

PROFESSIONAL SERVICES AGREEMENT

Between

THE CITY OF LOS ANGELES

And

ScanHealth, Inc., dba Sansio

For

Field Data Capture System (FDCS)

For the

Los Angeles Fire Department

Agreement Number _____

Professional Services Agreement

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DRAFT

AGREEMENT NUMBER _____
BETWEEN
THE CITY OF LOS ANGELES
AND
ScanHealth, Inc., dba Sansio
FOR Field Data Capture System (FDCS)

THIS AGREEMENT is made and entered into by and between the CITY of Los Angeles, California, a municipal corporation (hereinafter referred to as the "CITY") by and through the Los Angeles Fire Department (hereinafter referred to as the "LAFD"), and ScanHealth, Inc. (dba Sansio), a Minnesota corporation (hereinafter referred to as the "CONTRACTOR").

WHEREAS, the CITY desires to contract with Sansio to lease emergency medical services field data capture equipment; and

WHEREAS, Sansio's proposed services are expert and technical in nature; and

WHEREAS, it is more economical and feasible to automate emergency medical services field data capture because it facilitates compliance and timely transmission of protected health information; and

WHEREAS, automating and encrypting protected health information through the proposed contract will bring the CITY in compliance with the HIPAA statutes and other privacy laws; and

WHEREAS, the CITY performed its Charter Section 1022 evaluation and the Personnel Department determined that the proposed contract does not require a Charter 1022 finding because the program is proprietary and the contractor's staff must install, maintain and service the program; and

WHEREAS, the CITY issued a Request for Proposals (RFP) seeking qualified proposals and found CONTRACTOR's response to satisfy the level of qualifications and experience necessary to provide the type and level of service required by the CITY; and

WHEREAS, the Parties hereto wish to enter into an Agreement pursuant to which the CONTRACTOR shall perform the work and furnish the deliverables as described herein for consideration and upon the terms and conditions as hereinafter provided;

NOW THEREFORE, in consideration of the promises, representations, covenants and agreements set forth herein, the Parties represent, covenant and agree as follows:

1.0 PARTIES TO THE AGREEMENT AND REPRESENTATIVES

1.1 Parties to the Agreement

The Parties to this Agreement are:

- a. The CITY, by and through the LAFD, having its principal office at 200 North Spring Street, Los Angeles, California 90012.
- b. CONTRACTOR, having its principal address at 11 East Superior Street, Suite 310, Duluth, MN 55802

1.2 Representatives of the Parties

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

- a. The CITY's representative is, unless otherwise stated in the Agreement:

Millage Peaks, Fire Chief
Los Angeles Fire Department
200 N. Main St., Room 1800
Los Angeles, California 90012
(213) 978-3838
(213) 978-3814 fax

And:

Georgia Mattera, Fire Administrator
Los Angeles Fire Department
200 N. Main St., Room 1630
Los Angeles, California 90012
(213) 978-3731
(213) 978-3414 fax

- b. The CONTRACTOR's representative is, unless otherwise stated in the Agreement:

Dale A. Pearson, CEO
Sansio
11 East Superior Street, Suite 310
Duluth, MN 55802
(218) 625-7226 Ext. 7217
(218) 625-7225 fax

1.3 Notices

- a. Formal notices, demands and communications to be given hereunder by either party must 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.
- b. If the name of the person designated to receive the notices, demands, or communications, or the address of such person is changed, written notice shall be given in accordance with this Section, within five (5) working days of said change.
- c. Informal notifications shall be made via email and refer to non-standard occurrences that LAFD should be made aware of, such as notifications regarding pending litigation, etc.

2.0 DEFINITION OF TERMS

Software

HealthEMS field data capture software, or other software of equal or better functionality that is acceptable to LAFD. CONTRACTOR to provide HealthEMS pursuant to Exhibit G HealthEMS Subscription Agreement.

Hardware

Hardware refers to the tablets including any other equipment provided by Sansio. The exact itemization of the hardware CONTRACTOR to provide pursuant to Exhibit C Fee Schedule.

Tablets

Tablets refers to the Panasonic CF-19 tablet or other data capture device of equal or better functionality that is acceptable to LAFD. CONTRACTOR to provide pursuant to Exhibit C.

3.0 TERM OF AGREEMENT

The term of this Agreement shall commence upon the date executed by City Clerk, and shall remain in full force and effect for a six (6)-year period from that date, unless terminated earlier as provided herein. The LAFD, at its sole discretion, has the option to automatically extend the term of this Agreement for six (6) additional extensions, in three (3)-year increments.

4.0 PROCEDURES MANUAL

The Parties shall develop and maintain a Procedures Manual, which may be adjusted from time to time, governing the manner in which the Parties will conduct daily business. Either Party's failure to comply with practices established in such Manual may be deemed to be a material breach of this contract if not resolved or cured within a period of 30 days.

