

**City and County of San Francisco
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

**Software Development Agreement
between San Francisco City and County Employees' Retirement System,
a department of the City and County of San Francisco, and**

**[Insert name of contractor]
[Insert agreement number, if any]
[Insert PeopleSoft Contract ID]**

This Agreement is made this [insert day] day of [insert month], 20 [insert year], in the City and County of San Francisco ("City"), State of California, by and between [name of Contractor] ("Contractor") and City.

Recitals

WHEREAS, the San Francisco City and County Employees' Retirement System ("Department" and "Retirement System") wishes to procure the design and development of a state-of-the-art Retirement System member portal including development of new features and functions for its members from Contractor; and

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

WHEREAS, Contractor was competitively selected pursuant to a Request for Proposals entitled Request for Proposals for Peoplesoft Integration Developer issued by Retirement System; and

WHEREAS, the City's Retirement Board through delegation to approved Retirement System officers approved this Agreement on [insert date of Board action] in the amount of [insert Dollar Amount] for the period commencing [Insert Start Date] and ending [Insert End Date]; and

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth. Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the Retirement System. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the Retirement System, unless otherwise indicated by the context. "Acceptance Tests" means the procedures and performance standards required for Acceptance by City of the Programs and the System as defined herein. These procedures and performance standards are set forth for each

phase of System development, the Acceptance Test Plan. The following definitions apply to this Agreement:

1.1 “Acceptance” means notice from the City to Contractor that the software meets the specifications contained in the Documentation. City’s Acceptance of the software shall be governed by the procedures set forth in Article 4 (“Services, Software Implementation and Acceptance”).

1.2 “Acceptance Window” means the time period following completion of each phase of each Project during which Contractor must secure Acceptance of the completed phase from City.

1.3 “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein, together with any future written and executed amendments.

1.4 “Change Order” means a written instrument signed by the City’s Project Manager that modifies this Agreement through an adjustment to one or more of the following: (i) each Project’s Schedule; (ii) the Statement of Work; (iii) the Acceptance Criteria; or (iv) other requirements specified in this Agreement.

1.5 “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 Retirement System.

1.6 “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.

1.7 “Confidential Information” means confidential City information including, but not limited to, personal 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”). Confidential Information includes, without limitation, City Data.

1.8 RESERVED

1.9 “Contractor” means [insert name and address of contractor].

1.10 “Critical Milestones” means those milestones specified in each Project Schedule as Critical Milestones after which liquidated damages apply for failure to complete performance in accordance with this Agreement.

1.11 “Deliverables” means Contractor’s or its subcontractors’ completed and tested work product, including related materials, resulting from the Services provided by Contractor to

City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.

1.12 "Design Specifications" means the written design specifications to be prepared by Contractor to implement the Functional Specifications. The Design Specifications shall include descriptions of each Program to be developed hereunder together with descriptions of the hardware and software environment in which such Programs may be operated and the files or databases, if any, with which such Programs shall function.

1.13 "Documentation" means the technical publications relating to use of the System, such as reference, installation, administrative, maintenance, and programmer manuals, provided by Contractor to City.

1.14 "Equipment" means the central processing unit[s] and associated peripheral devices or computer hardware on which the Programs will operate and with which the Programs must be compatible, to be provided by City.

1.15 "Errors, Defects and Malfunctions" means either a deviation between the function of the developed Programs and the documentation furnished by Contractor for the Programs, or a failure of the Programs which degrades the use of the Programs.

1.16 "Fix" means repair or replace source, object or executable code in the Programs to remedy an Error, Defect or Malfunction.

1.17 "Functional Specifications" means the written description of City's requirements, operations, and procedures, which document is to be prepared by Contractor, and upon approval by City, shall form the basis for the Design Specifications as defined herein.

1.18 "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.

1.19 "Party" or "Parties" means, respectively, the City and Contractor either individually or collectively.

1.20 "Patch" means temporary repair or replacement of code in the Programs to remedy an Error, Defect or Malfunction. Patches may be made permanent and released in Subsequent Releases of the Software.

1.21 "Performance Specifications" means the description of the minimum System characteristics and performance which must be achieved by the Functional Specifications.

1.22 "Priority Category" means a priority assigned to an Error, Defect or Malfunction, designating the urgency of correcting an Error, Defect or Malfunction. Assignment of a Priority Category to an Error, Defect or Malfunction is based on City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

1.23 "Priority Protocol" means a Priority Protocol that is based on the Priority Category, rules specifying the turnaround time for correcting Errors, Malfunctions and Defects; escalation procedures, and personnel assignment.

1.24 "Programs" or "Software" shall mean the software package described in Appendix A, as customized by Contractor and delivered to City in source and object code form.

1.25 “Project” means [] and “Project Schedule” means the schedule for Contractor’s completion of all phases of Work for each Project, and the Critical Milestones associated with such completion as specified in this Agreement.

1.26 “Review Period” means the time period during which City shall review the completed Work of each Deliverable and give notice to Contractor of its acceptance or rejection of the completed phase.

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

1.28 “Subsequent Release” means a release of the Software for use in a particular operating environment which supersedes the Software. A Subsequent Release is offered and expressly designated by Contractor as a replacement to a specified Software product. A Subsequent Release will be supported by Contractor in accordance with the terms of this Software Maintenance Attachment. Multiple Subsequent Releases may be supported by Contractor at any given time.

1.29 “Support Services” means the support service performed at the option of City. Support Services include correcting an Error, Defect or Malfunction; providing telephone and/or online support concerning the installation and use of the Programs; training in the installation and use of the Programs; on-site consulting and application development services; detection, warning and correction of viruses; and disabled/disabling code.

