

April 6, 2021



RALPH M. TERRAZAS
FIRE CHIEF

February 18, 2021

BOARD OF FIRE COMMISSIONERS
FILE NO. 21-027

TO: Board of Fire Commissioners

FROM:  Ralph M. Terrazas, Fire Chief

SUBJECT: AGREEMENT WITH HARRIS & HARRIS, LTD. FOR DELINQUENT
ACCOUNTS COLLECTION SERVICES

FINAL ACTION:	<input type="checkbox"/> Approved	<input type="checkbox"/> Approved w/Corrections	<input type="checkbox"/> Withdrawn
	<input type="checkbox"/> Denied	<input type="checkbox"/> Received & Filed	<input type="checkbox"/> Other

SUMMARY

Pursuant to Section 5.181 of the Los Angeles Administrative Code, the Los Angeles Fire Department (LAFD) is required to refer unpaid and past due emergency ambulance service accounts to the City's contracted collection agency no later than 9 months from the date of initial billing. The LAFD's current contract with Harris & Harris, Ltd. (Harris & Harris) for uncollected emergency ambulance service accounts will expire on May 31, 2021, Contract No. C-124643.

On May 17, 2019, the Office of Finance released Request for Proposals No. 001-BCD for primary and secondary delinquent accounts collection services. The Office of Finance subsequently entered into a three-year agreement with Harris & Harris, Contract No. C-137456.

The LAFD requests to piggyback off the Office of Finance agreement with Harris & Harris for delinquent accounts collection services. The LAFD Agreement with Harris & Harris is for a three-year term, effective June 1, 2021 through May 31, 2024.

Harris & Harris collected annual revenues of \$1.2 million in FY 2018-19, and \$1.4 million in FY 2019-20.

The City Attorney has reviewed and approved the Agreement as to legal form.

RECOMMENDATIONS

That the Board:

1. Approve and authorize the Fire Chief to execute the Agreement with Harris & Harris, Ltd., to provide delinquent accounts collection services for a three-year term, from June 1, 2021 through May 31, 2024.
2. Transmit the Agreement to the Mayor for approval in accordance with Executive Directive No. 3.

FISCAL IMPACT

Execution of the Harris and Harris Agreement is estimated to generate an additional \$1.3 million annually in collection services revenues for the General Fund.

Board report prepared by Muriel Gee, Senior Management Analyst II, Administrative Services Bureau.

Attachment

AGREEMENT NO. _____

AGREEMENT BETWEEN

THE CITY OF LOS ANGELES

AND

HARRIS & HARRIS, LTD.

FOR

DELINQUENT ACCOUNTS COLLECTION SERVICES

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AGREEMENT NO. _____

AGREEMENT
BETWEEN THE CITY OF LOS ANGELES
AND
HARRIS & HARRIS, LTD.

This Agreement (hereinafter referred to as “Agreement”) is made and entered into by and between the City of Los Angeles (hereinafter referred to as “City”), a municipal corporation, acting by and through the Los Angeles Fire Department (hereinafter referred to as “Department” or “LAFD”), and Harris & Harris, Ltd., (hereinafter referred to as “Contractor”), with reference to the following:

WHEREAS, the City utilizes outside collection agency services as a best practice in delinquent debt collection and revenue generator to the City; and

WHEREAS, on May 17, 2019, the City’s Office of Finance (hereinafter referred to as “Finance”) released Request for Proposals (RFP) No. 001-BCD for Primary and/or Secondary Delinquent Account Collection Services to pursue collection of the City’s delinquent accounts; and

WHEREAS, the LAFD would like to take advantage of the above-referenced competitive contracting process to procure delinquent debt collection services as provided in Finance’s Agreement C-137456; and

WHEREAS, pursuant to City Charter Section 1022, the City has determined that this service can be performed more economically or feasibly by an independent contractor than by City employees; and

WHEREAS, the City and Contractor desire to enter into this Agreement whereby the Contractor will perform the work and furnish all labor, materials and equipment necessary to recover the monies due the City as a result of active pursuit of outstanding accounts receivables.

NOW, THEREFORE, in consideration of the premises, representations, covenants and agreements provided, below, the City and the Contractor agree as follows:

1.0 PARTIES TO THE AGREEMENT AND REPRESENTATIVES

1.1 Parties to the Agreement

- A. City – The City of Los Angeles, a municipal corporation, chartered by the State of California, acting by and through the Los Angeles Fire Department, having its principal office at 200 North Main Street, 18th Floor, Los Angeles, CA, 90012
- B. Contractor – Harris & Harris, Ltd., having its principal office at 111 W. Jackson Blvd., Suite 400, Chicago, IL 60604

1.2 Representatives of the Parties

The representatives of the respective parties authorized to administer this Agreement, and to whom formal notices, demands, and communications shall be given are as follows:

- A. The representative of the City shall be, unless otherwise stated in this Agreement:

Ralph M. Terrazas, Fire Chief
Los Angeles Fire Department
200 N. Main St., Room 1800
Los Angeles, CA 90012
Telephone: (213) 978-3800
Email: ralph.terrazas@lacity.org

With copies to:
S. Jenny Park, Fire Administrator
Los Angeles Fire Department
200 N. Main St., Room 1630
Los Angeles, CA 90012
Telephone: (213) 978-3731
Email: s.jenny.park@lacity.org

- B. The Contractor's representative is, unless otherwise stated in the Agreement:

Harris & Harris, Ltd.
111 W. Jackson Blvd., Suite 400
Chicago, IL 60604
Attn: Arnold S. Harris, President
Telephone: (312) 423-7400
Email: aharris@harriscollect.com

- C. Formal notices, demands, and communications to be given required hereunder by either party shall be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing.

D. If the name of the person designated to receive the notices, demands or communications or the address of such person is changed, written notice must be provided as described in this Agreement, within five (5) working days of said change.

2.0 TERM OF AGREEMENT

2.1 The term of this Agreement shall commence on June 1, 2021 and will terminate on May 31, 2024, unless otherwise terminated by the City as provided for in this Agreement.

2.2 To the extent that the Contractor may have provided services prior to the execution of this Agreement at the City's request and due to immediate needs, the City hereby ratifies and accepts those services performed in accordance with the terms and conditions of this Agreement.

3.0 SERVICES TO BE PROVIDED

The Contractor is an independent organization that will provide primary and/or secondary collection services on delinquent accounts referred to it by the LAFD pursuant to the terms and conditions of this Agreement.

Services to be performed by the Contractor for primary and/or secondary collection services herein include, but are not limited to, locating debtors, arranging for payments, mailing dunning notices, skip-tracing delinquent accounts, contacting debtors by telephone, filing delinquent notifications with credit bureaus and verifying assets. All correspondence between the Contractor and the LAFD and City debtors shall be sent by first class mail.

Primary collection services include collection efforts on initial referrals of delinquent Emergency Medical Services (EMS) Billing accounts "hereinafter referred to as "delinquent accounts") to the Contractor by the LAFD. The LAFD may refer delinquent accounts at the time reasonable collection efforts have failed, which is generally within nine (9) months of the date of initial billing.

For primary level services, the Contractor shall have a 12-month period consistent with the City's financial policies to effect collection. If the Contractor is unable to collect on the referred account within the allotted time from assignment, the Contractor shall return the account to the LAFD and cease all collection efforts. For the purposes of this Agreement, the term "assignment" means the date that the account is referred to the Contractor. In no event shall the Contractor be entitled to any payment on the account once it has been returned to the LAFD. In limited circumstances, the LAFD, as directed by the City, may, at its sole discretion, elect to extend the time that the Contractor may retain said account in writing. For payments received by the Contractor subsequent the return of the accounts, the Contractor may deposit these payments, remit same to the LAFD, and then the Contractor will be entitled to a commission payment.

Secondary collection services include collection efforts on referrals of delinquent accounts that were previously assigned to a collection agency at the primary level and were returned to the City department by the primary level agency after the time allotted by the City from initial assignment and uncollected. For secondary level collection services, the Contractor shall have a period of six (6) months to effect collection. If the Contractor is not able to collect on the referred account within six (6) months from assignment, the Contractor shall return the account to the LAFD and cease all collection efforts. In no event shall the Contractor be entitled to any payment on the account once it has been returned to the LAFD, or the City. In limited circumstances, the LAFD, as directed by the City, may, at its sole discretion, elect to extend the time that the Contractor may retain said account in writing.

The Contractor shall only perform primary level or secondary level collection services on any particular account that is referred to it by the LAFD and shall not under any circumstance perform both primary and secondary level collections on the same account.

The Contractor is prohibited from instituting any legal action on behalf of the LAFD or the City against any debtor or performing any service that would constitute the practice of law in the State of California. The Contractor is also prohibited from using any threats of legal action. The Contractor may only inform the debtor of consequences of non-payment, such as reporting to credit bureaus. If the Contractor determines that legal action or legal services are required, the Contractor shall make a recommendation for such action and return the account to the LAFD. Under this circumstance, the Contractor may communicate to debtor that the matter is being returned to the LAFD with a recommendation to consider further legal recourse.

In the event an account assigned to the Contractor is determined to be uncollectible, by LAFD, City, or Contractor, for reasons that include, but are not limited to, a debtor's bankruptcy filing, court-ordered receivership is granted over debtor's business, debtor is deceased or decedent's estate does not have sufficient assets to satisfy the indebtedness, the Contractor shall cease all collection efforts on said account upon receipt of this information and return the account to the LAFD with notification of the reason(s) for return of the account, as detailed in Section 7.0 of this Agreement.