5.0 SOURCE CODE ESCROW AGREEMENT

In order to provide the CITY with controlled access to the source code of CONTRACTOR's Software, CONTRACTOR has entered into a Source Escrow Agreement with Iron Mountain Intellectual Property Management (formerly DSI Technology), 2100 Norcross Parkway, Suite 150, Norcross, GA, 30071. CONTRACTOR shall add the CITY as beneficiary to the Source Code Escrow Agreement, Exhibit H. Once enrolled as a beneficiary, the CITY shall be issued an enrollment letter and a copy of the escrow agreement from Iron Mountain. There are no fees for the CITY to be enrolled as a beneficiary of the escrow agreement.

In addition, to ensure system continuity in the event the CITY needs to access the system without CONTRACTOR interaction, CONTRACTOR shall submit compiled programs with installation instructions and hardware requirements with the escrow agent.

6.0 SERVICES TO BE PROVIDED

A. Transition

CONTRACTOR and LAFD agree that they shall fully cooperate with each other in transitioning FDOS services in order to effect an orderly transition of the performance of services, records and data described in the agreed upon Project Plan below. CONTRACTOR agrees, in connection with its assumption of the Services, to transition current LAFD Field Data Capture process, to the CONTRACTOR's HealthEMS Field Data Capture System (FDOS) on a pre-determined date, post training.

B. Project Plan

1. Within fifteen (15) days of the effective date of the Agreement, CONTRACTOR must conduct a planning meeting with the CITY's Project Manager and develop and deliver a Project Plan acceptable to the LAFD within thirty (30) days which shall include goals, objectives and tasks to be completed for transitioning from the LAFD's current field data capture process to the CONTRACTOR's Software.

2. Establish timeline estimates for the following milestones and revise as necessary:

- i. Sansio Begin Assignments
- ii. Develop Project Work Plan
- iii. Project Kick-off Meeting
- iv. Detailed Project Planning
- v. Order Equipment
- vi. Receive Equipment in Duluth
- vii. Install Software on Mobile Equipment
- viii. Ship Equipment to LAFD
- ix. Reference Table Setup
- x. Billing Interface
- xi. Computer Aided Dispatch (CAD) Interface
- xii. ReddiNet: Emergency Room Assistant (ERA) Interface
- xiii. Configure Training Materials
- xiv. Train the Trainers
- xv. Train Field Staff
- xvi. City-Wide Roll-out
- xvii. "Live" Runs Captured
- xviii. All Stations Live

C. System Support

1. CONTRACTOR shall provide on-going system support and upgrades, including electronic documentation and/or training when substantial system changes occur. CONTRACTOR's Solution Center is staffed during prime CITY business hours, Monday – Friday, 7AM – 5PM PST, **excluding** major holidays. After hours or "non-prime" hours include **5PM - 7AM PST Monday – Thursday**, and 5PM PST on Friday through 7AM PST the following Monday and on major holidays. Support tickets started outside of prime Solution Center hours shall be addressed the next business day. Inquiries regarding system availability are supported by CONTRACTOR on-call technical staff during non-prime Solution Center hours.
2. CONTRACTOR shall provide full-time on-site CONTRACTOR support, resident at the designated location of the LAFD offices during project implementation from the commencement of the contract through the "All Stations Live" date.
3. CONTRACTOR shall also provide full-time on-site CONTRACTOR support at the designated location of the LAFD offices and part-time CONTRACTOR support at a designated location of CONTRACTOR's choice pursuant to Exhibit C, Fee Schedule: Sansio Additional Staff, Option B, during project implementation

from the commencement of the contract and throughout the duration of the contract.

4. CONTRACTOR shall respond to LAFD's systems related questions, within four (4) hours, and resolve those issues within twenty four (24) hours to the satisfaction of the LAFD.

D. Interface/Integration

1. CONTRACTOR shall integrate its Software with LAFD's Computer Aided Dispatch (CAD) system. Specific file formats and timing of such file transfers will be agreed upon by CONTRACTOR and LAFD and are required to conform to LAFD specifications. All files must be secure and transmitted using secure file transfer and must conform to all CITY security requirements.
2. CONTRACTOR shall interface in real-time between CONTRACTOR Software and Electrocardiograph (EKG) defibrillator monitors used by LAFD, and permit the transmission of EKG data in real-time to hospitals. Specific file formats and timing of such file transfers shall be agreed upon by CONTRACTOR and LAFD and are required to conform to LAFD specifications. All files shall conform to all LAFD security requirements.
3. CONTRACTOR agrees to integrate, at its expense, CONTRACTOR Software with ADPI's ambulance billing system, and with any other relational database management system used by the CITY, at the LAFD's direction at the time of implementation. This integration is to use an Extensible Markup Language (XML) based messaging interface or other interface platform as required by the LAFD, assuming the requirements do not place undue burden on the CONTRACTOR. With respect to any such future CITY systems, the preferred interface between CITY applications and CONTRACTOR's systems are web services.
4. Integration will be deemed achieved when CONTRACTOR ensures that each of the CITY Systems are fully compatible with, and shall not be materially and adversely affected by, CONTRACTOR's system, and data may be transferred from CITY Systems to CONTRACTOR's FDACS system, and back. All file transfers must conform to the CITY's security requirements. CONTRACTOR agrees to acquire any software licenses required for access to or interface with any CITY systems.
5. CONTRACTOR shall work with LAFD to integrate its Emergency Room Attendant (ERA) module with the Hospital Association of

