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<b>PROJECT TITLE</b>	<b>EXHIBITS</b> (List all attached exhibits - Scope of Work, Work Schedule, Payment Schedule, Renewal Options, etc.)
<b>CONTRACTOR</b>	<b>CITY OF REDMOND PROJECT ADMINISTRATOR</b> (Name, address, phone #)  City of Redmond
<b>CONTRACTOR'S CONTACT INFORMATION</b> (Name, address, phone #)	<b>BUDGET OR FUNDING SOURCE</b>
<b>CONTRACT COMPLETION DATE</b>	<b>MAXIMUM AMOUNT PAYABLE</b>

**THIS AGREEMENT** is entered into on \_\_\_\_\_, 20\_\_ between the City of Redmond, Washington, hereinafter called "the CITY", and the above person, firm or organization, hereinafter called "the CONSULTANT".

**WHEREAS**, the CITY desires to accomplish the above-referenced project; and

**WHEREAS**, the CITY does not have sufficient staff or expertise to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the project; and

**WHEREAS**, the CONSULTANT has represented to the CITY that the CONSULTANT is in compliance with the professional registration statutes of the State of Washington, if applicable, and has signified a willingness to furnish consulting services to the CITY, now, therefore,

**IN CONSIDERATION OF** the terms and conditions set forth below, or attached and incorporated and made a part hereof, the parties agree as follows:

1. **Retention of Consultant - Scope of Work.** The CITY hereby retains the CONSULTANT to provide professional services as defined in this agreement and as necessary to accomplish the scope of work attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this agreement.

2. **Completion of Work.** The CONSULTANT shall not begin any work under the terms of this agreement until authorized in writing by the CITY. The CONSULTANT shall complete all work required by this agreement according to the schedule attached as Exhibit B and incorporated herein by this reference as if set forth in full. A failure to complete the work according to the attached schedule, except where such failure is due to circumstances beyond the control of the CONSULTANT, shall be deemed a breach of this agreement. The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the CITY, in the event of a delay attributable to the CITY, or because of unavoidable delays caused by circumstances beyond the control of the CONSULTANT. All such extensions shall be in writing and shall be executed by both parties.

3. **Payment.** The CONSULTANT shall be paid by the CITY for satisfactorily completed work and services satisfactorily rendered under this agreement as provided in Exhibit C, attached hereto and incorporated herein by this reference as if set forth in full. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Scope of Work attached. The CONSULTANT shall be entitled to invoice

the CITY no more frequently than once per month during the course of the completion of work and services by the CONSULTANT. Invoices shall detail the work performed or services rendered, the time involved (if compensation is based on an hourly rate) and the amount to be paid. The CITY shall pay all such invoices within 30 days of submittal, unless the CITY gives notice that the invoice is in dispute. In no event shall the total of all invoices paid exceed the maximum amount payable set forth above, if any, and the CONSULTANT agrees to perform all services contemplated by this agreement for no more than said maximum amount.

4. Changes in Work. The CONSULTANT shall make such changes and revisions in the complete work provided by this agreement as may be necessary to correct errors made by the CONSULTANT and appearing therein when required to do so by the CITY. The CONSULTANT shall make such corrective changes and revisions without additional compensation from the CITY. Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the CITY. This work shall be considered as Extra Work and will be paid for as provided in Section 5.

5. Extra Work.

A. The CITY may, at any time, by written order, make changes within the general scope of the agreement in the services to be performed. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work or services under this agreement, whether or not changed by the order, or otherwise affects any other terms or conditions of the agreement, the CITY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule or both; and (3) other affected terms, and shall modify the agreement accordingly.

B. The CONSULTANT must submit any "proposal for adjustment" under this clause within 30 days from the date of receipt of the written order to make changes. However, if the CITY decides that the facts justify it, the CITY may receive and act upon a proposal submitted before final payment of the agreement.

C. Failure to agree to any adjustment shall be a dispute under the Disputes clause of this agreement, as provided in Section 13. Notwithstanding any such dispute, the CONSULTANT shall proceed with the agreement as changed.

D. Notwithstanding any other provision in this section, the maximum amount payable for this agreement shall not be increased or considered to be increased except by specific written amendment of this agreement.

6. **Ownership of Work Product.** Any and all documents, drawings, reports, and other work product produced by the CONSULTANT under this agreement shall become the property of the CITY upon payment of the CONSULTANT'S fees and charges therefore. The CITY shall have the complete right to use and re-use such work product in any manner deemed appropriate by the CITY, provided, that use on any project other than that for which the work product is prepared shall be at the CITY'S risk unless such use is agreed to by the CONSULTANT.

7. **Independent Contractor.** The CONSULTANT is an independent contractor for the performance of services under this agreement. The CITY shall not be liable for, nor obligated to pay to the CONSULTANT, or any employee of the CONSULTANT, sick leave, vacation pay, overtime or any other benefit applicable to employees of the CITY, nor to pay or deduct any social security, income tax, or other tax from the payments made to the CONSULTANT which may arise as an incident of the CONSULTANT performing services for the CITY. The CITY shall not be obligated to pay industrial insurance for the services rendered by the CONSULTANT.

8. **Indemnity.** The CONSULTANT agrees to hold harmless, indemnify and defend the CITY, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the CONSULTANT, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the CONSULTANT, its officers, agents, subconsultants or employees, in connection with the services required by this agreement, provided, however, that:

A. The CONSULTANT's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the CITY, its officers, agents or employees; and

B. The CONSULTANT's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the CONSULTANT and the CITY, or of the CONSULTANT and a third party other than an officer, agent, subconsultant or employee of the CONSULTANT, shall apply only to the extent of the negligence or willful misconduct of the CONSULTANT.

9. **Insurance.** The CONSULTANT shall provide the following minimum insurance coverages:

A. Worker's compensation and employer's liability insurance as required by the State of Washington;

**B. General public liability and property damage insurance in an amount not less than a combined single limit of two million dollars (\$2,000,000) for bodily injury, including death, and property damage per occurrence.**

**C. Professional liability insurance, if commercially available in CONSULTANT's field of expertise, in the amount of two million dollars (\$2,000,000) or more against claims arising out of work provided for in this agreement.**

**The amounts listed above are the minimum deemed necessary by the CITY to protect the CITY'S interests in this matter. The CITY has made no recommendation to the CONSULTANT as to the insurance necessary to protect the CONSULTANT'S interests and any decision by the CONSULTANT to carry or not carry insurance amounts in excess of the above is solely that of the CONSULTANT.**

**All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. Excepting the professional liability insurance, the CITY will be named on all insurance as an additional insured. The CONSULTANT shall submit a certificate of insurance to the CITY evidencing the coverages specified above, together with an additional insured endorsement naming the CITY, within fifteen (15) days of the execution of this agreement. The additional insured endorsement shall provide that to the extent of the CONSULTANT's negligence, the CONSULTANT's insurance shall be primary and non-contributing as to the City, and any other insurance maintained by the CITY shall be excess and not contributing insurance with respect to the CONSULTANT's insurance. The certificates of insurance shall cover the work specified in or performed under this agreement. No cancellation, reduction or modification of the foregoing policies shall be effective without thirty (30) days prior written notice to the CITY.**

**10. Records. The CONSULTANT shall keep all records related to this agreement for a period of three years following completion of the work for which the CONSULTANT is retained. The CONSULTANT shall permit any authorized representative of the CITY, and any person authorized by the CITY for audit purposes, to inspect such records at all reasonable times during regular business hours of the CONSULTANT. Upon request, the CONSULTANT will provide the CITY with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the CONSULTANT, but the CONSULTANT may charge the CITY for copies requested for any other purpose.**

**11. Notices. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth in the box for the same appearing at the outset of this Agreement. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.**

12. **Project Administrator.** The Project Administrator shall be responsible for coordinating the work of the CONSULTANT, for providing any necessary information for and direction of the CONSULTANT's work in order to ensure that it meets the requirements of this Agreement, and for reviewing, monitoring and approving the quality and quantity of such work. The CONSULTANT shall report to and take any necessary direction from the Project Administrator.

