

PROFESSIONAL SERVICES CONTRACT

This CONTRACT is entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas Municipal Corporation, acting by and through its City Manager and FMLASource, Inc., a ComPsych Company, an Illinois corporation (hereinafter referred to as "**VENDOR**"), both of whom may be referred to herein collectively as the "Parties".

I. PURPOSE

The purpose of this CONTRACT is to state the terms and conditions under which the **VENDOR** will provide administration and management of the city's Family Medical Leave Act (FMLA) requests.

II. SCOPE OF SERVICES

- 2.1 **VENDOR** agrees to provide the services described in this Article II entitled Scope of Services in exchange for the compensation described in Article V Consideration and Billing.
- 2.2 **VENDOR** will perform all work required under the CONTRACT to the satisfaction of Director of Human Resources. The determination made by Director shall be final, binding and conclusive on all Parties hereto. **CITY** shall be under no obligation to pay for any work performed by **VENDOR**, which is not satisfactory to Director. **CITY** shall have the right to terminate this CONTRACT, in accordance with Article VII. Termination, in whole or in part, should Vendor's work not be satisfactory to Director; however, **CITY** shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should **CITY** elect not to terminate.
- 2.3 **VENDOR** shall provide the products and perform all the services as set forth in City's Request for Proposal (Exhibit A), and the Vendor's Proposal dated December 12, 2019 (Exhibit B), and Business Associate Agreement (Exhibit C). Exhibits A, B, and C are attached hereto and incorporated herein for all purposes.
- 2.4 **VENDOR** shall work with the Human Resources Director or designee and appropriate City officials to perform any and all related tasks required by **CITY** in order to fulfill the purposes of this CONTRACT.

2.5 **VENDOR** shall provide the following:

CLAIM MANAGEMENT AND PROCESSING

- 2.5.1 Issuance of initial FMLA claim package to employee after city Human Resources staff initiates the employee FMLA request and provides to **VENDOR** via email;
- **VENDOR** will have the ability to receive requests from **CITY** via a mutually agreed upon intake form that is submitted online via secure site;
 - **VENDOR** will provide all notices to employees via mail utilizing the address provided during intake or email if employee indicated email preference;
- 2.5.2 If **VENDOR** receives a FMLA intake form and the person is otherwise ineligible, **VENDOR** will send denial and FMLA rights and responsibilities documentation. If the initial

denial is for a request for FMLA for self, the denial letter shall include a copy of the city's STD application and instructions for completion/approval/submittal;

2.5.3 If **VENDOR** receives a FMLA intake form and the person is eligible, **VENDOR** will send the employee the appropriate FMLA forms for completion. If the intake form indicates that an absence is being designated as FMLA, and the employee is eligible, **VENDOR** shall send the employee a designation letter and disability application if the request is for self. Along with the required FMLA forms or designation letter, the **VENDOR** shall send the city's FMLA policies.

2.5.4 Preparation of approval, denial, and designation correspondence with reason for any denial to employee;

2.5.5 Verification of medical certification to include communication with employee's physician where necessary and mailing of denial letter where certification not timely;

2.5.6 Notification to employer and/employee of FMLA begin and end dates;

- **VENDOR** will mail approval letters to employees approved for FMLA with the following information: start and end dates; duration of approved absences; type of FMLA leave (block, reduced schedule or intermittent); and **CITY** call in policy procedures as it relates to Intermittent FMLA;
- **VENDOR** will email HR personnel of employee's return to work from continuous FMLA 48 hours prior to scheduled return date.

2.5.7 Efficient FMLA claim processing within times provided for in the law;

- **VENDOR** claim intake will include: reviewing intake forms and making initial determination of employee eligibility for FMLA using a fixed calendar year; notification to employee where automatic FMLA designation is appropriate based on information contained on FMLA intake form such as when Workers' Compensation absence is involved; reviewing the bi-weekly payroll reports from the **CITY** and sending designation letters to any employee who has an absence coded as WC, who is otherwise eligible for FMLA and who has not received a designation letter in the past 12 month period; reviewing the payroll report and sending any employee coded as DS (Disability) who is otherwise eligible for FMLA, a designation for FMLA for self if FMLA has not already been approved for employee.
- **VENDOR** will include City's Disability as part of the FMLA certification to employee who is eligible for FMLA for serious health condition of self with instructions for completion. Completed FMLA certifications for continuous leave for employee's own health condition will be sent by Vendor to City's Benefits Administrator through secure email within 48 hours of receipt. **VENDOR** will utilize its existing enhanced FMLA certification form.