4.0 REFERRAL PROCESS

Under no circumstance shall the Contractor initiate collection on behalf of the LAFD prior to written permission from the LAFD. Execution of this Agreement by the Parties does not obligate or guarantee that the LAFD will actually refer any accounts to the Contractor. At any time, the LAFD may, at its sole discretion, utilize the services of the Contractor or another contracted agency. This Agreement only applies to EMS Billing accounts referred by the LAFD. The Contractor agrees to meet with the LAFD, and in good faith, establish procedures, including, but not limited to, the secure transmittal to the Contractor of all accounts; recording of individual account transactions; processing and

documentation of payments against accounts; the Contractor's security practices under the Health Insurance Portability and Accountability Act of 1996 and the American Recovery and Reinvestment Act of 2009 which added the Health Information Technology for Economic and Clinical Health Act of 2009; results of audits; transmittal of account information back to the LAFD; and the return, destruction or retention of account data.

The LAFD may use more than one means/methods to assign accounts to the Contractor, that includes electronic transmission, electronic file, or in writing. For the purposes of this Agreement, the term "assign" means the transfer of accounts by the LAFD to the Contractor to effect collection. Assigned accounts will include the following information, if available, and any other relevant information that the LAFD may have at the time of referral as deemed appropriate:

- Debtor Name(s)
- Debtor Address
- Type of Account
- Unpaid Balance Outstanding

5.0 PERFORMANCE REQUIREMENTS

- 5.1 In performing collection services for the LAFD, the Contractor shall adhere to the highest legal, ethical, and professional standards. The Contractor shall comply with the Taxpayer Bill of Rights and perform services in a manner that is consistent with all federal and state fair debt collection practices, acts and confidentiality provisions, including, but not limited to California Civil Code Sections 1788 et seq. In addition, all information and data received by the Contractor from the City shall be regarded as confidential under Section 21.17 of the Los Angeles Municipal Code.

Moreover, for collection of the LAFD EMS accounts, the Contractor shall maintain at all times compliance with all Health Insurance Portability and Accountability Act (HIPAA) regulations and requirements as set forth in Title 45 of the Code of Federal Regulation (Parts 160, 162 and 164) and the American Recovery and Reinvestment Act of 2009 which added the Health Information Technology for Economic and Clinical Health Act of 2009 (Sections 13400 et seq.) throughout the term of the contract. The CONTRACTOR is required to integrate with existing LAFD HIPAA compliant systems to ensure secure electronic transfer and documentation of EMS related records.

In addition, in performing the services requested, the Contractor shall:

1. Perform its work as an independent contractor and shall, at all times, inform the debtors that it is acting as a collection agency for the City but that it is an entity separate and distinct from the City;

2. Collect on only amounts authorized by the City and shall not add or collect any amounts not authorized by the City;
3. Deposit all monies collected for the LAFD into a special trust fund which shall be kept separate and not commingled with other funds of the Contractor or other clients of the Contractor. If the trust fund is an interest accruing account, such accruals must be credited to the City. All monies collected by the Contractor for the City shall be remitted to the City on a monthly basis; as defined in this Article and Section 7.0 of this Agreement;
4. Deliver to the LAFD on or before the fifteenth (15th) of each month all monies collected during the previous month. The Contractor shall not, for any reason, withhold monies collected during the previous month on any account referred to the Contractor by the LAFD and shall promptly deliver said payments to the LAFD as specified above. Together with the monthly delivery of monies collected during the previous month, the Contractor shall submit an invoice in duplicate for commission owed and a remittance report summarizing detailed information for payments received in accordance with the requirements outlined in Section 7.0 of this Agreement;
5. Obtain approval from the LAFD as to form and content for all letters used by the Contractor to effect collection before use;
6. Engage in payment plans, when determined appropriate, with the City debtors for a term of no longer than one (1) year. Payment plans in excess of one (1) year require written approval from the LAFD Fire Chief or Fire Administrator;
7. Agree that any information provided by the LAFD on delinquent accounts will be used solely for the purpose of collection, held in the strictest of confidence and used for no other purpose;
8. Maintain all LAFD information and records separate from information and records related to other clients;
9. Bear all expenses and costs incurred to effect collection of any account referred by the LAFD;
10. Report City department accounts to credit bureaus within forty-five (45) days of assignment, except for instances when the City has approved in writing a change in this time frame. The account may remain on a credit bureau report for the duration of the time in which the account is assigned with the Contractor and any written extension granted by the City, but upon return of the account to the City, the Contractor will instruct credit bureaus to remove any negative data reported relative to the account;

11. Provide electronic payment options to debtors including online, credit or debit card, e-check, ACH, as well as other City-approved methods;
12. Return to the LAFD, in automated format or other manner specified by the LAFD, all accounts that remain uncollected by the Contractor upon the period set by the LAFD from assignment, and shall cease all collection efforts, except for instances where payment plans are in effect and active payments are made in accordance with the plan or in limited circumstances where the LAFD, at the direction of the City may, at its sole discretion, elect to extend the time that the Contractor may retain said account in writing. In no event shall the Contractor be entitled to any payment on the account once it has been returned to the City, unless payment is received by the Contractor on the returned account. The Contractor shall report to the LAFD, as outlined in Section 7.0 of this Agreement, on any account returned prior to or retained past the allotted time specified by the City to effect collection in this Agreement;
13. Be able to accept account data through various communication methods employed by the LAFD, whether paper-based or electronic. The Contractor must work with the LAFD and its EMS billing Contractor(s) to develop systems interfaces for efficient and secured data transfer of their accounts. All costs associated with the development of said systems will be borne by the Contractor;
14. Comply with any special collection campaigns authorized by the City, wherein selected account types may be targeted for specified reductions in balances owed, for example, offer in compromise and debt amnesty programs.

Moreover, in performing the services requested, the Contractor shall not:

15. Subcontract, assign, refer or transfer any account referred to it by the LAFD, or otherwise assign its rights or delegate its duties under this Agreement to any other person or entity, including any attorney, without the express written consent of the LAFD;
16. Collect more than the amount of the assigned debt and any applicable contingency fees authorized by the City to be added to the assigned amount. The City's assigned debt may include both the principal amount and any penalties or interest on the unpaid principal amount, including any accrued amounts authorized by the City. The Contractor shall not add and/or collect penalties, interest or fees not authorized by the City in writing. Any additional authorized or unauthorized amounts collected by the Contractor shall be remitted to the LAFD and/or the City, as defined in Section 7.0 of this Agreement;
17. Threaten or intimidate debtors under any circumstances in the collection of the LAFD's accounts or violate any applicable government laws or regulations;

18. Use or display the official seal of the City or the LAFD on any of its letterheads or communications with any debtor for any reason;
19. State or suggest, in any verbal or written communication, that the Contractor intends to pursue legal action against the debtor, or imply that it has any authority to do so;
20. Take any legal action against a debtor on a City account;
21. Initiate, negotiate, or reach settlements on any account assigned to it for collection nor directly or indirectly imply that it has such authority, unless authorized by the City in writing;
22. Recommend to debtors the use of "payday" loans to satisfy City accounts, or any loans through a lender wherein the Contractor has any financial interest in the lender or where the Contractor would realize any additional financial gain through referral of business to the lender;
23. Perform secondary level collection services on any account in which it has previously performed primary collection services under this Agreement.

5.2 Recall of Accounts

The LAFD shall have the right at their sole discretion to recall from the Contractor without charge or penalty any account(s) assigned to the Contractor. For purposes of this Agreement, the term "recall" means the demand return of an assigned account to the City. Upon recall by the LAFD, the Contractor shall undertake no further collection efforts on recalled account(s). The Contractor shall also instruct credit bureaus to remove any negative data reported relative to the account(s) recalled. The Contractor shall not be entitled to any contingency fees for payments received by the LAFD on an account after the date of recall except where the debtor has contacted the LAFD or the City to engage in settlement of the account prior to the date of recall. If a debtor pays on an LAFD account no longer assigned to the Contractor, the Contractor shall accept payment and remit same to the LAFD, and will be entitled to commission fees.

5.3 Quality Assurance

The Contractor's performance will be evaluated according to contract standards and other performance measures deemed appropriate by the LAFD and/or the City, including, but not limited to, establishing the Contractor performance benchmarks and incentives relative to collection on the LAFD accounts. The LAFD and/or the City may use a variety of inspection methods to determine the Contractor's compliance with terms of this Agreement and evaluate performance level. The methods of inspection may include, but are not limited to:

- Random sampling
- Reports, (monthly and as needed)

- Periodic inspection of output items

The LAFD and/or the City shall have the right at any time during regular business hours to inspect records relative to the LAFD accounts maintained by the Contractor at its place of business. For the LAFD EMS accounts, the Contractor shall retain records as required by HIPAA and the terms of the Business Associate Agreement between the Contractor and the LAFD, as referenced in Section 10.

The Contractor must also be available to meet with representatives of the LAFD and/or the City on a quarterly basis, or as deemed appropriate by the City, to discuss any issues or concerns relating to the contract and/or the LAFD accounts. Upon request by the LAFD for an impromptu meeting with the Contractor, the Contractor shall coordinate with the LAFD an amicable time; however, if the LAFD deems the matter requires immediate attention, the Contractor shall make itself available to meet with the LAFD within two (2) business days from the day of the LAFD's request.