13. **Disputes.** Any dispute concerning questions of fact in connection with the work not disposed of by agreement between the CONSULTANT and the CITY shall be referred for resolution to a mutually acceptable mediator. The parties shall each be responsible for one-half of the mediator's fees and costs.

14. **Termination.** The CITY reserves the right to terminate this agreement at any time upon ten (10) days written notice to the CONSULTANT. Any such notice shall be given to the address specified above. In the event that this agreement is terminated by the City other than for fault on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. In the event that services of the CONSULTANT are terminated by the CITY for fault on part of the CONSULTANT, the amount to be paid shall be determined by the CITY with consideration given to the actual cost incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the CITY at the time of termination, the cost of the CITY of employing another firm to complete the work required, and the time which may be required to do so.

15. **Non-Discrimination.** The CONSULTANT agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, creed, color, national origin, sex, religion, honorable discharged veteran or military status, familial status, sexual orientation, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog or service animal by a person with a disability, except for a bona fide occupational qualification. The CONSULTANT understands that if it violates this provision, this Agreement may be terminated by the CITY and that the CONSULTANT may be barred from performing any services for the CITY now or in the future.

16. **Compliance and Governing Law.** The CONSULTANT shall at all times comply with all applicable federal, state, and local laws, rules, ordinances, and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

17. **Subcontracting or Assignment.** The CONSULTANT may not assign or subcontract any portion of the services to be provided under this agreement without the express written consent of the CITY. Any sub-consultants approved by the CITY at the outset of this agreement are named on separate Exhibit attached hereto and incorporated herein by this reference as if set forth in full.

18. **Non-Waiver.** Payment for any part of the work or services by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT for any breach of the agreement by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it under the agreement by the CITY. Waiver of any right or entitlement under this agreement by the CITY shall not constitute waiver of any other right or entitlement.

19. **Litigation.** In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this agreement, the parties agree that such actions shall be initiated in the Superior Court of the State of Washington, in and for King County. The parties agree that all questions shall be resolved by application of Washington law and that parties to such actions shall have the right of appeal from such decisions of the Superior Court in accordance with the law of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, in and for King County. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

20. **Taxes.** The CONSULTANT will be solely responsible for the payment of any and all applicable taxes related to the services provided under this agreement and if such taxes are required to be passed through to the CITY by law, the same shall be duly itemized on any billings submitted to the CITY by the CONSULTANT.

21. **City Business License.** The CONSULTANT has obtained, or agrees to obtain, a business license from the CITY prior to commencing to perform any services under this agreement. The CONSULTANT will maintain the business license in good standing throughout the term of this Agreement.

22. **Entire Agreement.** This agreement represents the entire integrated agreement between the CITY and the CONSULTANT, superseding all prior negotiations, representations or agreements, written or oral. This agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto. These standard terms and conditions set forth above supersede any conflicting terms and conditions on any attached and incorporate exhibit. Where conflicting language exists, the CITY'S terms and conditions shall govern.

**page 8 – Consulting Services Agreement, Non-Public Work  
City of Redmond, standard form**

**IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the  
day and year first above written.**

**CONSULTANT:**

**CITY OF REDMOND:**

\_\_\_\_\_  
**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

\_\_\_\_\_  
**Angela Birney, Mayor**  
**DATED:** \_\_\_\_\_

**ATTEST/AUTHENTICATED:**

\_\_\_\_\_  
**City Clerk, City of Redmond**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Office of the City Attorney**



## **Exhibit A – Scope of Work**

The CONTRACTOR/CONSULTANT shall perform all services and provide all goods as identified below:

This consultant will provide oversight of the Police Department's Peer Support Program, Public Safety Chaplaincy Program, provide on-going educational activities in support of healthy personal and professional relationships, family support, and educate officers on how to avoid engaging in dysfunctional coping behaviors that may damage their careers.

The contract mental health professional would provide an average of 8 hours per week of on-site services which would include:

- a. Train, manage and advise personnel assigned by the department as Peer Support Team Members;
- b. Provide training, education, and supervisory oversight of the Redmond Public Safety Chaplaincy Program;
- c. Provide training, activities, education, and support to Redmond Police Department employees and their families with the goal of maintaining positive healthy professional and personal relationships;
- d. Conduct Critical Incident Stress Management debriefings with personnel involved in responding to traumatic events as public safety personnel.

**Confidentiality:** When an employee discusses issues or concerns with the contractor these conversations will be treated as confidential. Only in the extreme instance where there is a question as to the safety of the individual where in the opinion of the mental health professional that the individual is a threat to themselves or others will the Wellness & Resiliency Coordinator be required to report to the Chief of Police any information about the conversations. Under these circumstances Wellness & Resiliency Coordinator will provide the most limited information as feasible to address the immediate concern for the safety and well-being of the individual.

**Reporting Relationship:** This position will report directly to the Chief of Police, or designee, for the purposes of coordinating department activities and job functions related to this contract.

**Qualifications:** The contractor must be a Mental Health Counselor licensed with the State of Washington and hold a Master of Administration or Science Degree in Applied Behavior Science. Due to the nature of the work described above, it is important that the person be experienced in providing mental health counseling to public safety personnel, is familiar with the stress of responding to traumatic public safety calls for service and traumatic grief therapy. It is also desirable that the mental health counselor be experienced in providing related marriage and family therapy.

**Exhibit B – Work Schedule**

Work Schedule. The CONSULTANT/CONTRACTOR shall complete all project milestones as identified and scheduled below:

<b>Milestone/Description of Task</b>	<b>Scheduled Completion Date</b>
This work will begin upon the signing of the Consultant Agreement between the CITY and the CONSULTANT and will continue until December 31, 2022.	
Coordinate or conduct quarterly Peer Support Team education/training	Quarterly
Provide quarterly report to command staff regarding summary of wellness training, education, and department activities.	Quarterly
Conduct annual dept-wide wellness training.	Annually

**Exhibit C – Payment Schedule**

For the goods/services identified in the Scope of Work, the City shall pay CONTRACTOR:

COST: \$150.00 per hour. Estimated at an average of 8-10 hours per week.

Total cost per year not to exceed \$75,000. Consultant will provide the CITY with a monthly invoice for services provided. Invoice will detail date, time, length (hours), location and type of services provided.