2.5.8 Access by city staff to FMLA dedicated medical specialists and attorneys;

2.5.9 Consultation with City to address FMLA leave abuse and the recertification process;

2.5.10 Communication to management and employee on FMLA issues;

- **VENDOR** will obtain approval from **CITY** on the format and content for all regular correspondence to include approval/denial/designation letters;

2.5.11 Customer services, call center and help desk including bilingual services.

- **VENDOR** will provide and maintain a toll free number that employees can call regarding questions related to their FMLA application status and available FMLA leave balance.
- **VENDOR** will provide to employee, through a toll free number, an employee's available leave balance by way of City approved message.
- **VENDOR** will provide a designated representative to answer and respond to FMLA questions from City staff.

CLAIM TRACKING AND DOCUMENTATION

2.5.12 Tracking of all employee FMLA requests and absences to include up to five city designated individuals per claim who receive email notification of FMLA approvals/designations to include type of FMLA leave frequency and duration or estimated time for intermittent leave; and FMLA denials. The five designated individuals will be provided by City at time of claim submission.

- **VENDOR** will perform necessary due diligence to determine if two City employees are both requesting FMLA for the birth, adoption or foster care of the same child so that only allowable time is designated between the two employees. Only continuous/block FMLA will be designated for bonding unless **CITY** has authorized intermittent leave. **CITY** will provide **VENDOR** with a data feed that includes the information for **VENDOR** to make the determination.
- **VENDOR** will deduct absences related to Worker's Compensation (WC), Short Term Disability leave (DS) for eligible employees, Paid Parental Leave (PP), and FMLA (FM) from an employee's FMLA leave entitlement based on a bi-weekly payroll file **CITY** will provide to **VENDOR** reflecting such leave codes.

2.5.13 Tracking of FMLA utilization of employees including, re-certification, intermittent, workers' compensation leave; and type of FMLA leave to include if leave is for employee's own serious health condition and noted "non-work related" and "Workers' Compensation"; leave for serious health condition of qualifying family member; birth or adoption of a child; or military related next of kin or exigency leave. Workers' Compensation leave, Short Term Disability, and Paid Parental Leave are only tracked when this type of leave runs concurrently with FMLA leave;

2.5.14 Complete documentation of each FMLA claim including documentation of communications with each employee even when employee fails to return FMLA certification;

2.5.15 Tracking reduction in leaves and lost time;

2.5.16 Data backup, security and disaster recovery plan;

2.5.17 Ability for HR staff to check status of FMLA application and number of FMLA hours an employee has available;

2.5.18 Incorporate and reconcile City payroll file into **VENDOR**'s system within 48 hours and update **VENDOR**'s system to reflect actual usage of FMLA based on data in the file.

REPORTING

2.5.19 Real time access to online reports of employee FMLA usage;

2.5.20 Specialized reports to review program results and as requested by **CITY**;

- If **VENDOR** determines based on the bi-weekly payroll file provided by **CITY**, that an absence has been coded as FMLA (FM) on the payroll file and FMLA has been exhausted, **VENDOR** will provide a report to the **CITY** indentifying these cases by employee name, SAP # (employee ID #), and dates incorrectly coded as FMLA within two business days. Additionally, if an employee is coded as FMLA (FM) on the payroll file, but has yet to be approved for FMLA by **VENDOR**, this should also be noted on the report.
- **VENDOR** will provide access to online reports to those **CITY** employees who the **CITY** designates as needing access.
- **VENDOR** will provide a continuously updated monthly report detailing 1) total number of employees currently on FMLA with qualifying reason and type of leave (block, intermittent or reduced schedule), 2) employee department, 3) total number of FMLA denials. **VENDOR** will provide electronic access to designated staff with the same information.
- **VENDOR'S** FMLA reports will have employees identified with name, SAP # and hire date with ability to sort by department; qualifying reason; type of FMLA leave; duration of leave; estimated frequency of intermittent leave; total number of FMLA hours taken to date based on rolling calendar period; remaining FMLA available; and whether a recertification has been requested and is pending. **CITY** shall use its best efforts to provide **VENDOR** with complete and accurate employee eligibility files on a monthly basis. **CITY** understands and agrees that **VENDOR** shall not be liable for claims or losses directly due to **CITY'S** failure to provide such files or from **CITY'S** provision of inaccurate eligibility files.
- **VENDOR** will provide online report that allows **CITY** to query all employee's FMLA related absences.