5.4 Account Redistribution

The LAFD shall have sole discretion at any time without reason the right to distribute or redistribute accounts among the City's contracted collection agencies. For those accounts assigned to the Contractor wherein payments are being made and/or subject to a current, agreed upon payment plan, the LAFD may permit these accounts to remain with the Contractor while collections continue according to the arranged payment amount and schedule.

For any account assigned to the Contractor and recalled by the LAFD to pursue other measures to collect, including redistribution to another contracted collection agency, the Contractor will not be due any commission after the date of recall by the LAFD except where debtor has contacted the LAFD to engage in settlement of the account prior to the date of recall. The Contractor shall direct the debtor to contact the LAFD on any attempt by a debtor to pay on a LAFD account that has been recalled by the LAFD or is no longer assigned to the Contractor.

5.5 Membership in Professional Organizations

The Contractor shall maintain, at no cost to the LAFD or the City, membership in the American Collectors Association, California Association of Collectors, or similar professional organizations that provide interstate and intrastate services and utilize collection techniques consistent with the Code of Ethics and standards adopted by said association(s).

5.6 Automation Support

The Contractor shall provide information technology/systems support to the LAFD as deemed necessary by the LAFD to establish and maintain account referral protocols, information exchanges and reports. Such information technology/systems support services are to be provided by the Contractor at no expense to the LAFD.

5.7 Client Assistance

The Contractor shall provide to the LAFD as needed on-site customer assistance during, but not limited to, the first thirty (30) days of contract implementation. Client assistance services are to be provided by the Contractor at no expense to the LAFD.

5.8 Training

The Contractor shall provide to the LAFD on-site training relative to collection processes and procedures as deemed necessary by the referring City departments at no cost to the LAFD.

5.9 Consulting

The Contractor shall provide to the LAFD, upon request of management and supervisory level personnel, consulting services relative to collection and revenue enhancement processes and procedures as deemed necessary by the LAFD at no cost to the LAFD.

The Contractor shall provide to the LAFD management and supervisory level staff data and information relative to collections, industry trends, best practices, projections and any other relevant materials, upon request, to assist the LAFD staff in revenue collection management and analysis.

5.10 Access to Accounts

The Contractor shall provide to the LAFD remote access to its accounts assigned to the Contractor through an internet website, or similar process approved by the LAFD. The Contractor shall also provide the LAFD with technical assistance, training and requirements needed to establish and use remote access privileges to its accounts, if needed, and at no cost to the LAFD. The remote access shall include the ability for the LAFD to view and print all transactions, information, and documents related to each account referred by the LAFD to the Contractor, including names and addresses noted on the account, if payer is different.

5.11 Complaint Response and Handling

The Contractor shall acknowledge and respond to all written and oral complaints received relative to the LAFD accounts or the LAFD debtors. For written complaints, the Contractor shall acknowledge receipt of the complaint in writing within two (2) business days from the day the written complaint is received. Complaints and/or inquiries by telephone shall be received by the Contractor's personnel during regular business hours. During non-business hours, the Contractor shall provide a means for debtors to leave a message regarding their complaint and/or inquiry. All phone messages regarding the LAFD accounts shall be responded to by the Contractor no later than the next business day from the day that the message was left.

All complaints shall be directed to qualified customer service staff or manager who shall take responsibility for resolving the matter. The Contractor shall conduct any necessary investigations and take appropriate steps to resolve complaints within thirty (30) calendar days from receipt of the complaint, or other time frame, if deemed appropriate and specified in writing by the LAFD. The Contractor shall notify complainant of the resolution of their complaint in writing and provide written notification of said resolution

to the LAFD, as defined in Section 7.0 of this Agreement. In circumstances when a complaint requires more than thirty (30) calendar days to resolve, the Contractor shall inform the LAFD of the additional time needed, basis for the delay and estimated time when a resolution is expected.

The Contractor shall document and maintain records of all complaints initiated, including information regarding the person(s) that filed the complaint, specific details regarding the nature of the complaint, all parties involved, steps taken to resolve the matter, final disposition and the name and title of staff that handled the matter.

At its sole discretion, the LAFD may require the Contractor to take further steps to resolve a complaint if determined by the LAFD that the Contractor did not address the complaint in a manner satisfactory to the LAFD. The Contractor shall provide to the LAFD any record(s) relative to a complaint upon request of the LAFD, and said record(s) shall be made available to the LAFD within two (2) business days of the LAFD's request.

The Contractor shall immediately notify the LAFD of any legal actions initiated against the Contractor regarding any LAFD account, or which may have any relevance to the LAFD and/or the City as a business partner. The Contractor shall within one (1) week of giving notice to the LAFD of a legal action, submit a comprehensive written report, including any supporting documentation, to the LAFD to acquaint the LAFD of pertinent details regarding the legal matter. The LAFD may, at its discretion, require the Contractor to provide said report sooner than one (1) week if deemed appropriate. The Contractor shall keep the LAFD informed on the status of any litigation matter at least on a quarterly basis, and shall immediately inform the LAFD of any key developments with regard to the legal proceeding. The LAFD may, at its sole discretion, modify the Contractor's reporting requirement regarding a legal matter as deemed appropriate. The Contractor shall assume all costs related to any litigation and the LAFD shall be held harmless for any liabilities or damages that may result from litigation against the Contractor on any LAFD account.

6.0 COMMISSION PAYMENTS

The LAFD agrees to compensate the Contractor on a contingency fee basis for services to the LAFD performed under this Agreement. If no recovery is made on an account referred to the Contractor by the LAFD, there is no compensation due to the Contractor. The commission due the Contractor shall be based on the Contractor's applicable commission rate approved by the LAFD and any recovery made on an account that has been assigned to the Contractor, up to, but not to exceed the LAFD's assigned amount. For compensation purposes, the assigned amount is the amount of the debt referred to the Contractor, including any LAFD and/or City authorized adjustments to the amount referred after assignment, i.e., interest accruing on the unpaid balance or a reduction in the debt from an audit performed on the account.

Any adjustments made to an assigned amount shall be authorized by the City, and upon adjustment, the Contractor shall be entitled to commission on amounts recovered up to

the final adjusted assigned amount. The Contractor is not entitled to commission on amounts recovered that exceed the LAFD's assigned amount, i.e., the Contractor's contingency fees authorized by the City to be added to the assigned amount and collected by the Contractor.

The Contractor's approved commission rates for actual amounts recovered on accounts referred, up to, but not exceeding the assigned amount of the referral, shall vary under this Agreement and the applicable rate will be determined by the following:

- The level of collection services performed by the Contractor is primary or secondary, and
- Whether the account is pre-judgment or post-judgment. For the purposes of this Agreement the term "pre-judgment" refers to accounts that the City has not obtained a court order for payment against the debtor and "post-judgment" refers to accounts that the City has obtained a court order against the debtor for payment of the debt.

Contractor's Approved Commission Rates

Collection Level	Assigned Amount	Commission Rate
<i>Primary Collection</i>	<i>N/A</i>	<i>14.9% add-on</i>
<i>Secondary Collection</i>	<i>N/A</i>	<i>21.9% add-on</i>
<i>Post Judgment</i>	<i>N/A</i>	<i>\$9/account for skip tracing/asset location</i>

The Contractor shall not be compensated in any other method than that prescribed in this Section. An invoice shall be submitted to the LAFD for commission owed the Contractor on amounts collected during the previous month, as detailed in Section 3.0 and Section 7.0 of this Agreement.

Any money paid directly to the City on any account assigned to the Contractor shall be deemed to have been collected by the Contractor, and the Contractor will be entitled to receive a commission on the payment, unless: 1) payment is received by the City or postmarked on or prior to the date of the City's receipt of the Contractor Acknowledgement Report as set forth in Section 7.0 of this Agreement or 2) collection activity, such as dunning notice sent or telephone contact with debtor, by the Contractor has not begun, in which case the Contractor would not be due any commission. The LAFD shall promptly notify the Contractor regarding any payment made directly to the City on an account assigned to the Contractor.