Southern California's ReddiNet system, supporting wireless transfer of pre-hospital data collected in the field to the destination facility. The ERA module shall be provided free of charge to all ReddiNet facilities receiving patients from LAFD.

E. Field Data Capture

CONTRACTOR must exert reasonable efforts to collect the maximum correct patient care and insurance information upon implementation and stabilization.

F. Training

1. CONTRACTOR shall provide reasonably necessary training periodically, as requested by LAFD, to LAFD's designated emergency medical, and any additional personnel regarding the gathering of the necessary information and proper completion, management, and reporting of pre-hospital data through CONTRACTOR'S FDCS.
2. CONTRACTOR shall immediately notify department personnel of changes that impact the electronic Patient Care Record (ePCR), and providing education on those changes as needed.
3. CONTRACTOR shall assist the LAFD in developing a plan to comply with any changes in laws, including any new interpretation of such laws. Such plan may include the implementation of new policies and procedures, software changes, training programs, etc.
4. CONTRACTOR shall monitor any enforcement actions, guidance, and advisory opinions that relate to the Services to be provided under this Agreement and report any applicable information to the LAFD.

G. Security

CONTRACTOR shall use all reasonable efforts under the law to maintain the security of the FDCS software and data, but shall not be responsible for the CITY's loss or dissemination of passwords or other breaches beyond CONTRACTOR's reasonable control.

H. Standards/Laws

1. CONTRACTOR shall conduct data collection efforts in compliance with all appropriate CITY, State, and Federal laws and rules governing Protected Health Information (PHI).

2. CONTRACTOR shall utilize most up-to-date knowledge and information with regard to electronic Patient Care Report (ePCR) requirements and standards, to ensure compliance with applicable Federal, State and local regulations.

I. Reports

1. CONTRACTOR shall establish a reporting system that will enable the LAFD to monitor the performance of the Services. **Reports must be designed to give the LAFD the information needed to accurately measure performance.**
2. CONTRACTOR shall provide timely comprehensive reports facilitating all required aspects of monitoring, evaluating, auditing and managing the services provided.
3. CONTRACTOR shall provide the reports specified in Exhibit B – Reports as well as any other reports that CONTRACTOR provides in the normal course of business.
4. CONTRACTOR shall provide ad hoc reporting capability.

J. Access to and Maintenance of Records

1. The CONTRACTOR shall make available ~~its~~ Software to authorized LAFD personnel on a 24/7 basis and provide for the secure access to the LAFD's data. Secure authorization and secure data transfer must be provided. Furthermore, CONTRACTOR shall provide adequate system capability and facilities for archiving and retrieving all ePCR records, signature verifications, and related data.
2. Access to data shall be limited to the employees, representatives and agents of CONTRACTOR and authorized personnel of CITY. A complete and signed access form for each of CITY's personnel authorized to access the Software must be submitted to and approved by CONTRACTOR.
3. CONTRACTOR shall maintain records in an electronic format that meets all Federal and State requirements for maintaining patient medical information. CONTRACTOR may not destroy data without written approval of the Los Angeles City Attorney.
4. CONTRACTOR shall perform regular data back-up. All backed up data in an electronic format that is to be stored or sent shall meet all Federal and State requirements for maintaining patient medical information.

5. CONTRACTOR shall have a disaster recovery and business restoration plan in place. CONTRACTOR shall test disaster recovery capabilities annually to ensure that data can be retrieved and made available to the LAFD. Test report shall be submitted to the LAFD for review. LAFD may audit the data backed up as well as the disaster recovery and business restoration plan annually.
6. CONTRACTOR shall maintain records, in electronic form, in accordance with requirements prescribed by the LAFD. Said records will be subject to examination and audit by authorized LAFD personnel or by the LAFD's representative at any time during the term of this contract. The CONTRACTOR shall provide any reports requested by the LAFD. All records must be returned to the LAFD upon expiration or termination of this contract, whichever occurs first.
7. CONTRACTOR shall ensure that all required documentation and Agreements regarding changes to industry regulations affecting collection of pre-hospital data are filed and maintained.

