



CITY OF PHOENIX

**FINANCE DEPARTMENT
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**REQUEST FOR PROPOSAL
RFP 22-071 (SBM)**

TELEHEALTH SERVICES - REQUIREMENTS CONTRACT



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ATTACHMENT A – BID SCHEDULE (UPLOADED AS A SEPARATE EXCEL SPREADSHEET)



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Please read before continuing to the offer document. This list may not include every requirement; the purpose is to assist vendors, but vendors are expected to read and comply with the entire solicitation.

SOLICITATION RESPONSE CHECK LIST

Check off each of the following as the necessary action is completed.

- All forms have been completed and signed, including Solicitation Disclosure form.
- All Submittals are included.
- Reviewed and verified prices offered.
- Checked price extensions and totals.
- Included any required drawings or descriptive literature.
- If required, checked and included the amount of the offer surety.
- Reviewed the insurance requirements, if any, to assure compliance.
- Included the specified number of copies of the offer as indicated in Submittal section.
- Included signed addenda, if any.
- Addressed the mailing envelope to the Procurement Officer on the solicitation front page, at the address listed.
- The mailing envelope clearly shows your company name and address, the solicitation number, solicitation title and the offer opening date.

Mailed the response in time – City must receive offers no later than the date and time indicated in the Schedule of Events or addenda.



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1. DESCRIPTION – STATEMENT OF NEED:

1.1. The City of Phoenix invites sealed offers for innovative solutions from telehealth providers for a five-year period commencing on or about January 17, 2022, in accordance with the specifications and provisions contained herein or the “Effective Date” which is upon award by City Council, conditioned upon signature and recording by the City Clerk’s department, as required by the Phoenix City Code, whichever is later.

1.2. This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.

1.3. Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence: by reaching the end of the term including any extensions exercised, or termination pursuant to the provisions of this Agreement.

2. CITY’S VENDOR SELF-REGISTRATION AND NOTIFICATION:

Vendors must be registered in the City’s procurePHX Self-Registration System at <https://www.phoenix.gov/financesite/Pages/EProc-help.aspx> to respond to solicitations and access procurement information. The City may, at its sole discretion, reject any offer from an Offeror who has not registered.

3. SCHEDULE OF EVENTS:

ACTIVITY (All times are local Phoenix time)	DATE
Pre-Offer Conference	November 29, 2021, at 2:00 p.m.
Pre-Offer Conference Location	<p>Join from the meeting link: https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=me7c557649047b87c2a321beb502b207c</p> <p>Join by meeting number: Meeting number (access code): 2455 110 1204 Meeting password: MiWxsmqT669</p> <p>Tap to join from a mobile device (attendees only):</p>



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	<p>+1-415-655-0001,,24551101204## US Toll</p> <p>Join by phone: +1-415-655-0001 US Toll Global call-in numbers</p> <p>Join from a video system or application: Dial 24551101204@cityofphoenix.webex.com</p> <p>You can also dial 173.243.2.68 and enter your meeting number.</p>
Written Inquiries Due Date	December 3, 2021, at 5:00 p.m.
Offer Due Date	December 10, 2021, 5:00 p.m.
Offer Submittal Location	<p>Finance Department – Procurement Division 251 W Washington St, 8th Floor Phoenix, AZ 85003</p>

The City reserves the right to change dates and/or locations as necessary, and the City does not always hold a Pre-Offer Conference or Site visit.

4. PREPARATION OF OFFER:

4.1. All forms provided in Submittal Section must be completed and submitted with the offer. The signed and completed Solicitation Disclosure form must be included or your offer may be deemed non-responsive.

4.2. It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the offer must be initialed in original ink by the authorized person signing the offer. No offer will be altered, amended or



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withdrawn after the specified offer due date and time. The City is not responsible for Offeror's errors or omissions.

4.3. All time periods stated as a number of days will be calendar days.

4.4. It is the responsibility of all Offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:

4.4.1. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.

4.4.2. Study and carefully correlate Offeror's knowledge and observations with the solicitation and other related data.

4.4.3. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in or between the solicitation and other related documents.

4.4.4. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.

4.4.5. Offerors are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Offers offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.

4.4.6. Offer responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products offered. Offers submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.



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4.4.7. Prices will be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price will prevail unless obviously in error.

5. OBTAINING A COPY OF THE SOLICITATION AND ADDENDA:

Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/>. Any interested offerors without internet access may obtain this solicitation by calling the Procurement Officer or picking up a copy during regular business hours at the City of Phoenix Finance Department, Procurement Division, 251 W Washington St, 8th Floor, Phoenix, AZ. It is the Offeror's responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their offer.

6. EXCEPTIONS:

Offeror must not take any exceptions to any terms, conditions or material requirements of this solicitation. Offers submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the City's sole discretion. Offerors must conform to all the requirements specified in the solicitation. The City encourages Offerors to send inquiries to the procurement officer rather than including exceptions in their Offer.

7. INQUIRIES:

All questions that arise relating to this solicitation should be directed via email to the Procurement Officer and must be received by the due date indicated in the Schedule of Events. The City will not consider questions received after the deadline.

No informal contact initiated by Offerors on the proposed service will be allowed with members of City's staff from date of distribution of this solicitation until after city council awards the contract. All questions concerning or issues related to this solicitation must be presented **in writing**.

The Procurement Officer will answer written inquiries in an addendum and publish any addendums on the Procurement Website.

8. ADDENDA:

The City of Phoenix will not be responsible for any oral instructions made by any employees or officers of the City of Phoenix regarding this solicitation. Any changes will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the offer submittal.



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9. BUSINESS IN ARIZONA:

The City will not enter contracts with Offerors (or any company(ies)) not granted authority to transact business, or not in good standing, in the state of Arizona by the Arizona Corporation Commission, unless the offeror asserts a statutory exception prior to entering a contract with the City.

10. LICENSES:

If required by law for the operation of the business or work related to this Offer, Offeror must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

11. CERTIFICATION:

By signature in the offer section of the Offer and Acceptance page(s), Offeror certifies:

- The submission of the offer did not involve collusion or other anti-competitive practices.
- The Offeror must not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.

12. SUBMISSION OF OFFER:

Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events. Late offers will not be considered. The prevailing clock will be the City Department's clock.

Offers must be submitted in one of the following ways:

12.1. Submitted in a sealed envelope and the following information should be noted on the outside of the envelope:

- Offeror's Name
- Offeror's Address (as shown on the Certification Page)
- Solicitation Number



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- Solicitation Title
- Offer Opening Date

Such offers must be completed in ink or typewritten. Include the number of copies that are required as indicated in the Submittal section.

12.2 Submitted electronically by email to procurement@phoenix.gov and the following information should be noted in the email:

- Offeror's Name
- Offeror's Address (as shown on the Certification Page)
- Solicitation Number
- Solicitation Title
- Offer Opening Date

Due to file size limitations for electronic transmission (for sending or receiving), offers sent by email may need to be sent in parts with multiple emails. It is the responsibility of the Offeror to ensure that the offer (including all parts if sent in multiple emails) is timely and to confirm that there are no technical reasons that any offer submitted electronically may be delayed. The date and time on the email(s) as received/stamped by the City's inbox will provide proof of submission and verification whether the offer was received on or prior to the exact time and date indicated in the Schedule of Events.

Any original documents (such as bonds, guaranties, powers of attorney), if required by the solicitation, must be separately delivered to and received by the City on or prior to the exact time and date indicated in the Schedule of Events, with a clear indication of the offer for which it is attributed.

12.3 If available for this solicitation, submitted electronically by file transfer site. For instructions to upload a digital offer, Offeror must first indicate its intent to apply (and submit a completed "intent to apply" form, if provided in the solicitation) by email to procurement@phoenix.gov and the following information should be noted in the email:

- Offeror's Name
- Offeror's Address (as shown on the Certification Page)
- Solicitation Number



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- Solicitation Title
- Offer Opening Date

It is the responsibility of the Offeror to ensure that the offer is timely and to confirm that there are no technical reasons that any offer submitted electronically may be delayed. The date and time on the upload as received/stamped by the City's file transfer site will provide proof of submission and verification whether the offer was received on or prior to the exact time and date indicated in the Schedule of Events.

Any original documents (such as bonds, guaranties, powers of attorney), if required by the solicitation, must be separately delivered to and received by the City on or prior to the exact time and date indicated in the Schedule of Events, with a clear indication of the offer for which it is attributed.

13. WITHDRAWAL OF OFFER:

At any time prior to the solicitation due date and time, an Offeror (or designated representative) may withdraw the offer by submitting a request in writing and signed by a duly authorized representative. If Offeror withdraws the offer electronically by email to procurement@phoenix.gov, the request to withdraw must be in the form of a letter attached to the email that includes either an image of the duly authorized representative's signature or an electronic signature from a verifiable source, such as Adobe Sign, DocuSign or a similar verifiable software program.

14. OFFER RESULTS:

Offers will be opened on the offer due date, time and location indicated in the Schedule of Events, at which time the name of each Offeror, and the prices may be read. Offers and other information received in response to the solicitation will be shown only to authorized City personnel having a legitimate interest in them or persons assisting the City in the evaluation. Offers are not available for public inspection until after the City has posted the award recommendation on the City's website.

The City will post a preliminary offer tabulation on the City's website, <https://solicitations.phoenix.gov/Awards> within five calendar days of the offer opening. The City will post the information on the preliminary tabulation as it was read during the offer opening. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has evaluated the offers, the City will post an award recommendation on the website. By signing and submitting its offer, each Offeror agrees that this posting of the award recommendation to the City's website effectively serves as the Offeror's receipt of



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that notice of award recommendation. The City has no obligation to provide any further notification to unsuccessful Offerors.

15. PRE-AWARD QUALIFICATIONS:

- 15.1. Offeror must have been in operation a minimum of three years. The Offeror's normal business activity during the past three years will have been for providing the goods or services in this solicitation. (This information must be provided in The Submittal section, Years in Business and Customer Reference Listing of this solicitation.)
- 15.2. Upon notification of an award the Offeror will have ten calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this solicitation. Insurance requirements are non-negotiable.

16. AWARD OF CONTRACT:

- 16.1. Unless otherwise indicated, award(s) will be made to the most responsive, responsible Offeror(s) who are regularly established in the service, or providing the goods, contained in this solicitation and who have demonstrated the ability to perform in an acceptable manner.
- 16.2. Factors that may be considered by the City include:
- Technical capability of the Offeror to accomplish the scope of work required in the Solicitation. This may include performance history on past and current government or industrial contracts; and,
 - Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,
 - Safety record; and,
 - Vendor history of complaints and termination for convenience or cause.
- 16.3. Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.
- 16.4. A response to a solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Offers do not become contracts until they are executed by the Deputy Finance Director or Department Director. A contract has its inception in the award,



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eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

17. CITY'S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST:

The City reserves the right to disqualify any Offeror based on any real or apparent conflict of interest that is disclosed by the offer submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any Offeror submitting an offer herein waives any right to object now or at any future time, before any agency or body, including but not limited to, the City Council of the City of Phoenix or any court.

18. SOLICITATION TRANSPARENCY POLICY:

- 18.1. Commencing on the date and time a solicitation is published, potential or actual offerors or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under Arizona Statutes, until the resulting contract(s) are awarded to all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation.
- 18.2. As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff. Offerors may not discuss the solicitation with any City employees or evaluation panel members.
- 18.3. Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.
- 18.4. With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction



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on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.

- 18.5. This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. **OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.** After official Notice is received by the City for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.
- 18.6. "To discuss" means any contact by the Offeror, regardless of whether the City responds to the contact. Offerors that violate this policy will be disqualified until the resulting contract(s) are awarded, or all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

19. PROTEST PROCESS:

- 19.1. Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City's best interests to set new deadlines, amend the solicitation, cancel or re-bid.
- 19.2. Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.
- 19.3. Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.
- 19.4. Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations on the City's website to award the contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award



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recommendation, with exceptions only for good cause shown, within the City's full and final discretion.