7.0 REPORTING

7.1 Required Monthly Reports to City Contract Administrator

All EMS accounts transmitted to the Contractor are deemed to contain PHI. The Contractor shall work with the LAFD to develop and ensure any and all reports provided to the City Contract Administrator, which includes monthly electronic reports regarding collection activities, overall and specific to EMS Billing Accounts, performed by the Contractor during the previous month and from inception of the Agreement, do not contain PHI. Required monthly reports are due to the City Contract Administrator within five (5) working days of the close of the prior month. The LAFD reserves the right to modify the Contractor's monthly reporting requirements to comply with Federal, State and Local laws, rules and regulations related to HIPAA and PHI. The Contractor shall comply with any requested changes to monthly reporting requirements within one (1) month of being notified by the LAFD of the requested modification. Required monthly reporting, as defined by the LAFD, may include, but are not limited to the following reports:

- Activity Reports
- Batch Reports
- Overall Status of Accounts Referred
- Lists of Delinquent Debtors
- Performance Reports
- Stair-Step Reports
- Status of Complaints, as defined in Section 5.0 of this Agreement

7.2 Required Monthly Reports to the LAFD

The Contractor shall also provide monthly electronic reports to the LAFD. Monthly reports shall include information relative to collection activities specific to accounts referred to the Contractor by the LAFD and include information for the prior month and aggregate from the time department initiated referring accounts to the Contractor. Required monthly reports are due to the LAFD within five (5) working days of the close of prior month. The LAFD reserves the right to modify the Contractor's monthly reporting requirements as deemed appropriate. The Contractor shall comply with any requested changes in monthly reporting within one (1) month of receiving notification from the LAFD. Required monthly reporting to the LAFD on accounts assigned to the Contractor may include, but are not limited to the following:

- Status of Accounts Referred by the City department -
Detailed for each account according to collection effort (e.g. payment plan, collection stage, call follow-up, pending dispute, skip trace, pending documents, etc.)
- Returned/Closed Accounts
- Retained Accounts
- Remittance Report

7.3 Acknowledgement Report

Upon receipt of a referral from the LAFD, the Contractor shall provide an Acknowledgement Report to the LAFD within one (1) City business day from the assignment to verify account placement. Timely submission of the Acknowledgement Report by the Contractor is essential in order for the Contractor to be entitled any commission for monies collected on a referred account, as set forth in Section 6.0 of this Agreement. The LAFD shall specify to the Contractor the method for receipt of the Acknowledgement Report. Information in the report shall include, but not be limited to the following on each account received:

- City Account Number
- Debtor Name
- Assignment Date
- Assignment Amount

7.4 Returned Accounts Report

The Contractor is required to furnish to the LAFD, when applicable, a report on accounts returned to the LAFD. Reasons that an assigned account may be returned to the LAFD include, but are not limited to:

- Contractor was unable to collect the unpaid amounts within the time period allotted by the City to effect collection
- Court-ordered receivership is granted over debtor's business
- Debtor bankruptcy filing
- Debtor is deceased
- Decedent's estate lacks sufficient assets to satisfy the indebtedness
- City recalled the account

The Contractor must state in its report the reason(s) for the return of the account and be able to provide detailed information regarding all efforts undertaken by the Contractor to collect on the account prior to its return. The format for the report on returned accounts shall be specified by the LAFD and shall accompany any returned accounts. At a minimum, information contained in the report shall include the following for each account returned:

- LAFD Account Number
- Contractor Assigned Account Number
- Debtor Name
- Assignment Date
- Assigned Amount
- Amount Collected
- Remaining Balance Due
- Detailed reasons for return -- for returns due to routine cancellation within the time period allotted by the City to effect collection (e.g. bad address, skip cannot locate, dispute, cease and desist, etc.)

7.5 Retained Accounts Report

The Contractor is required to furnish to the LAFD when applicable, a report on accounts retained by the Contractor beyond the approved period for collection. Reporting on retained accounts shall begin no later than the date that these accounts would normally have been returned to the LAFD due to the time period allotted by the LAFD to effect collection has expired. The Contractor shall continue to report on retained accounts, on a monthly basis, until said accounts are paid in full or returned to the LAFD.

LAFD accounts shall not be retained by the Contractor unless authorized in writing by the LAFD or the City or where payment plans are in effect and debtors are making active payments under the payment plan that will extend beyond the allotted time period to effect collection as specified under this Agreement.

At any time, the LAFD may, at its sole discretion and for any reason, recall an account from the Contractor, as set forth in Section 5.0 of this Agreement. However, this action would not preclude payment obligations to the Contractor of contingency fees in the event an account with a payment plan in effect is taken over by the LAFD and successfully collected by the LAFD or the City. The retained accounts report shall include at least the following information for each account retained:

- LAFD Account Number
- Debtor Name
- Assignment Date
- Assigned Amount
- Amount Collected
- Remaining Balance Due
- Reason(s) Account has been Retained

7.6 Remittance Report

The Contractor is required to furnish to the LAFD when applicable, a remittance report setting forth the details from any monies collected from debtors on LAFD assigned accounts during the previous month. This report shall accompany the monthly delivery of monies, as defined in Section 5.0 of this Agreement, and shall be delivered to the LAFD on or before the fifteenth (15th) of each month that the Contractor collected payments on assigned accounts during the previous month. Automated remittance processes may be implemented upon written agreement between the LAFD and the Contractor. Specific information required in the report shall include, but not be limited to:

- Contract Number
- Contractor Assigned Vendor Code Number
- LAFD Account Number
- Debtor Name
- Batch Number

- Amount Collected
- Remaining Balance Due
- Contractor Commission

7.7 Customized, Ad Hoc and Specialized As Needed Reports

On an occasional basis, the Contractor may be required to provide to the LAFD and the City Contract Administrators customized, ad hoc or specialized as needed reports. The Contractor shall furnish said reports within five (5) business days from receipt of a written request, or other timeframe specified in writing, from the LAFD Contract Administrator. Specific details regarding the content and format of the specialized report shall be provided by the requesting party. All reports are to be delivered to the LAFD only. No report may be distributed to other parties without the prior approval of the LAFD.

8.0 DATA, MANAGEMENT, SECURITY, AND PRIVACY

8.1 Data Ownership

As between the parties, City is the sole and exclusive owner of all data and information provided to Contractor by or on behalf of City pursuant to this Agreement and any and all updates or modifications thereto or derivatives thereof made by Contractor ("City Data"), and all intellectual property rights in the foregoing, whether or not provided to any other party under this Agreement.

City Data is Confidential Information for the purposes of this Agreement. Contractor shall not use City Data for any purpose other than that of rendering the services under this Agreement, nor sell, assign, lease, dispose of or otherwise exploit City Data. Contractor shall not possess or assert any lien or other right against or to City Data. City may request an export of City Data stored within the systems or held by Contractor in any form or format at no charge to City.

Subject to the restrictions articulated elsewhere in this Agreement, City grants Contractor a non-transferable, non-exclusive, terminable at-will license, solely for the term of this Agreement, to use City Data solely for purposes of performing the services pursuant to this Agreement for City's benefit.

8.2 Data Protection in General

The protection of personal privacy and personally identifiable data shall be an integral part of the business activities of Contractor, and Contractor shall use all reasonable efforts to prevent inappropriate or unauthorized use of City Data at any time and safeguard the confidentiality, integrity, and availability of City Data and comply with the following conditions:

- ##### 8.2.1
- Contractor shall implement and maintain appropriate administrative, technical and organizational security measures in order to safeguard against unauthorized access, disclosure, destruction, or theft of City Data. Contractor shall protect City Data using no less than the security means and technology necessary to meet the standard of care

relevant to the data at issue. Such security measures shall also be in accordance with recognized industry best practices and the standard of care imposed by state and federal laws and regulations relating to the protection of such information.

- 8.2.2 Unless otherwise stipulated in writing, Contractor shall encrypt all City Data at rest and in transit with controlled access. The Contractor shall apply and support encryption solutions that are certified against U.S. Federal Information and Processing Standard 140-2, Level 2, or equivalent industry standard, and verify that the encryption keys and keying material are not stored with any associated data. Whenever and wherever applicable, Contractor shall apply and support industry standards or better for tokenization, fraud-use protection, format-preserving encryption, and data encryption technology.
- 8.2.3 At no time shall any City Data be copied, disclosed, or retained by Contractor or any party related to Contractor, including its subcontractors, for use in any process, publication, or transaction that is not specifically authorized by Section 3.0 of this Agreement or by the City in writing.
- 8.2.4 Contractor shall secure and protect all City Data from hacking, viruses, ransomware, and denial of service and related attacks.
- 8.3 Development and Access
Contractor shall provide its services to the City and its end users solely from data centers in the continental United States of America. Storage of City Data at rest shall be located in the continental United States of America. Contractor shall not allow its personnel or subcontractors to store City Data on portable devices, including personal computers, except for devices that are used and kept only at Contractor's continental United States of America headquarters or data centers. Contractor may permit its personnel and subcontractors to access City Data remotely from locations within the continental United States of America only as required to provide contracted services. Contractor shall neither access nor allow a third-party access to City Data from any location outside of the continental United States of America. Contractor shall not provide any services under this Agreement from a location outside of the continental United States of America, absent receipt of City's express written approval.
- 8.3.1 Access Limitations
Contractor shall use precautions, including, but not limited to, physical software and network security measures, personnel screening, training and supervision, and appropriate agreements to:

- 8.3.1.1 Prevent anyone other than City, authorized Contractor personnel, and subcontractors with a specific need to know, for a purpose authorized under this Agreement, from monitoring, using, or gaining access to City Data;
- 8.3.1.2 Protect copies of City Data from loss, corruption, or unauthorized alteration; and
- 8.3.1.3 Prevent the disclosure of City and Contractor usernames, passwords, API keys, and other access control information to anyone other than authorized City and Contractor personnel.
- 8.3.2 Security Best Practices
Contractor shall implement the following security best practices with respect to City Data and to any service provided:
 - 8.3.2.1 Least Privilege
Contractor shall authorize access only to an employee or subcontractor for only the minimum amount of resources required for that function.
 - 8.3.2.2 Separation of Duties
Contractor shall divide functions among its staff members to reduce the risk of one person committing fraud undetected.
 - 8.3.2.3 Role-Based Security
Contractor shall restrict access to authorized users and base access control on the role a user plays in the Contractor's organization.
- 8.3.3 Credential Restrictions
Contractor shall restrict the use of, and access to, administrative credentials for accounts and system services accessing City Data, to only those of Contractor's personnel and subcontractors whose access is essential for the purpose of providing the contracted services or performing obligations under this Agreement. Contractor shall require personnel and subcontractors to log on using an assigned user-name and password when administering City accounts or accessing City Data. These controls must enable Contractor to promptly revoke or change access in response to terminations or changes in job functions, as applicable. Contractor shall encrypt all passwords, passphrases, and PINs, using solutions that are certified against U.S. Federal Information and Processing Standard 140-2, Level 2, or equivalent industry standard, and verify that the encryption keys and keying material are not stored with any associated data. Contractor shall implement any City request to revoke or modify user access within twenty-four hours or the next business day of receipt of City's request. Contractor shall disable user accounts after at most 10 consecutive invalid authentication attempts.
- 8.3.4 Physical and Environmental Security
Contractor facilities that process City Data must provide a physically secure environment from unauthorized access, damage, and interference.