7.0 NON-EXCLUSIVE AGREEMENT

CONTRACTOR understands and agrees that this is a non-exclusive agreement to provide systems services to the LAFD and that the LAFD has entered into contracts for the provision of systems services with other CONTRACTORS. The LAFD is free to use any CONTRACTOR's system with whom LAFD has contracts and, therefore, the LAFD cannot estimate nor guarantee the volume or amount of work to be received by CONTRACTOR under this Agreement.

8.0 COMPENSATION AND METHOD OF PAYMENT

8.1 Compensation

The LAFD will pay the CONTRACTOR for satisfactory services rendered within the period of the contract, unless this contract is amended. Payment is based on the rates specified in Exhibit C - Fee Schedule, which is attached hereto and made a part hereof.

8.2 Method of Payment

a. For services provided under this Agreement, the CONTRACTOR shall be paid by the LAFD in accordance with Exhibit C - Fee Schedule and the other conditions and provisions of this Section upon approval of the CONTRACTOR's invoices by the LAFD. The CONTRACTOR must include the following information, and any other documentation requested by the LAFD, on each invoice:

1. Date of invoice
2. Invoice number
3. Description of services
4. Amount of Invoice, including the basis of the calculation.

b. Except as otherwise expressly provided for in "Exhibit G HealthEMS Subscription Agreement", all other costs incurred by CONTRACTOR in the performance of the CONTRACTOR Services (including, but not limited to postage, materials, communications and phone costs and other operating costs) shall be CONTRACTOR's sole responsibility.

8.3 Optional Equipment

CONTRACTOR shall provide the LAFD the option to acquire additional hardware and accessories per the quantities specified in Exhibit C – Fee Schedule. Any additional quantities requested by the LAFD shall be processed via an LAFD purchase order, or as an amendment to this Agreement.

9.0 KEY PERSONNEL

9.1 LAFD Key Personnel

- a) Project Manager as designated by the Fire Chief.
- b) System Administrator
- c) Authorized Users.

9.2 CONTRACTOR Key Personnel

a. A Staff Assignment Table, Exhibit F, provided by CONTRACTOR, lists the Project Manager, all Key Personnel and their assignments during the project, including any Subcontractor personnel. The table contains all key assigned personnel who have been approved for work on this project,

including replacement personnel who may be substituted for an assigned staff member should they be ultimately be unavailable.

- b. The LAFD reserves the right to approve or disapprove key personnel. The LAFD will allow a CONTRACTOR or Subcontractor to substitute out key personnel upon LAFD written approval. Replacement of reassigned personnel, if approved, shall be with personnel with equal or greater ability and qualifications, and provided at no charge for their first 10 business days following their start date to bring the replacement up to speed. In addition, LAFD reserves the right to require a replacement of employees whom LAFD judges to be unsuitable, or whose continued use is deemed to be contrary to the best interest of the LAFD.

10.0 CONFIDENTIALITY

10.1 Confidentiality

- a. All data, documents, records, recorded testimony, audiotapes, videotapes, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media, to CONTRACTOR by the LAFD, and other documents to which the CONTRACTOR has access during the term of this Agreement are confidential information (hereinafter referred to as "Confidential Information"). The CONTRACTOR agrees that **both during and after the term of this Agreement, LAFD's Confidential Information shall be considered and kept as the private and privileged records of LAFD and shall not be divulged to any person, firm, corporation, or other entity except on the prior direct written authorization of LAFD.**
- b. The CONTRACTOR must ensure that each individual sent on an assignment under this Agreement shall have executed a Confidentiality Agreement prior to commencing any assignment. CONTRACTOR agrees to provide the signed Confidentiality Agreement to the LAFD prior to commencing any assignment. The Confidentiality Agreement to be used is attached hereto as Exhibit E. The CONTRACTOR is responsible for ensuring compliance with the Confidentiality Agreements.
- c. CONTRACTOR shall protect the confidentiality of all patient records as set forth in State and/or Federal laws on confidentiality of medical records.

10.2 CONTRACTOR's Interaction with the Media

CONTRACTOR shall refer all inquiries from the news media to LAFD, shall immediately contact LAFD to inform LAFD of the inquiry, and shall comply with the procedures of LAFD's public affairs staff regarding Statements to the media relating to this Agreement or CONTRACTOR's services hereunder.

10.3 Requirements Apply to All Subcontractors

The CONTRACTOR shall ensure that these requirements are provided to and apply to all Subcontractors of this Agreement.

10.4 Continued Requirements

The requirements of this Section survive termination of this Agreement.