19.5. All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:

- 19.5.1. Identification of the solicitation number;
- 19.5.2. The name, address and telephone number of the protester;
- 19.5.3. A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
- 19.5.4. The form of relief requested; and
- 19.5.5. The signature of the protester or its authorized representative.

19.6. The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City's Procurement Code, (Phoenix City Code, Ch. 43) and any protests or appeals not submitted within the time requirements will not be considered. Protests must be filed with the Procurement Officer.

20. PUBLIC RECORD:

All Offers submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If an Offeror believes that a specific section of its Offer response is confidential, the Offeror will isolate the pages marked confidential in a specific and clearly labeled section of its Offer response. An Offeror may request specific information contained within its Offer is treated by the Procurement Officer as confidential provided the Offeror clearly labels the information "confidential." To the extent necessary for the evaluation process, information marked as "confidential" will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Offerors as "confidential" available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify the Offeror in writing of any request to view any portion of its Offer marked "confidential." The Offeror will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Offeror does not provide the Procurement Officer with a court order enjoining release of the



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information during the designated time, the Procurement Officer will make the information requested available for inspection.

21. LATE OFFERS:

Late Offers must be rejected, except for good cause. If a late Offer is submitted, the Department will document the date and time of the submittal of the late Offer, keep the Offer and notify the Offeror that its Offer was disqualified for being late.

22. RIGHT TO DISQUALIFY:

The City reserves the right to disqualify any Offeror who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the Offeror submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a solicitation response, the Offeror waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the City or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Offeror.

23. CONTRACT AWARD:

The City reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the City. The City reserves the right to multiple award.

24. DETERMINING RESPONSIVENESS AND RESPONSIBILITY:

29.1 Offers will be reviewed for documentation of any required minimum qualifications, and completeness and compliance with the solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

29.2 Responsiveness: Nonresponsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers will render an Offer nonresponsive.

29.3 Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the Offeror, late deliveries, or other unsatisfactory performance that may result in additional administrative



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costs. It is important that the Offeror be a responsible Offeror. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

25. EVALUATION OF COMPETITIVE SEALED OFFERS:

The City will use its discretion in applying the following processes to this solicitation. Any ties in scoring will be resolved with a best and final price request and the lowest price will prevail.

26. DETERMINING RESPONSIVENESS AND RESPONSIBILITY:

26.1. Offers will be reviewed for documentation of minimum qualifications, completeness, and compliance with the Solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

26.2. Responsiveness: Nonresponsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers (as the case may be) will render an Offer nonresponsive.

26.3. Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and an Offer that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as nonresponsive. Alternatively, the City in its sole discretion may instruct in writing that any Offeror remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so in writing, the City may determine the Offer to be nonresponsive.

26.4. Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the contractor, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible contractor. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

26.5. The Procurement Officer will review each Offer to determine if the Offeror is responsible. The City's determination as to whether an Offeror is responsible will be based on all information furnished by the Offeror, interviews (if any), and information received from Offeror's references, including information about Offeror's history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the Contract resulting from the solicitation will not be made until any necessary investigation, which each Offeror agrees to permit by submitting its Offer, is made by the City as it deems necessary. A review of responsibility may occur up to contract award.



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26.6. The Offeror's unreasonable failure to promptly supply information about an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror.

27. DETAILED EVALUATION OF OFFERS AND DETERMINATION OF COMPETITIVE RANGE:

During deliberations, the Evaluation Panel will reach a consensus score for each evaluation criterion except price. The Procurement Officer will score the price, which will be added to the overall consensus score. The overall consensus scores will determine the Offerors' rankings and which Offers are within the Competitive Range, when appropriate.

28. OFFERS NOT WITHIN THE COMPETITIVE RANGE:

The City may notify Offerors of Offers that the City determined are not in the Competitive Range.

29. DISCUSSIONS WITH OFFERORS IN THE COMPETITIVE RANGE:

29.1. The City will notify each Offeror whose Offer is in the Competitive Range or made the 'short list' and provide in writing any questions or requests for clarification to the Offeror. Each Offeror so notified may be interviewed by the City and asked to discuss answers to written or oral questions or provide clarifications to any facet of its Offer. The Offerors in the competitive range may be required to provide a demonstration of their product.

29.2. Demonstrations - Offerors in the competitive range may be invited to construct a hands-on sample or presentation of their solution at the City of Phoenix. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. The City may also require a hands-on lab demonstration designed specifically for the evaluation panel. The results of the surveys will be tabulated and delivered to the evaluation team for the final review and solution selection session(s).

29.3. If an Offer in the Competitive Range contains conditions, exceptions, reservations or understandings to or about any Contract or Solicitation Scope requirement, the City may discuss or negotiate the conditions, exceptions, reservations or understandings during these meetings. But the City in its sole discretion may reject any and all conditions, exceptions, reservations and understandings, and the City may instruct any Offeror to remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so, the City may determine the Offer is nonresponsive,



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and the City may revoke its determination that the Offer is in the Competitive Range.

- 29.4. To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Offeror about other Offers received in response to this solicitation. During discussions with Offerors in the Competitive Range, the City will not give Offerors specific prices or specific financial requirements that Offerors must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace or otherwise unacceptable. Offerors will not be told of their relative rankings before Contract award.

30. BEST AND FINAL OFFERS (BAFO):

- 30.1. A BAFO is an option available for negotiations. Each Offeror in the Competitive Range, which is determined in the City's sole discretion, may be afforded the opportunity to amend its Offer and make one BAFO.
- 30.2. If an Offeror's BAFO modifies its initial Offer, the modifications must be identified in the BAFO. The City will evaluate BAFOs based on the same requirements and criteria applicable to initial Offers. The City will adjust appropriately the initial scores for criteria that have been affected by Offer modifications made by a BAFO. Based on the criteria defined in the solicitation as weighted, the City will then perform final scoring and prepare final rankings.
- 30.3. The Evaluation Panel will recommend the Offer that is the best value and most advantageous to the City based on the evaluation criteria.
- 30.4. The City reserves the right to make an award to an Offeror whose Offer is the highest rated, best value, and most advantageous to the City based on the evaluation criteria, without conducting written or oral discussions with any Offeror, without negotiations, and without soliciting BAFOs.



SECTION II – STANDARD TERMS AND CONDITIONS

1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

- Shall, Will, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of Offer as non-responsive.
- Should:** Indicates something that is recommended but not mandatory. If the Contractor fails to provide recommended information, the City may, at its sole option, ask the Contractor to provide the information or evaluate the offer without the information.
- May:** Indicates something that is not mandatory but permissible.

For purposes of this solicitation, the following definitions will apply:

- "A.R.S." Arizona Revised Statute
- "Buyer" or "Procurement Officer" City of Phoenix staff person responsible for the solicitation. The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this contract.
- "City" The City of Phoenix
- "Contractor" The individual, partnership, or corporation who, as a result of the competitive process, is awarded a contract by the City of Phoenix.
- "Contract" or "Agreement" The legal agreement executed between the City of Phoenix, AZ and the Contractor.
- "Days" Means calendar days unless otherwise specified.
- "Deputy Finance" The contracting authority for the City of Phoenix, AZ,



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Director”	authorized to sign contracts and amendments thereto on behalf of the City of Phoenix, AZ.
“Employer”	Any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and employs one or more employees in this state. Employer includes this state, any political subdivision of this state and self-employed persons. In the case of an independent contractor, employer means the independent contractor and does not mean the person or organization that uses contract labor. (A.R.S. 23-211).
“Offer”	Means a response from a supplier, contractor or service provider to a solicitation request that, if awarded, binds the supplier, contractor or service provider to perform in accordance with the contract. Same as bid, proposal, quotation or tender.
“Offeror”	Any Vendor, Seller or Supplier submitting a competitive offer in response to a solicitation from the City. Same as Bidder or Proposer.
“Solicitation”	Means an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Quotations (RFQ), Request for Qualifications (RFQu) and request for sealed bids, or any other type of formal procurement which the City makes public through advertising, mailings, or some other method of communication. It is the process by which the City seeks information, proposals, bids or quotes from suppliers.
“Suppliers”	Firms, entities or individuals furnishing goods or services to the City.
“Vendor or Seller”	A seller of goods or services.

2. CONTRACT INTERPRETATION:

2.1. APPLICABLE LAW: This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.



2.2. CONTRACT ORDER OF PRECEDENCE: In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:

- 2.2.1. Special terms and conditions
- 2.2.2. Standard terms and conditions
- 2.2.3. Amendments
- 2.2.4. Statement or scope of work
- 2.2.5. Specifications
- 2.2.6. Attachments
- 2.2.7. Exhibits
- 2.2.8. Instructions to Contractors
- 2.2.9. Other documents referenced or included in the Solicitation

2.3. ORGANIZATION – EMPLOYMENT DISCLAIMER: The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor’s obligations under the agreement are considered to be City’s employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen’s compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.

2.4. SEVERABILITY: The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

2.5. NON-WAIVER OF LIABILITY: The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.

2.6. PAROL EVIDENCE: This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between



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the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

3. CONTRACT ADMINISTRATION AND OPERATION:

3.1. RECORDS: All books, accounts, reports, files and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements vendor has in place.

3.2. DISCRIMINATION PROHIBITED: Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended.

Any contractor, in performing under this contract, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee.

3.3. EQUAL EMPLOYMENT OPPORTUNITY AND PAY: In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Contractor will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.



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For a Contractor with 35 employees or fewer: Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.

For a Contractor with more than 35 employees: Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-Contractor agreements or subleases of this Agreement entered into by supplier/lessee. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.



3.4.3 Documentation: Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

3.4.4 Monitoring: The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

3.4. LEGAL WORKER REQUIREMENTS: The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:

- 3.4.1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.
- 3.4.2. A breach of a warranty under paragraph 1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
- 3.4.3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.

3.5. HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS: The Contractor's products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City.

At the request of City representatives, the Contractor will provide the City:

- 3.5.1. Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract
- 3.5.2. A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.



The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement. The City further reserves the right to make unannounced inspections of the Contractor’s facilities (during normal business hours).

- 3.6. COMPLIANCE WITH LAWS:** Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor’s business records, including personnel records to verify any such compliance.

Because the contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor’s acts.

- 3.7. LAWFUL PRESENCE REQUIREMENT:** Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies

- 3.8. CONTINUATION DURING DISPUTES:** Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.

- 3.9. EMERGENCY PURCHASES:** The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

4. COSTS AND PAYMENTS:

- 4.1. GENERAL:** Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or



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services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Offer.

- 4.2. PAYMENT DEDUCTION OFFSET PROVISION:** Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.
- 4.3. LATE SUBMISSION OF CLAIM BY CONTRACTOR:** The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.
- 4.4. DISCOUNTS:** Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.
- 4.5. NO ADVANCE PAYMENTS:** Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.
- 4.6. FUND APPROPRIATION CONTINGENCY:** The Vendor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Vendor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.
- 4.7. MAXIMUM PRICES:** The City will not be invoiced at prices higher than those stated in any contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.



4.8. F.O.B. POINT: All prices are to be quoted F.O.B. delivered, unless specified elsewhere in this solicitation.

5. CONTRACT CHANGES:

5.1. CONTRACT AMENDMENTS: Contracts will be modified only by a written contract amendment signed persons duly authorized to enter into contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.