FMLA COMPLIANCE

2.5.21 Compliance with all Texas and federal FMLA laws to ensure timely handling;

2.5.22 Compliance with City's Administrative Directive 4.20 FMLA Administration; all HIPAA and state medical privacy requirements, and City's Administrative Directive, 4.7 Healthcare Data Protection Administrative Authority. **VENDOR** is responsible for notifying **CITY** of any compliance concerns identified with City's internal policy;

2.5.23 Cooperation with and assistance to **CITY** as **CITY** handles FMLA claims filed with the Department of Labor. **CITY** understands that decisions made by **VENDOR** regarding FMLA eligibility shall not be deemed by **CITY** to be a recommendation, suggestion or determination to take any employment action against an employee and will consult with city's legal counsel prior to making any adverse employment determinations. **CITY** will confirm FMLA status with **VENDOR** prior to terminating an employee for attendance in reliance on **VENDOR's** designation of employee's non FMLA status;

2.5.24 Training of Human Resources staff on policy and procedure at times coordinated with **CITY** and mutually agreed upon;

2.5.25 Utilization of best practices in absence management;

2.5.26 Assistance to **CITY** as necessary to help coordinate independent medical reviews where necessary. **VENDOR** shall develop standard FMLA administration procedures that are in compliance with state and federal regulations.

III. PERFORMANCE STANDARDS

3.1 **VENDOR** acknowledges and agrees that **VENDOR** shall provide services under this **CONTRACT** at a certain level with a certain degree of accuracy and timeliness. Therefore, as part of this professional services contract with **CITY**, **VENDOR** agrees to the following performance standards and administrative fee adjustments:

Performance compliance audits may be conducted at the discretion of **CITY**, but are limited to one (1) per contract year and to claims processed in the contract year as defined herein regardless of incurred date. If **CITY** conducts a performance audit, either party to this **CONTRACT** may conduct a second audit, at its own expense, by the same or another independent auditor using a different claim sample of at least equal size. Performance-related fee adjustments will then be based on the combined results. The definition of an error in these audits is subject to a good faith review by the parties to this **CONTRACT**. The cost of the first audit conducted by the **CITY** in any contract year will be paid by **CITY**. Should **VENDOR** fail to meet any material performance expectation as reasonably determined by **CITY**, **VENDOR** will pay the cost for all subsequent audits until **VENDOR** is meeting expected performance levels.

As an interim measurement, **VENDOR** will share a copy of its monthly internal audit results on City Plans with **CITY**. If **CITY** waives its right to an independent audit in any plan year, it retains the right to audit in all subsequent years.

3.2 **CITY** shall monitor, review and evaluate **VENDOR's** performance in accordance with the Performance Standards established in this **CONTRACT** and set forth as follows:

Performance guarantees will be measured annually for determination of whether a penalty amount will be credited. Reconciliation of performance guarantees shall occur within sixty (60) days after the end of each contract year.

<u>CATEGORY</u>	<u>SERVICE LEVEL & MEASUREMENT</u>	<u>PENALTY</u> (as a % of Annual Fees)
Notification to Employee of Eligibility	99% of employee eligibility notifications sent within five business days after eligibility determination, where applicable. Divide number of employee eligibility notifications that were made within five business days after the eligibility determination by total number of employee eligibility notifications. FMLASource shall not be penalized if up to date and accurate employee eligibility information is not	2%