11.0 INSURANCE.

A. CONTRACTOR shall procure and maintain for the duration of this Agreement, the following insurance coverage:

1. Workers' Compensation insurance in compliance with the applicable State and Federal laws, and not less than \$1,000,000;
2. General Liability insurance in an amount no less than \$1,000,000 per occurrence;
3. General Liability insurance in an amount no less than Coverage for business interruption, destruction of data processing equipment and media, liabilities affecting accounts receivable, and valuable documents in an amount no less than \$1,000,000 aggregate;
4. Storage of software code and data in a secure location "in escrow" account such that the LAFD would have access to it in the event that the CONTRACTOR ceases as a business entity and is unable to provide billing services outlined in this contract. In that circumstance, the LAFD would have access to run the software for a period of time not to exceed twelve (12) months while a new provider is contracted for field data collection system services.
5. Liability coverage for all vehicles whether owned, hired or used in the amount of \$500,000; and

B. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage

- a. LAFD, its officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the CONTRACTOR, including the insured general supervision of the CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR; or automobiles owned, leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protections afforded LAFD, its officers, officials, employees or volunteers.
- b. CONTRACTOR's insurance coverage shall be primary insurance as respects LAFD, its officers, officials, employees and volunteers. Any insurance of self-insurance maintained by LAFD, its officers, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it. CONTRACTOR hereby waives subrogation rights for loss or damage against LAFD.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to LAFD, its officers, officials, employees or volunteers.
- d. CONTRACTOR's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Companies issuing the insurance policy, or policies, shall have no recourse against LAFD for payment of premiums or assessments for any deductibles with are all at the sole responsibility and risk of CONTRACTOR.

2. All Coverage

- a. Each insurance policy required by this Section shall be endorsed to State that coverage shall not be suspended, voided, canceled, or

reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to LAFD.

- b. CONTRACTOR shall furnish LAFD with certificates of insurance and with original endorsements effecting coverage required by this Section if requested. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by LAFD before work commences. LAFD reserves the right to require complete, certified copies of all required insurance policies at any time.

- c. **Payment Withholding**

Payment Withholding: Should any of CONTRACTOR or Subcontractor's required insurance lapse during the term of the Agreement, the City shall not process any requests for payments originating after such lapse until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date.

12. CONTRACT TERMINATION

A. Termination for Convenience

The City may terminate this Contract for the City's convenience at any time by giving CONTRACTOR 90 day's written notice thereof. Upon receipt of said notice, CONTRACTOR shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The 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 affect such termination. Thereafter, CONTRACTOR shall have no further claims against the City under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become City property upon the date of such termination. CONTRACTOR agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.

B. Termination for Breach of Contract

- 1. Except for excusable delays as provided in Exhibit A Standard Provisions for City Contracts, 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, the City may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default, which is acceptable to the City within the time permitted by the City, then the City may terminate this Contract due to CONTRACTOR's breach of this Contract.

2. 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 the City may immediately terminate this Contract.
3. If CONTRACTOR engages in any dishonest conduct related to the performance or administration of this Contract or violates the City's lobbying policies, then the City may immediately terminate this Contract.
4. In the event the City terminates this Contract as provided in this section, the City may procure, upon such terms and in such manner as the City may deem appropriate, services similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to the City for all of its costs and damages, including, but not limited, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become City property upon date of such termination. CONTRACTOR agrees to execute any documents necessary for the City to perfect, memorialize, or record the City's ownership of rights provided herein.
6. 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 Termination for Convenience, above.
7. The rights and remedies of the 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.

8. The amount due the CONTRACTOR by reason of termination shall be determined as follows:
 - a. If the termination is for the City's convenience, the CONTRACTOR will be paid on the basis of the Work completed in accordance with the previously agreed upon milestone and payment schedules in effect prior to the effective date of termination.
 - b. If the termination is for the CONTRACTOR's default, the total sum payable to the CONTRACTOR will be determined in accordance with the previously agreed upon payment schedule. The City, however, may retain from said payment an amount equal to any additional costs incurred by the City in completing that part of the work that is in default.
9. In addition to the above setoff amount, the City shall also be entitled to recover for other damages as provided by law.
10. In the event that the Contract is terminated, all monies due the CONTRACTOR or retained under the terms of the Contract shall be forfeited to the City; but such forfeiture shall not release the CONTRACTOR or the CONTRACTOR's sureties from liability for failure to fulfill the Contract. The CONTRACTOR and the CONTRACTOR's securities shall be credited with the amount of money so forfeited toward any excess of cost over and above the Contract price arising from the suspension of the operations of the Contract and the completion of the Work by the City. The CONTRACTOR shall be credited with any surpluses remaining after all just claims for such completion have been paid.

13.0 STANDARD PROVISIONS

The CONTRACTOR must comply with the applicable requirements of the Standard Provisions for LAFD Contracts (Rev. 03/09), except as noted in this Agreement, attached hereto as and incorporated herein by reference. Should there be any discrepancy between provisions in this contract and the Standard Provisions, those in this contract shall take precedence.