5.2. ASSIGNMENT - DELEGATION: No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.

5.3. NON-EXCLUSIVE CONTRACT: Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source when necessary.

6. RISK OF LOSS AND LIABILITY:

6.1. TITLE AND RISK OF LOSS: The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.

6.2. ACCEPTANCE: All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.

6.3. FORCE MAJEURE: Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay



arises out of a force majeure occurrence in accordance with this force majeure term and condition.

If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.

6.4. LOSS OF MATERIALS: The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the project manager.

6.5. CONTRACT PERFORMANCE: Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor.

The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

6.6. DAMAGE TO CITY PROPERTY: Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City.

Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.



7. CITY'S CONTRACTUAL RIGHTS:

- 7.1.** Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.
- 7.2. NON-EXCLUSIVE REMEDIES:** The rights and remedies of the City under this Contract are non-exclusive.
- 7.3. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE BREACH:** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.
- 7.4. ON TIME DELIVERY:** Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
- 7.5. DEFAULT:** In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.
- 7.6. COVENANT AGAINST CONTINGENT FEES:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.
- 7.7. COST JUSTIFICATION:** In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.



7.8. WORK PRODUCT, EQUIPMENT AND MATERIALS: All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City’s request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are “works for hire” within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

8. CONTRACT TERMINATION:

8.1. GRATUITIES: The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

8.2. CONDITIONS AND CAUSES FOR TERMINATION:

8.2.1 This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

8.2.2 The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:

- In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
- In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;



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- In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality.
- Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
- In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or give the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.

8.3. CONTRACT CANCELLATION: All parties acknowledge that this contract is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

9. STATE AND LOCAL TRANSACTION PRIVILEGE TAXES:

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden and legal liability to remit taxes are on the vendor that is conducting business in Arizona and the City of Phoenix. Any failure by the Contractor to collect applicable taxes from the City will not relieve the Contractor from its obligation to remit taxes. It is the responsibility of the prospective bidder to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your offer. You may also find information at <https://www.phoenix.gov/finance/plt> or <https://www.azdor.gov/Business.aspx>. Once your offer is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City, the Contractor agrees to remit any overpayments back to the City for miscalculations on taxes included in a offer price.

10. TAX INDEMNIFICATION:

Contractor will pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor, and require the same of all subcontractors. Contractor will hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including



transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation, and require the same of all subcontractors.

11. TAX RESPONSIBILITY QUALIFICATION:

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest). Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes. Contractor agrees to provide written authorization to the City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or Arizona Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

12. NO ISRAEL BOYCOTT:

If this Contract is valued at \$100,000 or more and requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, or construction, then Contractor must certify and agree that it does not and will not boycott goods or services from Israel, pursuant to Title 35, Chapter 2, Article 9 of the Arizona Revised Statutes. Provided that these statutory requirements are applicable, Contractor by entering this Contract now certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of goods or services from Israel.



SECTION III – SPECIAL TERMS & CONDITIONS

- 1. PRICE:** All prices submitted shall be firm and fixed for the initial one year(s) of the contract. Thereafter, price increases will be considered annually provided the adjustments are submitted in writing with 30 days' notice to the Procurement Officer. Price increase requests shall be accompanied with written documentation to support the increase, such as a letter from the manufacturer, published price index, applicable change in law, etc. Price decrease requests do not require supporting documentation and are allowed at any time during the contract term.

The City will be the sole judge in determining the allowable increase amount. Price increases agreed to by any staff other than the Deputy Finance Director or Department Director are invalid. The Contractor acknowledges and agrees to repay all monies paid because of a requested price increase unless the increase was specifically approved, in writing, by the Deputy Finance Director or Department Director.

- 3. METHOD OF ORDERING:** Contractor shall deliver items and/or services only upon receipt of a written purchase order. All Contractor invoices and packing/delivery tickets must include the City of Phoenix purchase order number.
- 4. METHOD OF INVOICING:** Invoice must be emailed in .pdf format to invoices@phoenix.gov and must include the following:
 - City purchase order number or shopping cart number
 - Items listed individually by the written description and part number.
 - Unit price, extended and totaled.
 - Quantity ordered, back ordered, and shipped.
 - Applicable tax
 - Invoice number and date.
 - Delivery address.
 - Payment terms.
 - FOB terms.
 - Remit to address
- 5. METHOD OF PAYMENT:** Payment to be made from Contractor's invoice and a copy of the signed delivery/service ticket submitted to cover items received and accepted during the billing period. Contractor will be paid on a monthly basis in arrears.



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6. **PARTIAL PAYMENTS:** Partial payments are not authorized on individual purchase orders. Payment will be made upon final delivery and acceptance of all goods and services on the purchase order.
7. **SUPPLIER PROFILE CHANGES:** It is the responsibility of the Contractor to promptly update their profile in procurePHX at www.phoenix.gov/procure. If Contractor's legal identify has changed, the Procurement Officer must be notified immediately. Failure to do so may result in non-payment of invoices and contract termination.
8. **ESTIMATED QUANTITIES OR DOLLAR AMOUNTS (REQUIREMENTS CONTRACTS ONLY):** Quantities and dollar amounts listed are the City's best estimate and do not obligate the City to order or accept more than City's actual requirements during the period of this agreement, as determined by actual needs and availability or appropriated funds. It is expressly understood and agreed that the resulting contract is to supply the City with its complete actual requirement for the contract period,
9. **AUTHORIZED CHANGES:** The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within thirty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the Deputy Finance Director or Department Director prior to the institution of the change.
10. **SUSPENSIONS OF WORK:** The Procurement Officer and the project manager reserve the right to suspend work wholly or in part if deemed necessary for the best interest of the City. This suspension will be without compensation to the Contractor, other than to adjust the contract completion/delivery requirements.
11. **HOURS OF WORK:** All work under this contract shall be coordinated with the City's project manager. Any changes to the established schedule must have prior written approval by the City's project manager.



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- 12. **POST AWARD CONFERENCE:** A post-award conference will be held by the Procurement Officer or project manager prior to commencement of any work on the project. The purpose of this conference is to discuss critical elements of the work schedule and operational problems and procedures.

- 13. **PERFORMANCE INTERFERENCE:** Contractor shall notify the City’s department contact immediately of any occurrence and/or condition that interferes with the full performance of the contract and confirm it in writing within 24 hours.

Department Contact: TBD

Phone: TBD

- 14. **COOPERATIVE AGREEMENT:** In addition to the City and with approval of the Contractor, this contract may be extended for use by other municipalities and government agencies in the State of Arizona.

A current listing of eligible entities may be found at www.mesaaz.gov/business/purchasing/save Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective entity. Orders placed by other agencies and payment thereof will be the sole responsibility of that entity. The City shall not be responsible for any disputes arising out of transactions made by other entities who utilize this solicitation.

- 15. **ADVERTISING:** Except as required by law, Contractor shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Agreement, the Technology Assets, or any part thereof without the prior written consent of the City. The name of any City site on which services are performed by the Contractor pursuant to this Agreement shall not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.

- 16. **EXCLUSIVE POSSESSION:** All services, information, computer program elements, reports, and other deliverables which may be created under this



contract are the sole property of the City of Phoenix and will not be used by the Contractor or any other person except with prior written permission by the City.

17. **STRICT PERFORMANCE:** Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract, or by law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.
18. **LICENSES AND PERMITS:** Contractor will keep current Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.
19. **DEMONSTRATION:** The City may, in its discretion, require a demonstration of the products or services offered as part of the evaluation process. The demonstration shall be provided by the Contractor at no cost to the City for the period deemed sufficient to properly evaluate the product or service. The exact time, conditions, and terms of the evaluation shall be established at the time a demonstration is requested.
20. **WARRANTY:** All equipment supplied under this contract shall be fully guaranteed by the contractor for a minimum period of two years from the date of acceptance by the City. Any defects of design, workmanship, or materials that would result in non-compliance with the contract specifications shall be fully corrected by the contractor (including parts and labor) without cost to the City.

Warranty work requirements shall be performed by a technician on-site with a guaranteed response time of eight hours, seven days a week, 24 hours per day. City acceptance will be determined by the date of actual installation and start-up. Since some of the items will be inventoried for emergency purposes, the City will notify the Contractor of actual start-up date which will be within one year of item receipt.

21. **START-UP SUPPLIES:** All necessary supplies for initial operation shall be provided with the equipment at the time of installation by the Contractor at no additional cost to the City.
22. **SUBSTITUTION OF SPECIFIED ITEMS:** Whenever in the specifications any item or process is requested or identified by manufacturer name, proprietary name, or patent such specifications shall be used to facilitate descriptions of the item or



process and shall be followed by the words “or equal”. The Contractor may offer any item or process that is equal in every respect. However, if the item or process delivered is not, in the opinion of the City of Phoenix, equal in every respect to the specifications, then the Contractor must furnish the item or material that is equal, in the opinion of the City.

- 23. COMMUNICATION IN ENGLISH:** It is mandatory that the Contractor’s lead person assigned to any City facility can speak, read, and write in English to effectively communicate with City staff.

- 24. CONTRACTOR ASSIGNMENTS:** The Contractor hereby agrees that any of its employees who may be assigned to a City site to satisfy obligations under this contract shall be used exclusively for that purpose during the hours when they are working in areas covered by this contract and shall perform no work at other City facilities. If other services, in addition to or separate from, the services specified herein, may be deemed necessary by the Deputy Finance Director or Department Director or his authorized representative, the Contractor may be requested to perform the additional or special service.

- 25. TRANSITION OF CONTRACT:** Contractor will, without limitation, provide important information to a successor Contractor and the City to ensure continuity of service at the required level of proficiency and agrees to provide to the City all files, supplies, data, records, and any other properties or materials of the City, which the City owns or has rights to pursuant to this contract and which are in the possession of Contractor. The provisions of this section will survive the expiration or termination of this contract.

26. BACKGROUND SCREENING:

Contractor agrees that all Contractor and subcontractors’ workers (collectively “Contract Worker(s)”) pursuant to this Agreement will be subject to background and security checks and screening (collectively “Background Screening”) at Contractor’s sole cost and expense, unless otherwise provided for in the scope of work. Contractor’s background screening will comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening is necessary to preserve and protect the public health, safety and welfare. The City requires a completed Contract Worker Badge/Key/Intrusion Detection Responsibilities Agreement for each Contract Worker who requires a badge or key.



- 26.1 **Background Screening Risk Level:** The City has established two levels of risk: Standard and Maximum risk. If the scope of work changes, the City may amend the level of risk, which could require the Contractor to incur additional contract costs to obtain background screens or badges.
- 26.2 **Terms of This Section Applicable to all Contractor’s Contracts and Subcontracts:** Contractor will include Contract Worker background screening in all contracts and subcontracts for services furnished under this agreement.
- 26.3 **Materiality of Background Screening Requirements; Indemnity:** The background screening requirements are material to City’s entry into this agreement and any breach of these provisions will be deemed a material breach of this contract. In addition to the indemnity provisions set forth in this agreement, Contractor will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor’s services under this Agreement or Contractor’s failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.
- 26.4 **Continuing Duty; Audit:** Contractor’s obligations and requirements will continue throughout the entire term of this Agreement. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor’s records.
- 26.5 **Contractor’s Default; Liquidated Damages; Reservation of Remedies for Material Breach:** If Contractor is required to access any City facilities without an escort, City badging is required. Contractor’s default under this section will include, but is not limited to, the following:
- Contract Worker gains access to a City facility(s) without the proper badge or key;
 - Contract Worker uses a badge or key of another to gain access to a City facility;



- Contract Worker commences services under this agreement without the proper badge, key or background screening;
- Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable background screening; or
- Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement.
- Contractor acknowledges and agrees that the access control, badge and key requirements in this section are necessary to preserve and protect the public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this section within three business days (excluding weekends and City holidays) from the date notice of default is sent by the City. The parties agree that Contractor's failure to properly cure any default under this section will constitute a breach of this section. In addition to any other remedy available to the City at law or in equity, the Contractor will be liable for and pay to the City the sum of \$1,000.00 for each breach by Contractor in this section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this agreement if Contractor breaches this section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages if Contractor breaches this section. The parties further agree that three breaches by Contractor in this section arising out of any default within a consecutive period of three months or three breaches by Contractor in this section arising out of the same default within a period of 12 consecutive months will constitute a material breach of this agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this agreement, at law and in equity including, but not limited to, termination of this agreement.