1.30 “System” means the Programs prepared by Contractor for City and the Equipment on which those Programs operate, the combination of which shall satisfy the requirements set forth in the Performance Specifications.

1.31 “Upgrade” means either an enhancement to the Programs code to add new features or functions to the system or software programming revisions containing corrections to Errors, Defects and Malfunctions that have been reported by users or discovered by the Contractor.

1.32 “Version Locking” means a mechanism that restricts access to a computer file by allowing only one user or process access at any specific time.

1.33 “Warranty Period” means a period commencing with the installation of the Software product during which reported Errors, Defects and Malfunctions for Software products are corrected without charge in accordance with the provisions below.

1.34 “Work” means the implementation, assembly, installation, optimization, and integration as required by this Agreement, whether completed or partially completed, including all labor, materials, and services provided, or to be provided, by Contractor to fulfill its obligations hereunder. The Work, therefore, constitutes all of the requirements for providing the System to the City which may be implemented in phases as Projects.

1.35 “Workaround” means a change in the procedures followed or end user operation of the software to avoid an Error, Defect or Malfunction without significantly impairing functionality or degrading the use of the Software.

Article 2 Term of the Agreement

2.1 **Term.** The term of this Agreement shall commence on [insert Contractor's start date] and expire on [insert expiration date], unless earlier terminated as otherwise provided herein.

2.2 **Options to Extend.** City has the option to renew the Agreement for a period of three (3) one-year additional periods. The City may exercise this option at the City's sole and absolute discretion by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement." Extensions may be for the whole or partial period provided for above.

2.3 **Maintenance Term.** The term of the Maintenance Services Option (Section 4.7) if executed by City, shall commence on [insert commencement date] and expire on [insert expiration date], unless earlier terminated as otherwise provided herein. The City has three (3) options to extend the Maintenance Services for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions.

3.1.1 **Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 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 the 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. The 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.

3.1.2 **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."

3.2 **Authorization to Commence Work.** Contractor shall not commence any work under this Agreement until the City has issued formal written authorization to proceed, such as a

purchase order, task order or notice to proceed. Such authorization may be for a partial or full scope of work.

3.3 Compensation.

3.3.1 Calculation of Charges and Contract Not to Exceed Amount. The amount of this Agreement shall not exceed [insert whole dollar amount in numbers and words], the breakdown of which appears in Appendix E, "Calculation of Charges." City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments until City approves the Services delivered. Payments to Contractor by City shall not excuse Contractor from its obligation to replace the unsatisfactory Services even if the unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Services 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 the Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due to Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices submitted by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.5 RESERVED.

3.3.6 Getting paid by the City for Services.

(a) The City utilizes a commercial product through its banking partner to pay City contractors electronically. Contractors shall sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [SF City Partner at sfgov.org](https://sfgov.org).

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information.

3.3.7 RESERVED.

3.3.8 Payment Terms. MAKE THIS APPLICABLE TO EACH PROJECT/DELIVERABLE ACCORDING TO THE PAYMENT

(a) **Payment Due Date.** Unless City notifies the Contractor that a dispute exists, Payment shall be made within thirty (30) calendar days, measured from (1) the rendering of the Services, or (2) the date of receipt of the invoice, whichever is later. Payment is

deemed to be made on the date City issued a check to Contractor or, if Contractor agreed to electronic payment, the date City has posted electronic payment to Contractor. Each such invoice shall indicate retention until the final payment.

3.3.9 Retention. The final payment of ten percent (10%) of the software development and license costs shall be paid within thirty (30) days after City issues its notice of Acceptance of the System.

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make 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 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 Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section.

Article 4 Services, Software Implementation and Acceptance

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Appendices A-D, "Scope of Services." Officers and employees of the City are not authorized to request and the City is not required to compensate for Services beyond those stated.

4.2 Software Implementation.

4.2.1 Program Development. Subject to the terms and conditions of this Agreement, and in consideration for the payments to be made, Contractor agrees to design, develop, and install the Programs in the following discrete and sequential phases. In Phase 1, Contractor will develop Functional Specifications; in Phase 2, Contractor will create the Design Specifications; in Phase 3, Contractor will code the Programs, install the completed System at City's site, and deliver the Documentation for the System. The Work covered under each phase is specified in Appendix []. Upon completion of Phase 3, the System will be subject to Acceptance Testing to verify conformity with the Design Specifications.

4.2.2 Interpretation of the Specifications. The City hereby acknowledges that the Functional Specifications will, upon acceptance by the City, provide the basis for the Design Specifications, and that the Design Specifications will, upon acceptance by the City, provide the basis for the coding and installation of the Programs. In the event of a variance between the written proposal Contractor submitted in response to City's request for the services to be performed under this Agreement (the "Proposal") and the Functional Specifications, the Functional Specifications shall be determinative. In the event of a variance between the

Functional Specifications and the Design Specifications, the Design Specifications shall be determinative.

4.2.3 Interpretive Differences. In the event City and Contractor differ in their interpretations of the Proposal, Functional Specifications, Design Specifications, or Acceptance Tests, City's interpretation, if reasonable, shall be determinative.

4.2.4 Change Orders.

(a) **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 Statement of Work, the Acceptance Criteria or any other obligations of Contractor, as applicable.