**EXHIBIT   D**  
**Substitute Paragraph #6**  
**For Non-Public Works Consulting Services Agreements**

6. Ownership of Work Product. In performance of the CONSULTANT's obligations under this Agreement, the CITY or the CONSULTANT may receive access to intellectual property (including, but not limited to, knowhow and software) ("Intellectual Property") owned, controlled, or licensed by the other party or a third party ("Owner"). With respect to said Intellectual Property, the CITY and the CONSULTANT agree as follows:

A. Intellectual Property (including derivative works thereof, regardless of authorship) owned, controlled, or licensed by an Owner before commencement of the Scope of Work shall remain the property of the Owner;

B. Subject to subparagraphs A and D hereof, any Intellectual Property (other than derivative works of the CITY's Intellectual Property) developed in connection with this Agreement shall be owned by the CONSULTANT;

C. Upon payment of all amounts due under this Agreement, the CONSULTANT shall be deemed to have granted the CITY a non-exclusive, worldwide, perpetual (without regard to any termination or expiration of this Agreement), irrevocable, fully paid, royalty-free license as to the deliverables identified in the Scope of Work in source and object code form, including all intellectual property and other proprietary rights incorporated therein or embodied thereby. The CITY shall have the right to make, use, reproduce, disclose, modify, adapt, create derivative works based thereon, translate, distribute directly and indirectly, transmit, display, and perform publicly such work for its own internal, non-commercial uses;

D. Except as provided herein, neither party hereto may use, copy, publish, or disclose an Owner's Intellectual Property to others or authorize others to copy, publish, or disclose such Intellectual Property without the Owner's prior written approval; and

E. Nothing contained in this Paragraph shall affect or modify the CITY's obligation to disclose public records under Chapter 42.56 RCW or other applicable law. Provided, however, that the CONSULTANT may mark any documents furnished to the CITY under the following:

NOTICE: The information herein has been prepared for the use of the City of Redmond, Washington and no others, and is disclosed solely as required under Chapter 42.56 RCW or other applicable law. The information contains data that is copyright by © \_\_\_\_\_, all rights reserved, and as such shall not be used by or disclosed outside the original recipient of this disclosure. Recipient may not use the information to provide services to any other person or entity for a fee or other consideration.

## INFORMATION PRIVACY AND SECURITY AGREEMENT

This Information Privacy and Security Agreement ("IPSA") is entered into by and between the City of Redmond ("City") and [ ] ("Contractor") as of the date last signed below (the "Effective Date") and hereby amends the attached agreement between City and Contractor (the "Underlying Agreement"). This IPSA shall apply to the extent that the provision of services by Contractor pursuant to the Underlying Agreement, for example including but not limited to, professional services, SAAS, on-premises software, and remote desktop access, involves the processing of City Data, access to City systems, or access to City Data that is subject to privacy laws.

In consideration of the mutual promises in the Underlying Agreement, this IPSA and other good and valuable consideration, the parties agree as follows:

### **1. Definitions.**

a. "Authorized Users" means Contractor's employees, agents, subcontractors and service providers who have a need to know or otherwise access City Data to enable Contractor to perform its obligations under the Underlying Agreement or the IPSA, and who are bound in writing by confidentiality and other obligations sufficient to protect City Data in accordance with the terms and conditions of this IPSA.

b. "City Data" means any and all information that the City has disclosed to Contractor or that Contractor has created on behalf of the City pursuant to its obligations under the Underlying Agreement. For the purposes of this IPSA, City Data does not cease to be City Data solely because it is transferred or transmitted beyond the City's immediate possession, custody, or control.

c. "Data Breach" means the unauthorized acquisition, access, use, or disclosure of City Data which compromises the security or privacy of the City Data or associated City software systems.

d. "Services" means all services, work, activities, deliverables, software or other obligations provided by Contractor pursuant to the Underlying Agreement.

### **2. Standard of Care.**

a. Contractor acknowledges and agrees that, in the course of its engagement by City, Contractor may create, receive, or have access to City Data. Contractor shall comply with the terms and conditions set forth in this IPSA in its creation, collection, receipt, access to, transmission, storage, disposal, use, and disclosure of such City Data and be responsible for any unauthorized creation, collection, receipt, access to, transmission, storage, disposal, use, or disclosure of City Data under its control or in the possession of Authorized Users.

b. Contractor further acknowledges that use, storage, and access to City Data shall be performed with that degree of skill, care, and judgment customarily accepted as sound, quality, and professional practices. Contractor shall implement and maintain safeguards necessary to ensure the confidentiality, availability, and integrity of City Data. Contractor shall also implement and maintain any safeguards required to be implemented by applicable state and federal laws and regulations.

### **3. User Access to City Data.**

a. Contractor shall not access, use or disclose City Data in any manner that would constitute a violation of state or federal law, the terms of the Underlying Agreement, or the terms of this IPSA. Contractor may only provide access to Authorized Users who have a legitimate business need to access, use or disclose City Data in the performance of Contractor's duties to City.

b. If Contractor requires access to a City software system, then each Authorized User must have a unique sign-on identification and password for access to City Data on City systems. Authorized Users are prohibited from sharing their login credentials, and may only receive such credentials upon execution of the Authorized User Access Agreement, attached hereto as Exhibit A. Contractor shall notify City within one (1) day of the departure of any Authorized User, so that City may terminate such Authorized User's access to City software systems.

### **4. Use of Subcontractors or Agents.**

a. Contractor may disclose City Data to a subcontractor and may allow the subcontractor to create, receive, maintain, access, or transmit City Data on its behalf, provided that Contractor obtains satisfactory assurances that the subcontractor will appropriately safeguard the information. Without limiting the generality of the foregoing, Contractor shall require each of its subcontractors that create, receive, maintain, access, or transmit City Data on behalf of Contractor to execute a written agreement obligating the subcontractor to comply with all terms of this IPSA and to agree to the same restrictions and conditions that apply to Contractor with respect to the City Data.

b. Contractor shall be responsible for all work performed on its behalf by its subcontractors and agents involving City Data as if the work was performed by Contractor. Contractor shall ensure that such work is performed in compliance with this IPSA, the Underlying Agreement and applicable law.

### **5. Use, Storage, or Access to, City Data.**

a. Contractor shall only use, store, or access City Data in accordance with, and only to the extent permissible under this IPSA and the Underlying Agreement. Further, Contractor shall comply with all laws and regulations applicable to City Data (for example, in compliance with the Health Insurance Portability and Accountability Act ["HIPAA"] or the FBI Criminal Justice

Information Services requirements). If Contractor has access to City protected health information, then Contractor must also execute the City's Business Associate Agreement.

b. Contractor may store City Data on servers housed in datacenters owned and operated by third parties, provided the third parties have executed confidentiality agreements with Contractor. Any transmission, transportation, or storage of City Data outside the United States is prohibited except with the prior written authorization of the City.

## **6. Privacy.**

a. Contractor represents and warrants that in connection with the Services provided by Contractor:

i. All use of City Data by Contractor shall be strictly limited to the direct purpose of performing the Services, except to the extent that City expressly grants permission in writing for such additional uses.

ii. Collection of data which identifies individuals shall be limited to the minimum required by the Services.

iii. If the Services, in whole or part, involves access or delivery of information pertaining to the City via a public-facing web site, then Contractor represents and warrants that its current privacy policy is published online, and is accessible from the same web site as any web-hosted application that is a part of the Services. Contractor's privacy policy will provide end-users with a written explanation of the personal information collected about end-users, as well as available opt-in, opt-out, and other end-user privacy control capabilities.

iv. If Contractor creates technical system log information, aggregated technical usage or traffic data, and/or statistically measured technical usage or traffic data that contains or originated (in whole or part) from City Data, then Contractor's use of such data shall be strictly limited to the direct purpose of the Services and Contractor's technical security operations and systems maintenance. Contractor is prohibited from using such data that personally identifies an individual for secondary commercial purpose (including but not limited to marketing to such individuals, or disclosing data to third parties for reasons unrelated to the primary purpose for originally collecting the data), nor may Contractor solicit consent from the identified individual to do so unless the Underlying Agreement defines a means to do so that does not unduly burden individual privacy rights.

b. Contractor shall maintain the confidentiality of City Data. Confidential information shall not be deemed to include information which (a) is or becomes publicly known through no fault of Contractor; (b) is a publicly available document; or (c) disclosure of which is required by court order or legal requirement. If disclosure of City Data is required by court order or legal requirement the Contractor shall notify City, unless such notification is prohibited by court order or legal requirement. City may take such legally available measures as it chooses to limit or prevent disclosure of the City Data.