26.6 **Employee Identification and Access:** Contract Workers are forbidden access to designated restricted areas. Access to each building will be as directed by the authorized Phoenix authorized representative. Contract Workers are not authorized access other than during scheduled hours. Access to the building will be directed by the City's authorized representative.



Only authorized Contract Workers are allowed on the premises of the City facilities/buildings. Contract Workers are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized Contract Worker.

Unless otherwise provided for in the scope of work:

- Contract Workers must **always** have city issued badges and some form of verifiable company identification (badge, uniform, employee id).
- Contractor will supply a list of the names and titles of all employees requiring access to the buildings. It is the Contractor's responsibility to provide updates and changes of personnel as necessary.

26.7 **Key Access Procedures:** If the Contractor Worker’s services require keyed access to enter a City facility(ies), a separate key issue/return form must be completed and submitted by the Contractor for each key issued. Contractor must submit the completed key issue/return form to the appropriate badging office.

26.8 **Stolen or Lost Badges or Keys:** Contractor must immediately report lost or stolen badges or keys to the City’s appropriate badging office. If the badge/key was stolen, Contract Worker’s must report the theft to their local police department. Prior to issuance of a new badge or key, a new badge application or key issue form must be completed, submittal of a police department report for stolen badges, and applicable payment of the fee(s) listed herein.

26.9 **Return of Badge or Key:** All badges and keys are the property of the City and must be returned to the City at the badging office within one business day (excluding weekends and City holidays) of when the Contract Worker’s access to a City facility is no longer required to furnish the services under this agreement. Contractor will collect a Contract Worker’s badge and key(s) upon the termination of the Contract Worker’s employment; when the Contractor Worker’s services are no longer required at a City facility(s); or upon termination, cancellation or expiration of this agreement.

26.10 **Badge and Key Fees:** The following constitute the badge and key fees under this agreement. The City reserves the right to amend these fees upon a 30-day prior written notice to Contractor.

Replacement Badge Fee:	\$55.00	per badge
Lost/Stolen Badge Fee:	\$55.00	per badge



Replacement Key Fee:	\$55.00	per key
Replacement Locks:	\$55.00	per lock

27. BACKGROUND SCREENING – MAXIMUM RISK:

27.1 The current risk level and background screening required is **MAXIMUM RISK**.

27.2 **Maximum Risk Level:** A maximum risk background screening will be performed every five years when the Contract Worker’s work assignment will:

- work directly with vulnerable adults or children, (under age 18); or
- any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or
- unescorted access to:
 - City data centers, money rooms, high-value equipment rooms; or
 - unescorted access to private residences; or
 - access to critical infrastructure sites/facilities; or
 - direct or remote access to Criminal Justice Information Systems (CJIS) infrastructure.

27.3 **Requirements:** The background screening for maximum risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the State of Arizona, plus any other jurisdiction where the Contractor worker has lived at any time in the preceding seven years from the Contract Worker’s proposed date of hire. In addition, Maximum screening levels may require additional checks as included herein, depending on the scope of work, and may be amended if the scope of work changes.

27.4 **Contractor Certification; City Approval of Maximum Risk Background Screening:** Unless otherwise provided for in the Scope of Work, Contractor will be responsible for:

- determining whether Contract Worker(s) are disqualified from performing work for the City for maximum risk level background checks; and,
- submitting pass/fail results to the City for approval; and,
- reviewing the results of the background check every three to five years, dependent on scope; and,
- to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,



SECTION III – SPECIAL TERMS AND CONDITIONS

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- Submitting the list of qualified Contract Workers to the contracting department; and,
 - If, upon review of the background information, the City will advise the Contractor if it believes a Contract Worker should be disqualified. The Contractor will evaluate the Contract Worker and if the Contractor believes that there are extenuating circumstances that suggest that the person should not be disqualified, the Contractor will discuss those circumstances with the contracting department. The contracting department decision on disqualification of a Contract Worker is final.
 - For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
 - By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current.
 - The City final documented decision will be an “approve” or “deny” for identified Contract Workers.
 - The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Contractor, or any contracted agency that assists with review, after the City’s completed review.
 - By executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all such background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
 - Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Contractor has received the City’s written acceptance of Contract Worker’s maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the Contract Workers proposed by Contractor for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this agreement will not be proposed to perform work under other city contracts or engagements without city’s prior written approval.
- 28. SECURITY INQUIRIES:** Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor’s expense, be subject to background and security checks and screening at the request of the City.



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Contractor shall perform all such security inquiries and shall make the results available to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City's prior approval.

The City, in its sole discretion, reserves the right, but not the obligation to:

- require an employee/prospective employee of the Contractor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. 41-1750 (G) (4);
- act on newly acquired information whether or not such information should have been previously discovered;
- unilaterally change its standards and criteria relative to the acceptability of Contractor's employees and/or prospective employees; and
- object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Agreement. Contractor will bear the costs of all inquiries requested by the City.



29. CONFIDENTIALITY AND DATA SECURITY: All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this Agreement is confidential, proprietary information owned by the City. Except as specifically provided in this Agreement, the Contractor shall not disclose data generated in the performance of the service to any third person without the prior written consent of the City Manager or his/her designee.

Personal identifying information, financial account information, protected health information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Contractor must encrypt all data at rest and in transit using approved levels as defined in NIST Cryptography Standards and guidelines. Special Publication 800-175B. All infrastructure must reside in the continental United States. Access control solutions must meet City Standards and support multi-factor authentication. This includes data saved to laptop computers, computerized devices, handheld devices, networking devices, removable storage devices, or other electronic media, as well as data in transit, such as during email or file transfer.

When personal identifying information, financial account information, protected health information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. Contractor must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

This includes implementing and monitoring compliance with policies and procedures that require the redaction, destruction, erasure, or other disposal of paper documents and electronic media containing personal identifying information, financial account information, protected health information, or restricted City information so that these types of information cannot practicably be read or reconstructed. Contractor will provide the City with its information security policies and procedures regarding the redaction, destruction, erasure, or other disposal of documents and information.

In the event that data collected or obtained by the Contractor in connection with this Agreement is suspected to have been compromised, Contractor shall notify the contracting City department immediately. Contractor agrees to reimburse the City for any costs incurred by the City to investigate and respond to potential breaches of this data, including, where applicable, the cost of notifying individuals who may be impacted by the breach, attorneys' fees, and for any monetary damages or penalties the City is assessed. In case of a breach or critical breach of the City's information, it will be the City, not the Contractor that will inform any and all individuals affected by any such breach. Only upon prior written consent of the City, or at the specific



direction of the City, will the Contractor notify individuals affected by a breach or critical breach of the City’s information.

Contractor agrees that the City may assess or test the security of any applications, web services, or computerized systems created or provided by the Contractor that process, store, or transmit City information. If the City finds vulnerabilities that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS) in these applications, web services, or computerized systems, the Contractor agrees to remediate the vulnerability at no cost to the City and within an agreed-upon timeframe not to exceed 90 days. To clarify, the Contractor must remediate found vulnerabilities in computerized systems they provide; Contractor is **not** liable for remediating any vulnerability found in the City’s network or computing infrastructure used to support the applications, web services, or systems created or provided by the Contractor.

Contractor agrees to abide by all current applicable legal and industry data security and privacy requirements. These include, but are not limited to, Arizona Revised Statutes §44-7501 — Notification of breach of security system; Arizona Revised Statutes §44-7601 — Discarding and disposing of records containing personal identifying information; Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules; Health Information Technology for Economic and Clinical Health (HITECH) Act, and Payment Card Industry Data Security Standards.

Contractor agrees to demonstrate that they have adequate controls and safeguards when they host or process personal identifying information, financial account information, protected health information, or restricted City information. This may be accomplished through a third-party audit utilizing a widely recognized auditing standard, such as Statement on Standards for Attestation Engagements (SSAE18) No. 18, or through earning industry certification, such as ISO/IEC 27001. Additionally, Contractor/Consultant will follow industry recognized security frameworks as part of their security program covering infrastructure, operations, policy and procedure. This can include ISO/IEC 27001, NIST Cyber Security Framework or SP 800/53. Evidence must be provided to show compliance annually.



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By signing and entering this Agreement the Contractor specifically acknowledges that it is responsible for the security of cardholder data that Contractor possesses or otherwise stores, processes or transmits on behalf of the City. Additionally, as a requirement of this contract you must provide to the City a copy of your written Notice to customers that you are responsible for the security of cardholder data that you obtain and otherwise store, process or transmit.

Contractor agrees to comply with all City information security and technology policies, standards, and procedures when accessing City networks and computerized systems whether onsite or remotely.

Contractor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by the Contractor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court.

A violation of this Section may result in immediate termination of this Agreement without notice.

The obligations of Contractor under this Section shall survive the termination of this Agreement.



SECTION IV – INSURANCE AND INDEMNIFICATION

1. DEFENSE AND INDEMNIFICATION CLAUSE:

Consultant (“Indemnitor”) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever (“Losses”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors (“Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amount arising out of or recovered under any state’s Workers’ Compensation Law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor’s duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee’s own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to any work performed by Indemnitor or Indemnitor’s Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

INDEMNIFICATION – PATENT, COPYRIGHT AND TRADEMARK

In addition to any other indemnification required by this Agreement, Contractor agrees to defend, at its own expense, and to indemnify and hold harmless the City and its officers, agents, and employees from and against all judgments, claims, damages, suits, liabilities, settlements, costs and demands, including reasonable attorneys’ fees, suffered or incurred by the City as a result of any claim that the Technology Assets infringe the patents, copyrights, or other intellectual property rights of third parties, provided that Contractor is notified in writing of such claim. The City will reasonably cooperate with Contractor, at Contractor’s expense, to facilitate the settlement or defense of such claim. Without limiting in any way the Contractor obligations set forth herein, if, as a result of any claim of infringement with respect to the Technology Assets, the City is enjoined from using the Technology Assets, or if Contractor reasonably



believes that the Technology Assets are likely to become the subject of a claim of infringement, Contractor may, at Contractor’s option and expense, (1) procure the right for the City to continue to use the Technology Assets, or (2) replace or modify the Technology Assets so as to make them non-infringing and of equal or superior functionality and capability for the purpose(s) for which the Technology Assets were provided.

The Contractor’s obligation to indemnify, defend, and hold harmless the City pursuant to this subsection shall be reduced to the extent the applicable infringement is caused or alleged to be caused by the alteration or modification of the Technology Assets by the City (including its employees and contractors other than the Contractor and its subcontractors) other than in connection with the ordinary or expected use of the Technology Assets.

2. CONTRACTOR’S INSURANCE:

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors and Contractor may purchase additional insurance as they determine necessary.

2.1. SCOPE AND LIMITS OF INSURANCE: Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

2.1.1. Commercial General Liability – Occurrence Form

General Aggregate	\$5,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

- The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract



arising out of the activities performed by, or on behalf of the Contractor related to this Contract.

- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

2.1.2. Automobile Liability

Bodily Injury and Property Damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, relating to this Contract.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

2.1.3. Worker’s Compensation and Employers’ Liability

Workers’ Compensation	Statutory
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Employers’ Liability:

Each Accident	\$100,000
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Disease – Each Employee	\$100,000
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Disease – Policy Limit	\$500,000
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- Policy must contain a waiver of subrogation against the City of Phoenix.
- This requirement does not apply when a contractor or subcontractor is exempt under A.R.S. §23-902(E), **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.