(b) **Contractor Proposed Change Order.** Contractor may also propose a Change Order involving either additions, deletions, or revisions to the Work, or any obligations imposed upon the Parties under this Agreement. Contractor's proposed Change Order shall be in the form of a Request for Change ("RFC") which shall explain, in writing, Contractor's basis for requesting the Change Order and the impact of the proposed Change Order on the Project Schedule, the cost of Work, the Agreement documents and Deliverables, and any other interdependent Work, including but not limited to, the Acceptance Criteria, training, documentation, performance, resources, data conversion, users, re-engineering tasks, and all other aspects of the Project, as provided in this Agreement.

(c) Any Change Order requiring a Project price adjustment that results in an overall increase to the not to exceed Project compensation (Section 3.3), shall be agreed to in writing by the Parties and executed in the same manner as this Agreement pursuant to Section 11.5, ("Modification of this Agreement").

(d) All Change Orders must be approved, in writing, by City's Project Manager. Contractor shall not proceed with any work contemplated in any Change Order until it receives written notification to commence such work from City's Project Manager.

(e) The City shall have authority to order minor changes in the Work not involving either an adjustment in the total contract sum or an extension of the time for completion of the Work. The City's Project Manager may waive a variation in the Work if, in his or her opinion, such variation does not materially change the Work or the Program's performance.

4.3 Acceptance Procedure.

4.3.1 Acceptance of Projects. Upon completion of each Project of Program development, City shall, within the Review Period, review and give notice to Contractor of City's acceptance or rejection of the specifications of each completed phase of Work. Should City reject either the Phase 1 or Phase 2 Work, then City is entitled to another Review Period upon receipt from Contractor of the revised Phase 1 or Phase 2 specifications. In the event that Contractor fails to provide Phase 1 or Phase 2 Work which meets the Acceptance Criteria of this Agreement during the Acceptance Window, City may, at its option, assess Liquidated Damages per Section 4.12 of this Agreement and/or terminate this Agreement under Section 8.2, "Termination for Default; Remedies."

4.3.2 Final Acceptance of System. Upon completion of THE FINAL PROJECT, City and Contractor shall conduct Acceptance Testing of the System in accordance with the Acceptance Test Plan. City will not be deemed to have Accepted any Program or the System until Contractor receives written notice of Acceptance from City.

4.3.3 Data Conversion. Contractor shall be responsible for the timely and accurate conversion of City's data to the format required by the Programs and System, and for providing the test data specified in the Acceptance Test Plan.

4.3.4 Contractor's Assistance in Acceptance Tests. Contractor must furnish all materials, equipment, and technical assistance necessary to conduct the Acceptance Tests. Test Equipment provided by Contractor for performance of the Acceptance Tests shall be currently certified as "calibrated" by the test equipment manufacturer, or its authorized calibration service agent. (*See Section 4.5.8(b)*)

4.3.5 Failure to Pass Acceptance Tests. In the event that City determines that the System fails to meet the standards set forth in the Acceptance Test Plan, City shall promptly report to Contractor each deficiency, and Contractor will correct the reproducible aspects of the problem or failure within [insert number] days from date of Contractor's receipt of notice of the problem or failure. Problems or failures that do not re-occur or cannot be repeated by Contractor, or by the City in Contractor's presence, shall not be considered a failure. In the event that Contractor cannot achieve System Acceptance within [insert number] days following the commencement of Acceptance Testing, Contractor shall be in default under this Agreement and, in addition to those remedies set forth in Article 8 entitled "Termination and Default" City is further entitled to a refund of all payments made to Contractor under this Agreement.

4.3.6 Parallel Processing. The Parties contemplate that parallel processing will be used until both the Programs and its backup have completed the Acceptance Tests.

4.4 Documentation Delivery and Training.

4.4.1 Documentation Delivery. Contractor will deliver electronic copies of the completed Documentation for each Project and the final System in accordance with the Documentation description, Appendix B, and the Project Schedule, Appendix C. The City may withhold its issuance of the notice of final Acceptance until City receives the completed Documentation.

4.4.2 City Training. Contractor will provide up to [insert number] hours of knowledge transfer at completion of System and upon Retirement System request at any time during the Agreement term to City personnel at City's premises at no charge.

4.5 Project Administration.

4.5.1 Project Schedule. The Project Schedule is set forth in Appendix C and may be amended by mutual agreement between City and Contractor.

(a) **Delays.** To prevent slippage in the completion of the project, Contractor agrees that if such slippage occurs, it will assign additional qualified personnel to the project.

(b) **Time of the Essence.** The Parties agree that time is of the essence, and that the System will be developed and implemented in accordance with the Project Schedule.

(c) **Critical Milestones.** Contractor acknowledges and understands that the Project Schedule contains certain time-sensitive milestones (“Critical Milestones”) that must be attained by certain dates; otherwise, the City will suffer financial harm. Milestones that are Critical Milestones are so indicated in the Project Schedule. Notwithstanding City’s ability to assess liquidated damages for Contractor’s failure to meet any Critical Milestone, the time period for achieving final Acceptance shall not exceed **TEN** calendar days after initiation of System testing. In addition to any other remedy provided under this Agreement, Contractor’s inability to achieve final Acceptance of the System within **TEN** calendar days after the last Critical Milestone will be cause for immediate termination of this Agreement, and City shall be entitled to a full refund of any amounts paid to Contractor under this Agreement for the portion(s) of the Programs that are not accepted.

4.5.2 **Progress Reports.** Contractor will provide City with bi-weekly written status reports advising the City of its progress, which reports will be delivered two (2) calendar days following the two-week period to which it relates.