	provided by CITY to FMLASource.	
Medical Certification Processing	98% of medical certifications will be processed within five business days from receipt. Divide total number of processed medical certifications by the number of medical certifications that were processed within five business days.	2%
Leave Approval or Denial Decision	98% of leave approval or denial decisions will be made within five business days after receipt of adequate information to make a decision, or for leaves that require approval by the employer (e.g., ADA or some company leaves), five business days after Client's decision is communicated to FMLASource. Adequate information is defined as receipt of sufficient documentation or, when documentation is not received, within three business days after the documentation due date. Divide total number of leave approvals/denial decisions made within the applicable five/three business day period by total number of leave approvals/denials decisions by. FMLASource shall not be penalized if any delay is caused, in whole or in part, by Client.	2%
Responsiveness	FMLASource will return 99% of employee contacts within two business days	2%
Eligibility Data	Upon FMLASource's receipt of a clean file from CITY in a mutually agreed upon format, FMLASource will post the data into production within an average of 3 business days.	2%
Complaints	FMLASource will respond to complaints within two business days at least 95% of the time.	2%

IV. GENERAL ASSURANCES

- 4.1 **VENDOR** covenants and agrees to perform all services described in this CONTRACT in a workmanlike manner with a high degree of care to ensure accuracy and timeliness. **VENDOR** shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.

- 4.2 **VENDOR** agrees to assign a unit including, but not limited to, a Supervisor/Manager who shall be responsible for the task administration and work performance for this CONTRACT.
- 4.3 **VENDOR** agrees to employ, at its own expense, all personnel required to perform the services described in this CONTRACT. Personnel employed by **VENDOR** shall neither be employees of nor have any contractual relationship with **CITY**. All **VENDOR** personnel engaged in providing services under this CONTRACT shall be fully qualified and shall be authorized or licensed to perform such work as required.

V. CONSIDERATION & BILLING

- 5.1 In consideration of **VENDOR's** performance hereunder, **CITY** shall pay to **VENDOR** as follows:

Year 1	\$126,952.00
Year 2	\$126,952.00
Year 3	\$126,952.00
Year 4	\$126,952.00
Year 5	\$126,952.00

- 5.2 Payments to **VENDOR** shall be in the amount shown by the monthly billings and other documentation submitted and shall be subject to **CITY'S** approval. All services shall be performed to **CITY'S** satisfaction, and **CITY** shall not be liable for any payment under this CONTRACT for services which are unsatisfactory and which have not been approved by **CITY**. The final payment due herein will not be paid until the reports, data, and documents required under this CONTRACT have been received and approved by the **CITY**. No additional fee or charge will be assessed against the **CITY** for late payment of any amount due to the **VENDOR** under this CONTRACT.
- 5.3 **CITY** shall not be liable to **VENDOR** for costs incurred or performances rendered by **VENDOR** prior to the commencement of this CONTRACT or after its termination.
- 5.4 **CITY** shall not be obligated or liable under this CONTRACT to any party, other than **VENDOR**, for payment of any monies or provision for any goods or services.

VI. TERM

- 6.1 This CONTRACT shall commence on July 1, 2020, and shall terminate on June 30, 2021.
- 6.2 With at least 60 days written notice prior to expiration of the term, **CITY** may, at its sole option have the right to extend the term of this CONTRACT, under the same terms and conditions, for four (4) additional one (1) year periods subject to the same notice requirement. All renewals shall be in writing and signed by the Director, or designee, without further action by the San Antonio City Council, subject to appropriation of funds.
- 6.3 However, **CITY** may terminate this CONTRACT at any time if funds are restricted, withdrawn, not approved or service is unsatisfactory; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided as part of **CITY'S** budget for each fiscal year.

VII. OWNERSHIP OF PRODUCT

- 7.1 **VENDOR** recognizes that **CITY** shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with this CONTRACT and shall be used as **CITY** desires without restriction. **VENDOR** may utilize the information produced as a result of this CONTRACT for statistical purposes only as allowed by federal or state law.