2.1.3. Professional Liability (Errors and Omissions Liability)

Each Claim	\$2,000,000
Annual Aggregate	\$2,000,000

- The policy must cover liability arising from the failure to meet the professional standards required or expected in the delivery of those services as defined in the Scope of Services of this Contract.
- Consultant warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

2.1.4. Technology Errors and Omissions Liability

Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

- The policy must cover errors and omissions or negligent acts in the delivery of products, services, and/or licensed programs for those services as defined in the Scope of Services of this Contract.
- Contractor warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

2.1.5. Network Security and Privacy Liability (required if Contractor has access to personal or confidential data.)

Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

- Policy must cover but not be limited to (1) coverage for third party claims and losses with respect to network risk and invasion of privacy (2) crisis management and third-party identity theft response costs and (3) cyber extortion.
- Contractor warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be



exercised for a period of two (2) years beginning at the time work under this Contract is completed.

2.2. NOTICE OF CANCELLATION: For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to procurement@phoenix.gov or the Finance Department – Procurement Division, 251 W Washington St, 8th Floor, Phoenix, AZ 85003.

2.3. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

2.4. VERIFICATION OF COVERAGE: Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly to procurement@phoenix.gov or the Finance Department – Procurement Division, 251 W Washington St, 8th Floor, Phoenix, AZ 85003. The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.**

2.5. SUBCONTRACTORS: Contractor’s certificates shall include all subcontractors as additional insureds under its policies **OR** Contractor shall be responsible for ensuring and verifying that all subcontractors have valid and collectable insurance. At any time throughout the life of the contract, the City of Phoenix reserves the right to require proof from the Contractor that its subcontractors have insurance coverage. All subcontractors providing services included under this Contract’s Scope of Services are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Contractor may, on behalf of its subcontractors, waive a specific type of coverage or limit of liability where appropriate to the



SECTION IV – INSURANCE AND INDEMNIFICATION

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type of work being performed under the subcontract. Contractor assumes liability for all subcontractors with respect to this Contract.

- 2.6. APPROVAL:** Any modification or variation from the insurance coverages and conditions in this Contract must be documented by an executed contract amendment.



SECTION V – SCOPE OF WORK

1. PURPOSE

1.1. The Phoenix Fire Department (PFD) responds to thousands of behavioral health and low acuity 9-1-1 calls for service each year. These calls are received and routed for service through the Phoenix Fire Department Regional Dispatch Center (PFDRDC). The PFD seeks innovative solutions from telehealth providers that can be integrated into its existing 9-1-1 procedures to enhance communication, reduce response times, deliver additional lines of care, and provide prevention strategies to maximize the PFD’s availability for the next service call.

2. BACKGROUND

2.1. The PFD responds to over 190,000 emergency medical service (EMS) calls each year. Between 2009 and 2019, total calls for service increased by 43% (3.6% per year). For the same period, PFD only added three response assets, about 4% growth. The PFD does not “hold” calls, but fire and ambulance incident response times are below published best practice standards due to increased demand without a concomitant increase in resources.

2.2. The PFD operates the PFDRDC a secondary Public Safety Answering Point (PSAP) for 28 jurisdictions throughout central Arizona. The PFDRDC utilizes a home-grown Emergency Medical Dispatch (EMD) application within its Computer-Aided Dispatch (CAD) system to quickly triage each phone call to determine an appropriate emergency response and to deliver pre- and post-arrival instructions to callers.

2.3. The PFD is currently unable to provide specific data quantifying how many behavioral health calls for service it responds to each year. This data is difficult to ascertain in part because many calls have co-occurring issues. In addition, the PFD has frequently engaged existing Maricopa County behavioral health mobile crisis teams but struggles with limited mobile team availability, delayed response times, and undefined patient outcomes.

2.4. In 2021 the City dedicated resources to expanding PFD’s successful Community Assistance Program (CAP). CAP will deploy a total of ten Crisis Response Units (CRUs) staffed with trained crisis intervention counselors available to respond 24 hours a day, seven days a week. CAP will staff an additional nine Behavioral Health Units (BHUs) comprised of a behavioral health specialist and a peer or navigator to connect Phoenix residents with existing state, county, city, or private mental health resources. CRUs co-respond with fire and police units to assist



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residents who have experienced a traumatic incident such as a house fire, unexpected death, homelessness, domestic violence, sexual assault, and homicide. BHU teams will co-respond with first responders on incidents with a behavioral health nexus and respond to incidents without police or fire when no crime, threat, or medical need is identified during the 9-1-1 intake. Both teams will conduct safety assessments and needs assessments. When appropriate, CRUs and BHUs will be capable of transporting residents to behavioral health clinics, pharmacies, or relevant appointments. BHUs will provide short-term care case management to ensure residents are connected to public or private long-term services. These services and functions are beyond the scope of this RFP.

- 2.5. According to the Substance Abuse and Mental Health Services Administration (SAMHSA), over 300,000 adults in Arizona live with severe mental health conditions like schizophrenia, bipolar disorder, and major depression. Unfortunately, only 40.3% of adults with mental health illnesses in Arizona receive any form of treatment from either public or private resources. The remaining 59.7% receive no mental health treatment. According to Mental Health America, Arizona is ranked 47 out of 50 states and Washington, D.C, for providing access to mental health services.

3. OBJECTIVE

- 3.1. The PFD is seeking a Contractor to deliver a comprehensive turnkey telehealth delivery system. This system shall be a secure interactive audio/visual application, communications platform, data storage, data management functions, and robust business intelligence tools for reporting. The Contractor will use these communications and data tools to provide access to healthcare professionals, including but not limited to doctors, osteopaths, registered nurses, licensed practical nurses, licensed clinical social workers, substance use and abuse counselors, crisis intervention counselors, or other allied health professionals, that deliver crisis, mental, behavioral, and medical health services.
- 3.2. The PFD expects that referring 9-1-1 callers directly to definitive care services will have the secondary benefit of reducing low acuity dispatches of PFD units (diversion at dispatch), thereby reducing non-emergency transports.

4. DEFINITIONS

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 that established a national platform of consumer privacy protections and marketplace reforms.



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“Hold Time” is defined as the time it takes for the telehealth service provider to connect the customer/resident with a licensed provider.

“NIST 800-53” means the United States National Institute of Standards and Technology advanced computer security and network infrastructure policy.

“PSAP” means the Public Safety Answering Point that operates on a 24-hour basis whose primary function is to receive incoming telephonic 9-1-1 requests for emergency assistance and relay those requests to an appropriate responding public safety response unit or agency.

“SOC2” means the formal audit process established by the American Institute of CPA’s which defines criteria for managing data based on five “trust service principles.” These principles include the dimensions of security, availability, processing integrity, confidentiality, and privacy.

“Telehealth” is used interchangeably with **“telemedicine,”** which means the interactive use of audio, video, or other electronic media and other technologies for the practice of health care, assessment, diagnosis, consultation, or treatment and the transfer of medical or health-related data. Includes the use of audio-only telephone encounters if an audio-visual telehealth encounter is not reasonably available due to a patient’s preference, functional status, lack of technology, or telecommunication infrastructure limits. A physical or mental risk assessment or health status examination may be conducted during a real-time telehealth encounter.

“Transfer Time” means the time between the service provider receiving and answering the phone call from the PFDRDC, PFD, and CAP.

5. GENERAL REQUIREMENTS

The Contractor shall:

- 5.1. Be capable of providing a state-of-the-art, comprehensive, and innovative turnkey delivery system that can be integrated into the existing 9-1-1 procedures to enhance communication, reduce response times, and deliver additional lines of care. This system shall include:
 - 5.1.1. a secure interactive audio/visual application,
 - 5.1.2. communications platform,
 - 5.1.3. data storage and data management functions, and
 - 5.1.4. robust business intelligence tools for reporting.



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- 5.2. Use these communications and data tools to provide access to allied healthcare professionals, including:
 - 5.2.1. doctors,
 - 5.2.2. osteopaths,
 - 5.2.3. registered nurses,
 - 5.2.4. licensed practical nurses,
 - 5.2.5. clinical social workers,
 - 5.2.6. substance use and abuse counselors,
 - 5.2.7. crisis intervention counselors or other allied health professionals that deliver crisis and low acuity mental, behavioral, and medical health services.
- 5.3. Provide services regardless of a caller's insurance status or ability to pay.
- 5.4. Provide an off-site telehealth system with the capabilities to service the scale and demand of 9-1-1 calls within the City, with the intent of delivering services to improve health outcomes of residents that call 9-1-1 for mental, behavioral, and low acuity medical health services.
- 5.5. Host the telehealth delivery system from a remote location(s), as selected or approved by the Contractor.
- 5.6. Referral interactions between the PFDRDC and Contractor should take place telephonically.
 - 5.6.1. Interactions between the Contractor and the customers referred by the PFDRDC, PFD units, or CAP units should have the option to interact via an audio-only (for customers that only have access to a telephone) or video (for customers with access to a device with an internet application.)
- 5.7. Since this is an expansion of service, PFD cannot provide specific data regarding call volumes but anticipates it could be up to 200 calls per 24-hour period.
- 5.8. Deliver telehealth services at two different points of the 9-1-1 caller experience.
 - 5.8.1. First is a referral from the PFDRDC in lieu of a dispatch of a CAP or PFD unit.
 - 5.8.2. Second is a referral from PFD and/or CAP unit requesting assistance from an incident scene after the resident has been given an assessment and meets the telehealth inclusion criteria.



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- 5.9. Assist the PRDRDC and PFD's medical director in developing Emergency Medical Dispatch (EMD) triage protocols to determine the eligibility of callers for the telehealth solution.
- 5.10. Have established processes, systems, applications, data management, security architecture, privacy controls, triage methods, documentation, compliance features, sentinel event review, and quality assurance procedures in place associated with telehealth service delivery.
- 5.11. Have the ability to provide the telehealth delivery system off-site or via remote means conducted through telecommunications technology.
- 5.12. Receive calls routed via a warm telephone handoff from the PFDRDC 9-1-1 operations center.
 - 5.12.1. Information related to the 9-1-1 call will be sent from the PFDRDC system via a unidirectional method such as simple mail transfer protocol (SMTP) or simple network paging protocol (SNPP) to the telehealth provider.
 - 5.12.2. The Contractor will not integrate directly with the PFDRDC CAD system, and all communication will be unidirectional.
 - 5.12.3. Provide follow-up care to callers when appropriate.
- 5.13. Collaborate with the PFD to achieve provider status within AHCCCS Emergency Triage, Treatment and Transport (ET3) model and the Arizona Department of Health Services Treat and Refer program guidelines
 - 5.13.1. Ensure that ET3 and Treat and Refer-eligible healthcare providers in the employment of the telehealth system or acting as a subcontractor are enrolled as AHCCCS providers. Eligible providers may enroll at: <https://www.azahcccs.gov/APEP>
 - 5.13.2. Further information on the AHCCCS ET3 model: <http://www.azahcccs.gov/Initiatives/ET3/>
 - 5.13.3. Further information from AHCCCS on Treat and Refer: <https://www.azahcccs.gov/plansproviders/newproviders/treatandrefer.html>
 - 5.13.4. Further information from the Arizona Department of Health Services on Treat and Refer: <https://www.azdhs.gov/preparedness/emergency-medical-services-trauma-system/#tr-ems-agency-recognition>
- 5.14. Support multiple languages with English and Spanish being required languages.