4.5.3 **Project Managers.** Contractor and City shall each designate a Project Manager, who shall be accessible by telephone throughout the duration of the Agreement and shall be available 9 a.m. to 5 p.m. Monday through Friday, excluding City-designated holidays. These hours may be adjusted by mutual agreement of City and Contractor.

(a) The City’s Project Manager will be authorized to make binding decisions for the City regarding this Agreement and will: (i) review all specifications, technical materials and other documents submitted by Contractor, request necessary corrections, and approve such documents; (ii) provide requested City information and data and assume responsibility on the adequacy of the same; (iii) advise Contractor of City’s requirements; and (iv) upon request provide access to City’s staff, facility and hardware. City’s Project Manager shall have the right to manage and direct any aspect of the Project as may be necessary, in his or her opinion, to safeguard the interest of the City. City’s Project Manager shall communicate all of his or her concerns to Contractor’s Project Manager. In the event Contractor believes that any direction being given by City’s Project Manager shall impair the performance of the Project or any phase thereof, Contractor shall immediately inform the City’s Project Manager of its concern. Except as specifically provided under this Agreement, City’s Project Manager’s management of the Project shall not relieve Contractor of any obligations or liabilities set forth in this Agreement and the Appendices or Exhibits thereto.

(b) Throughout the term of this Agreement, whenever the Contractor’s Project Manager is not on site, he or she must be available by phone or e-mail. Whenever the Contractor’s Project Manager will be unavoidably absent or otherwise unavailable by phone or e-mail for more than eight hours, then a substitute Project Manager must be designated to respond to telephone calls and e-mails from the City. Contractor shall use its best efforts to maintain the same Project Manager until Final Acceptance of the Programs.

Contractor’s Project Manager: [insert name]
[mailing address]
[phone number]
[e-mail address]

City’s Project Manager: Director of Information Technology
Retirement System

1145 Market Street, 5th Floor
San Francisco, CA 94103
(415) 487-7000
ret-it.contract@sfgov.org

4.5.4 Changing Project Managers. The City and Contractor shall use their best efforts to maintain the same Project Manager until Final Acceptance of the System. However, if a Party needs to replace its Project Manager, the Party shall provide the other Party written notice thereof at least forty-five (45) days prior to the date the Project Manager shall be replaced. Such notice shall provide all the required information above. Notwithstanding the foregoing, the Parties have the right to appoint temporary Project Managers in connection with short term unavailability, sick leave or reasonable vacations. Parties shall notify each other in advance of any such temporary appointments. City may require Contractor to replace its Project Manager, by giving Contractor notification thereof and City's objective reasons therefor.

4.5.5 Qualified Personnel. Contractor represents and warrants that it is qualified to perform the Services required by the City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. Contractor will comply with the 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 sufficient resources for timely completion within the project schedule.

4.5.6 Meetings. From the commencement date of the Project until the Final Acceptance of the Programs, the Project Managers shall communicate at times and locations designated by City to discuss the progress of the Project. Until the Final Acceptance of the Project, the Project Managers shall communicate, as required by the City, to discuss any operational problems or defects that City has encountered. City shall have the right to call a meeting at any time by providing Contractor forty-eight (48) hours written notice thereof. Such notice shall provide the time, place and the purpose of the meeting. Contractor and City's Project team must be available to meet as often as is necessary to facilitate timely completion of the Project.

4.5.7 Inspection. City's Project Manager shall have the right to inspect and/or test, at any time, all Work, Deliverables and materials to be provided for the Project, and the manufacture, assembly and installation of such Deliverables and materials. City's Project Manager's inspection shall be based on compliance with the Agreement. City's Project Manager's right to inspect all aspects of the Project shall not relieve Contractor of its obligation to furnish material and workmanship in accordance with this Agreement. City's Project Manager may reject any portion of the Project, which fails to meet any applicable standard.

(a) **Defects Post-Inspection.** Notwithstanding any previous inspection, acceptance, or payment by the City for any Work, or Deliverables found to be in non-compliance with the Agreement, or found to be defective before Final Acceptance of the Project, such Work or Deliverables shall be repaired or replaced within a reasonable period of time by Contractor at its own cost and expense.

(b) **Special Testing Tools.** Contractor shall furnish all tools, labor and material which Contractor deems necessary to inspect any Deliverables, Work or material. Unless purchased by the City as part of the Project, Contractor shall provide all test equipment

needed to verify Deliverables or Work at its sole cost and expense. The equipment provided by Contractor for performance test shall currently be certified as “calibrated” by the test equipment manufacturer, or its authorized calibration service agent. Unless purchased by the City, all test equipment shall remain the property of Contractor.

4.5.8 Right to Stop Work. City’s Project Manager shall have the right to stop any Work on the Project if: (i) City notifies Contractor of a defect in the Work or Deliverables and after such notice, Contractor fails to promptly commence correction of any identified defects in the Work or Deliverables; or (ii) Contractor fails to carry out any portion of the Project in accordance with this Agreement. All stop work orders from the City shall be in writing and signed by City’s Project Manager. City shall specifically state the cause for the order to stop work. Upon receiving a stop work order, Contractor shall immediately cease working on that portion of the Work specified in the order, until the cause for such order has been eliminated. City’s right to stop any work on the Project shall not give rise to a duty on the part of the City to exercise this right for the benefit of Contractor or any other person or entity. In the event City’s Project Manager orders work to be stopped without proper justification, City shall reimburse Contractor for the actual and direct costs incurred by Contractor due to the delay. Furthermore, Contractor will be entitled to a time extension equal to the number of days delay City has caused due to the unjustified work stoppage. In no event will a stop work order extend beyond 30 days.