**7. Information Security.** This Section 7 applies to the extent that Contractor owns, supports, or is otherwise responsible for host(s), network(s), environment(s), or technology products (including hardware or software) which may contain City Data.

a. Contractor represents and warrants that the design and architecture of Contractor's systems (including but not limited to applications and infrastructure) shall be informed by the principle of defense-depth; controls at multiple layers designed to protect the confidentiality, integrity and availability of data.

b. Contractor shall make appropriate personnel vetting/background checks, have appropriate separation of duties, and undertake other such workflow controls over personnel activities as necessary to safeguard City Data.

c. Contractor shall implement appropriate procedures to monitor and deploy security patches and prevent unintended or unauthorized system configuration changes that could expose system vulnerability or lead to a Data Breach.

d. To the extent that the Services include software that was developed, in whole or part, by Contractor, then Contractor shall ensure that all such Services were developed within a software development life cycle (SDLC) process that includes security and quality assurance roles and control process intended to eliminate existing and potential security vulnerabilities.

e. Contractor shall have appropriate technical perimeter hardening. Contractor shall monitor its system and perimeter configurations and network traffic for vulnerabilities, indicators of activities by threat actors, and/or the presence of malicious code.

f. Contractor shall have access, authorization, and authentication technology appropriate for protecting City Data from unauthorized access or modification, and capable of accounting for access to City Data. The overall access control model of Contractor systems shall follow the principal of least privileges.

g. Contractor shall collaborate with City to safeguard electronic City Data with encryption controls over such City Data both stored and in transit. Contractor shall discontinue use of encryption methods and communication protocols which become obsolete or have become compromised. All transmissions of City Data by Contractor shall be performed using a secure transfer method.

h. Contractor shall maintain a process for backup and restoration of data with a business continuity and disaster recovery plan.

i. Contractor facilities will have adequate physical protections, commensurate with leading industry practice to secure business facilities, data centers, paper files, servers, backup systems, and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability.



j. Contractor shall, at its own expense, conduct an information security and privacy risk assessment, no less than annually, in order to demonstrate, substantiate, and assure that the security and privacy standards and practices of Contractor meet or exceed the requirements set out in this IPSA. Upon written request, Contractor shall furnish City with an executive summary of the findings of the most recent risk assessment. In lieu of providing an executive summary, Contractor may provide evidence of privacy and security certification from an independent third party.

i. City reserves the right to conduct or commission additional tests, relevant to the Services, in order to supplement Contractor's assessment. Contractor shall cooperate with such effort.

ii. If the findings of the risk assessment identify either: a potentially significant risk exposure to City Data, or other issue indicating that security and privacy standards and practices of Contractor do not meet the requirements set out in this IPSA, then Contractor shall notify City to communicate the issues, nature of the risks, and the corrective active plan.

## **8. Data Breach Procedures and Liability.**

a. Contractor shall maintain a data breach plan in accordance with the criteria set forth in Contractor's privacy and security policy and shall implement the procedures required under such data breach plan on the occurrence of a Data Breach, in compliance with the requirements of Washington's data breach notification law codified at RCW 42.56.590. Contractor shall report, either orally or in writing, to City any Data Breach involving City Data including any reasonable belief that an unauthorized individual has accessed City Data. The report shall identify the nature of the event, a list of the affected individuals and the types of data, and the mitigation and investigation efforts of Contractor. Contractor shall make the report to the City immediately upon discovery of the Data Breach, but in no event more than forty-eight (48) hours after discovery of the Data Breach. Contractor shall provide investigation updates to the City. If such Data Breach contains protected health information, as defined by HIPAA, Contractor shall comply with the breach requirements contained in the Business Associate Agreement.

b. Notwithstanding any other provision of the Underlying Agreement, and in addition to any other remedies available to the City under law or equity, Contractor shall promptly reimburse the City in full for all costs incurred by the City in any investigation, remediation or litigation resulting from any Data Breach. Contractor's duty to reimburse the City includes but is not limited to, reimbursing to the City its cost incurred in doing the following:

i. Notification to third parties whose information may have been or were compromised and to regulatory bodies, law- enforcement agencies or other entities as may be required by law or contract;

ii. Establishing and monitoring call center(s) and credit monitoring and/or identity restoration services to assist each person impacted by a Data Breach of a nature that, in City's sole discretion, could lead to identity theft; and

iii. Payment of legal fees and expenses, audit costs, fines and penalties, and other fees imposed upon the City by a regulatory agency, court of law, or contracting partner as a result of the Data Breach.

c. Upon a Data Breach, Contractor is not permitted to notify affected individuals without the express written consent of City. Unless Contractor is required by law to provide notification to third parties or the affected individuals in a particular manner, City shall control the time, place, and manner of such notification.

**9. No Surreptitious Code.** Contractor warrants that, to the best of its knowledge, its system is free of and does not contain any code or mechanism that collects personal information or asserts control of the City's system without City's consent, or which may restrict City's access to or use of City Data. Contractor further warrants that it will not knowingly introduce, via any means, spyware, adware, ransomware, rootkit, keylogger, virus, trojan, worm, or other code or mechanism designed to permit unauthorized access to City Data, or which may restrict City's access to or use of City Data.

**10. Public Records Act.** Contractor recognizes that City is a municipal entity subject to the Public Records Act, Chapter 42.56 RCW, and that City is obligated to disclose records upon request unless a specific exemption from disclosure exists. Nothing in this IPSA is intended to prevent City's compliance with the Public Records Act, and City shall not be liable to Contractor due to City's compliance with any law or court order requiring the release of public records.

**11. City Control and Responsibility.** City retains all ownership, title, and rights to the City Data. City has and will retain sole responsibility for: (a) all City Data; and (b) City's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by City or through the use of third-party services.

**12. Term and Termination.**

a. Term. The term of this IPSA is the same as the term in the Underlying Agreement.

b. Termination. In addition to the termination rights in the Underlying Agreement, City may terminate this IPSA and the Underlying Agreement as follows:

i. In the event of a material breach of this IPSA by the Contractor, provided that City first sends the Contractor written notice describing the breach with reasonable specificity, including any steps that must be taken to cure the breach. If Contractor fails to cure the breach to the reasonable satisfaction of City within thirty (30) days after receipt of the written notice, this IPSA and the Underlying Agreement may be terminated at the end of the 30-day period; provided, that if a cure cannot be completed within the thirty (30) day period, the cure period shall be extended so long as Contractor shall initiate the cure within the thirty (30) day period and thereafter diligently pursue it to completion, and provided further, that the cure

period shall not be extended more than ninety (90) days after receipt of the notice of the breach;  
or

ii. Immediately upon a Data Breach by Contractor or Contractor's Authorized Users.

c. Effect of Expiration or Termination.

i. If City terminates the Underlying Agreement or this IPSA due to a material breach or Data Breach described in Section 12.b above, City shall not be obligated to pay any early termination fees or penalties.

ii. Within thirty (30) days following the expiration or termination of the Underlying Agreement, Contractor shall return to City all City Data in a format and structure acceptable to City and shall retain no copies of such City Data, unless City requires destruction of the City Data. As applicable, Contractor shall comply with any transition service requirements described in the Underlying Agreement.

iii. Contractor is permitted to retain City Data in its backups, archives and disaster recovery systems until such City Data is deleted in the ordinary course of Contractor's data deletion practices; and all City Data will remain subject to all confidentiality, security and other applicable requirements of this IPSA and as otherwise required by law.