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- 5.15. Be able to provide robust reporting capability including:
 - 5.15.1. standard reports,
 - 5.15.2. program dashboards,
 - 5.15.3. utilization reports,
 - 5.15.4. stabilization rates,
 - 5.15.5. call disposition reports, and ad hoc reporting tools sufficient to document 9-1-1 dispatch diversion rates,
 - 5.15.6. aggregate customer health outcomes,
 - 5.15.7. program performance, and
 - 5.15.8. program fiscal impacts.
 - 5.15.9. Data shall be maintained sufficiently to analyze hourly, daily, weekly, monthly, quarterly, and annual reporting needs.
- 5.16. Provide training and electronic and/or printed copies of training materials. Training shall include, but not be limited to:
 - 5.16.1. initial training on technological features and navigation on telehealth platform inclusive of coordination with program implementation,
 - 5.16.2. training of new employees as requested, and
 - 5.16.3. on-going training that may occur on a daily, weekly, or monthly basis, of PFDRDC staff, EMS Division staff, PFD crewmembers, and CAP employees.

6. SPECIAL REQUIREMENTS

The Contractor shall:

- 6.1. Provide technology platform(s) that is/are compatible with all major cellular carriers (Verizon-Mobile, AT&T, etc.) and operating systems (iOS, Android, etc.).
- 6.2. Execute the business associate agreement (BAA) in the form attached as Exhibit 1 with the City before commencing work, and
 - 6.2.1. Have a data privacy policy in effect that details its internal procedures, systems, protections, and management of personal health information.
 - 6.2.2. Utilize secure compliant technological platforms that integrate across 9-1-1 related technologies such as CAD, electronic health records, and health information exchange to include processes, controls, and policies for



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securing data at rest, in transit, and use, complying with HIPAA regulations and NIST 800-53.

6.2.3. Ensure that telehealth technology is secure, protects patient privacy, and meets the strict protections required by the HIPAA.

6.3. Comply with all SOC2 requests from the City.

6.4. Be able to provide ongoing program monitoring dashboards and/or ad hoc reporting tools or capabilities.

6.5. Provide service to meet our desired performance level guarantees to include:

6.5.1. Capacity to facilitate at least 200 calls a day.

6.5.2. Immediate notification of system errors that could impact telehealth services.

6.5.3. Service disruption as the result of the Contractor's system error or technical failure must not exceed 0.5% of the time.

6.5.3.1. Have backup plans and processes for system errors and technical failures that result in service disruption.

6.5.4. The service provider will maintain a transfer time of 30-60 seconds.

6.5.5. Have established processes in place to ensure that the wait time is under five minutes, and maintain the wait time:

6.5.5.1. under five minutes 99% of the time,

6.5.5.2. under four minutes 90% of the time, and

6.5.5.3. under three minutes 80% of the time.

7. CONTRACTOR REQUIREMENTS AND QUALIFICATIONS

The Contractor shall:

7.1. Be in the business of providing the contemplated services for a minimum of three years.

7.2. Possess sufficient qualified and experienced staff to support this program.

7.3. Provide access to State of Arizona certified allied healthcare professionals, including:

7.3.1. doctors,

7.3.2. osteopaths,



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- 7.3.3. registered nurses,
 - 7.3.4. licensed practical nurses,
 - 7.3.5. licensed clinical social workers,
 - 7.3.6. substance use and abuse counselors,
 - 7.3.7. crisis intervention counselors, or
 - 7.3.8. other allied health professionals that deliver crisis and low acuity mental, behavioral, and medical health services.
- 7.4. Be available to accept referrals 24-hours a day, seven days a week, 365-days a year.
- 7.5. Make available technical support 24-hours a day, seven days a week, 365-days a year.
- 7.6. Participate in a nationally recognized provider credentialing framework (i.e., URAC, NCQA, etc.).



SECTION VI – SUBMITTALS

1. COPIES:

Please submit one original, two copies, and one electronic copy (portable drive or CD) of the Submittal Section and all other required documentation.

1.1. **Please submit only the Submittal Section, do not submit a copy of the entire solicitation document.** This offer will remain in effect for a period of 180 calendar days from the opening date and is irrevocable unless it is in the City’s best interest to release offer(s).

2. OFFER SUBMITTAL FORMAT:

The written offer should be:

2.1. Typewritten for ease of evaluation;

2.2. Signed by an authorized representative of the Offeror;

2.3. Submitted with contact information for the individual(s) authorized to negotiate with the City;

2.4. Submitted as a one (1) offer containing all the required documents and information in a single PDF document.;

2.5. Submit the following forms and responses in the required format with a table of contents and clearly labeled:

2.5.1. Section VI – Submittals:

- Cost and Payments
- Bid Price Schedule
- Place of Business
- References
- Certification Regarding Department Suspension, and other Ineligibility and Voluntary Exclusion.
- Offer
- Conflict of Interest and Solicitation Transparency Form
- Questionnaire



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3. COSTS AND PAYMENTS:

3.1 PAYMENT TERMS & OPTIONS: Vendors must choose an option, if a box is not checked, the City will **default to 0% - net 45 days**:

- Contractor offers a prompt payment discount of either _____% - 30 days or 0% – 45 days - to apply after receipt of invoice or final acceptance of the products (invoice approval), whichever date is later, starts the 30 days. If no prompt payment discount is offered, the default is 0%, net 45 days; effective after receipt of invoice or final acceptance of the products, whichever is later. **Payment terms offering a discount will not be considered in the price evaluation of your offer.**

- Contractor may be paid immediately upon invoice approval, if enrollment is made to the Single Use Account (SUA) Program, administered by the City’s servicing bank (“Bank”). By checking this box, the vendor accepts transaction costs charged by their merchant bank and agrees not to transfer to the City those extra charges. The City will not pay an increase in our services for the SUA charges; if an audit uncovers an upcharge for the SUA charges the vendor will owe the City all costs. The vendor may opt-out of the SUA program once, but then may not rejoin during the same contract term. **For more information about the SUA program or to enroll, send email to mailbox.sua@phoenix.gov.**

4. OFFER:

All offers shall be firm and fixed for a period of 180 calendar days from the solicitation opening date. Pass-through offer adjustments will be accepted after that date provided said adjustment(s) are submitted in writing with thirty days’ advance notice and are accompanied by written documentation of a manufacturer’s offer increase. Offer adjustment requests shall be sent to: Finance Department, Procurement Division, 251 W Washington St, 8th Floor, Phoenix, AZ 85004.

5. BID PRICE SCHEDULE:

The Offeror shall submit proposals that identify all costs associated with the solution that they are quoting. Quotes must include detailed costs breakdown for each proposed category (Please complete the Attachment A uploaded as a separate Excel attachment).

5.1.1 Non-Recurring Start-up Fees _____ inclusive of:



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- 5.1.1.1 Project scoping and framing,
- 5.1.1.2 Collaborative development of program triage protocols,
- 5.1.1.3 Pre-launch implementation design, development, and testing.
- 5.1.1.4 Initial training of PFDRDC management and staff.
- 5.1.2 Recurring Fee _____ inclusive of:
 - 5.1.2.1 Post-implementation rework or modifications and associated re-training
 - 5.1.2.2 On-going training of PFDRDC management and staff.
 - 5.1.2.3 Technical support service
- 5.1.3 Per case fee _____ inclusive of:
 - 5.1.3.1 Per service, per call, or other contemplated use charges based on the volume of calls referred to the telehealth program.

NOTE: The Offeror can propose alternate pricing tables that include the tasks, roles, responsibilities, and service requirements contemplated in the above information.

6. EMERGENCY 24-HOUR SERVICE CONTACT:

Name _____

Telephone Number _____

Alternate Contact _____

Telephone Number _____

7. PLACE OF BUSINESS:

Bidder’s place of business will be an award factor in order to minimize the City’s transportation and handling costs. If additional service locations are available or if different from the address in Offer Section, enter below:



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8. YEARS IN BUSINESS AND REFERENCES:

Contractor certifies that they have provided complete Telehealth Services listed in this solicitation for a period of three years.

Contractor shall furnish the names, addresses, and telephone numbers of a minimum of three firms or government organizations for which the Contractor is currently furnishing or has furnished, completed service for Telehealth Services.

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____

Company Name _____

Address _____

Reference _____

Telephone Number _____

Email address _____



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9. CERTIFICATION REGARDING DEPARTMENT SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION:

The prospective participant (Contractor for a federally funded project) certifies, by submission of this solicitation and certification, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by **any** federal department or agency.

Where the prospective participant is unable to certify to any of the statements in this certification, such participant **shall** attach an explanation to this solicitation.

THE PARTICIPANT (Contractor for a federally funded project), CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. 3801 ET SEQ. ARE APPLICABLE THERETO.

Authorized Official: _____

Title of Authorized Official: _____

Date: _____



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ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the material(s) or service(s) listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc. and the Contractor’s Offer as accepted by the City.

This contract shall henceforth be referred to as Contract No._____. The Contractor has been cautioned not to commence any billable work or provide any material or service under this contract until Contractor receives purchase order, or contract documentation.

CITY OF PHOENIX

A Municipal Corporation
Jeffrey Barton, City Manager

Director or delegate, Department
T.J. Martin
Assistant Finance Director

Attest:

_____ this ____ day of _____ 2020
City Clerk

Approved as to form this 19th day of January 2017. This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.



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OFFER

TO THE CITY OF PHOENIX - The Undersigned hereby offers and agrees to furnish the material and or service(s) in compliance with all terms, conditions, specifications, and addenda issued as a result of a solicitation.

Arizona Sales Tax No. _____

Use Tax No. for Out-of State Suppliers _____

City of Phoenix Sales Tax No. _____

Arizona Corporation Commission File No. _____

Taxpayer's Federal Identification No.: If recommended for contract award, Bidder agrees to provide its federal taxpayer identification number or as applicable its social security number to the City of Phoenix for the purposes of reporting to appropriate taxing authorities, monies paid by the City of Phoenix under the awarded contract. If the Bidder provides its social security number, the City will only share this number with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.

Enter City's Registration System ID Number
 Located at City's eProcurement website (see
 SECTION I – INSTRUCTIONS - CITY'S
 REGISTRATION)

Offeror has read, understands, and will fully and faithfully comply with this solicitation, its attachments and any referenced documents. Offeror certifies that the prices offered were independently developed without consultation with any other Offeror or potential Offerors.

Authorized Signature

Date

Printed Name and Title
(LLC, Inc., Sole Proprietor)

(Member, Manager, President)

Address _____

City, State and Zip Code _____

Telephone Number _____

Company's Fax Number _____

Company's Toll Free # _____



SECTION VI – SUBMITTALS

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CONFLICT OF INTEREST AND TRANSPARENCY FORM: This form must be signed and submitted to the City and all questions must be answered (or N/A) or your Offer may be considered non-responsive.

1. Name of person submitting this disclosure form.

First	MI	Last	Suffix
-------	----	------	--------

2. Contract Information

Solicitation # or Name:

3. Name of individual(s) or entity(ies) seeking a contract with the City (i.e. parties to the Contract)

4. List any individuals(s) or entity(ies) that are owners, partners, parent, sublessees, joint venture, or subsidiaries of the individual or entity listed in Question 3. Please include all Board members, executive committee members and officers for each entry. If not applicable, indicate N/A.

5. List any individuals or entities that will be subcontractors on this contract or indicate N/A.

- Subcontractors may be retained, but not known as of the time of this submission.
- List of subcontracts, including the name of the owner(s) and business name:

6. List any attorney, lobbyist, or consultant retained by any individuals listed in Questions 3,



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4, or 5 to assist in the proposal or seeking the resulting contract. If none, indicate N/A.

7. Disclosure of Conflict of Interest:

A. City Code Section 43-34

Are you aware of any fact(s) with regard to this solicitation or resulting contract that would raise a “conflict of interest” issue under City Code Section 43-34?