4.5.9 RESERVED.

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. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void

4.6 Maintenance Services Option. City, at its sole discretion, reserves the right to obtain maintenance services from Contractor for a period up to two (2) years and two(2) one-year increments thereafter from final acceptance of the Programs by City or upon expiration of the performance warranty provided herein. Contractor will provide maintenance services for the Programs in accordance with the terms and conditions of this Agreement and Appendix F (Maintenance Terms and Conditions). Annual maintenance and support charges shall not increase more than two and a half percent (2.5%) of the rate of the year immediately prior to such increase.

4.7 RESERVED

4.8 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.8.1 Independent Contractor. For the purposes of this Section 4.9, “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 is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, and its agents and employees will not represent or hold themselves out to be employees of the City at any time. Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or

distributions by the City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor is liable for its acts and omissions. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing Services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor, or any of its agents or employees. 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 the City determine that Contractor is not performing in accordance with the requirements of this Section, 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 warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.8.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.9 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.

4.9 Assignment. The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.10 Liquidated Damages. By entering into this Agreement, Contractor agrees that in the event the Services are delayed beyond the Critical Milestones as provided in Appendices A-D, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the sum of **[insert whole dollar amount in words and numbers -- no pennies and no ".00"]** per calendar day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded.

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. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor's failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

4.11 **Performance Bond.** The Contractor is required to furnish a performance bond in a form acceptable to City, in a sum of not less than [insert bonding level] of the annual amount of the contract to guarantee the faithful performance of this contract. The bond must be approved as to sufficiency and qualifications of the surety by the Controller.

4.12 **Fidelity Bond.** Contractor shall maintain throughout the term of this Agreement, at no expense to City, a blanket fidelity bond or a blanket crime policy (Employee Dishonesty Coverage) covering all officers and employees in an amount of not less than \$[0000] with any deductible not to exceed \$[0000] and including City as additional obligee or loss payee as its interest may appear.

4.13 **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 Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded Agreement.

Article 5 Insurance, Indemnity and Warranties

5.1 Insurance.

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

(a) Commercial General Liability Insurance with limits not less than \$[_,000,000] each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. **Policy must include Abuse and Molestation coverage.**

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

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

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

(e) Technology Errors and Omissions Liability Insurance, with limits of \$[_,000,000] for each claim and each loss. The policy shall at a minimum cover professional

misconduct or lack of the requisite skill required for the performance of Services defined in this Agreement and shall also provide coverage for the following risks:

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

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

(f) Cyber and Privacy Liability Insurance with limits of not less than \$[_,000,000] per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, PHI or other PII, stored or transmitted in electronic form.

5.1.2 Additional Insured.

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

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

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

5.1.4 Primary Insurance.

(a) The Commercial General 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.

(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.

5.1.5 Other Insurance Requirements.

(a) Thirty (30) days' advance written notice shall be provided to 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 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, be maintained for a period of three (3) 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 City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

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

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

5.2 Indemnification

5.2.1 General Indemnification. Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are 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, experts, and related costs, and City's costs of investigating any claims against City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent,

which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

5.2.2 Infringement Indemnification. If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the Programs infringes a patent or copyright, or any rights of a third party, or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (infringement), Contractor will hold City harmless and defend such action at its expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Programs constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement. In the event that a final injunction shall be obtained against City's use of the Programs by reason of Infringement, or in Contractor's opinion City's use of the Programs is likely to become the subject of Infringement, Contractor may at its option and expense (a) procure for City the right to continue to use the Programs as contemplated hereunder, (b) replace the Programs with non-infringing, functionally equivalent substitute Programs, or (c) suitably modify the Programs to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Programs. If none of these options is reasonably available to Contractor, then this Agreement may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Agreement for the development and license of the infringing Programs.

5.2.3 Under no circumstances will City indemnify or hold harmless Contractor.

5.3 Warranties

5.3.1 Warranty of Title. Contractor warrants that the Programs developed pursuant to this Agreement will, prior to its transfer to City, be the sole and exclusive property of Contractor.

5.3.2 Warranty of Authority; No Conflict. Each Party hereby warrants to the other that it is authorized to enter into this Agreement and that its performance thereof will not conflict with any other agreement.

5.3.3 Warranty of Performance Specifications; Warranty Services. Contractor hereby warrants that when fully implemented, the developed Programs, configuration, customization and services performed by Contractor pursuant to this Agreement, when fully implemented, including technical and functional system integration that includes planning, fit/gap analysis, design, configuration, enhancements and custom programming, and developed interfaces (collectively "System Integration and Customization"), will perform in accordance with the required functionality defined in Appendix [____] during a one year period following the issuance of written Acceptance by City. Upon City issuing written notice to Contractor of a warranty breach under this section, Contractor shall correct and repair the configuration and customized code provided by Contractor during the Warranty Period, at no charge to City, within thirty (30) days following the notice, provided that:

(a) The problem encountered occurs within one year of the acceptance of such provided System Integration and Customization.

(b) The root cause analysis indicates the problem is in the system not meeting the System Integration and Customization requirements where the Contractor has responsibility (e.g., a problem caused by the developed, configured or customized COTS software or hardware component not meeting requirements, a defect in the configuration or code created by the Contractor).

(c) Full correction of the system defect is to be completed by Contractor unless otherwise approved by City, and the corrected code shall be appropriately tested to verify that no regression errors are introduced. Contractor shall warrant against Version Locking due to customization of the system.