8.4 System Administration and Network Security

8.4.1 Operational Controls

Contractor shall implement operational procedures and controls designed to ensure that technology and information systems are configured and maintained according to prescribed internal standards and consistent with applicable Industry Standard Safeguards. Examples of Industry Standard Safeguards are ISO/IEC 27002:2005, NIST 800-44, Microsoft Security Hardening Guidelines, OWASP Guide to Building Secure Web Applications, SOC 2 Type 2, and the various Center for Internet Security Standards. Moreover, Contractor shall use application security and software development controls designed to eliminate and minimize the introduction of security vulnerabilities.

8.4.2 Antivirus

Contractor shall have and maintain antivirus protection configured to automatically search for and download updates (daily, at a minimum) and perform continuous virus scans. Malware and threat detection must be updated continuously, and software patches provided by vendors must be downloaded and implemented in a timely manner. If Contractor is unable to implement these controls in a timely manner, Contractor shall notify City in writing.

8.4.3 Vulnerability Management and Patching

Contractor shall employ vulnerability management and regular application, operating system, and other infrastructure patching procedures and technologies designed to identify, assess, mitigate, and protect against new and existing security vulnerabilities and threats, including viruses, bots, and other malicious code.

8.4.4 Network Controls

Contractor shall have, shall implement, and shall maintain network security controls, including the use of firewalls, layered DMZs and updated intrusion detection and prevention systems, reasonably designed to protect systems from intrusion or limit the scope or success of any attack or attempt at unauthorized access to City Data.

8.4.5 Logging and Monitoring

Unless prohibited by applicable law, Contractor shall, and shall require subcontractors to, continuously monitor its networks and personnel for malicious activity and other activity that may cause damage or vulnerability to City Data. Contractor shall maintain logs of administrator and operator activity and data recovery events related to City Data.

8.4.6 Changes in Service.

Contractor shall notify the City of any changes, enhancement, and upgrades to the System Administration and Network Security, or changes in other related services, policies, and procedures, as applicable, which can adversely impact the security of City Data.

8.5 Policies, Assessments, and Audits

8.5.1 Policies

Contractor shall, and shall require subcontractors to, establish and maintain a formal, documented, mandated, company-wide information security program, including security policies, standards, and procedures (collectively “Information Security Policy”), and communicate the Information Security Policy to all of its respective personnel in a relevant, accessible, and understandable form. Contractor shall regularly review and evaluate the Information Security Policy to ensure its operational effectiveness, compliance with all applicable laws and regulations, and to address new threats and risks. Upon execution of this Agreement and thereafter within three (3) days of City’s request, Contractor shall make available for review by the City Contractor’s Information Security Policy and any related SOC audits or other evidence that Contractor has in place appropriate policies and procedures regarding information protection and security.

8.5.2 Vulnerability and Risk Assessments

At least annually, Contractor shall perform vulnerability tests and assessments of all systems that contain City Data. For any of Contractor’s applications that process City Data, such testing must also include penetration tests using intercept proxies to identify security vulnerabilities that cannot be discovered using automated tools, and code review or other manual verifications to occur at least annually.

Contractor recognizes and agrees that work performed under this agreement may be subject to City’s vulnerability disclosure program. Contractor shall work with City in good faith to mitigate any vulnerabilities discovered as part of any City vulnerability disclosure program. Contractor shall perform such mitigation within the timeline required pursuant to the vulnerability disclosure program and at no additional cost to City. Contractor shall further hold harmless any security researcher identified by City that alerts City to vulnerabilities in accordance with the process and requirements of City’s vulnerability disclosure program.

8.5.3 Right of Audits by City/Security Review Rights

City and its agents, auditors (internal and external), regulators, and other representatives as City may designate, may inspect, examine, and review the facilities, books, systems, records, data, practices, and procedures of Contractor (and any personnel and subcontractors that Contractor may use) that are used in rendering services to City to verify the integrity of City Confidential Information and to monitor compliance with the confidentiality and security requirements for City Confidential Information. In lieu of an on-site audit, at City’s discretion and upon request by the City, the Contractor agrees to complete, within fourteen (14) days of receipt, an audit questionnaire provided by the City regarding the Contractor's data privacy and information security program. Contractor shall comply with all recommendations that result from such inspections, tests, and audits within reasonable timeframes.

8.6 Data Backup and Emergency Recovery

Contractor shall employ a multilayered approach to backups and disaster recovery, including the use of a primary data center and a backup data center. Contractor shall perform both local and remote backups of the complete server infrastructure, including server operating systems, applications, and data. Contractor shall perform Disaster Recovery Tests no less than semi-annually. Contractor shall maintain and comply with a reasonable written plan (the “DR Plan”) setting forth procedures for (a) mitigating disruption to systems during and after an earthquake, hurricane, other natural disaster, war, act of terrorism, act of cyber terrorism, and other natural or man-made disaster, including without limitation Force Majeure Events (as that term is used in PSC-6, Excusable Delays, of the Standard Provisions for City Contracts (Rev. 10/17)[v.3] (collectively, a “Disaster”); and (b) restoring Service functionality promptly after a Disaster. The DR Plan will include procedures no less protective than industry standard, and Contractor shall update the DR Plan as the industry standard changes.

8.7 Data Return and Destruction

8.7.1 At the conclusion of the Agreement and as instructed by City, Contractor shall (at its sole cost) return, delete, or destroy City Data then in its possession or under its control including, without limitation, originals, and copies of such City data. The following types of information are excluded from this requirement: (i) City Data that becomes a part of the public domain, including through court filings; and (ii) City Data that Contractor is required to maintain, by law, regulations, or by the terms of this Agreement, but only for the time period required. For the avoidance of doubt, anything that is stored on routine backup media solely for the purpose of disaster recovery will be subject to destruction in due course rather than immediate return or destruction pursuant to this paragraph, provided that Contractor and Contractor’s employees and contractors are precluded from accessing such information in the ordinary course of business prior to destruction.

8.7.2 Contractor shall implement and utilize appropriate methods to ensure the destruction of City Data. Such methods shall be in accordance with recognized industry best practices and shall leave no data recoverable on Contractor’s computers or other media.

8.7.3 Contractor agrees to certify that City Data has been returned, deleted, or destroyed from its systems, servers, off-site storage facilities, office locations, and any other location where Contractor maintains City Data within forty-five (45) days of receiving City’s request that the information be returned, deleted, or destroyed. Contractor shall document its verification of data removal, including tracking of all media requiring cleaning, purging or destruction.

8.8 Data Breach

Contractor shall notify City in writing as soon as reasonably feasible, but in any event within forty-eight hours of Contractor’s discovery or reasonable belief of any unauthorized access, loss, transmission, alteration, or destruction of City Data (a “Data Breach”), or of any event that compromises the integrity, confidentiality or availability of

City Data (a “Security Incident”), including, but not limited to, denial of service attack, ransomware attack, and system outage, instability or degradation due to computer malware or virus. Contractor shall begin remediation immediately. Contractor shall provide daily updates if requested by City, and, in any event, reasonably frequent updates, regarding findings and actions performed by Contractor until the Data Breach or Security Incident has been resolved to City’s satisfaction. Contractor shall conduct an investigation of the Data Breach or Security Incident and shall share a report of the investigation findings with City. At City’s sole discretion, City and/or its authorized agents shall have the right to conduct an independent investigation of a Data Breach. Contractor shall cooperate fully with City and its agents in that investigation. If the City is subject to liability for any Data Breach or Security Incident, the Contractor shall fully indemnify and hold harmless the City and defend against any resulting actions.

8.9 Confidentiality

8.9.1 City’s Confidential Information

For purposes of this Section 8.9, “Confidential Information” means any nonpublic information whether disclosed orally or in written or digital media, received by Contractor that is either marked as “Confidential” or “Proprietary” or which the Contractor knows or should have known is confidential or proprietary information. City Data shall be treated as Confidential Information by Contractor under this Agreement, even if such data is not marked “Confidential” or “Proprietary” or was obtained by or transferred to Contractor prior to the effective date of this Agreement.