“An elected City official or a City employee shall not represent any person or business for compensation before the City regarding any part of a procurement, including any resulting contract, if during the time the elected official is or was in office or the employee is or was employed by the City such elected official or employee played a material or significant role in the development of the solicitation, any other part of the procurement, or the contract award.”

- I am not aware of any conflict(s) of interest under City Code Section 43-34.
- I am aware of the following potential or actual conflict(s) of interest:

B. ARS Sections 38-501 et. Seq. & City Charter Chapter 11

State law and the Phoenix City Charter and Code prohibit public officers or employees, their close relatives, and any businesses they, or their relatives, own from (1) representing before the City any person or business for compensation, (2) doing business with the City by any means other than through a formal procurement, and (3) doing business with the City without disclosing that the person has an interest in the contract. This prohibition extends to subcontracts on City contracts and also applies to parent, subsidiary, or partner businesses owned by a public officer or employee. See A.R.S. Sections 38-501 through 38-511, for



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more information (City Charter, Chapter 11, applies the state conflict-of-interest law to City employees).

Please note that any contract in place at the time a person becomes a public officer or employee may remain in effect. But the contract may not be amended, extended, modified, or changed in any manner during the officer's or employee's city service without following city administrative regulations.

Are you aware of any fact(s) with regard to this contract that would raise a "conflict of interest" issue under A.R.S. Sections 38-501 through 38-511 (See Arizona Revised Statutes regarding conflict of interest at www.azleg.gov).

- I am not aware of any conflict(s) of interest under Arizona Revised Statutes Sections 38-501 through 38-511.
- I am aware of the following conflict(s) of interest:

8. Acknowledgements

A.Solicitation Transparency Policy – No Contact with City Officials or Staff During Evaluation

- I understand that a person or entity who seeks or applies for a city contract, or any other person acting on behalf of that person or entity, is prohibited from contacting city officials and employees regarding the contract after a solicitation has been posted.



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- This “no-contact” provision only concludes when the contract is awarded at a City Council meeting. If contact is required with City official or employees, the contact will take place in accordance with procedures by the City. Violation of this prohibited contacts provision, set out in City Code Sections 2-190.4 and 43-36, by respondents, or their agents, will lead to **disqualification**.

B.Fraud Prevention and Reporting Policy

- I acknowledge that the City has a fraud prevention and reporting policy and takes fraud seriously. I will report fraud, suspicion of fraud, or any other inappropriate action to: telephone no. 602-261-8999 or 602-534-5500 (TDD); or aud.integrity.line@phoenix.gov.

The purpose of the fraud policy is to maintain the City's high ethical standards. The policy includes a way for our business partners to report wrongdoing or bad behavior. Suspected fraud should be reported immediately to the Phoenix Integrity Line. The City has adopted a zero-tolerance policy regarding fraud.

OATH

I affirm that the statements contained in this form, including any attachments, to the best of my knowledge and belief are true, correct, and complete. Should any of the answers to the above questions change during the course of the contract, particularly as it relates to any changes in ownership, applicant agrees to update this form with the new information within 30 days of such changes. Failure to do so may be deemed a breach of contract.

PRINT NAME

TITLE

SIGNATURE

DATE

COMPANY (CORPORATION, LLC, ETC.) NAME and DBA



13. QUESTIONNAIRE

QUALIFICATIONS AND EXPERIENCE

- 13.1. Provide a narrative of your Company Profile and describe your experience and expertise in conducting telehealth services for public sector customers General Requirements (Section V – Scope of Work). The following subsections describe additional information to provide at a minimum:
 - 13.1.1. History of the business including the date established, type of ownership, or legal structure of the business (sole proprietor, partnership, corporation, etc.).
 - 13.1.2. Length of time the firm has been operating as the legal entity.
 - 13.1.3. Length of time the firm has been providing the requested service (please note the qualification contained in §5-7.1).
 - 13.1.4. State your firm’s experience in providing telehealth services to public sector customers.
 - 13.1.5. Provide a copy of your firm’s current data privacy policy.
 - 13.1.6. Provide a copy of your firm’s current SOC2 audit.
 - 13.1.7. Provide a narrative of your policies and procedures related to handling personal health information in a HIPAA-compliant manner.
 - 13.1.8. Provide a narrative regarding key personnel proposed to deliver telehealth services and their experience and qualifications. Fully explain their roles, responsibilities, licensure or certification held, and continuous credentialing program and policies. At a minimum, the following information must be included in the narrative:
 - 13.1.9. Discuss the areas of expertise that possess State licensure and/or certification in Arizona as described in §5-5.2 (individual resumes or CVs are not necessary, rather aggregate counts of available staffing by category).
 - 13.1.10. Describe the credentialing policy and process used by the company, including if it meets a recognized national standard as discussed in §5-7.6.



METHOD OF APPROACH

- 13.2. Describe your firm’s approach to providing telehealth services to public sector customers. Relate the description to the program objectives stated in §5-3.0, and §5-5.1 through §5-5.8.
- 13.3. Describe in detail your firm’s technology infrastructure, design, main or key elements as described in §5-6.1 through §5-6.4.
- 13.4. State service performance level guarantees that, at a minimum, meet the requirements stated in §5-6.5.
- 13.5. Provide a narrative regarding the provision of services to all residents regardless of a caller’s ability to pay §5-5.3.
- 13.6. Describe the available reporting capabilities in sufficient detail to understand available standard reports, ad hoc reporting tools, dashboards, and data visualizations as contemplated by §5-5.15. Please include a sample report.

CAPACITY

- 13.7. Provide a narrative and statistics to support your firm’s ability to handle the estimated volume of calls and hours of operation of the planned services. The following subsections describe additional information to provide at a minimum:
 - 13.7.1. Describe your current hours of operation and ability to meet the need of 24-hours per day, seven days per week, 365-days per year §5-7.4.
 - 13.7.2. Describe the staffing levels currently in use and any planned expansion.
 - 13.7.3. Describe your firm’s ability to handle the estimated volume of calls as described in §5-5.7.
 - 13.7.4. Provide a narrative on how will you ensure that technical support is available and operational 24-hours a day, seven days a week, 365-days a year §5-7.5.



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SECTION VII - EXHIBIT 1

BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT ("Business Associate Agreement") is attached as EXHIBIT 1 and incorporated by reference into City Contract No. _____ entered into by and between The City of Phoenix ("Covered Entity") and _____ ("Business Associate").

RECITALS

WHEREAS, reference is made to City Contract No. _____ between Covered Entity and Business Associate (the "Underlying Agreement"), to which Business Associate performs certain activities or functions on behalf of Covered Entity which may involve Business Associate to create, receive, maintain or transmit Protected Health Information ("PHI"), as hereinafter defined.

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and security of PHI that may be created, received, maintained, or transmitted by Business Associate pursuant to the Underlying Agreement with applicable provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and regulations promulgated thereunder by the United States Department of Health and Human Services ("H.H.S."), including those added pursuant to the American Recovery and Reinvestment Act of 2009, Title XIII - Health Information Technology for Economic and Clinical Health ("HITECH"), and other applicable laws (collectively referred to herein as "HIPAA").

WHEREAS, the purpose of this Business Associate Agreement is to satisfy certain standards and requirements of the Privacy Rule, 45 C.F.R. Parts 160 and 164, subparts A and E, and the Security Rule, 45 C.F.R. Parts 160 and 164, subparts A and C, as the same may be amended from time to time.

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Definitions.



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Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in HIPAA.

- (a) "Breach" has the meaning set forth at 45 C.F.R. § 164.402.
- (b) "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Business Associate Agreement, shall mean _____ (Contractor name)
- (c) "Electronic Protected Health Information" or "ePHI" has the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103, limited to information created or received by Business Associate from or on behalf of Covered Entity.
- (d) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended.
- (e) "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- (f) "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, found in the American Recovery and Reinvestment Act of 2009 at Division A, title XIII and Division B, Title IV.
- (g) "Individual" has the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- (h) "Limited Data Set" has the same meaning as the term "limited data set" in 45 C.F.R. § 164.514(e)(2).
- (i) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. parts 160 and 164, Subparts A and E, as promulgated pursuant to HIPAA, and as may be amended from time to time.
- (j) "Protected Health Information" or "PHI" has the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. PHI shall include ePHI.
- (k) "Required by Law" has the same meaning as the term "required by law" in 45 C.F.R. § 164.103.



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- (l) "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- (m) "Unsecured PHI" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued by H.H.S. under Pub. L. 111-5, § 13402(h)(2).
- (n) "Security Rule" means the Standards for Security of Electronic Protected Health Information at 45 C.F.R. parts 160, 162 and 164, as promulgated pursuant to HIPAA, and as may be amended from time to time.

2. **Obligations and Covenants of Business Associate.**

- (a) *Uses and Disclosures.* Business Associate shall not use or disclose Covered Entity's PHI otherwise than as specifically permitted or required by this Business Associate Agreement.
 - (i) The Confidentiality and Data Security provisions found in Paragraph 12 of the Underlying Agreement shall apply to this Business Associate Agreement.
 - (ii) **Application of Privacy Rule and Security Rule to Business Associate.** The administrative, technical and physical safeguards set forth in the Privacy Rule and Security Rule shall apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of the Privacy Rule that relate to privacy or security, and that are made applicable with respect to covered entities shall also be applicable to Business Associate and are hereby incorporated into this Business Associate Agreement.
 - (iii) **Security.** Business Associate agrees to (a) comply with Subpart C of 45 C.F.R. Part 164 with respect to PHI; and (b) ensure that any agent or subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and



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164.308(b)(2), and (c) report to Covered Entity any violation of the Security Rule of which it becomes aware.

Business Associate agrees to use appropriate and reasonable safeguards to prevent use or disclosure of the PHI other than as provided for by this Business Associate Agreement and will comply with the Security Rule with respect to ePHI. Business Associate shall use its best efforts to implement and maintain technologies and methodologies that render PHI unusable, unreadable, or indecipherable to unauthorized individuals as specified by the Secretary in the guidance issue by H.H.S. under Pub. L. 111-5, § 13402(h)(2).

Business Associate agrees that the City may assess or test the security of any applications, web services, or computerized systems created or provided by the Business Associate that process, store, or transmit City information. If the City finds vulnerabilities that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS) in these applications, web services, or computerized systems, the Business Associate agrees to remediate the vulnerability at no cost to the City and within an agreed-upon timeframe not to exceed 90 days. To clarify, the Business Associate must remediate found vulnerabilities in computerized systems they provide; Business Associate is not liable for remediating any vulnerability found in the City's network or computing infrastructure used to support the applications, web services, or systems created or provided by the Business Associate.

Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity only as specified in the Underlying Agreement or as otherwise directed in writing by Covered Entity, provided that such use or disclosure would not violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity and doing so meets the requirements of this Business Associate Agreement.

- (iv) Except as expressly permitted by the Underlying Agreement, HIPAA, the HITECH Act, the rules promulgated under those



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provisions and any other applicable statute or regulation, Business Associate shall not (a) directly or indirectly receive remuneration in exchange for any PHI of an individual, or (b) use or disclose PHI for any purpose directly or indirectly related to any marketing or marketing communication.

- (v) Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by covered entity except for the specific uses and disclosures set forth below:
 - (1) Except as otherwise limited in this Business Associate Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that: (A) disclosures are Required by Law; or (B) to third parties only if such use or disclosure is necessary to provide healthcare operations services to Covered Entity or, is permitted or Required by Law, upon Business Associate receiving reasonable written assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person to whom it is disclosed is obligated to notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been potentially breached.
 - (2) To the extent permitted in the Underlying Agreement or otherwise approved in writing by Covered Entity, Business Associate may use PHI to provide Data Aggregation services to Covered Entity relating to the health care operations of Covered Entity.
- (vi) Business Associate is not permitted to use PHI to create de-identified information except as approved in writing by Covered Entity.
- (vii) Other Business Associates. As part of its providing functions, activities, and/or services to Covered Entity as identified in Section 2(a) (Uses and Disclosures), Business Associate may



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disclose information, including PHI, to other business associates of Covered Entity when directed to do by Covered Entity and may use and disclose information, including PHI, received from other business associates of Covered Entity as if this information was received from, or originated with, Covered Entity.