Article 6 Liability of the Parties

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

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

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

Article 7 Payment of Taxes

7.1 Contractor to Pay All Taxes. Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by 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. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to timely report on behalf of City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as

amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by City to enable 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 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 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 (“Notice of Termination”). The Notice of Termination shall specify the date on which termination of the Agreement shall become effective (“Termination Date”).

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 affect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of the 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) Completing performance of any Services that City requires Contractor to complete prior to the Termination Date.
- (b) Halting the performance of all Services on and after the Termination Date.
- (c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.
- (d) At City’s direction, assigning to City any or all of Contractor’s right, title, and interest under the orders and subcontracts cancelled. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the cancellation of such orders and subcontracts.
- (e) Subject to City’s approval, settling all outstanding liabilities and all claims arising out of the cancelled orders and subcontracts.
- (f) Taking such action as may be necessary, or as 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 Termination Date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

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

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

(c) The reasonable cost to Contractor of handling and returning material or equipment delivered to City or otherwise disposed of as directed by City.

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

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

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

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

8.2 Termination for Default; Remedies.

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

(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.	10.4	Nondisclosure of Private, Proprietary or Confidential Information
4.6	Subcontracting	10.10	Alcohol and Drug-Free Workplace
4.10	Assignment	10.13	Working with Minors
Article 5	Insurance, Indemnity and Warrant	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 11	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 the 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, reorganization or arrangement, 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 Default Remedies. 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 City.

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 in accordance with Article 11.

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

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

8.4.1 Upon termination of this Agreement, Contractor will submit an invoice to City for an amount which represents the value of its work or services actually performed prior to the effective date of termination for which Contractor has not previously been compensated, except that with respect to reimbursement for Contractor's services, in no event will the compensation paid for the month in which termination occurs be greater than the scheduled deliverable fee if the engagement is deliverable based, or the 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.

8.4.2 Upon termination or expiration of this Agreement, Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

8.5 **Survival.** This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services		Article 9	Property Rights of the Parties
3.4	Audit and Inspection of Records		10.4	Nondisclosure of Private, Proprietary or Confidential Information
3.5	Submitting False Claims		11.6	Dispute Resolution Procedure
4.9	Independent Contractor; Payment of Taxes and Other Expenses		8.3	Non-Waiver of Rights
Article 5	Insurance, Indemnity and Warranties		11.7	Agreement Made in California; Venue
6.1	Liability of City		11.8	Construction
6.3	Liability for Incidental and Consequential Damages		11.9	Entire Agreement
Article 7	Payment of Taxes		11.10	Compliance with Laws
8.1.6	Payment Obligation		11.11	Severability
8.2.2	Default Remedies		Article	Data and Security

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8.5.1 Subject to the survival of the Sections identified in Section 8.5, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Intellectual Property Rights of the Parties

9.1 RESERVED.

9.2 **Sale of the Programs.** Upon receipt of final payment for the System, Contractor will convey to City good and marketable title to the System free and clear of all liens, claims and encumbrances.

9.3 **Ownership of Underlying Modules.** The foregoing conveyance of title is subject to Contractor's retention of ownership of all modules developed by Contractor as a utility routine or generalized interface and not specifically for City.

9.4 **City Data.** In the performance of Services, Contractor may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed 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. City Data shall be returned to City upon Acceptance of the Programs. Contractor shall within fifteen (15) calendar days purge or physically destroy all City Data from its servers or files and provide City with written certification within five (5) calendar days that such purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

9.5 RESERVED.

9.6 **Competition.** Nothing in this Agreement shall be construed so as to preclude Contractor from developing, using, or marketing software that is competitive with that prepared for City hereunder, irrespective of whether such software is similar in functionality or design or is otherwise related to the Programs developed by Contractor for City pursuant to this Agreement.

9.7 RESERVED.

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 City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by 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 Labor and Employment Code Article 141, 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 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 Article 141. Information about and the text of Article 141 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 Article 141, 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 San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. 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 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 Labor and Employment Code Article 131.2.

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

10.7 Minimum Compensation Ordinance. San Francisco Labor and Employment Code Article 111 applies to this Agreement. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of the Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it is in compliance with Article 111.

10.8 Health Care Accountability Ordinance. San Francisco Labor and Employment Code Article 121 applies to this Agreement. Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 121.3 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 Article 121, 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 Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with twenty (20) or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

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

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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 (12) months after the date 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 ten percent (10%) in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Reserved.

10.13 Reserved.

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 Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, 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 Article 142.

10.14.2 The requirements of Article 142 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. Article 142 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 Nonprofit Contractor Requirements.

10.15.1 **Good Standing.** If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General's Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City's request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with

the California Attorney General's Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

10.15.2 Public Access to Nonprofit Records and Meetings. If Contractor is a nonprofit 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 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.

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.

10.18 Reserved.

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:	San Francisco City and County Employees' Retirement System 1145 Market Street, 5th Floor San Francisco, CA 94103 ret-it.contract@sfgov.org (415) 487-7000 Attn: Director of Information Technology
To Contractor:	Name Title Company Address Email Phone

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Laws Requiring Access for People with Disabilities.

11.2.1 Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public,

whether directly or through a contractor, must be accessible to people with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

11.2.2 Contractor shall adhere to the requirements of (i) the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), (ii) Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), (iii) Section 255 of the Communications Act Guidelines, (iv) the applicable Revised Section 508 Standards published by the U.S. Access Board (<https://www.access-board.gov/ict/>), and (v) the Web Content Accessibility Guidelines (WCAG) 2.1, Level AA, as amended from time to time. Contractor shall ensure that all information content and technology provided under this Agreement fully conforms to the applicable Revised 508 Standard, as amended from time to time, prior to delivery and before the City's final acceptance of the Services and/or Deliverables.