VIII. RETENTION AND ACCESSIBILITY OF RECORDS

- 8.1 **VENDOR** shall maintain at its principal administrative office adequate books and records of all transactions including electronic and manual claims data in which **VENDOR** engages with **CITY**.
- 8.2 The books and records must be maintained for the term of this CONTRACT to which they relate and for the five (5) year period following the end of this CONTRACT's term.
- 8.3 **VENDOR** shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of federal or state law.
- 8.4 **CITY**, the Texas Department of Insurance (TDI) Commissioner, the United States Department of Health and Human Services, and their designated agents shall be given access to those books and records for the purpose of examination, audit, or inspection as permitted by federal or state law.
- 8.5 Trade secrets, including the identity and address of policyholders and certificate holders, are confidential, except that the TDI Commissioner may use such information in proceedings instituted against the **VENDOR**.
- 8.6 **CITY** is entitled to continuing access to these books and records.
- 8.7 **VENDOR** may, at **CITY'S** option, fulfill the requirements of this Section of this CONTRACT by delivering to **CITY**, the books and records and by giving written notice to the TDI Commissioner of the location of the books and records.

- 8.8 Notwithstanding anything set forth to the contrary herein, **CITY** does not have the right to audit any of **VENDOR'S** financial records that are not directly related to this **CONTRACT**.

IX. HIPAA COMPLIANCE

- 9.1 **VENDOR** will maintain the confidentiality of any patient-identifiable health information specifically relating to Plan Participants ("Patient Health Information") in accordance with all applicable federal and state laws and regulations, including the Privacy Rule and the Security Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as may be amended from time to time.
- 9.2 **VENDOR** shall comply with the electronic transmission standards, and with all other regulations as might be adopted by HIPAA.
- 9.3 The parties acknowledge that they are "Business Associates" as defined in Title 45, Section 160.103, of the Code of Federal Regulations. **VENDOR** shall abide by the terms of the Business Associate Agreement executed by the parties, attached hereto as Exhibit C and incorporated herein by reference.

X. PUBLICATION

- 10.1 In order to use any advertising relating to business underwritten and/or developed for **CITY**, **VENDOR** must obtain approval by **CITY** at least ten (10) business days prior to such use.

XI. AMENDMENT

- 11.1 This **CONTRACT**, together with its authorizing ordinance and its exhibits, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this **CONTRACT** shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

XII. ASSIGNING INTEREST

- 12.1 **VENDOR** shall not assign, sell, pledge, transfer or convey any interest in this **CONTRACT**, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of **CITY**, evidenced by passage of an ordinance to that effect by the San Antonio City Council. Any such attempt at an assignment will be void *ab initio*, and shall confer no rights on the purported assignee. Should **VENDOR** assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this **CONTRACT**, the **CITY** may, at its option, cancel this contract and all rights, titles and interest of **VENDOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this **CONTRACT**. The violation of this provision by **VENDOR** shall in no event release **VENDOR** from any obligation under the terms of this

CONTRACT, nor shall it relieve or release **VENDOR** from the payment of any damages to **CITY** which **CITY** sustains as a result of such violation.

If approved, **VENDOR'S** subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with **VENDOR** arising from or in relation to this CONTRACT, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this CONTRACT. **VENDOR** shall indicate this limitation in all contracts with approved subcontractors.

- 12.2 **VENDOR** agrees to notify **CITY** of any changes in **VENDOR'S** ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this CONTRACT, any such change of ownership interest or control of its business entity may be grounds for termination of this CONTRACT at the sole discretion of the **CITY**.
- 12.3 In no event shall such written consent for a change of subcontractor if obtained, relieve **VENDOR** from any and all obligations hereunder or change the terms of this CONTRACT.
- 12.4 **CITY** must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

XIII. INSURANCE AND BONDING

- 13.1 Prior to the commencement of any work under this CONTRACT, **VENDOR** shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Human Resources Department, Employee Benefits Division, which shall be clearly labeled "**Family Medical Leave Act Administration Services**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this CONTRACT until such certificate and endorsements have been received and approved by the City's Human Resources Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 13.2 **CITY** reserves the right to review the insurance requirements of this section during the effective period of this CONTRACT and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT, but in no instance will **CITY** allow modification whereupon **CITY** may incur increased risk. Any requested insurance change must be mutually agreed upon by both parties.
- 13.3 **VENDOR'S** financial integrity is of interest to **CITY**. Therefore, subject to **VENDOR'S** right to maintain reasonable deductibles in such amounts as are approved by

CITY, VENDOR shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at **VENDOR's** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and rated A- (VII) or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and for an amount not less than the amount listed below:

1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal/Advertising Injury e. Contractual Liability	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Professional Liability (Claims Made Form) To be maintained and in effect for no less than two years subsequent to the completion of the professional services	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
5. Cyber Liability	\$1,000,000 per claim \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.