**13. Insurance.** In addition to the insurance requirements of the Underlying Agreement, Contractor will maintain at its sole cost and expense at least the following insurance covering its obligations under this IPSA.

a. Cyber Liability Insurance: With coverage of not less than Two Million Dollars (\$2,000,000) in the aggregate which shall include at a minimum coverage for (i) unauthorized access, which may take the form of a "hacker attack" or a "virus" introduced by a third party or cyber extortion; (ii) crisis management, response costs and associated expenses (e.g. legal and public relations expenses); (iii) breach of the City Data; and (iv) loss of data or denial of service incidents.

b. If Contractor's Services include professional services, then Contractor shall maintain Professional Liability or Errors and Omissions Coverage of not less than Two Million Dollars (\$2,000,000) per claim and in the aggregate.

c. Contractor's insurance shall be primary to any other insurance or self-insurance programs maintained by City. Contractor shall provide to City upon execution a certificate of insurance and blanket additional insured endorsement (if applicable for the Cyber Liability Insurance). Receipt by City of any certificate showing less coverage than required is not a waiver of Contractor's obligations to fulfill the requirements.

d. Upon receipt of notice from its insurer(s), Contractor shall provide City with thirty (30) days prior written notice of any cancellation of any insurance policy, required pursuant

to this Section 13. Contractor shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 13. Failure to provide the insurance cancellation notice and to furnish to City replacement insurance policies meeting the requirements of this Section 13 shall be considered a material breach of this IPSA.

e. Contractor's maintenance of insurance as required by this Section 13 shall not be construed to limit the liability of Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Contractor's maintenance of insurance policies required by this IPSA shall not be construed to excuse unfaithful performance by Contractor.

**14. Cumulative Rights and Remedies.** All City rights and remedies set out in this IPSA are in addition to, and not instead of, other remedies set out in the Underlying Agreement, irrespective of whether the Underlying Agreement specifies a waiver, limitation on damages or liability, or exclusion of remedies. The terms of this IPSA and the resulting obligations and liabilities imposed on Contractor shall supersede any provision in the Underlying Agreement purporting to limit Contractor's liability or disclaim any liability for damages arising out of Contractor's breach of this IPSA.

**15. Indemnification.** Contractor shall indemnify, defend and hold harmless City and City's officers, directors, employees, volunteers and agents (each, a "City Indemnitee") from and against any and all third party loss, cost, expense, claims, suit, cause of action, proceeding, damages or liability incurred by such City Indemnitee arising out of or relating to (i) a breach of this IPSA by Contractor; (ii) a violation by Contractor of any information security and privacy statute or regulations; or (iii) any Data Breach by Contractor.

**16. Miscellaneous.**

a. Order of Precedence. This IPSA shall survive the expiration or earlier termination of the Underlying Agreement. In the event the provisions of this IPSA conflict with any provision of the Underlying Agreement, or Contractor's warranties, support contract, or service level agreement, the provisions of this IPSA shall prevail.

b. Entire Agreement. This IPSA, including its exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this IPSA and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

c. No Third-Party Beneficiaries. This IPSA is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this IPSA.

d. Notices. All notices required to be given by either party to the other under this IPSA shall be given to the Technology and Information Systems Service Desk at the following

email address: ISAdministration@redmond.gov, or phone number: 425-556-2929. All other notices shall be governed by the requirements of the Underlying Agreement.

e. Amendment and Modification; Waiver. No amendment to or modification of this IPSA is effective unless it is in writing, identified as an amendment to or modification of this IPSA and signed by an authorized representative of each party. The waiver of any breach of any provision of this IPSA will be effective only if in writing. No such waiver will operate or be construed as a waiver of any subsequent breach.

f. Severability. If a provision of this IPSA is held invalid under any applicable law, such invalidity will not affect any other provision of this IPSA that can be given effect without the invalid provision. Further, all terms and conditions of this IPSA will be deemed enforceable to the fullest extent permissible under applicable law and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect.

g. Governing Law; Submission to Jurisdiction. This IPSA is governed exclusively by the laws of the State of Washington, excluding its conflicts of law rules. Exclusive venue for any action hereunder will lie in the state and federal courts located in Seattle, King County, Washington and both parties hereby submit to the jurisdiction of such courts.

h. Counterparts. This IPSA may be executed in counterparts and by facsimile or electronic pdf, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this IPSA delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this IPSA.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first above written.

**Contractor**

**City of Redmond**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A  
AUTHORIZED USER ACCESS AGREEMENT

Name of Individual: \_\_\_\_\_ Name of Contractor: \_\_\_\_\_

I understand and agree that I am being provided electronic access to a system containing confidential and or proprietary data (the "City Data") owned and operated by the City of Redmond ("City") due to my employment by or contractual relationship with \_\_\_\_\_ ("Contractor").

I agree that I may use the City Data for the sole purpose of Contractor's obligations to City and in a manner that complies with City's Information Technology Usage Policy. I understand that under no circumstances shall I attempt to impermissibly access, download, read, alter, use or disclose any City Data.

In the event I inadvertently access City Data not related to Contractor's obligations to City, I agree that I will not use, copy, alter or disclose such data and will immediately delete all such data from my records and notify City.

I understand that my user identification, password and profile (collectively, "Authorized User ID") will allow me to access the City Data. I acknowledge that I will keep my Authorized User ID confidential and will not divulge such information to any other individual or entity. I agree to take appropriate measures to protect the privacy of any City Data and to comply with Contractor's privacy and security policies and procedures. I agree that if I suspect that my Authorized User ID has been obtained by another individual, I will immediately inform City so that appropriate action may be taken.

I understand that my access to City Data may be monitored. I understand that all actions used in connection with the City Data may be saved, searched and audited for compliance. I understand that I do not have any personal privacy rights related to my access of the City Data. I further understand that the City has the right to revoke my access at any time.

I agree that I will not use City Data for any other purpose, including personal use, solicitation for outside business ventures, or clinical or research studies. I understand that unauthorized use or disclosure of certain types of City Data may subject me to civil liability under state and/or federal law, and that improper use or disclosure may constitute a crime.

I understand that should I violate any provision of this Authorized User Access Agreement, City will discontinue my access to the City Data and may terminate access of Contractor.

I acknowledge that I have read, understand and agree with the conditions above. Further, I agree to immediately notify City at \_\_\_\_\_ of any conflict with or violation of the above conditions.

\_\_\_\_\_  
Authorized User Signature

\_\_\_\_\_  
Date

**EXHIBIT \_\_\_\_\_**  
**INSURANCE ADDENDUM**

THIS ADDENDUM modifies the provisions of the (check one):        General Services Agreement,        Non-Public Work Consultant Agreement,        Instructional Services Agreement,        Social/Community Services Agreement,        Short Term Facility Agreement,        Fixed Asset Loan Agreement,        Three Party Consultant Agreement (hereinafter "the Agreement") or        Public Work Consultant Agreement entered into between the parties on \_\_\_\_\_, \_\_\_\_\_.