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

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code § 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 by written instrument executed and approved in the same manner as this Agreement.

11.6 **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. Disputes will not be subject to binding arbitration. 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 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 City until a written claim therefor has been presented to and rejected by City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

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

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

11.9 Entire Agreement. This contract, including the appendices, 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. The Parties agree that this Agreement, including all appendices, sets forth the Parties’ complete agreement. If the Appendices to this Agreement include any standard printed terms from Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between City’s terms and Contractor’s printed terms attached, City’s terms in this Agreement shall take precedence, followed by the procurement issued by the department (if any), Contractor’s proposal, and Contractor’s printed terms, respectively. Any hyperlinked terms included in Contractor’s terms shall have no legal effect.

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 any City Data under this Agreement, and in no event later than twenty-four (24) hours after Contractor 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 City’s instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where City Data is stored.

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

Article 12 Department Specific Terms

12.1 Reserved.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

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

13.1.2 City Data; Confidential Information. In the performance of Services, Contractor may have access to, or collect on City’s behalf, City Data, which may include proprietary or Confidential Information that if disclosed 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 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 thirty (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.** This Agreement may require the exchange of information covered by the U.S. Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). A Business Associate Agreement ("BAA") executed by the parties is attached as Appendix [insert the appendix letter].

13.4 **Management of City Data.**

13.4.1 **Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of, 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 City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by 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 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 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 and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

13.4.2 **Disposition of City Data.** Upon request of City or termination or expiration of 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 subcontractor's environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

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

13.6 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 PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any "Leak") within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. 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 twenty-four (24) 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 Chapter 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 City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

CITY

CONTRACTOR

Recommended by:

[company name]

Caryn Bortnick
Chief Operating Officer
San Francisco City and County Employees'
Retirement System

[name of authorized representative]
[title]
[optional: address]
[optional: city, state, ZIP]

City Supplier Number: [Supplier Number]

Approved as to Form:

David Chiu
City Attorney

By: _____
[name of Deputy City Attorney]
Deputy City Attorney

Appendices

- A: Performance Specifications
- B: Documentation
- C: Project Schedule
- D: Acceptance Test Plan
- E: Calculation of Charges
- F: Maintenance Terms and Conditions

Appendix A
Performance Specifications

Appendix B Documentation

The following is a description of all technical publications relating to use of the System, such as reference, installation, administrative, maintenance, and programmer manuals, and the electronic copies to be provided by Contractor to City.

Appendix C Project Schedule

1. Start Date: [insert start date]

The date on which the time for completion of Phase 1 shall begin to accrue.

2. Notice to Proceed: [insert number in words and (numbers)] days

The minimum time period of advance notification that City shall give Contractor to notify Contractor that Authorization has been obtained for this Agreement and that Contractor should be ready to begin Work on the Start Date.

3. Phase 1: Preparation of Functional Specifications

a. Time for completion: [insert number in words and (numbers)] days

The length of time following the Start Date during which Contractor shall complete and deliver to City for City's review the following Work:

b. Functional Specifications of the System

[List any additional things Contractor shall complete during Phase 1 and any Critical Milestones associated with this phase.]

c. Review Period: [insert number in words and (numbers)] days

➔ Should be a number several multiples smaller than the number used for the Acceptance Window.

The length of time following delivery to City of the Work specified above, or resubmission of such Work to City following error correction by Contractor, that City shall have to review the completed Work and give notice to Contractor of City's acceptance or rejection of the completed Work.

d. Acceptance Window: [insert number, such as 90 or 120, in words and in (numbers)] days

The time period following completion of Phase 1 during which Contractor must secure Acceptance of that phase from City.

4. Phase 2: Preparation of Design Specifications

a. Time for completion: [insert number in words and (numbers)] days

The length of time following Acceptance by City of the Functional Specifications and other Work produced in Phase 1 during which Contractor shall complete the following Work:

b. Design Specifications of the System

c. Review Period: [number in words and (numbers)] days

The length of time following delivery to City of the Work specified above, or resubmission of such Work to City following error correction by Contractor, that City shall have to review the completed Work and give notice to Contractor of City's acceptance or rejection of the completed Work.

d. Acceptance Window: [insert number, such as 90 or 120, in words and in (numbers)] days

The time period of following completion of Phase 2 during which Contractor must secure Acceptance of the completed phase from City.

5. Phase 3: Program Coding, System Installation, and Documentation Delivery

a. Time for completion: [insert number in words and (numbers)] days

The length of time following Acceptance by City of the Design Specifications and other Work produced in Phase 2 during which Contractor shall complete the following Work:

Coding of the Programs for the System

Factory, pre-installation testing of the System by Contractor **[and City, if so desired]**

Installation of the completed System at its final City site

Delivery of Documentation for System

[List additional requirements Contractor shall complete during Phase 3 and any Critical Milestones associated with this phase.]

Following completion by Contractor of Phase 3, City and Contractor shall commence performance of the Acceptance Tests.