13.4 As they may apply to the limits required by the **CITY**, the **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by **CITY** and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by **CITY**, **VENDOR** shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof. Any change requested under this section must be mutually agreed to by both parties.

13.5 **VENDOR** agrees that, with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the **CITY** and its officers, employees, and elected representatives as additional insureds, by endorsement, as respects operations and activities of, or on behalf of, the named insured and performed under this CONTRACT with the **CITY**, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;

- **VENDOR'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of its operations under this **CONTRACT** with **CITY**; and
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of **CITY**.

13.6 **VENDOR** provide advance, written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and shall give such notice not less than ten (10) calendar days for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to **CITY** at the following addresses:

**City of San Antonio
Human Resources Department
Employee Benefits Division
P.O. Box 839966
San Antonio, Texas 78283-3966**

- 13.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **VENDOR** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **VENDOR'S** performance should there be a lapse in coverage at any time during this **CONTRACT**. Failure to provide and to maintain the required insurance shall constitute a material breach of this **CONTRACT**.
- 13.8 In addition to any other remedies **CITY** may have upon **VENDOR's** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, **CITY** shall have the right to order **VENDOR** to stop work hereunder, and/or withhold any payment(s) which become due, to **VENDOR** hereunder until **VENDOR** demonstrates compliance with the requirements hereof.
- 13.9 Nothing herein contained shall be construed as limiting in any way the extent to which **VENDOR** may be held responsible for payments of damages to persons or property resulting from **VENDOR'S** or its subcontractors' performance of the work covered under this **CONTRACT**.
- 13.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this **CONTRACT** and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided.
- 13.11 **VENDOR** and any subcontractors are responsible for all damage to their own equipment and/or property.

XIV. INDEMNITY

- 14.1 **CONTRACTOR** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **CONTRACTOR'S** activities under this **CONTRACT**, including any acts or omissions of **CONTRACTOR**, any agent, officer, director, representative, employee, Contractor or subcontractor of **CONTRACTOR**, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this **CONTRACT**. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY** arising out of or related to its activities under this **CONTRACT**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. The indemnity provided for in this paragraph will not apply to an adverse employment action taken by **CITY** excluding any adverse action taken by **CITY** in reliance and as a direct result of **CONTRACTOR'S** failure to approve FMLA for a otherwise eligible individual in which case this provision will apply. **IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 14.2 The provisions of this **INDEMNIFICATION** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 14.3 **CONTRACTOR** shall advise the **CITY** in writing within 10 days of any claim or demand against the **CITY** or **CONTRACTOR** known to **CONTRACTOR** related to or arising out of **CONTRACTOR'S** activities under this contract.

XV. INDEPENDENT CONTRACTOR

- 15.1 **VENDOR** covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of **CITY**; that **VENDOR** shall have exclusive right to control the details of the work performed hereunder and all person performing the same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between **CITY** and **VENDOR**, its officers, agents, employees, contractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **VENDOR**.
- 15.2 Any and all of the employees of the **VENDOR**, wherever located, while engaged in the performance of any work under this **CONTRACT** shall be considered employees of the **VENDOR** only, and not of the **CITY**, and any and all claims that may arise from the

Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the **VENDOR**.

- 15.3 No Third Party Beneficiaries: For purposes of this CONTRACT, including its intended operation and effect, the Parties specifically agree and contract that (1) this CONTRACT only affects matters/disputes between the Parties to this CONTRACT and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may benefit incidentally by this CONTRACT; and (2) the terms of this CONTRACT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **VENDOR**.

XVI. SMALL ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) ORDINANCE COMPLIANCE PROVISIONS

16.1 Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the **CITY's** Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, marital status, sexual orientation, or, on the basis of age or disability or other unlawful forms of discrimination, unless exempted by state or federal law or otherwise stated herein, in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunity invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from **CITY**. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new **CITY** contracts shall be issued to the CONTRACTOR until the **CITY's** audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

XVII. NON-WAIVER

- 17.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required hereunder will not operate as a release to **VENDOR** from any other covenants and conditions required in this CONTRACT.