- (b) *Reporting of Unauthorized Uses or Disclosures.* Unless restricted by law enforcement, Business Associate, its agents and subcontractors, shall notify Covered Entity in writing of any unauthorized or impermissible access, use or disclosure of unsecured PHI, any modification or destruction of information, any interference with system operations, , including any Breach of Unsecured PHI or any Security Incident, without unreasonable delay, but not later than three (3) days after Business Associate's discovery of the use or disclosure, Breach of Unsecured PHI, or Security Incident. In the event that data collected or obtained by the Business Associate or agents and subcontractors, in connection with this Business Associate Agreement is suspected to have been compromised, Business Associate shall notify the contracting City department immediately following the date of discovery. The parties agree that this Section satisfies any notices necessary by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. For purposes of this Business Associate Agreement, "Unsuccessful Security Incidents" include activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, and any combination of the above, so long as no such incident results in unauthorized access, acquisition, use or disclosure.

- (c) *Breaches of Unsecured PHI.*

(i) In the event of a Breach of Unsecured PHI, Business Associate shall provide Covered Entity a written report, without unreasonable delay, but not later than three (3) days after Business Associate's discovery of the Breach. The report shall include at least the following information:

- (1) the identification of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach;



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- (2) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - (3) a description of the types of PHI that were involved in the Breach (i.e., full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information that were involved);
 - (4) any steps that Covered Entity or the Individual should take to protect Covered Entity or the Individual from potential harm resulting from the Breach;
 - (5) a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to the Individual, and to protect against further Breaches;
 - (6) the results of any and all investigations performed by Business Associate related to the Breach;
 - (7) any other details necessary to complete an assessment related to the potential compromise of PHI; and
 - (8) contact procedures for Covered Entity to ask Business Associate questions or learn additional information from Business Associate, which shall include a telephone number, an e-mail address, and postal address.
- (ii) Business Associate shall assist Covered Entity, as requested, to provide notification to affected Individuals whose Unsecured PHI has been Breached, as well as the Secretary and the media, as required by HIPAA or other applicable law. In case of a breach or critical breach of the City's information, it will be the City, not the Business Associate, that will inform any and all individuals affected by any such breach. Only upon prior written consent of the City, or at the specific direction of the City, will the Business Associate notify individuals affected by a breach or critical breach of the City's information. Business Associate will, upon Covered Entity's written request, make any notifications and fulfill its obligations pursuant to this Business Associate Agreement, the Privacy Rule and any other applicable mandates of law or regulation. Business Associate agrees to pay actual costs for notification and any associated mitigation



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incurred by Covered Entity, including but not limited to, costs associated with providing notice, printing, mailing, credit monitoring, identity theft protection, call center services, etc., if Covered Entity determines in its sole discretion that such measures are warranted. Business Associate shall also reimburse Covered Entity for all reasonable costs, expenses, damages, and other losses resulting from any unauthorized use or disclosure, Security Incident, or Breach involving PHI maintained by Business Associate or its subcontractors. These obligations are in addition to, and in no way limit, the obligations under Section 2(n) (Indemnification). The obligations of this Section shall survive the expiration or earlier termination of this Business Associate Agreement.

- (iii) Business Associate agrees to establish procedures to investigate a Breach, mitigate losses, and protect against future Breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.
- (d) *Mitigation of Unauthorized Uses or Disclosures.* Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or one of its agents or subcontractors in violation of the requirements of this Business Associate Agreement, HIPAA, or other applicable law.

Agents and Subcontractors. Business Associate will notify Covered Entity prior to entering into a written agreement with any agents or subcontractors who will have access to PHI and will require such agents or subcontractors to comply with the terms of this Business Associate Agreement. Business Associate will ensure that any agent or subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information. Business Associate shall, upon request, provide a copy of such Agreement (s) to Covered Entity. Business Associate shall secure from its agents and subcontractors reasonable assurances that all PHI which they receive will be (a) held, used and disclosed in confidence; (b) used or further disclosed only as required by law for the purposes for which it was disclosed to the agent



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or subcontractor, and (c) maintained in strict compliance with all applicable provisions of this Business Associate Agreement, the Privacy Rule and the Security Rule.

- (e) *Access to PHI.* Business Associate shall, to the extent Covered Entity determines that any PHI maintained by Business Associate or its agents or subcontractors constitutes a Designated Record Set, make PHI specified by Covered Entity available to Covered Entity, or as directed by Covered Entity, to the Individual(s) identified by Covered Entity as being entitled to access and copy that PHI, in the time and manner reasonably designated by Covered Entity and in accordance with 45 C.F.R. § 164.524. If Business Associate receives a request for access to PHI directly from an Individual, Business Associate shall notify Covered Entity upon receipt of such request.
- (f) *Amendment of PHI.* Business Associate shall, to the extent Covered Entity determines that any PHI maintained by Business Associate or its agents or subcontractors constitutes a Designated Record Set, make any amendment(s) to PHI that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 in the time and manner reasonably designated by Covered Entity. If Business Associate receives a request for amendment to PHI directly from an Individual, Business Associate shall notify Covered Entity upon receipt of such request.
- (g) *Accounting of Disclosures.* Business Associate agrees to maintain and document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA, including but not limited to 45 C.F.R. § 164.528. Business Associate agrees to provide to Covered Entity, in writing and within ten (10) days of a request, information collected in accordance of this Section to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI. If Business Associate receives a request for an accounting of PHI directly from an Individual, Business Associate shall notify Covered Entity upon receipt of such request.
- (h) *Minimum Necessary Requirement.* Business Associate shall comply with HIPAA's minimum necessary requirements with respect to the use, disclosure, or request of PHI by limiting such PHI, to the extent



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reasonably practicable, to a Limited Data Set, or if needed, the minimum necessary to accomplish the intended purpose of such use, disclosure or request.

- (i) *Indemnification.* This indemnification provisions found in Paragraph 40.5 and Paragraph 1.1 of Exhibit 1 to the Underlying Agreement shall apply to this Business Associate Agreement.
- (j) *Restrict Disclosure of PHI.* Upon request by Covered Entity on behalf of an Individual, Business Associate agrees to abide by any restrictions on the use or disclosure of PHI agreed to by Covered Entity.
- (k) *Sales or Marketing.* Business Associate shall not use or disclose PHI for fundraising or marketing purposes. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except as expressly permitted by HIPAA.
- (l) *Compliance with Law.* To the extent Business Associate is to carry out one of more of Covered Entity's obligation(s) under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation(s).

3. **Obligations of Covered Entity.**

- (a) *Revocation of Permitted Use or Disclosure of PHI.* Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (b) *Restrictions on Use of Disclosure of PHI.* Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by in accordance with 45 C.F.R. § 164.522, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) *Requested Uses or Disclosures of PHI.* Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA.



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- (d) *Limitations in Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitations in the notice of privacy practices of Covered Entity under 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.*

4. **Termination.**

- (a) *Termination.* This Business Associate Agreement shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if Covered Entity agrees that it is infeasible to return or destroy such PHI, the protections are extended to such information in accordance with the termination provisions in this Section.
- (b) Effect of Termination.
- (i) Except as provided in paragraph (ii) of this Section 4(c) (Effect of Termination), upon termination of this Business Associate Agreement or City Contract No. 152640 for any reason, Business Associate shall return all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, or alternatively, certify in writing to Covered Entity that Business Associate has destroyed all such PHI in a manner specified by the Secretary in the guidance issued by H.H.S. under Pub. L. 111-5, § 13402(h)(2). This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- (ii) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. If Covered Entity agrees that return or destruction of the PHI is infeasible, as determined in its sole discretion, Business Associate shall extend the protections of this Business Associate Agreement to such PHI, and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

5. **Miscellaneous.**



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- (a) *Amendment.* Business Associate and Covered Entity agree to take such action as is reasonably necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of HIPAA. This Business Associate Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by both Business Associate and Covered Entity.
- (b) *Interpretation.* This Business Associate Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and other applicable law. The parties agree that ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits the parties' compliance with HIPAA and other applicable law.
- (c) *No Third Party Beneficiaries.* Nothing express or implied in this Business Associate Agreement is intended to confer, nor shall anything herein confer, upon any person other than Business Associate and Covered Entity any rights, remedies, obligations, or liabilities whatsoever.
- (d) *Notices.* This Notice provision found in Paragraph 20 of the Underlying Agreement shall apply to this Business Associate Agreement.
- (e) *Regulatory References.* A reference in this Business Associate Agreement to a section in HIPAA means the section as in effect or as amended.
- (f) *Subpoenas.* In the event that Business Associate receives a subpoena or similar notice or request from any judicial, administrative or other party in connection with this Business Associate Agreement, including, but not limited to, any unauthorized use or disclosure of PHI in breach of this Business Associate Agreement or in violation of HIPAA, Business Associate shall as soon as practicable, but in no event not less than five (5) days from receipt of such subpoena, notice or request, forward a copy of such subpoena, notice or request to Covered Entity and afford Covered Entity the opportunity to exercise any rights it may have under the law.
- (g) *Choice of Law and Venue.* The Governing Law; Forum; Venue provision found in Paragraph 22 of the Underlying Agreement shall apply to this Business Associate Agreement.
- (h) *Assignment of Rights and Delegation of Duties.* This Non-Assignability provisions found in Paragraph 19 of the Underlying Agreement shall



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apply to this Business Associate Agreement.

- (i) *Severability.* The provisions of this Business Associate Agreement shall be severable, and in the event that any provision of this Business Associate Agreement is held or declared to be illegal, invalid or otherwise unenforceable, the remainder of this Business Associate Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision(s) had not been contained herein.
- (j) *No Waiver.* Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Business Associate Agreement may be waived by either party except by a writing signed by an authorized representative of the party making the waiver.
- (k) *Entire Agreement.* This Business Associate Agreement, together with the all applicable amendments made pursuant to and in accordance with Section 5(a) (Amendment) of this Business Associate Agreement, constitutes the entire Business Associate Agreement between Covered Entity and Business Associate with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between Covered Entity and Business Associate with respect to the subject matter hereof. To the extent that any provision of this Business Associate Agreement specifically conflicts with the terms of any Underlying Agreement, the provisions of this Agreement shall govern.
- (l) *Independent Contractors.* For purposes of this Agreement, Covered Entity and Business Associate are and will act at all times as independent contractors. None of the provisions of this Agreement are intended to create, nor shall be deemed or construed to create, any relationship other than that of independent entities contracting with each other for the purpose of effecting this Agreement. None of the provisions of this Agreement shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the parties.
- (m) *Ownership.* Covered Entity shall retain all ownership rights to the PHI that Business Associate creates, receives, maintains, or transmits, in order to perform functions, activities or services on behalf of Covered Entity and any information derived from such PHI.



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- (n) *Survival.* The respective rights and obligations of Business Associate that by their nature should survive termination of this Agreement, including but not limited to Sections 2(d) (Reporting of Unauthorized Uses or Disclosures), 2(e) (Breaches of Unsecured PHI), 2(n) (Indemnification), Section 4 (Term and Termination), 5(f) (Subpoenas), 5(g) (Assistance in Litigation or Administrative Proceedings), and 5(i) (Choice of Law and Venue), shall survive the termination of this Agreement.

- (o) *Counterparts.* This Agreement may be executed in several counterparts, such counterparts may be exchanged by electronic or facsimile transmission, and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.