DATA SECURITY ATTESTATION

INSTRUCTIONS: Contractors and Partners who receive or have access to health or medical information or electronic health record systems maintained by the City and County of San Francisco (City) 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 City. 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.] [City data security training materials are available for use; contact the Office of Contract Administration.]		
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 City's health information?		
I	Have (or will have if/when applicable) a diagram of how City 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 Privacy Officer or designated person	Name: (print)		Signature		Date	

III. EXCEPTIONS: If you have answered "NO" to any question or believe a question is Not Applicable, please contact the Office of Contract Administration for a consultation. All "No" or "N/A" answers must be reviewed and approved by OCA below

EXCEPTION(S) APPROVED by CITY	Name: (print)		Signature		Date	

Appendix C
Technology Specific Term Sheets

Agreements are to be executed as applicable on a per project or purchase basis, substantially in the form of the Technology Marketplace Term Sheet Templates found at the Office of Contract Administration's Resources website: https://sf.gov/resource/2022/option-1-technology-marketplace-contracts as may be modified in the future. Contractor acknowledges and agrees that the terms and conditions of the executed Technology Marketplace Term Sheet shall control over the applicable City purchases, and in the event of conflicting language between the Agreement and the applicable Term Sheet(s), the terms and conditions of the Term Sheet(s) will control over the Agreement.

1. P-520 Equipment Lease Agreement Term Sheet;
2. P-629 Licensed Content Agreement Term Sheet;
3. P-640 Software Maintenance Agreement Term Sheet;
4. P-642 Software Development Term Sheet;
5. P-645 Software License and Maintenance Agreement (No Prof. Services) Term Sheet;
6. P-648 Software as a Service Agreement Term Sheet;
7. P-649 Software License, Maintenance and Technical Services Agreement (with Professional Services) Term Sheet.