THE UNDERSIGNED PARTIES agree to modify paragraph 8 (if a General Services Agreement), 9 (if Non-Public Work Consultant Agreement), 7 (if Instructional Services Agreement), 6 (if Social/Community Services Agreement), 9 (if Short Term Facility Agreement), 5 (if Fixed Asset Loan Agreement), 10 (if a Three Party Consultant Agreement) or 8 (if Public Work Consultant Agreement) as follows (check all applicable items):

- The general public liability and property damage insurance limit is increased/reduced to \$ \_\_\_\_\_ (insert amount).
- The professional liability insurance amount is increased/reduced to \$ \_\_\_\_\_ (insert amount). This item relates to Consultant and Three Party Consultant Agreements only.
- The professional liability insurance requirement is eliminated. This item relates to Consultant and Three Party Consultant Agreements only.
- The insurance provisions are otherwise modified as follows:  
\_\_\_\_\_  
\_\_\_\_\_

Except as expressly modified above, all insurance-related terms and conditions of the Agreement will remain unchanged and in full force and effect. The City has made no recommendation to the contractor/consultant as to the insurance necessary to protect the contractor/consultant's interests and any decision by the contractor/consultant to carry or not carry insurance amounts or coverage in excess of the above is solely that of the contractor/ consultant.

DATED \_\_\_\_\_, \_\_\_\_\_.

CITY OF REDMOND

CONTRACTOR/CONSULTANT

\_\_\_\_\_  
MAYOR ANGELA BIRNEY

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
APPLICANT (IF THREE PARTY  
CONSULTANT AGREEMENT

\_\_\_\_\_  
CITY CLERK, CITY OF REDMOND

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
OFFICE OF THE CITY ATTORNEY

APPROVED:

\_\_\_\_\_  
RISK MANAGER, CITY OF REDMOND



## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between the City of Redmond (“Covered Entity”) and \_\_\_\_\_, (“Business Associate”), effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“Effective Date”).

### RECITALS

WHEREAS, the parties contemplate one (1) or more arrangements (collectively, the “Arrangement”) whereby Business Associate provides services to Covered Entity, and Business Associate creates, receives, maintains, transmits, or has access to Protected Health Information in order to provide those services;

WHEREAS, Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and regulations promulgated thereunder, including the Standards for Privacy and for Security of Individually Identifiable Health Information codified at 45 Code of Federal Regulations (“CFR”) Parts 160, 162, and 164 (“Privacy Regulations” and “Security Regulations”);

WHEREAS, the Privacy Regulations and Security Regulations require Covered Entity to enter into a contract with Business Associate in order to mandate certain protections for the privacy and security of Protected Health Information, and those regulations prohibit the Disclosure or Use of Protected Health Information by or to Business Associate if such a contract is not in place;

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

#### I. DEFINITIONS

1.1 Capitalized terms used but not otherwise defined in this Agreement shall have the same meaning assigned to such terms in HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH Act”) and as set forth in 45 CFR Parts 160, 162 and 164.

#### II. OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Permitted Uses and Disclosures of PHI. Except as otherwise limited in this Agreement, Business Associate may Use and Disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the written documents describing the Arrangement entered into by the parties, provided that such Use or Disclosure of PHI would not violate the Privacy Regulations or Security Regulations if done by Covered Entity. Business Associate further agrees not to Use or Disclose PHI other than as permitted or required by this Agreement, or as Required by Law.

2.2 Adequate Safeguards for PHI. Business Associate shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of PHI in any manner other than as permitted by this Agreement or as Required by Law.

2.3 Adequate Safeguards for EPHI. Business Associate shall implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any EPHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate shall comply with the Security Regulations, where applicable, with respect to EPHI to prevent the Use or Disclosure of EPHI other than as permitted by this Agreement. Such compliance shall include but not be limited to, creation and maintenance of security policies and procedures pursuant to 45 CFR 164.316 and an ongoing risk assessment conducted in accordance with 45 CFR 164.308.

2.4 Reporting Non-Permitted Use, Disclosure, or Breach.

(a) Business Associate shall immediately in writing notify Covered Entity of any Use or Disclosure of PHI not permitted by this Agreement of which Business Associate becomes aware.

(b) Business Associate shall report to Covered Entity any Security Incident of which it becomes aware as follows: (a) reports of successful unauthorized access shall be made immediately; and (b) reports of attempted unauthorized access shall be made in a reasonable time and manner considering the nature of the information to be reported.

(c) Business Associate shall report to Covered Entity a Breach or potential Breach of Unsecured PHI without unreasonable delay, but not later than five (5) days, following Business Associate's discovery of such Breach or potential Breach, where such report will include the identification of each individual whose Unsecured PHI has been or is reasonably believed to have been breached, additional information that Covered Entity is required to include in a Breach notification pursuant to 45 CFR 164.404(c), and other information as requested by Covered Entity. Business Associate agrees to not notify patients, the media, or HHS of a Breach unless requested to do so by Covered Entity or unless otherwise required by law. For purposes of the foregoing obligation, "Breach" shall mean the acquisition, access, Use, or Disclosure of PHI in a manner not permitted under the HIPAA Privacy Regulations which compromises the security or privacy of such information, as further defined in 45 CFR 164.402. Business Associate shall supplement its report(s) if the above information is not available at the time of the initial report, and Business Associate shall otherwise cooperate with Covered Entity's requests for information as may be necessary for Covered Entity to evaluate the scope of the incident and related compliance issues. Business Associate must notify Covered Entity of the Breach or potential Breach regardless of whether Business Associate has conducted a risk assessment, or the results of the risk assessment, described in 45 CFR 164.404.

2.5 Notice. All reporting pursuant to this Agreement shall be to the City of Redmond Privacy Officer at the following e-mail address: [privacy@redmond.gov](mailto:privacy@redmond.gov).

2.6 Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books, and records relating to the Use

and Disclosure of PHI by Business Associate on behalf of Covered Entity available to the Secretary of the federal Department of Health and Human Services (“HHS”) for purposes of determining Covered Entity’s compliance with the Privacy Regulations and Security Regulations. Business Associate shall immediately in writing notify Covered Entity of any requests made by HHS and provide Covered Entity with copies of any documents produced in response to such request.

2.7 Access to and Amendment of PHI. In the event that Covered Entity’s PHI in the Business Associate’s possession constitutes a Designated Record Set, Business Associate shall within five (5) days of receiving a request from Covered Entity for access to PHI about an Individual contained in a Designated Record Set, Business Associate shall: (a) make the PHI specified by Covered Entity available to Covered Entity to access and copy that PHI, and (b) make PHI available to Covered Entity for the purpose of amendment and incorporating such amendments into the PHI. Covered Entity is responsible for responding to Individuals’ request for access to PHI and, in the event Business Associate receives such requests directly from Individuals, Business Associate shall notify Covered Entity of the request promptly, but in no event longer than five (5) business days, for Covered Entity to respond to the Individuals. Business Associate shall have a process in place for requests and amendments from Covered Entity.

## 2.8 Accounting of Disclosures.

(a) In accordance with 45 CFR 164.528, and Section 13405(c) of Title XII, Subtitle D of the HITECH Act, codified at 42 U.S.C. § 17932, Business Associate agrees to: (a) document Disclosures of PHI and information related to such Disclosures; (b) provide such documentation to Covered Entity in a time and manner designated by Covered Entity; and (c) permit Covered Entity to respond to a request by an individual for an accounting of Disclosures of PHI. Within ten (10) days of Business Associate receiving a request from Covered Entity, Business Associate shall provide to Covered Entity an accounting, as described in 45 CFR 164.528, of each Disclosure of PHI made by Business Associate or its employees, agents, representatives, or subcontractors. Covered Entity is responsible for responding to Individuals’ request for an accounting and, in the event Business Associate receives such requests directly from Individuals, Business Associate shall notify Covered Entity of the request promptly, but in no event longer than five (5) business days, for Covered Entity to respond to the Individuals.