8.9.2 Protection of Confidential Information

Except as expressly authorized herein, Contractor shall (a) hold in confidence and not disclose any Confidential Information to third parties and (b) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement or performing the contracted services. Contractor shall limit access to Confidential Information to Contractor personnel and subcontractors that are previously disclosed to City and, (1) who have a need to know such information for the purpose of Contractor performing its obligations or exercising its rights under this Agreement, or performing Contracted Services; (2) who have confidentiality obligations no less restrictive than those set forth herein; and (3) who have been informed of the confidential nature of such information. In addition, the Contractor shall protect Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At LAFD’s request or upon termination or expiration of this Agreement, the Contractor shall return to LAFD any Deliverables not provided to the City and Contractor shall destroy (or permanently erase in the case of electronic files) all copies of Confidential Information, and Contractor shall, upon request, certify to City its compliance with this sentence.

8.9.3 Exceptions

The confidentiality obligations set forth in Section 8.9 shall not apply to any Confidential Information that (a) is at the time of disclosure or becomes generally available to the public through no fault of the Contractor; (b) is lawfully provided to the Contractor by a third party free of any confidentiality duties or obligations; (c) was already known to the Contractor at the time of disclosure free of any confidentiality duties or obligations; or (d) the Contractor can demonstrate was independently developed by personnel of the Contractor without reference to the Confidential Information. In addition, the Contractor may disclose Confidential Information to the extent that such disclosure is necessary for the Contractor to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Contractor promptly notifies LAFD in writing of such required disclosure, cooperates with LAFD if LAFD seeks an appropriate protective order, and the Contractor discloses no more information that is legally required.

8.10 Compliance with Privacy Laws

Contractor is responsible for ensuring that Contractor's performance of its obligations and exercise of its rights under this Agreement complies with all applicable local, state, and federal privacy laws and regulations, as amended from time to time. If this Agreement or any practices which could be, or are, employed in performance of this Agreement become inconsistent with or fail to satisfy the requirements of any of these privacy laws and regulations, City and Contractor shall in good faith execute an amendment to this Agreement sufficient to comply with these laws and regulations and Contractor shall complete and deliver any documents necessary to show such compliance. The City acknowledges and agrees that Contractor is not responsible for giving any notices to or obtaining any consents from any other party in order for Contractor to process the City Data as contemplated by this Agreement.

9.0 REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants that:

9.1 Compliance with Law

The services that the Contractor provides pursuant to this Agreement will comply with all applicable laws, including without limitation federal, state, and local.

9.2 Authority to Contract and No Pending Litigation

The Contractor has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.

9.3 Workmanlike Performance

All professional services will be performed in a professional and workmanlike manner, according to at least prevalent industry standards, and performed by competent personnel.

10.0 BUSINESS ASSOCIATE AGREEMENT

The LAFD is a Covered Healthcare Entity within the City organization, and in accordance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and to ensure the security of documents containing Protected Health Information (“PHI”), the Contractor by entering into this Agreement with the LAFD agrees to abide by the Business Associate Agreement (“BAA”), attached hereto and incorporated herein as Attachment B.

11.0 MISCELLANEOUS

11.1 Standard Provisions

By entering into this Agreement with the City, the Contractor shall comply with the Standard Provisions for City Contracts (Rev. 10/17)[v.3], attached hereto as Attachment A and incorporated by reference as though fully set forth herein.

11.2 Disclosure of Border Wall Contracting Ordinance

Contractor shall comply with Los Angeles Administrative Code (LAAC) Section 10.50 *et seq.*, “Disclosure of Border Wall Contracting Ordinance.” City may terminate this Agreement at any time if City determines that Contractor failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

11.3 Publicity/Case Studies

Contractor shall refer all inquiries from the news media to City, shall immediately contact City to inform City of the inquiry, and shall comply with the procedures of City’s Public Affairs staff regarding statements to the media relating to this Agreement or Contractor’s services hereunder. Contractor shall not use City as a reference or case study absent receipt of City’s prior written approval. Contractor shall further provide City with the opportunity to review and approve any such reference or case study prior to publication. In no event may Contractor use any City marks in conjunction with a reference or case study.

11.4 Non-Exclusive Agreement

City and Contractor understand and agree that this is a non-exclusive Agreement to provide services to the City and the LAFD and that the City or the LAFD reserve the right to enter into an agreement with other contractors to provide similar services during the term of this Agreement.

11.5 Order of Precedence

This Agreement, and any exhibits, attachments or documents incorporated herein by inclusion or by reference constitutes the complete and entire Agreement between the City and the Contractor. In the event of any inconsistency between the body of this Agreement and the Attachments, the order of precedence will be as follows:

- 1) This Agreement;

- 2) Attachment A – Standard Provisions for City Contracts (Rev. 10/17)[v.3]; and
- 3) Attachment B – Business Associate Agreement (HIPAA)

11.6 Entire Agreement

This Agreement contains the full and complete Agreement between the parties. No verbal agreement or conversation with any officer or employee of either party will affect or modify any of the terms and conditions of this Agreement.

11.7 Counterparts/Electronic Signatures

This Agreement may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

THE CITY OF LOS ANGELES

HARRIS & HARRIS, LTD.

By: _____
Ralph M. Terrazas
Fire Chief

By*: _____
Arnold S. Harris
President and CEO

Date: _____

Date: _____

APPROVED AS TO FORM:
MICHAEL N. FEUER, City Attorney

By**: _____
David L. Harris
EVP and COO

By: _____
Samuel W. Petty
Deputy City Attorney

Date: _____

Date: _____

ATTEST:
HOLLY L. WOLCOTT, City Clerk

NOTE: If Contractor is a corporation, two signatures are required.

* The signature of President, Chairman of the Board, or Vice President is required here; and
** an additional signature of Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer is also required for the Corporation.

By: _____
Deputy City Clerk

Date: _____

Agreement Number: _____

ATTACHMENT A

STANDARD PROVISIONS FOR CITY CONTRACTS (Rev. 10/17)[v.3]

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

PSC-3. Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-4. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

PSC-5. Amendment

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

PSC-6. Excusable Delays

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

PSC-7. Waiver

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

PSC-8. Suspension

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

PSC-9. Termination

A. Termination for Convenience

CITY may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
 - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
 - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
 - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
 - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
- 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
- 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
- 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

PSC-10. Independent Contractor

CONTRACTOR is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

PSC-11. Contractor's Personnel

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

CONTRACTOR shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

PSC-12. Assignment and Delegation

CONTRACTOR may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

PSC-13. Permits

CONTRACTOR and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

PSC-14. Claims for Labor and Materials

CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

PSC-15. Current Los Angeles City Business Tax Registration Certificate Required

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

PSC-16. Retention of Records, Audit and Reports

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

PSC-17. Bonds

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

PSC-18. Indemnification

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-19. Intellectual Property Indemnification

CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-20. Intellectual Property Warranty

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

PSC-21. Ownership and License

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

CONTRACTOR agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

PSC-22. Data Protection

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the “City Data”). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR’S** discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting, or potentially affecting City Data related to cyber security (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY’S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY’S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

PSC-23. Insurance

During the term of this Contract and without limiting **CONTRACTOR’S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY’S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-24. Best Terms

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR’S** customers for similar goods and services provided under this Contract.

PSC-25. Warranty and Responsibility of Contractor

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-27. Child Support Assignment Orders

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-28. Living Wage Ordinance

CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-29. Service Contractor Worker Retention Ordinance

CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

CONTRACTOR understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-31. Contractor Responsibility Ordinance

CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

PSC-32. Business Inclusion Program

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

PSC-33. Slavery Disclosure Ordinance

CONTRACTOR shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-34. First Source Hiring Ordinance

CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-35. Local Business Preference Ordinance

CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-36. Iran Contracting Act

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR’S** principals, and **CONTRACTOR’S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract #_____. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

PSC-38. Contractors’ Use of Criminal History for Consideration of Employment Applications

CONTRACTOR shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-39. Limitation of City’s Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards

CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

PSC-41. Compliance with California Public Resources Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR’S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

PSC-42. Possessory Interests Tax

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

PSC-43. Confidentiality

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively “Confidential Information”) are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

1. Additional Insured/Loss Payee. The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.

2. Notice of Cancellation. All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.

3. Primary Coverage. CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.

4. Modification of Coverage. The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.

5. Failure to Procure Insurance. All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

6. Workers' Compensation. By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

7. California Licensee. All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

8. Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

Required Insurance and Minimum Limits

Name: _____

Date: 12/15/2020Agreement/Reference: Collection Services of the City of Los Angeles Delinquent Account Receivables

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

✓ Workers' Compensation (WC) and Employer's Liability (EL)
WC StatutoryEL 1,000,000☐ Waiver of Subrogation in favor of City☐ Longshore & Harbor Workers☐ Jones Act

✓ General Liability _____ 1,000,000
☐ Products/Completed Operations☐ Sexual Misconduct _____☐ Fire Legal Liability _____☐ _____

Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work) _____

✓ Professional Liability (Errors and Omissions) _____ 1,000,000
Discovery Period 12 months after completion of project or termination of agreement

Property Insurance (to cover replacement cost of building - as determined by insurance company) _____
☐ All Risk Coverage☐ Boiler and Machinery☐ Flood _____☐ Builder's Risk☐ Earthquake _____☐ _____

Cyber Liability and Data Breach with Aggregate \$2MM _____
☐ _____

Surety Bonds - Performance and Payment (Labor and Materials) Bonds _____
1,000,000

✓ Crime Insurance

Other: 1) In the absence of imposed Auto Liability requirements, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.