14.0 TABLE OF EXHIBITS

The Exhibits listed below are incorporated into this Agreement by this reference.

Document
Exhibit A – Standard Provisions for City Contracts
Exhibit B – Reports
Exhibit C – Fee Schedule
Exhibit D – Business Associate Agreement
Exhibit E – Confidentiality Agreement
Exhibit F – Staff Assignment Table
Exhibit G – HealthEMS Subscription Agreement
Exhibit H – Source Code Escrow Agreement

[Signature page follows.]

DRAFT

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

THE CITY OF LOS ANGELES

ScanHealth, Inc., dba Sansio
a Minnesota Corporation

By _____
MILLAGE PEAKS
Fire Chief

By _____
Dale A. Pearson
CEO

Date _____

Date _____

APPROVED AS TO FORM:

ATTEST:

CITY ATTORNEY CARMEN A. TRUTANICH

CITY CLERK JUNE LAGMAY

By _____
Laurel Lightner
Assistant City Attorney

By _____
Deputy City Clerk

Date _____

Date _____

LAFD Business License Number _____
Internal Revenue Service Taxpayer Identification Number _____
Agreement Number _____

Exhibit A

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 hereof. The language of this Contract shall be construed according to its fair meaning and not strictly for or against the **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" herein in this Contract includes the party or parties identified in the Contract. The singular shall include the plural; if there is more than one **CONTRACTOR** herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. NUMBER OF ORIGINALS

The number of original texts of this Contract shall be equal to the number of the parties hereto, one text being retained by each party. At the **CITY'S** option, one or more additional original texts of this Contract may also be retained by the City.

PSC-3. APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. 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, and/or procedures that apply to the performance of this Contract.

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 law of a federal, state or local government having jurisdiction over this Contract, the validity of the remaining parts, terms or provisions of the Contract shall not be affected thereby.

PSC-4. 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** hereto;
- 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 the **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-5. INTEGRATED CONTRACT

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter hereof, 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 paragraph PSC-6 hereof.

PSC-6. AMENDMENT

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-4.

PSC-7. EXCUSABLE DELAYS

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

PSC-8. BREACH

Except for excusable delays as described in PSC-7, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights

and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

PSC-9. 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-10. TERMINATION

A. TERMINATION FOR CONVENIENCE

The **CITY** may terminate this Contract for the **CITY'S** convenience at any time by giving **CONTRACTOR** thirty days written notice thereof. Upon receipt of said notice, **CONTRACTOR** shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. The **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 affect such termination. Thereafter, **CONTRACTOR** shall have no further claims against the **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights thereto, shall become **CITY** property upon the date of such termination. **CONTRACTOR** agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.

B. TERMINATION FOR BREACH OF CONTRACT

1. Except for excusable delays as provided in PSC-7, 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, the **CITY** may give **CONTRACTOR** written notice of such default. If **CONTRACTOR** does not cure such default or provide a plan to cure such default which is acceptable to the **CITY** within the time permitted by the **CITY**, then the **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. 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 the **CITY** may immediately terminate this Contract.
3. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates the

CITY'S lobbying policies, then the **CITY** may immediately terminate this Contract.

4. In the event the **CITY** terminates this Contract as provided in this section, the **CITY** may procure, upon such terms and in such manner as the **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to the **CITY** for all of its costs and damages, including, but not limited, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become **CITY** property upon date of such termination. **CONTRACTOR** agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.
6. 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-10(A) Termination for Convenience.
7. The rights and remedies of the **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.

PSC-11. INDEPENDENT CONTRACTOR

CONTRACTOR is acting hereunder as an independent contractor and not as an agent or employee of the **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 the **CITY**.

PSC-12. CONTRACTOR'S PERSONNEL

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

CONTRACTOR shall not use subcontractors to assist in performance of this Contract without the prior written approval of the **CITY**. If the **CITY** permits the use of subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of

this Contract. The **CITY** has the right to approve **CONTRACTOR'S** subcontractors, and the **CITY** reserves the right to request replacement of subcontractors. The **CITY** does not have any obligation to pay **CONTRACTOR'S** subcontractors, and nothing herein creates any privity between the **CITY** and the subcontractors.