XVIII. FRAUD AND ABUSE PREVENTION

- 18.1 **VENDOR** shall establish, maintain and utilize internal management procedures sufficient to protect against fraud, abuse or misappropriation of funds while in performance of obligations and duties under this CONTRACT. Any suspected fraud, abuse or misappropriation of funds shall be investigated promptly at the sole expense of **VENDOR**. Any funds that are found to be misappropriated shall be repaid to **CITY** by **VENDOR** within thirty (30) days of such finding.
- 18.2 **VENDOR** agrees to repay **CITY** for overpayments to service providers resulting from **VENDOR'S** claims system's or processors' errors within 30 days of verification of overpayments.

XIX. CONFLICT OF INTEREST

- 19.1 **VENDOR** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the **CITY** or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 19.2 **VENDOR** warrants and certifies, and this CONTRACT is made in reliance thereon, that thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY**. **VENDOR** further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.
- 19.3 **VENDOR** warrants that no person or selling agency has been employed or retained to solicit or secure this CONTRACT upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by **VENDOR** for the purpose of securing business. For breach or violation of this warranty, **CITY** shall have the right to rescind this CONTRACT without liability or, at its discretion, to deduct from the CONTRACT price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 19.4 If at any time it shall be found that the person, firm or corporation to whom a CONTRACT has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable at **CITY's** option, and **VENDOR** shall be liable to **CITY** for all loss or damage that **CITY** may suffer thereby.

XX. TERMINATION

- 20.1 For purposes of this CONTRACT, “termination” of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 20.2 Termination by Notice. This CONTRACT may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than 30 calendar days nor more than 90 calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be 30 calendar days after receipt of the notice by the other party.
- 20.3 Termination for Cause. Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters in default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this CONTRACT shall terminate at 11:59:59 p.m., Central Standard Time, on the tenth (10th) day after the receipt of the notice by the defaulting party.
- 20.4 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or, if any law is interpreted to prohibit such performance, this CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 20.5 Effect of Termination. The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from **VENDOR** to **CITY** or to such person(s) or firm(s) as the **CITY** may designate. Any records transfer shall be completed within 15 calendar days of the termination date. Any such transfer of records or funds shall be completed at **VENDOR'S** sole cost and expense. All files are the property of the **CITY** and, at the **CITY'S** request, will be delivered at no cost to the **CITY** or its designated recipient on the effective date of termination. Any **CITY** funds held in any escrow account(s) shall be returned to the **CITY** within 30 calendar days after the effective termination date.
- 20.6 Upon termination or cancellation of this CONTRACT, **CITY** may immediately commence audit of **VENDOR'S** books, accounts, and records. Within 30 calendar days after being notified by **CITY** of the results of said audit, **VENDOR** shall pay **CITY** any amount shown by said audit to be owed **CITY** or its employees. No waiver of existing default shall be deemed to waive any subsequent default. Notwithstanding anything set forth to the contrary herein, **CITY** does not have the right to audit any of **VENDOR'S** records that are not directly related to this CONTRACT.
- 20.7 If **CITY** conducts an audit, either party to this CONTRACT may conduct a second audit, at their own expense, by the same or another independent auditor. If the results from the second audit are different, a third audit may be conducted with the costs of said audit to be shared equally between **VENDOR** and **CITY**. The results from said third audit shall be final.

- 20.8 Upon termination of this CONTRACT, in whole or in part, and/or its non-renewal, in entirety or of any major operating subsidiary, entity or portion thereof, **CITY** shall have the option to:
- 20.8.1 Assume all open claims pending for the terminated or non-renewed portion of the CONTRACT, as of the effective date of termination or non-renewal, provided however, that **VENDOR** shall be entitled to receive its full fee for all claims processed to completion into its data files prior to the effective date of termination or non-renewal; or,
 - 20.8.2 Upon agreement of a rate of compensation by both parties, **CITY** requires **VENDOR** to continue administration, to conclusion, all incurred claims associated with that portion of the services terminated or non-renewed.
 - 20.8.3 In the event **CITY** requests **VENDOR** to provide post-termination or non-renewal claims administration, upon agreement of a rate of compensation by both parties, **CITY** may continue to purchase on-line data services. Such rate of compensation shall thereafter be reviewed by the parties on an annual basis and continued on-line data services shall be the subject of a written agreement between the parties, subject to funding and approval of the City Council.
- 20.9 Within 30 calendar days of the effective date of termination or cancellation, **VENDOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this CONTRACT through the effective date of termination, except for monies owed for processing of claims incurred prior to the termination date and submitted for processing after the termination date.