ATTACHMENT B

BUSINESS ASSOCIATE AGREEMENT (HIPAA)

BUSINESS ASSOCIATE AGREEMENT

This **Business Associate Agreement** (the "Agreement"), is made as of the ____ day of _____, 2021 (the "Effective Date"), by and between Harris & Harris, Ltd., on behalf of itself and its subsidiaries and affiliates, (the "Business Associate") and the City of Los Angeles, a HIPAA Hybrid Covered Entity, by and through the Los Angeles Fire Department ("LAFD"), a HIPAA designated "health care component" of the City of Los Angeles ("Covered Entity") (collectively the "Parties") to comply with the privacy and security standards required under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), adopted by the U.S. Department of Health and Human Services and as amended January 25, 2013, [45 C.F.R. Parts 160, 162 and 164; Volume 78 Fed. Reg. No. 17, Pages 5566 through 5702, January 23, 2013] and, in order to satisfy the electronic storage requirements of the Health Information Technology for Economic and Clinical Health Act as incorporated in the American Recovery and Reinvestment Act of 2009 (hereinafter referred to as "HITECH"), and any applicable state confidentiality laws.

RECITALS

WHEREAS, the City of Los Angeles ("City") utilizes outside collection agency services as a best practice in delinquent debt collection and revenue generator;

WHEREAS, the Business Associate ("BA") provides professional primary and secondary collection services of the delinquent accounts of the Covered Entity ("CE");

WHEREAS, the BA and Covered Entity ("CE") will to enter into an Agreement by which the BA will provide professional primary and/or secondary collection services and pursue collection of the CE's delinquent accounts;

WHEREAS, the CE and BA have agreed as a condition of the services, the CE will need to disclose to BA certain "Protected Health Information" ("PHI") that is subject to protection under HIPAA and HITECH;

WHEREAS, HIPAA requires that CE receive adequate assurances that BA will comply with certain obligations with respect to the PHI received in the course of providing services to or on behalf of CE;

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

A. DEFINITIONS

Terms used in this Agreement, but not otherwise defined, shall have the meaning ascribed by the Final HIPAA Regulations and the HITECH Act, as amended as of January 23, 2013.

1. **Breach** means the acquisition, access, use, or disclosure of protected health information in a manner not permitted under subpart E of 45 C.F.R. Part 164.
2. **Business Associate** ("BA") shall have the meaning ascribed in 45 C.F.R. §160.103 and refers to Harris & Harris, Ltd. for purposes of this Agreement.
3. **Contract** means Los Angeles City Contract Number _____ and all amendments by and between the City of Los Angeles ("City") and Harris & Harris, Ltd. which includes, but is not limited to the performance of activities related to primary and/or secondary collection services of the CE's delinquent accounts.
4. **Covered Entity** ("CE") means the City of Los Angeles, a Hybrid Entity by and through its LAFD, a Health Care Component of the City of Los Angeles, a Hybrid Entity.
5. **Designated Record Set** means a group of records maintained by or for a Covered Entity that are: (i) medical records about individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record system maintained by or for a health plan; and/or (iii) used, in whole or in part, by or for the Covered Entity to make decisions about individuals. For purposes of this definition, the term "record" means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a Covered Entity.
6. **Health Care Component** ("HCC") means those portions of the Hybrid Entity that perform HIPAA-related activities. LAFD became a HCC by the Los Angeles City Council action which adopted the recommendation of the Personnel Committee meeting on July 30, 2010 [Council File No. 10-1181] or as modified [Council File No. R3-0240; Aug. 16, 2013].
7. **HITECH Act** ("HITECH") means the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act, and any amendments, regulations, rules and guidance issued thereto and the relevant dates for compliance.

8. **HIPAA Final Regulations** means 45 C.F.R. Parts 160, 162 and 164 as amended on January 23, 2013 and effective on March 23, 2013 but only to the extent it applies to a Covered Entity, Hybrid Entity and/or Business Associate.
9. **Hybrid Entity** ("HE") means, for purposes of this Agreement, the City of Los Angeles, a single legal municipal entity that is (i) a Covered Entity; (ii) whose business activities include both covered and non-covered HIPAA functions; and (iii) that has designated its LAFD, along with other portions of the City of Los Angeles, as a HHC pursuant to 45 C.F.R. §160.103.
10. **Individual** means the person who is the subject of the Protected Health Information as defined 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).
11. **Protected Health Information** ("PHI") means the Individually Identifiable Health Information ("IIHI") described in 45 C.F.R. §160.103 that is transmitted electronically; maintained electronically; or transmitted or maintained in any other form or medium.
12. **Required by Law** means mandate contained in law that compels a use or disclosure of PHI under 45 C.F.R. §164.512(a)(1) and (2).
13. **Secretary** means the Secretary of the Department of Health and Human Services or their designee under 45 C.F.R. §160.103.
14. **Security Incident** means any use or disclosure of information not provided for by this "Agreement" of which the BA becomes aware, including breaches of unsecured protected health information as defined by 45 C.F.R. §164.402.
15. **Subcontractor** means a person or entity that, creates, receives, maintains or transmits protected health information on behalf of the business associate. (45 C.F.R. §160.103(3)(iii))

B. DISCLOSURE OF PHI TO BUSINESS ASSOCIATE

In connection with the delinquent account collection services provided by BA to or on behalf of CE, described in this Agreement, CE may disclose PHI to BA for the purpose of providing primary and/or secondary collection services to the CE, and such collection services may include, but is not limited to, collection efforts on initial referrals of delinquent Emergency Medical Services ("EMS") Billing accounts. The BA shall ensure the secure electronic transfer and documentation of EMS-related records.

BA shall comply with its obligations under this Agreement and with all obligations of a BA under HIPAA, HITECH, and other related laws and any implementing regulations, as they exist at the time this Agreement is executed and as they are amended, for so long as this Agreement is in place. Specifically, the BA will comply with all the obligations and assume the liability for failure to do so as provided for in the Final Rules reflected in the Federal Register, Vol. 78, No. 17, commencing at Page 5677, dated, January 25, 2013 which implements among other things Section 13401 of HITECH.

C. OBLIGATIONS OF COVERED ENTITY

1. CE shall notify BA of any limitation(s) in its Notice of Privacy Practices of Covered Entity in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect BA's use or disclosure of PHI.
2. CE shall notify BA of any changes in, or revocation of, permission by Individual to use or disclose PHI to the extent that such changes may affect BA's use or disclosure of PHI.
3. CE shall notify BA of any restriction to the use or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect BA's use or disclosure of PHI.
4. CE shall not request BA to use or disclose PHI in any manner that would not be permissible under HIPAA if done by CE. [45 C.F.R. §164.504(e)(2)(i)]
5. CE will make a determination as to whether a use or disclosure of PHI by BA is a Breach within the meaning of 45 C.F.R. §164.402 necessitating notification under 45 C.F.R. §164.404, 164.406 and 164.408.

D. OBLIGATIONS OF BUSINESS ASSOCIATE

BA agrees to comply with applicable federal and state privacy and security laws, specifically the provisions of the HIPAA Administrative Simplification to the extent applicable to business associates.

1. **Use and Disclosure of PHI.** Except as otherwise permitted by this Agreement or applicable law, BA shall not use or disclose PHI other than as permitted or required by the Agreement or as Required By Law, except as necessary to conduct the practices of the LAFD as describe in this Agreement and the Contract to or on behalf of the CE. These activities may include the transmitting or receiving of PHI, as may be required from time to time, to other business associates or covered entities on behalf of CE. BA shall not use or disclose PHI that would violate the HIPAA Rules if used or disclosed by CE. Provided, however, BA may use and disclose PHI as necessary for the proper management and administration of BA, or to carry out its legal responsibilities. BA shall in such cases:
 - (a) Provide information to members of its workforce using or disclosing PHI regarding the confidentiality requirements of the HIPAA Final Rules and this Agreement;
 - (b) Obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (i) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (ii) the person or entity will notify BA of any instances of which it is aware in which confidentiality of the PHI has been breached; and
 - (c) **Notification to Covered Entity.** Agree to notify the designated Privacy Officer of CE of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules within 72 hours of discovery of the improper use or disclosure. The determination as to whether a use or disclosure for a purpose not provided for by this Agreement is a Breach within the meaning of 45 C.F.R. §164.402 shall be determined by the CE using the criteria determined in 45 C.F.R. §164.402 (2)(i)-(iv) after BA notifies CE of the use or disclosure of the PHI.
 - (d) **Breach Notification.** BA agrees to follow 45 C.F.R. §164.410 after first notifying CE of the use or disclosure not provided by this Agreement and CE makes a determination that a breach has occurred pursuant to paragraph C(5) of this Agreement.

- (e) For purposes of the Breach Notification provision in 45 C.F.R. §164.410, BA, in this Agreement is not the agent of CE.
- 2. **Data Aggregation.** In the event that BA works for more than one covered entity, BA is not permitted to use and disclose PHI for data aggregation purposes, however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the HIPAA Administrative Simplification.
- 3. **De-identified Information.** BA may use and disclose de-identified health information if (i) the use is disclosed to CE in writing and permitted in writing by CE in its sole discretion and (ii) the de-identification is in compliance with 45 C.F.R. §164.502(d), and the de-identified health information meets the standard and implementation specifications for de-identification under 45 C.F.R. §164.514(a) and (b).
- 4. **Safeguards.** BA shall maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as required by law. BA shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI it creates, receives, maintains, or transmits on behalf of CE.
- 5. **Minimum Necessary.** BA shall attempt to ensure that all uses and disclosures of PHI which pertain to the billing or operations of the CE are subject to the principle of “minimum necessary use and disclosure,” i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed.
- 6. **Disclosure to Agents and Subcontractors.** If BA discloses PHI received from CE, to agents, including a subcontractor, BA shall require the agent or subcontractor to agree to the same restrictions and conditions as apply to BA under this Agreement. BA shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits on behalf of the CE. BA shall be liable to CE for any acts, failures or omissions of the agent or subcontractor in providing the services as if they were BA’s own acts, failures or omissions, to the extent permitted by law. BA further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.