(b) Any accounting provided by Business Associate under this Section 2.8 shall include: (i) the date of Disclosure; (ii) the name, and address, if known, of the entity or person who received the PHI; (iii) a brief description of Disclosed PHI; and (iv) a brief statement of the purpose of Disclosure. For each Disclosure that could require an accounting under this Section 2.8, Business Associate shall document the information specified in (i) through (iv), above, and shall securely retain this documentation for six (6) years from the date of Disclosure.

## 2.9 Use of Subcontractors and Agents.

(a) Business Associate may Disclose PHI to a subcontractor, and may allow the subcontractor to create, receive, maintain, access or transmit PHI on its behalf, provided that

Business Associate obtains satisfactory assurances that the subcontractor will appropriately safeguard the information. Without limiting the generality of the foregoing, Business Associate shall require each of its subcontractors that create, receive, maintain, access or transmit PHI on behalf of Business Associate to execute a written agreement obligating the subcontractor to comply with all terms of this Agreement and to agree to the same restrictions and conditions that apply to Business Associate with respect to the PHI. Upon request from Covered Entity, Business Associate shall provide a list of subcontractors that it has Disclosed PHI to and the nature of the Disclosed PHI.

(b) Business Associate shall terminate its agreement with any subcontractor if Business Associate knows of or discover a pattern of activity or practice of a subcontractor that constitutes a material breach or violation of the subcontractor's HIPAA obligation under the written agreement with Covered Entity. Business Associate shall immediately notify Covered Entity of the termination of the subcontractor agreement if such termination resulted from a material breach or violation of the subcontractor's HIPAA obligations.

(c) Business Associate shall require the subcontractor assent in writing to the jurisdiction and laws of the United States, regardless of whether the subcontractor is a foreign entity, is performing services outside the United States, or is not otherwise subject to the jurisdiction of the United States. Business Associate hereby agrees not to transmit or store any PHI outside of the United States.

2.10 Agreement to Mitigate. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of the requirements of this Agreement, and to promptly communicate to Covered Entity any actions taken pursuant to this Section 2.10.

2.11 Business Associate Practices, Policies and Procedures. Business Associate represents and warrants that Business Associate's privacy and security policies and practices shall meet current standards set by applicable state and federal law for the protection of PHI including, without limitation, user authentication, data encryption, monitoring and recording of database access, internal privacy standards and a compliance plan, all designed to provide assurances that the requirements of this Agreement are met. Upon reasonable notice, Business Associate shall make its facilities, systems, books and records available to Covered Entity to monitor Business Associate's compliance with this Agreement.

2.12 Compliance with Covered Entity Obligations. To the extent Business Associate carries out Covered Entity's obligations under the Privacy Regulations and Security Regulations, Business Associate shall comply with the requirements of such regulations that apply to Covered Entity in the performance of such obligations.

2.13 HITECH Act Compliance. Business Associate will comply with the requirements of the HITECH Act, codified at 42 U.S.C. §§ 17921–17954, which are applicable to business associates, and will comply with all regulations issued by HHS to implement these referenced statutes, as of the date by which business associates are required to comply with such referenced statutes and HHS regulations.

2.14 Minimum Necessary. Business Associate shall Use or Disclose only the minimum necessary amount of PHI to accomplish the intended purpose of such Use or Disclosure.

### **III. OBLIGATIONS OF COVERED ENTITY**

3.1 Covered Entity shall, upon request, provide Business Associate with its current notice of privacy practices adopted in accordance with the Privacy Regulations.

3.2 Covered Entity shall inform Business Associate of any revocations, amendments or restrictions in the Use or Disclosure of PHI if such changes affect Business Associate's permitted or required Uses and Disclosures of PHI hereunder.

### **IV. ADDITIONAL PERMITTED USES**

4.1 Except as otherwise limited in this Agreement or the Arrangement, Business Associate may Use and Disclose PHI as set forth below:

(a) Use of Information for Management, Administration and Legal Responsibilities. Business Associate may Use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(b) Disclosure of Information for Management, Administration and Legal Responsibilities. Business Associate may Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate if the Disclosure is Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will be held confidentially and Used or further Disclosed only as Required by Law or for the purpose of which it was Disclosed, and the person notifies Business Associate of any instances of which it is aware where confidentiality of the information has been breached.

### **V. TERM AND TERMINATION**

5.1 Term and Termination. This Agreement shall commence as of the Effective Date and shall continue in effect unless and until terminated by Covered Entity under this Section 5.1. Covered Entity may terminate this Agreement, without cause or penalty, on five (5) days' prior written notice to Business Associate. In addition, this Agreement may be terminated by Covered Entity immediately and without penalty upon written notice by Covered Entity to Business Associate if Covered Entity determines, in its sole discretion, that Business Associate has violated any material term of this Agreement. Business Associate's obligations under Sections 2.4, 2.5, 2.7, 2.8, 2.9, 2.9(b), 2.10, 5.2, 6.3, 6.5, 6.6 and 6.10 of this Agreement shall survive the termination of this Agreement.<sup>1</sup>

5.2 Disposition of PHI upon Termination. Upon termination of this Agreement, Business Associate shall either return or destroy, in Covered Entity's sole discretion and in accordance with any instructions by Covered Entity, all PHI maintained in any form by Business Associate or its agents and subcontractors, and shall retain no copies of such PHI unless directed

to do so by Covered Entity. However, if Covered Entity determines that neither return nor destruction of PHI is feasible, Business Associate may retain PHI provided that Business Associate: (a) continues to comply with the provisions of this Agreement for as long as it retains PHI, and (b) limits further Uses and Disclosures of PHI to those purposes that make the return or destruction of PHI infeasible.

## **VI. GENERAL TERMS**

6.1 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

6.2 Relationship to Agreement Provisions. In the event that a provision of this Agreement is contrary to a provision of any other agreement between the parties, the provisions of this Agreement shall control.

6.3 Indemnification. Business Associate will indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs, and other expenses (including attorneys' fees) incurred as a result or arising directly or indirectly out of, or in connection with (a) any misrepresentation, breach, or non-fulfillment of any undertaking on the part of Business Associate under this Agreement; (b) any claims, demands, awards, judgments, actions, and proceedings made by any person or organization, arising out of or in any way connected with Business Associate's obligations under this Agreement; and (c) a breach of unsecured PHI caused by Business Associate or its subcontractors or agents. Without limiting the generality of the foregoing, Business Associate agrees to reimburse Covered Entity for any and all costs and expenses incurred as a result or arising directly or indirectly out of Covered Entity's compliance with the HIPAA breach notification requirements set forth at 42 U.S.C. § 17932 and 45 CFR 164.40 *et seq.* as a result of a Breach by Business Associate, including but not limited to all costs associated with Covered Entity's obligation to notify affected Individuals, the government, and the media of a Breach and any costs for credit monitoring, as applicable or establishing a toll-free number. Any limitation of liability set forth in written agreements pertaining to the Arrangement shall not apply to this Agreement.