XXI. COMPLIANCE WITH LAWS

- 21.1 **VENDOR** hereby agrees to provide services hereunder in compliance with all applicable Federal, State and local laws, regulations, policies and procedures.
- 21.2 Non-Discrimination. As a party to this contract, **VENDOR** understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XXII. SUCCESSORS AND ASSIGNS

- 22.1 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

XXIII. NOTICES

23.1 Any notice required or permitted to be given under this CONTRACT shall be sufficient if given in writing and sent by certified mail, return receipt requested, postage prepaid to **CITY**, or to **VENDOR** at the addresses set forth below or to any other address of which written notice of change is given:

CITY

**City of San Antonio
Human Resources Department
Employee Benefits Division
111 Soledad
San Antonio, TX 78205**

VENDOR

**Compsych Corporation
NBC Tower – 455 N. Cityfront Plaza Drive
Chicago, IL 60611**

XXIV. EXHIBITS

24.1 **VENDOR** understands and agrees that all exhibits referred to in this CONTRACT are intended to be and hereby are, specifically made a part of this CONTRACT. Said exhibits are as follows:

CITY’S Request for Proposal	Exhibit A
VENDOR’S Proposal	Exhibit B
HIPAA Business Associate Agreement	Exhibit C

24.2 **VENDOR** understands and agrees that Exhibits A, B, and C are a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by **VENDOR** as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.

24.3 The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of **CITY’S** Request for Proposal, **VENDOR’S** Proposal and the terms of this CONTRACT; **CITY’S** Request for Proposal shall control where it conflicts with **VENDOR’S** Proposal.

XXV. LEGAL AUTHORITY

25.1 The signer of this CONTRACT for **VENDOR** represents, warrants, assures and guarantees full legal authority to execute this CONTRACT on behalf of **VENDOR** and to bind **VENDOR** to all of the terms, conditions, provisions and obligations herein contained.

XXVI. VENUE AND GOVERNING LAW

- 26.1 Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Bexar County, Texas. This CONTRACT shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are to be performed in Bexar County, Texas.

XXVII. GENDER

- 27.1 Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXVIII. NON-DISCRIMINATION

- 28.1 As a party to this contract, **VENDOR** understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XXIX. CAPTIONS

- 29.1 The captions contained in this CONTRACT are for convenience or reference purposes only and shall in no way limit, enlarge or alter the terms and/or conditions of this CONTRACT.

XXX. ENTIRE AGREEMENT

- 30.1 This CONTRACT, its exhibits and the authorizing ordinance constitute the final and entire agreement between the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same is in writing, dated subsequent to the date hereto, and duly executed by the parties hereto.

XXXI. SEVERABILITY

- 31.1 If any clause or provision of this CONTRACT is illegal, invalid or unenforceable under present or future federal, state or local laws, including, but not limited to the City Charter, City Code or Ordinances of the City of San Antonio, Texas, then, and in that event, it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties to this CONTRACT that, in lieu of each clause or provision of this CONTRACT that is illegal, invalid or unenforceable, there be added as part of this CONTRACT a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XXXII. ACKNOWLEDGMENT

32.1 Each of the parties acknowledges that it has read this CONTRACT, understands its contents and executes this CONTRACT voluntarily.

EXECUTED this the _____ day of _____, 2020.

CITY OF SAN ANTONIO

Erik Walsh
City Manager

COMPSYCH, INC.

DocuSigned by:
Richard A. Chaifetz

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Dr. Richard Chaifetz
Chairman and Chief Executive Officer

APPROVED AS TO FORM:

Krista Cover
Assistant City Attorney