Appendix D

Acceptance Test Plan TO BE CUSTOMIZED FOR EACH PROJECT

➔ Acceptance Criteria:

Explicitly define what must be satisfied for there to be acceptance. This section is similar to the Performance Specifications, but unlike the Performance Specifications, which gets superseded by the Functional Specifications and later the Design Specifications, it remains the same over the course of the Agreement and thus provides a standard for evaluating the completed System that can be specified at the outset and remain unaltered. Use the following checklist of important items to consider:

1. Response time of System at peak load and during off hours
2. Transaction rate
3. System capacity
4. System Reliability--Specify the length of time of the reliability test period [i.e. 30 days] and the permissible downtime of the system during that period [i.e. "X"%]. Also specify the required accessibility of the system to peripheral units during that time period [i.e. not more than 10% can be prohibited access simultaneously at any time except during downtime of the System].
5. Test failures--Define what constitutes a test failure. Can categorize failures by severity.
6. Permissible number of failures--Define the number of failures and the severity thereof that are permissible before the System is determined to have failed the test(s).
7. Retesting--Circumstances under which retesting is appropriate.
8. System satisfies all the requirements set forth in the Performance Specifications.

Acceptance Procedure:

Things to consider in drafting this section:

1. Use of the old system and the new System in parallel--Length of time Contractor has to debug the System while at this stage; performance tests City will perform at this point.
2. Certification by Contractor that the System is ready to be used in operation by City.
3. Cutover from old System to new System--Tests that must be passed before this is done; cutover procedure; retention of old system as a backup and the conditions that would cause and the method of reversion to the old system.
4. Time for Contractor to debug the System while in operation (usually a short time, if any).
5. Time frame for Final Acceptance procedures--Testing by City of the System in full operation; total amount of time for the System acceptance tests, and if the System fails to pass during that time, what will happen and the remedies that will be available.
6. Method and timing of issuance of Final Acceptance.
7. Equipment, material, and assistance Contractor is to provide during all stages of the testing.
8. Notice procedures for the City to inform Contractor of failed tests and for Contractor to inform City that errors have been corrected and the System is ready to be retested.
9. Recording procedures for the tests and their results.

10. Times during the acceptance testing period during which the installed System at City's site will be available to Contractor to perform debugging.

Appendix E
Calculation of Charges

1. **Project Cost.** In accordance with Article 3 of this Agreement, Contractor's total compensation under this Agreement is detailed below, inclusive of all costs required to complete all work specified in Appendix A. In no event shall the total costs under this Agreement exceed the amount provided in Article 3, Section 3.3, of this Agreement.

Deliverable or Description	Target Completion Dates	Cost
Total Cost		

2. **Fixed Price.** Project costs are fixed for the term of this Agreement.
3. **Travel and Expense Reimbursement.** No travel and expense reimbursement shall be provided by City.
4. **Retainage.** City shall retain ten percent (10%) of each invoiced amount and shall be retained until completion of the System.
5. **Invoicing.**
6. **Location of Work**
7. **Project Evaluation**
8. **Reports**
Contractor shall submit written reports as requested by Retirement System. Format for the content of such reports shall be determined by Retirement System. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.
9. **Department Liaison**
In performing the Services provided for in this Agreement, Contractor's liaison with Retirement System will be [insert name of contact person].
10. **Services Provided by Attorneys**

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys,

including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

Appendix F

Software Maintenance Terms and Conditions

1. Scope of Service Coverage

a. Contractor shall provide Support Services and provide Upgrades during the term of this Maintenance Agreement for the Software.

b. During the term of this Maintenance Agreement, Contractor will furnish Error, Defect or Malfunction correction in accordance with the Priority Categories listed below, based on City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

1) Priority 1: An Error, Defect or Malfunction which renders the Software inoperative; or causes the Software to fail catastrophically.

2) Priority 2: An Error, Defect or Malfunction which substantially degrades the performance of the Software, but does not prohibit City's use of the Software.

3) Priority 3: An Error, Defect or Malfunction which causes only a minor impact on the use of the Software.

c. Contractor will furnish Error, Defect or Malfunction correction in accordance with the following protocols:

1) Priority 1 Protocol: Within two hours, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; shall proceed to immediately provide a Fix, a Patch or a Workaround; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Subsequent Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect or Malfunction is corrected.

2) Priority 2 Protocol: Within four hours, Contractor assigns a product technical specialist(s) to diagnose the Error, Defect or Malfunction and to commence correction of the Error, Defect or Malfunction; to immediately provide a Workaround; to provide escalation procedures as reasonably determined by Contractor's staff; and to exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Software maintenance release.

3) Priority 3 Protocol: Contractor may include a Fix or Patch in the next Software major release.

2. Hotline Support. Contractor shall provide remote access hotline support to City to help City answer routine questions with respect to the use of the Software. Contractor also shall provide remote access hotline support to City to initiate resolution of Priority 1 and Priority 2 Errors, Defects and Malfunctions. Hotline support shall be made available by phone between the hours of 8 a.m. and 6 p.m. Pacific time Monday through Friday, except legal holidays. Hotline support shall be available by electronic bulletin board, electronic mail or other service 24-hours a day, seven-days a week. Responses to questions posted by electronic means will be made within

the time frame established under Priority Protocols for an Error, Defect or Malfunction in a Software Product.

3. City Responsibilities Related to Support. City shall use reasonable efforts to make available to Contractor reasonable access to the equipment on which City experienced the Error, Defect or Malfunction, the Software Product and all relevant documentation and records. City shall also provide reasonable assistance to Contractor, including sample output and diagnostic information, in order to assist Contractor in providing Support Services. City shall be responsible for the interface between the Software and other software products installed on City equipment. Unless otherwise agreed in writing between City and Contractor, City is responsible for installing, managing and operating any Software delivered under this Maintenance Agreement.

4. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of the Contractor to replace unsatisfactory work, equipment, or materials although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that did not conform to the requirements of this Maintenance Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

5. Qualified Personnel. Work under this Maintenance Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall assign adequate personnel resources to provide the level of service within the response times specified in this Maintenance Agreement.