PSC-13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

CONTRACTOR may not, unless it has first obtained the written permission of the **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-14. PERMITS

CONTRACTOR and its directors, officers, partners, agents, employees, and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance hereunder and shall pay any fees required therefor. **CONTRACTOR** certifies to immediately notify the **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

PSC-15. CLAIMS FOR LABOR AND MATERIALS

CONTRACTOR shall promptly pay when due all amounts payable 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), against **CONTRACTOR'S** rights to payments hereunder, or against the **CITY**, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

PSC-16. CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

If applicable, **CONTRACTOR** represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this Contract, **CONTRACTOR** shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

PSC-17. 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, in accordance with

requirements prescribed by the **CITY**. These records shall be retained for a period of no less than three years following final payment made by the **CITY** hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized **CITY** personnel or by the **CITY'S** representative at any time during the term of this Contract or within the three years following final payment made by the **CITY** hereunder or the expiration date of this Contract, whichever occurs last. **CONTRACTOR** shall provide any reports requested by the **CITY** regarding performance of this Contract. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

PSC-18. FALSE CLAIMS ACT

CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the **CITY** under the False Claims Act (Cal. Gov. Code §§ 12650 *et seq.*), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

PSC-19. BONDS

All bonds which may be required hereunder shall conform to **CITY** requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

PSC-20. INDEMNIFICATION

Except for the active negligence or willful misconduct of the **CITY**, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, **CONTRACTOR** undertakes and agrees to defend, indemnify and hold harmless the **CITY** and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits 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 the **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 the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by **CONTRACTOR** or its subcontractors of any tier. Rights and remedies available to the **CITY** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the **CITY**. The provisions of PSC-20 shall survive expiration or termination of this Contract.

PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION

CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the **CITY**, and any of its Boards, Officers, Agents, Employees, Assigns,

and Successors in Interest from and against all suits 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 the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever 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 right (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 of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONTRACTOR, or its subcontractors of any tier, under the Agreement. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of PSC-21 shall survive expiration or termination of this Contract.

PSC-22. 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, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

PSC-23. OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all Work Products originated and prepared by **CONTRACTOR** or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, 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. **CONTRACTOR** hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by **CONTRACTOR** under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

For all Work Products delivered to the CITY that are not originated or prepared by **CONTRACTOR** or its subcontractors of any tier under this Contract, **CONTRACTOR** hereby grants 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 the **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract to contractually bind or otherwise oblige its subcontractors performing work under this Contract such that the **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of **CONTRACTOR'S** contract with the **CITY**.

PSC-24. INSURANCE

During the term of this Contract and without limiting **CONTRACTOR'S** indemnification of the **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by **CONTRACTOR**, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Exhibit 1 hereto), covering its operations hereunder. Such insurance shall conform to **CITY** requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto) and shall 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-25. DISCOUNT TERMS

CONTRACTOR agrees to offer the **CITY** any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discount to payments made under this Contract which meet the discount terms.

PSC-26. 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-27. NON-DISCRIMINATION

Unless otherwise exempt, this Contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The **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 the **CITY**. In performing this Contract, **CONTRACTOR** shall not

discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of **CONTRACTOR'S** contract with the **CITY**.

PSC-28. EQUAL EMPLOYMENT PRACTICES

Unless otherwise exempt, this Contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of this Contract, **CONTRACTOR** agrees and represents that it will provide equal employment practices and **CONTRACTOR** and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. **CONTRACTOR** agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, **CONTRACTOR** shall certify in the specified format that he or she has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of

race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of **CITY** contracts. On their or either of their request **CONTRACTOR** shall provide evidence that he or she has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of **CITY** contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has failed to comply with the Equal Employment Practices provisions of a **CITY** contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until **CONTRACTOR** shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the **CITY**, or when an individual bid or proposal is submitted, **CONTRACTOR** shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of **CITY** Contracts.

- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - 1. Hiring practices;
 - 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 - 3. Training and promotional opportunities; and
 - 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of the **CONTRACTOR'S** Contract with the **CITY**.

PSC-29. AFFIRMATIVE ACTION PROGRAM

Unless otherwise exempt, this Contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of a **CITY** contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. **CONTRACTOR** shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to

their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, **CONTRACTOR** shall certify on an electronic or hard copy form to be supplied, that **CONTRACTOR** has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of **CITY** contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Affirmative Action Program provisions of **CITY** contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has breached the Affirmative Action Program provisions of a **CITY** contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that **CONTRACTOR** has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a **CITY** contract, there may be deducted from the amount payable to **CONTRACTOR** by the **CITY** under the contract, a penalty of ten dollars

(\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a **CITY** contract.

- H. Notwithstanding any other provisions of a **CITY** contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in **CITY** contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. **CONTRACTOR** shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the **CITY**. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, **CONTRACTOR** may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, **CONTRACTOR** must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - 2. **CONTRACTOR** may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the **CITY** with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and **CONTRACTOR**.

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- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the **CITY'S** Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the **CITY** and may be used at the discretion of the **CITY** in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.

- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the **CITY** and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the **CITY**.