7. **Individual Rights Regarding Designated Record Sets.** If BA maintains a Designated Record Set on behalf of CE, BA agrees as follows:
- (a) **Individual Right to Copy or Inspection.** BA agrees that if it maintains a Designated Record Set for CE that is not maintained by CE, it will, in the event any Individual delivers directly to BA a request for access to PHI, in order for CE to respond to such Individual, forward such request to CE in order to meet the requirements of 45 C.F.R. §164.524(a)(1). Under the HIPAA Final Rules Covered Entity is required to take action on such requests as soon as possible, but not later than 30 days following receipt of the request. [45 C.F.R. § 164.524(b)(2).] BA agrees to make reasonable efforts to assist CE in meeting this deadline. The information shall be provided in the form or format requested if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged. If CE maintains the requested records, CE, rather than BA, shall permit access according to its policies and procedures implementing the HIPAA Administrative Simplification.
 - (b) **Individual Right to Amendment.** BA agrees, if it maintains PHI in a Designated Record Set, to make the Designated Record Set available to CE for amendments to PHI pursuant to 45 C.F.R. §164.526.
 - (c) **Accounting of Disclosures.** BA agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528, and to make this information available to CE upon CE's request, in order to allow CE to respond to an Individual's request for accounting of disclosures. Under the HIPAA Final Rules, CE is required to take action on such requests as soon as possible but not later than 60 days following receipt of the request. BA agrees to use its best efforts to assist CE in meeting this deadline. Such accounting must be provided without cost to the individual or CE if it is the first accounting requested by an individual within any 12 month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if BA informs the CE in advance of the fee and is afforded an opportunity to withdraw or modify the request. Such accounting is limited to disclosures that were made in the **six (6)** years prior to the request (not including disclosures prior to the compliance date of the HIPAA Administrative Simplification and shall be provided for as long as Business Associate maintains the PHI).

8. **Internal Practices, Policies and Procedures.** Except as otherwise specified herein, BA shall make available its internal practices, policies and procedures relating to the use and disclosure of PHI, received from or on behalf of CE to the Secretary or his or her agents for the purpose of determining CE's compliance with the HIPAA Rules, or any other health oversight agency, or to CE. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by CE or the Secretary.
9. **Notice of Privacy Practices.** BA shall abide by the limitations of CE's Notice of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to CE's Notice; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which BA relied prior to receiving notice of such amended Notice.
10. **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, BA shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the HIPAA Administrative Simplification expressly applies.
11. **Knowledge of HIPAA Rules.** BA agrees to review and understand the HIPAA Rules as it applies to BA, and to comply with the applicable requirements of the HIPAA Rules, as well as any applicable amendments.
12. **Security Incident.** BA agrees to immediately report to the CE any security incident of which BA becomes aware within 72 hours of discovery of the security incident.

E. TERM AND TERMINATION

1. **Term.** The Term of its Agreement shall be effective as of the Effective Date of the Contract, and shall terminate when all of the PHI provided by CE to BA, or created or received by BA on behalf of CE, is destroyed or returned to CE, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

2. **Termination for Cause.** Upon CE's knowledge of a material breach by BA, CE shall either:
 - (a) Provide an opportunity for BA to cure the breach or end the violation and terminate this Agreement and the Contract if BA does not cure the breach or end the violation within the time specified by CE;
 - (b) Immediately terminate this Agreement and the Contract if BA has breached a material term of this Agreement and cure is not possible; or
 - (c) If neither termination nor cure is feasible, CE shall report the violation to the Secretary.
3. **Effect of Termination.**
 - (a) Except as provided in paragraph (b) of this section, upon termination of this Agreement, for any reason, BA shall return or destroy all PHI received from CE, or created or received by BA on behalf of CE. This provision shall apply to PHI that is in the possession of subcontractors or agents of BA. BA shall retain no copies of the PHI and shall confirm, in writing, to the CE that all PHI has been returned to the CE or destroyed and the method of destruction.
 - (b) In the event that BA determines that returning or destroying the PHI, BA shall provide to CE written notification of the conditions that make return or destruction infeasible. Upon discovering that return or destruction of PHI is infeasible, BA shall extend the protections of this 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 BA maintains such PHI.

F. MISCELLANEOUS

1. **Indemnification.**
 - (a) To the extent permitted by law, BA agrees to indemnify and hold harmless CE from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief), for any damage or loss incurred by CE arising out of, resulting from, or attributable to any acts or omissions or other conduct of BA or its agents in connection with the performance of BA's or its agents'

and/or subcontractor's duties under this Agreement. This indemnity shall not be construed to limit CE, if any, to common law indemnity.

- (b) CE shall have the option, at its sole discretion, to employ attorneys selected by it to defend any such action described in F(1)(a) above, the costs and expenses of which shall be the responsibility of BA. CE shall provide BA with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist BA in establishing a defense to such action.
 - (c) These indemnities shall survive termination of this Agreement, and CE reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.
- 2. **Mitigation.** If BA violates this Agreement or the HIPAA Rules, BA agrees to mitigate any damage caused by such breach, and bear any such related costs.
- 3. **Rights of Proprietary Information.** CE retains any and all rights to the proprietary information, confidential information, and PHI it releases to BA.
- 4. **Survival.** The respective rights and obligations of BA under Section E. 3 (Effect of Termination) of this Agreement shall survive the termination of this Agreement.
- 5. **Notices.** Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representatives as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Covered Entity (for Breach Notification):

Alexandra Vázquez-Sherman (HIPAA Privacy Officer)
Fire Special Investigator
LAFD, Administrative Operations Bureau
Risk Management
200 N. Main St., Room 1890
Los Angeles, CA 90012
Telephone: (213) 978-3873

Email: alexandra.vazquez-sherman@lacity.org

If to Covered Entity LAFD (For all other Matters)

Ralph Terrazas, Fire Chief
Los Angeles Fire Department
200 N. Main St., Room 1800
Los Angeles, California 90012
Telephone: (213) 978-3800
Email: ralph.terrazas@lacity.org

And:

S. Jenny Park, Fire Administrator
Los Angeles Fire Department
200 N. Main St., Room 1630
Los Angeles, California 90012
Telephone: (213) 978-3731
Email: s.jenny.park@lacity.org

If to Business Associate:

Harris & Harris, Ltd.
Attention: Arnold S. Harris, President
111 W. Jackson Blvd., Suite 400
Chicago, IL 60604
Telephone: (312) 423-7400
Email: aharris@harriscollect.com

6. **Amendments**. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow CE to comply with the requirements of the HIPAA Rules.
7. **Choice of Law**. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of California, without regard to applicable conflict of laws principles.
8. **Assignment of Rights and Delegation of Duties**. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither party may assign any of its rights or delegate any of its obligations under this

Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary; however, CE retains the right to assign or delegate any of its rights or obligations hereunder to any City department or office in a manner consistent with the HIPAA Rules. Assignments made in violation of this provision are null and void.

9. **Nature of Agreement.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.
10. **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 Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.
11. **Equitable Relief.** Any disclosure or misappropriation of PHI by BA in violation of this Agreement will cause CE irreparable harm, the amount of which may be difficult to ascertain. BA therefore agrees that CE shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining BA from any such further disclosure or breach, and for such other relief as CE shall deem appropriate. Such rights are in addition to any other remedies available to CE at law or in equity. BA expressly waives the defense that a remedy in damages will be adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by CE.
12. **Severability.** The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
13. **No Third Party Beneficiaries.** Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
14. **Headings.** The descriptive headings of the articles, sections, subsections of this Agreement are inserted for convenience only, do not constitute a part

of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

15. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits CE to comply with the HIPAA rules and any applicable state confidentiality laws. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HIPAA Rules.
16. **Regulatory References.** A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.
17. **Counterparts and Electronic Signatures.** This Agreement may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures.

[SIGNATURE PAGE TO FOLLOW]

BUSINESS ASSOCIATE AGREEMENT

Page 14 of 14

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives.

For: THE CITY OF LOS ANGELES

DATE: _____

By: _____
Ralph M. Terrazas
Fire Chief
Los Angeles Fire Department

For: HARRIS & HARRIS, LTD.

By:* _____
Arnold S. Harris
President and CEO

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

DATE: _____

By: _____
Judith D. Thompson
Deputy City Attorney

By:** _____
David L. Harris
EVP & COO

DATE: _____

DATE: _____

ATTESTED:

HOLLY L. WOLCOTT, City Clerk

By: _____
Deputy City Clerk

NOTE: If Contractor is a corporation, two signatures are required.

* The signature of President, Chairman of the Board, or Vice President is required here; and

** An additional signature of Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer is also required for the Corporation.

Agreement Number: _____