6.4 Insurance. Business Associate shall obtain and maintain during the term of this Agreement, and at any time in which it retains PHI, liability insurance covering common law claims, breach notification expenses, data theft, and coverage related to the violation of state or federal information privacy and security laws or regulations. The policy limits for such coverage shall not be less than \$1,000,000 per claim, and \$3,000,000 in the annual aggregate. Such insurance shall name Covered Entity as an additional named insured. A copy of such policy or a certificate evidencing the policy shall be provided to Covered Entity upon written request. Business Associate shall provide Covered Entity with written notice of any policy cancellation within two (2) business days of the receipt of such notice. Failure of Business Associate to maintain the insurance as required shall constitute a material breach of this Agreement, upon which Covered Entity may, after giving five (5) business days notice to Business Associate to correct such breach, immediately terminate this Agreement. Business Associate's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Business Associate to the coverage provided by such insurance, or otherwise limit Covered Entity's recourse to any remedy available at law or in equity.

6.5 Data Ownership. Business Associate acknowledges and agrees that Covered Entity owns all rights, interests, and title in and to its data, including all PHI and any de-identified data, and title shall remain vested in Covered Entity at all times. Accordingly, Business Associate hereby acknowledges and agrees that it does not have the right to engage in the sale of PHI. Business Associate shall not de-identify PHI or Use or Disclose any such de-identified information unless otherwise permitted in writing by Covered Entity.

6.6 Governing Law; Venue and Jurisdiction; Attorneys' Fees. This Agreement shall in all respects be interpreted, enforced and governed by the laws of Washington State. Venue for any action or proceeding shall be in King County, Washington. In the event of any litigation or arbitration relating to or arising out of this Agreement, the substantially prevailing party or parties shall be entitled to its cost of litigation or arbitration, and reasonable attorneys' fees, including any attorneys' fees and costs incurred in bankruptcy or insolvency proceedings or on any appeal.

6.7 Legal Compliance. The parties hereto shall comply with applicable laws and regulations governing their relationship, including, without limitation, the Privacy Regulations, the Security Regulations, and any other federal or state laws or regulations governing the privacy, confidentiality, or security of patient health information, including without limitation, the Washington Uniform Healthcare Information Act, RCW Ch. 70.02. Business Associate shall comply with applicable state and federal statutes and regulations as of the date by which business associates are required to comply with applicable statutes and regulations. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Regulations, the Security Regulations, the HITECH Act, RCW ch. 70.02 and other federal or state laws or regulations governing the privacy, confidentiality, or security of patient health information or PHI.

6.8 Amendment. Upon request by Covered Entity, Business Associate agrees to promptly enter into negotiations with Covered Entity concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of the Privacy Regulations, Security Regulations, or other applicable laws. Covered Entity may terminate this Agreement upon thirty (30) days written notice to Business Associate in the event: (a) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to this Section, or (b) Business Associate does not enter into an amendment of this Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of the Privacy Regulations, Security Regulations, or other applicable laws.

6.9 Severability. If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect.

6.10 Public Records Act. The parties acknowledge that the confidentiality provisions of the HIPAA Privacy Regulations constitute an “other statute which exempts or prohibits disclosure” under the Washington State Public Records Act (see RCW 42.56.070(1); *see also Hangartner v. Seattle*, 151 Wn.2d 439, 453 (2004)), and that the confidentiality provisions under the Privacy Regulations and this Agreement shall control. Furthermore, Business Associate shall not release any de-identified health information without first notifying and conferring with Covered Entity.

6.11 No Assignment. Neither party shall assign this Agreement without the prior written consent of the other party.

6.12 Entire Agreement. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations and agreements relating to the same subject matter, including, but not limited to other business associate agreements or agreements related to patient data and the access, use, privacy, security and confidentiality of patient data. In the event of conflict between any written or oral provision of the Arrangement and any provision of this Agreement, the applicable provisions of this Agreement shall control with respect to patient data and the access, use, privacy, security and confidentiality of patient data.

6.13 Independent Contractor. Business Associate and Covered Entity are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties. No acts performed, or words spoken by either party with respect to any third party, shall be binding upon the other. Any and all obligations incurred by either party in connection with the performance of any of its obligations hereunder shall be solely at that party's own risk. Each party agrees that it shall not represent itself as the agent or legal representative of the other for any purpose whatsoever.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective as of the Effective Date.

**Business Associate:**

**City of Redmond:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_



## EXHIBIT H

### POLICE RIDE-ALONG WAIVER, RELEASE, AND INDEMNIFICATION

The contractor may voluntarily choose to participate in police "ride-alongs."

### WAIVER, RELEASE, AND INDEMNIFICATION

I hereby request the privilege, for my personal benefit, of accompanying members of the Redmond Police Department while on general duty, which will include my being in and about City-owned police vehicles, and riding in a police vehicle while the same is being used by Redmond Police Department personnel during the course of police duties. I fully understand that during the time I am accompanying any Redmond Police Officer, I may be exposed to a wide variety of dangerous circumstances and situations which include, but are not limited to, high speed motor vehicle chases, motor vehicle accidents, coming into contact with armed subjects, circumstances which require the police officer to use his/her firearm, and exposure to the risk of accidental discharge of a firearm. I waive any and all actions, claims, and demands against the City of Redmond; its officers, agents, and employees, for all personal injuries, damages or losses, of any nature, which may result from any such activity, including all those which may arise out of the negligence of any police officer or any other employee or agent of the City of Redmond, and do further release the City of Redmond, its officers, agents, employees, assigns, and subrogates in the event of any loss, damages, or claims arising from the subject activity. This agreement is made in consideration of my being allowed to accompany Redmond Police personnel in the performance of their duties. I understand and agree that I will obey and follow any and all directions of any police officer and, in particular, the officers to whom I am assigned during the time that I am accompanying the Redmond Police Department.

- I agree to ride with and accompany whichever police officers are designated by Redmond Police supervisory personnel.
- Ride-alongs are subject to any conditions imposed by the shift supervisor.
- Total length of ride-along is subject to supervisor approval. In general, ride-along should not exceed 1 hour.
- PERMISSION TO RIDE WITH AN OFFICER IS SUBJECT TO THE RESULTS OF A CRIMINAL BACKGROUND RECORDS CHECK.

Contractor is hereby granted permission to ride in a Redmond Police vehicle as may be assigned during the contract period.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

<b>Contractor:</b>  Phyllis O. Rodgers, MA, LMHC inLifeClinic, LLC 16715 NE 79 ST Redmond, WA 98052  Signature: _____  Print Name: _____  Date: _____	<b>City of Redmond</b>  _____  By: _____  Print Name: _____  Title: _____  Date: _____
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## Exhibit I - Option for Renewal

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The City reserves the right to renew this contract for two (2) additional one-year renewal terms, for a potential maximum total term of three and a half (3.5) years, upon serving notice to Consultant within thirty (30) calendar days prior to expiration. If a renewal provision is exercised, all terms and conditions of original contract shall remain in full force and effect. A renewal will be accomplished through a separate contract with reference to the original contract. Acceptance of a renewal offer will be by mutual agreement of both parties. The Mayor or designee is authorized to exercise this renewal option.

Should the City exercise a renewal option, the City and Consultant may discuss a price adjustment, in accordance with the Bureau of Labor Statistics Consumer Price Index (CPI-W) for the Seattle-Tacoma-Bellevue area occurring during the immediately preceding 12-month period for which CPI-W data is available, or a fixed 3% increase, whichever is greater. The Bureau of Labor Statistics website can be found at: <https://www.bls.gov/cpi/data.htm>. Consultant shall notify the City in writing at least thirty (30) days prior to a proposed price adjustment. Acceptance of such a request will be at the sole discretion of the City.