PSC-30. CHILD SUPPORT ASSIGNMENT ORDERS

This Contract is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, **CONTRACTOR** will fully comply with all applicable State and Federal employment reporting requirements for **CONTRACTOR'S** employees. **CONTRACTOR** shall also certify (1) that the Principal Owner(s) of **CONTRACTOR** are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that **CONTRACTOR** will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, *et seq.* of the California Family Code; and (3) that **CONTRACTOR** will maintain such compliance throughout the term of this Contract.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract, subjecting this Contract to termination if such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to obtain compliance of its subcontractors shall constitute a default by **CONTRACTOR** under this Contract, subjecting this Contract to termination where such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

CONTRACTOR certifies that, to the best of its knowledge, it is fully complying with the Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

PSC-31. LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

- A. Unless otherwise exempt, this Contract is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 *et seq.* of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time. These Ordinances require the following:
1. **CONTRACTOR** assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of compensated and uncompensated days off and health benefits, as defined in the LWO.
 2. **CONTRACTOR** further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. **CONTRACTOR** shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. **CONTRACTOR** shall deliver the executed pledges from each such subcontractor to the **CITY** within ninety (90) days of the execution of the subcontract. **CONTRACTOR'S** delivery of executed pledges from each such subcontractor shall fully discharge the obligation of **CONTRACTOR** with respect to such pledges and fully discharge the obligation of **CONTRACTOR** to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
 3. **CONTRACTOR**, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the **CITY** with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. **CONTRACTOR** shall post the Notice of Prohibition Against Retaliation provided by the **CITY**.
 4. Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of PSC-31 and shall incorporate the provisions of the LWO and the SCWRO.

5. **CONTRACTOR** shall comply with all rules, regulations and policies promulgated by the **CITY'S** Designated Administrative Agency which may be amended from time to time.
- B. Under the provisions of Sections 10.36.3(c) and 10.37.6(c) of the Los Angeles Administrative Code, the **CITY** shall have the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if the **CITY** determines that the subject **CONTRACTOR** has violated provisions of either the LWO or the SCWRO, or both.
- C. Where under the LWO Section 10.37.6(d), the **CITY'S** Designated Administrative Agency has determined (a) that **CONTRACTOR** is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the **CITY** in such circumstances may impound monies otherwise due **CONTRACTOR** in accordance with the following procedures. Impoundment shall mean that from monies due **CONTRACTOR**, **CITY** may deduct the amount determined to be due and owing by **CONTRACTOR** to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d)(3) and disposed of under procedures described therein through final and binding arbitration. Whether **CONTRACTOR** is to continue work following an impoundment shall remain in the sole discretion of the **CITY**. **CONTRACTOR** may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.
- D. **CONTRACTOR** shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). **CONTRACTOR** shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from **CONTRACTOR**.

PSC-32. AMERICANS WITH DISABILITIES ACT

CONTRACTOR hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and its implementing regulations. **CONTRACTOR** will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. **CONTRACTOR** will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by **CONTRACTOR**, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

PSC-33. CONTRACTOR RESPONSIBILITY ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time, which requires **CONTRACTOR** to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect **CONTRACTOR'S** fitness and ability to continue performing this Contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, **CONTRACTOR** pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. **CONTRACTOR** further agrees to: (1) notify the **CITY** within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that **CONTRACTOR** is not in compliance with all applicable federal, state and local laws in performance of this Contract; (2) notify the **CITY** within thirty calendar days of all findings by a government agency or court of competent jurisdiction that **CONTRACTOR** has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the **CITY**; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the **CITY** within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

PSC-34. MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

CONTRACTOR agrees and obligates itself to utilize the services of Minority, Women and Other Business Enterprise firms on a level so designated in its proposal, if any. **CONTRACTOR** certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. **CONTRACTOR** shall not change any of these designated subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of the **CITY**, provided that such approval shall not be unreasonably withheld.

PSC-35. EQUAL BENEFITS ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the Contract, **CONTRACTOR** certifies and represents that **CONTRACTOR** will comply with the EBO.
- B. The failure of **CONTRACTOR** to comply with the EBO will be deemed to be a material breach of this Contract by the **CITY**.
- C. If **CONTRACTOR** fails to comply with the EBO the **CITY** may cancel, terminate or suspend this Contract, in whole or in part, and all monies due or to become due under this Contract may be retained by the **CITY**. The **CITY** may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.
- E. If the **CITY'S** Designated Administrative Agency determines that a **CONTRACTOR** has set up or used its contracting entity for the purpose of evading the intent of the EBO, the **CITY** may terminate the Contract. Violation of this provision may be used as evidence against **CONTRACTOR** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

CONTRACTOR shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

“During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-1922.”

PSC-36. SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as amended from time to time. **CONTRACTOR** certifies that it has complied with the applicable provisions of the Slavery Disclosure Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract.