



## Exhibit Z: Standard Provisions for Grant Agreements

### I. FISCAL PROVISIONS

#### A. Payment

FIRST 5 will pay GRANTEE for services provided under this Agreement on a cost-reimbursement basis in accordance with the terms of this Agreement, including **Exhibit B** (Budget).

To the extent FIRST 5's payments to GRANTEE are derived from third-party awards issued to FIRST 5, then notwithstanding any other provision of this Agreement, FIRST 5 shall be entitled to withhold payment to GRANTEE until and unless FIRST 5 has received funds from the Third-Party Funder (as that term is defined in Subparagraph I.D.2 of this Exhibit Z).

#### B. Invoices

##### 1. Invoices Required Monthly

GRANTEE shall invoice FIRST 5 on a monthly basis.

An invoice is incomplete if it does not state the amount GRANTEE requests be paid by FIRST 5 and is not accompanied by the information and attachments required by this Paragraph I.B.

##### 2. Invoice Submission Deadline

GRANTEE shall submit complete invoices no later than 30 calendar days after the month of service to which the invoice pertains, except that GRANTEE shall submit a complete invoice no later than 15 calendar days after the following months of service: the final month of service (or fraction thereof) within the term of the Agreement, and the month of June.

Notwithstanding the prior paragraph, where the services to be performed under this Agreement are funded in whole or in part by a Third-Party Funder, GRANTEE shall submit complete invoices no later than 20 calendar days after the month of service to which the invoice pertains, except that GRANTEE shall submit a complete invoice no later than 15 calendar days after the following months of service: the final month of service (or fraction thereof) within the term of the Agreement, and the month of June.

##### 3. Late Invoice is Material Breach

GRANTEE understands and acknowledges that failure to submit invoices timely shall constitute a material breach of this Agreement.

GRANTEE further understands and agrees that in no event shall FIRST 5 be required to pay GRANTEE for any cost or expenditure for which GRANTEE does not seek payment through a timely submitted invoice.

#### **4. Invoice Submission and Required Attachments**

GRANTEE shall submit invoices using the electronic or other system as directed by FIRST 5.

GRANTEE shall attach to its invoices those records from within Expenditure Documentation (as that term is defined in Subparagraph II.A.1.d of this Exhibit Z) that (a) document personnel costs; (b) document any individual cost or expenditure that, taken alone, is over \$1000; (c) constitute a general ledger detailed report; and (d) FIRST 5 in its sole discretion directs GRANTEE to attach.

#### **5. No Reimbursement for Expenses Reimbursed or Funded Through Other Sources; Requirement to Identify Potential Reimbursements and Funding from Other Sources**

GRANTEE shall not claim reimbursement, shall not be entitled to payment from FIRST 5, and shall return to FIRST 5 any payment GRANTEE receives from FIRST 5, for any cost or expense as to which GRANTEE has received or been promised funding or reimbursement from any other source.

On its invoices, GRANTEE shall identify any cost or expense as to which (a) GRANTEE has sought funding or reimbursement from a source other than FIRST 5, (b) a source other than FIRST 5 has committed to provide funding or reimbursement, or (c) GRANTEE knows, GRANTEE should know, or a reasonable person would know that there is a reasonable possibility that GRANTEE will receive funding or reimbursement from a source other than FIRST 5.

In the event GRANTEE receives or is promised reimbursement or funding from any source other than FIRST 5 for any cost or expense related to its performance under this Agreement, GRANTEE shall provide FIRST 5 notice of such reimbursement or funding or promise thereof within 5 business days.

#### **6. Invoice Submission Warrants Truth, Accuracy, and Compliance**

By submitting an invoice to FIRST 5, GRANTEE warrants, represents, and certifies that the invoice (including any attached documentation) is true, accurate, and complete; and that it requests payment for expenses that are lawful and authorized by, allowable under, and compensable under this Agreement and applicable law.

## **C. Payment Terms**

1. The maximum total compensation paid to GRANTEE under this Agreement shall not exceed the Maximum Financial Obligation stated in Paragraph I.A of the Agreement.
2. FIRST 5 will not pay for any airfare, lodging, or meal expenses incurred by GRANTEE, except if specified in Exhibit B.
3. GRANTEE will be paid by FIRST 5 for GRANTEE's actual, reasonable, necessary, and allowable costs incurred in the performances of services under and pursuant to this Agreement.
4. If GRANTEE provides any tasks, deliverables, goods, services, or other work, other than specified in this Agreement, the same will be deemed to be a gratuitous effort on the part of GRANTEE, and GRANTEE will have no claim whatsoever against FIRST 5 for compensation for such gratuitous efforts.
5. To the extent FIRST 5 concludes that GRANTEE's invoice (including any required attachments) was timely submitted, is complete and in proper form, seeks payments that are appropriately payable under this Agreement, and has been reviewed and approved by appropriate personnel of FIRST 5, then FIRST 5 will make payment to GRANTEE within 45 days net (excluding holidays and the last five weekdays of the calendar year) after FIRST 5's approval of the complete invoice. *Provided, however,* that the timing and extent of FIRST 5's payments are subject to other provisions of this Agreement, including but not limited to those concerning Third-Party Funding and the availability of funds.
6. All payments by FIRST 5 under this Agreement shall be made directly to GRANTEE. Under no circumstances shall FIRST 5 be required to make payment in any amount pursuant to this Agreement to any person or entity other than GRANTEE, including any individual employee or creditor of GRANTEE.
7. Payment is deemed to have been made on the date FIRST 5 mails the warrant or initiates the electronic funds transfer.

## **D. Budget Contingencies**

Notwithstanding any other provision of this Agreement:

### **1. Appropriation Contingency**

This Agreement is contingent upon the appropriation of sufficient funding by FIRST 5 for the services covered by this Agreement. If funding is reduced or deleted by FIRST 5 for the services covered by this Agreement, FIRST 5 has the option to either terminate this Agreement with no liability occurring to FIRST 5 or to offer an amendment to this Agreement indicating the reduced amount.

## **2. Third-Party Funding Contingency**

This Subparagraph I.D.2 applies to the extent the services covered by this Agreement may be funded using funds that FIRST 5 receives from any Third-Party Funder. A “Third-Party Funder” is any person or entity that provides, or promises to provide, funding to FIRST 5 for the purpose of supporting programs or services. Third-Party Funders may include the federal government, the State of California, the County of Santa Clara, the City of San José, or any agency, department, office, or instrumentality of any of those entities; any individual, foundation, or philanthropy; or any other source.

If the funds from the Third-Party Funder are not secured, FIRST 5 has the option, in its sole discretion, to (1) continue this Agreement; (2) to reduce the amount of services and/or the payment amount by any amount; (3) suspend this Agreement until such time as FIRST 5 secures the funds; or (4) terminate this Agreement. GRANTEE expressly waives any and all claims against FIRST 5 for damages, injuries, and claims of any kind arising out of FIRST 5’s exercise of the options described in this Subparagraph I.D.2.

### **E. Unspent Funds**

GRANTEE shall have no claim, and hereby waives any claim, to any payment for any cost or expense that GRANTEE does not incur during the term of this Agreement and for which GRANTEE does not seek payment or reimbursement pursuant to a timely submitted invoice.

### **F. No Supplantation**

GRANTEE hereby certifies that it does not and will not use any funding from FIRST 5, including through this Agreement, to replace or supplant existing local or state funding that supports GRANTEE’s programs or services.

### **G. Costs Disallowed by Third-Party Funder**

If FIRST 5 allows or issues payment to GRANTEE for a service reimbursement claimed by GRANTEE on the expectation that the reimbursement will be allowed by the State of California, United States Government, or other Third-Party Funder, and that Third-Party Funder subsequently disallows the reimbursement, then FIRST 5 shall be entitled to recoup the disallowed amount from GRANTEE by exercising either, both, or any combination of the following options: (1) require that GRANTEE issue a refund to FIRST 5; (2) reduce by the amount to be recouped any payment due or to become due to GRANTEE under this Agreement or any other agreement between the Parties.

### **H. Submitting False Claims; Monetary Penalties**

Any person—including GRANTEE or any individual, consultant, subcontractor, or other person acting on behalf of GRANTEE—who submits a false claim to FIRST 5 under this Agreement shall be liable to FIRST 5 for three times the amount of damages which FIRST 5 sustains because of the false claim. Any such person shall also be liable to FIRST 5 for the cost of a civil action brought to recover penalties or damages, and may be liable to FIRST 5 for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim.

**I. Payment Does Not Imply Acceptance of Work**

No payment shall in any way lessen the liability of GRANTEE to remedy or replace unsatisfactory work, service, equipment, or materials, if the unsatisfactory character of such work, service, equipment, or materials was not detected at the time of payment. Work, service, materials, equipment, components, or workmanship that does not conform to the requirements of this Agreement may be rejected by FIRST 5 and in such case must be remedied or replaced by GRANTEE without delay at no additional cost to FIRST 5.

**J. Warranty of Eligibility to Receive Federal and State Funds and Participate in Federal and State Programs**

By executing this Agreement, GRANTEE represents, warrants, and certifies that GRANTEE is not suspended, debarred, or otherwise excluded from participation in federal or state programs. GRANTEE acknowledges that this representation, warranty, and certification of eligibility to receive state or federal funds is a material term of this Agreement. GRANTEE must provide notice to FIRST 5 by personal delivery or email pursuant to Section II of the Agreement within 24 hours if GRANTEE knows, should reasonably know, learns, or acquires any reason to believe that GRANTEE is or is likely to become suspended or debarred from receiving state or federal funds.

**K. Budget Modifications**

**1. Agreements Not Funded by Third-Party Funders**

This Subparagraph I.K.1 applies where the services to be performed are not funded in whole or in part by any Third-Party Funder.

GRANTEE may transfer funds between line items established in Exhibit B if the transfers represent less than a 10 percent (10%) change to that item. Deviations exceeding 10 percent of any single category proposed in the line item budget must receive FIRST 5's written approval before payment to GRANTEE. GRANTEE must submit a request for written approval sixty (60) days prior to each fiscal year end date. FIRST 5 will consider up to two Budget Modification requests for each fiscal year during the term of this Agreement, and shall have sole discretion to determine whether, to what extent, and for what reason to approve or not approve the request. If the Program costs more than originally specified, the GRANTEE is solely responsible for the excess cost. A budget modification approved pursuant to this Subparagraph I.K.1 shall not require an amendment to this Agreement unless the budget modification requires an increase to the maximum amount of this Agreement.

**2. Agreements Funded in Whole or in Part by Third-Party Funders**

This Subparagraph I.K.2 applies where the services to be performed are funded in whole or in part by a Third-Party Funder.

GRANTEE shall not transfer funds between line items or otherwise spend funds or submit any invoice for payment for expenditures that are in any way inconsistent with Exhibit B without the prior written approval of FIRST 5 pursuant a request that GRANTEE submits to FIRST 5 at least 75 calendar days prior to the end of the fiscal

year. FIRST 5 shall have sole discretion to determine whether, to what extent, and for what reason to approve or not approve the request.

**L. FIRST 5's Right to Refuse Payment or Obtain Recoupment**

FIRST 5 may, in its sole discretion, determine not to make a particular payment, to pay less than the full requested amount, and/or to obtain repayment from GRANTEE, if and to the extent FIRST 5 determines in its sole discretion that any of the following circumstances have occurred. Remedies under this Paragraph I.L are in addition to, and not in place of, any other remedy available to FIRST 5 under this Agreement or under law.

**1. Misrepresentation**

With or without actual knowledge, GRANTEE misrepresents a material fact with respect to information furnished by GRANTEE, directly or indirectly, to FIRST 5.

**2. Litigation**

Litigation related to the performance of any of GRANTEE's duties or obligations under this Agreement is pending or has resulted in a final judgment and may jeopardize or adversely affect the purposes of this Agreement, GRANTEE's ability to perform under this Agreement, or other activities of FIRST 5 related to this Agreement.

**3. Unauthorized Actions**

GRANTEE takes any action requiring FIRST 5's prior written approval under this Agreement, without receiving FIRST 5's prior written approval.

**4. Default or Breach**

GRANTEE is in material default under any provision of this Agreement, or has failed to abide by any term or condition of this Agreement, or has failed to promptly take all reasonable steps to cure or remedy a default or breach.

**5. Failure to Submit Invoices, Documentation, Statements, or Reports**

GRANTEE has failed to submit invoices, documentation, statements, or reports required under this Agreement.

**6. Failure to Deliver Materials**

GRANTEE has failed to deliver to FIRST 5 the materials described in Paragraph III.E of this Exhibit Z.

**M. GRANTEE's Financial Condition**

**1. Reliance on GRANTEE's Financial Condition; Documentation of Financial Condition**

GRANTEE understands and agrees that FIRST 5 has relied, and shall throughout the term of this Agreement continue to rely, on GRANTEE's representation that its financial

condition renders GRANTEE capable of performing under this Agreement. GRANTEE's financial condition is best described in GRANTEE's "Documentation of Financial Condition," which term shall mean GRANTEE's audited financial statements; and, if no such statements exist, then GRANTEE's auditor letters completed in accordance with generally accepted accounting principles; and, if no such letters exist, then IRS Form 990 as filed by or on behalf of GRANTEE; and, if no such Form 990 exists, then other such documentation as FIRST 5 may in its sole discretion define and describe.

## **2. Current Documentation of Financial Condition**

GRANTEE acknowledges and agrees that prior to execution of this Agreement it was required to provide to FIRST 5 a copy of the most recent version of GRANTEE's Documentation of Financial Condition. To the extent that GRANTEE did not provide such copy to FIRST 5 prior to execution of this Agreement, GRANTEE shall provide such copy to FIRST 5 within 2 business days of execution of this Agreement. GRANTEE represents and warrants that such copy provided to FIRST 5 is a true and correct copy of GRANTEE's most recent such documentation, and that in all material respects such documentation truthfully, accurately, and fully describes GRANTEE's financial condition.

## **3. New Documentation of Financial Condition or Written Notice of Circumstances Affecting Financial Condition**

During the term of this Agreement, GRANTEE shall provide to FIRST 5 (i) copies of any newly issued Documentation of Financial Condition and (ii) written notice of any circumstances that GRANTEE knows or should reasonably know do or may materially and adversely affect GRANTEE's Financial Condition. GRANTEE shall provide such copies or written notice promptly, and in all events within 5 business days of the issuance of the documentation or the arising of such circumstances.

## **4. Exemption for Public Entities**

GRANTEE shall be exempted from the requirement of this Paragraph I.M if and to the extent GRANTEE is a public entity, including a county or department or agency thereof; a city or department or agency thereof; a school district; a children and families first commission; or other public entity.

# **II. GRANT-RELATED STANDARD PROVISIONS**

## **A. Maintenance, Monitoring, and Right of Access to Documents and Records**

### **1. Records to be Maintained**

GRANTEE shall maintain complete and accurate records of the work funded by and performed under this Agreement, including but not limited to the records described in this Subparagraph II.A.1, for at least seven years after the later of the expiration of this Agreement or resolution of all claims arising under or related to this Agreement or between or involving both Parties.

- a. Records are to include but are not limited to financial records, supporting employment documentation, client statistical records,

and all other records related to the GRANTEE's performance under this Agreement.

- b. Records that demonstrate that GRANTEE has conducted Live Scan criminal history background checks, other screening required by law, and other assessment of all personnel of GRANTEE (whether employees, independent contractors, volunteers, interns, subcontractors, or otherwise) who interact with children or families under this Agreement; that GRANTEE has reviewed the results of all such personnel background checks and screenings and determined that such results are satisfactory to GRANTEE pursuant to the established criteria described in Subparagraph II.A.1.c of this Exhibit Z; and that GRANTEE is satisfied, based on the results of the background checks and screenings, that GRANTEE's use of the personnel does not place any child or family at unreasonable risk.
- c. Records that describe and document the criteria GRANTEE uses when considering the results of background checks, screenings, and other assessments and reaching the conclusions described in Subparagraph II.A.1.b of this Exhibit Z.
- d. "Expenditure Documentation," which shall mean all documentation that establishes (i) the accuracy, validity, timing, and purpose of the expenses or other costs for which GRANTEE's invoice seeks payment, and (ii) that such expenses and costs are allowable, appropriate, and in furtherance of the purposes of the Agreement. Expenditure Documentation shall, at a minimum, include, as applicable, receipts, statements, payroll records including payroll register reports, general ledger reports, subcontractor invoices (which invoices must include line item expenditure reports as backup for payment), proof of payment to subcontractors, and other documents. GRANTEE understands and agrees that there is no minimum threshold or *de minimis* exception for the size of expenditure or cost for which GRANTEE must maintain Expenditure Documentation.
  - i. If and to the extent GRANTEE knows, should reasonably know, or is informed in writing by FIRST 5 that activities undertaken pursuant to the Agreement may constitute Medi-Cal Administrative Activities (MAA), "Expenditure Documentation" shall also include documentation required by and that demonstrates compliance with the requirements of Exhibit X, entitled "Medi-Cal Administrative Activities (MAA) Requirements and Certification."
  - ii. If and to the extent GRANTEE purchases, procures, obtains, distributes, or in any way uses cash, gift cards, or other cash equivalents (collectively, "Gift Cards") in connection with performance under this Agreement, or if Gift Cards are included in any budget approved by FIRST 5 and used under this Agreement, "Expenditure



Documentation” shall also include receipts, logs, and other documents necessary to identify and document (a) the amount of the Gift Card and the date and vendor from which the Gift Cards were purchased; (b) the person(s) to whom the Gift Cards were distributed; (c) confirmation or verification that the recipient of the Gift Card did in fact receive the Gift Card; (d) the reason for distribution of the Gift Card; and (e) approval by a supervisor for GRANTEE of the purchase and distribution of each Gift Card based upon a determination that the purchase and distribution are in furtherance of this Agreement.

## **2. Monitoring, Auditing, and Right to Access GRANTEE’s Records**

Upon written request by FIRST 5, GRANTEE shall permit FIRST 5, FIRST 5’s designated representative, and/or any authorized County or State Agency to audit, inspect, review, and copy all records, notes, recordings, and writings of any kind that FIRST 5 determines in FIRST 5’s sole discretion to be related to GRANTEE’s obligations or performance of services under this Agreement, including but not limited to the records described in Subparagraph II.A.1 of this Exhibit Z. GRANTEE hereby consents to entry into GRANTEE’s premises and access to GRANTEE’s records for such audit, inspection, review, or copying by FIRST 5, FIRST 5’s designated representative, and any authorized County or State Agency.

Upon GRANTEE’s written request, FIRST 5 shall in good faith attempt, but shall not be required, to conduct such audit, inspection, review, or copying during normal business hours and at a time that is convenient to GRANTEE. Notwithstanding the preceding sentence, FIRST 5 shall have the absolute right to conduct such audit, inspection, review, or copying within 10 business days of FIRST 5’s written request.

In addition to the foregoing, GRANTEE shall, within 10 business days of a written request by FIRST 5, supply FIRST 5 or its designated representative with copies of any records, notes, recordings, and writings of any kind that FIRST 5 determines in FIRST 5’s sole discretion to be related to GRANTEE’s obligations or performance of services under this Agreement, recordings, or writings of any kind.

## **B. Staffing**

### **1. Proper Training and Credentialing Required.**

GRANTEE must ensure that appropriately trained, competent staff are assigned to the Program. GRANTEE is responsible for properly training staff assigned to the Program to ensure the continuity and level of service. GRANTEE shall ensure that, throughout the term of this Agreement, its staff and all other individuals or entities performing services under this Agreement have and maintain any licenses or certifications necessary to provide the services under this Agreement.

### **2. Background Checks and Screening Required**

GRANTEE shall conduct Live Scan criminal history background checks, other screening required by law, and other assessment of all personnel of GRANTEE (whether employees, independent contractors, volunteers, interns, subcontractors, or otherwise)

who do or may interact with children or families in connection with performance under this Agreement. Prior to permitting any such personnel to interact with children or families, GRANTEE shall determine in writing that it is satisfied, based on the results of the background checks, screenings, and assessments and pursuant to established criteria, that GRANTEE's use of that personnel does not place any child or family at unreasonable risk.

**C. Subcontracting, Assignment, Delegation; FIRST 5's Prior Written Consent Required**

**1. No Subcontracting, Assignment, or Delegation Without Prior Written Consent**

GRANTEE has been selected to perform services under this Agreement based upon the qualifications and experience of GRANTEE's personnel. GRANTEE may not assign, delegate, or subcontract this Agreement or any portion of the rights and obligations under this Agreement, including the services to be performed, without the prior written consent of FIRST 5, which FIRST 5 may, in its sole discretion, grant, deny, and/or condition for any reason.

**2. GRANTEE Retains Ultimate Responsibility**

In the event FIRST 5 consents to GRANTEE's assignment, delegation, or subcontracting of any rights or obligations under this Agreement, GRANTEE shall retain ultimate responsibility for compliance with this Agreement and shall require its assignees, delegees, and subcontracts to agree to the terms of this Agreement.

**3. Prior Approval of Sub-agreements**

GRANTEE shall not perform under this Agreement through subcontractors, delegees, or assignees except pursuant to a written sub-agreement that FIRST 5 has reviewed and approved prior to GRANTEE's execution. FIRST 5's review and approval of such sub-agreement are subject to the following requirements:

1. All sub-agreements must use language approved by FIRST 5 and approved by FIRST 5 prior to GRANTEE's execution. GRANTEE shall provide any sub-agreement to FIRST 5 within 15 calendar days of execution.
2. All sub-agreements must require that all the terms and conditions of this Agreement apply to the subcontractor, delegee, or assignee.
3. No payment to reimburse costs incurred by a subcontractor, delegee, or assignee will be made except for work performed pursuant to a sub-agreement that complies with the requirements of this Paragraph II.C.
4. No sub-agreement will alter in any way any legal responsibility of GRANTEE to provide services under this Agreement.
5. GRANTEE will monitor subcontractors, delegees, and assignees on a regular basis in accordance with FIRST 5 monitoring procedures to ensure compliance with the terms and conditions of this Agreement and

all related reporting requirements. GRANTEE will provide records of compliance by subcontractors, delegees, and assignees as requested by FIRST 5.

6. GRANTEE assures that all subcontractors, delegees, or assignees (i) agree to indemnify FIRST 5 to the same degree as GRANTEE indemnifies FIRST 5 under this Agreement and (ii) maintain current licensure and insurance appropriate for obligations undertaken by them; and (iii) provide copies of such indemnification, licensure, and insurance to FIRST 5 upon request.
7. GRANTEE may only pay subcontractors, delegees, and assignees on a cost reimbursement basis.
8. Upon FIRST 5's written request, GRANTEE will provide FIRST 5 with records of reimbursement to subcontractors, delegees, and assignees for obligations incurred. The amount of reimbursement funded by FIRST 5 is not to exceed the amounts itemized in **Exhibit B** of this Agreement.
9. FIRST 5 has the right to refuse reimbursement for obligations incurred under any sub-agreement that does not comply with the terms of this Agreement.

#### **D. Reporting, Monitoring and Evaluation**

##### **1. Reporting**

GRANTEE shall submit timely reports on its progress in achieving contract objectives, as described in **Exhibit C**, on a schedule and in a form prescribed by FIRST 5. GRANTEE shall be available on reasonable notice by FIRST 5 to attend meetings to discuss such reports or progress.

##### **2. Monitoring**

FIRST 5 will monitor the work performed and financial obligations incurred under this Agreement to determine whether GRANTEE'S operation conforms to the terms of this Agreement.

GRANTEE agrees to cooperate with FIRST 5 on the implementation, monitoring and evaluation of its performance under this Agreement and to comply with any and all reporting, data collection and evaluation requirements established by FIRST 5, including but not limited to submission of reports described in **Exhibit C**.

##### **3. Evaluation**

GRANTEE shall abide by all evaluation expectations and requirements noted in **Exhibit A**, Scope of Work, and **Exhibit C**, Evaluation Requirements.

In addition, GRANTEE shall participate in research and/or evaluation studies designed by FIRST 5 and/or First 5 California to measure the effectiveness and efficiency of GRANTEE's services and to provide information on GRANTEE's services. GRANTEE shall ensure that GRANTEE's data collection activities meet local and State evaluation

and reporting requirements, and shall work with FIRST 5 to meet this obligation. GRANTEE shall cooperate with FIRST 5 to:

- a. Develop an evaluation implementation plan that defines short and long-term goals and objectives;
- b. Obtain agreement on research methods and measurements tools;
- c. Develop evaluation protocols that facilitate quality data collection; and
- d. Assess progress toward outcomes.

#### **4. Data Collection**

GRANTEE agrees to perform ongoing qualitative and quantitative data collection and sharing in accordance with FIRST 5 processes to ensure effective service delivery to families in compliance with applicable state and federal law.

#### **5. Other Reports**

GRANTEE shall submit other reports not listed in **Exhibit C** that FIRST 5 may, in its sole discretion and upon reasonable notice, require GRANTEE to submit.

#### **E. Additional Requirements Related to Third-Party Funding**

GRANTEE acknowledges and agrees that, to the extent FIRST 5 uses funding from Third-Party Funders to make payments under this Agreement or otherwise underwrite the services under this Agreement, there may be conditions attached to such funding. GRANTEE agrees to be bound by any such conditions no later than 15 calendar days after receipt of written notice of such conditions.

### **III. CONTRACTING-RELATED STANDARD PROVISIONS**

#### **A. Non-Exclusiveness of Remedies**

Notwithstanding this Agreement, the remedies listed in the Agreement are non-exclusive and are intended to supplement, and not to displace, rights and remedies the Parties may have under other provisions of this Agreement or applicable law.

#### **B. Termination**

##### **1. Termination for Convenience**

FIRST 5 may terminate all or part of this Agreement for the convenience of FIRST 5 by written notice to GRANTEE. The written notice shall state the scope of the termination and the effective date of the termination, which shall be at least 30 calendar days after the written notice. FIRST 5 may exercise its right to terminate for convenience for any or no reason, including because funding for the program or services performed under this Agreement is reduced, suspended, or terminated.

## **2. Termination for Cause**

If FIRST 5 determines in its sole discretion that GRANTEE cannot meet, has not met, or will not meet the requirements of this Agreement, it may terminate this Agreement upon written notice to GRANTEE that states the reason for termination and the effective date of termination. Reasons for termination include, but are not limited to, the following:

- i. Any breach of this Agreement by GRANTEE;
- ii. Violation by GRANTEE of any applicable laws, rules, regulations or policies;
- iii. Assignment, delegation, or subcontracting of services under this Agreement by GRANTEE without FIRST 5's prior written consent;
- iv. Failure to provide services to FIRST 5's satisfaction; or
- v. GRANTEE's filing of a voluntary petition in bankruptcy; receipt of an adjudication that GRANTEE is insolvent; obtaining an order for relief under Section 301 of the U.S. Bankruptcy Code (11 U.S.C. § 301); filing any petition or failing to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency, or other relief for debtors; seeking or consenting to or acquiescing in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of GRANTEE, or any of GRANTEE's property; making an assignment for the benefit of creditors; or failing to pay GRANTEE's debts generally as they become due.

## **3. Waiver of Claims for Damages Arising From Termination**

GRANTEE expressly waives any and all claims against FIRST 5 for damages arising from FIRST 5's termination of this Agreement under this Subparagraph III.B.

### **C. Option to Demand Cure Prior to Termination**

Prior to exercising its right to terminate this Agreement for cause, FIRST 5 may, in its sole discretion, elect to demand that GRANTEE cure or correct any failure to comply with this Agreement by issuing to GRANTEE a written notice of course correction. Such notice shall indicate the nature of the issue(s) to be addressed. At FIRST 5's option, GRANTEE may be given the opportunity to respond or participate in formulating the course correction recommendation. FIRST 5 has the right to require the presence of GRANTEE's officer(s) and/or other personnel at any meeting to discuss course correction.

After issuing such notice and considering GRANTEE's response, if any, FIRST 5 may develop a set of specific course correction recommendations and a timetable for implementing the recommendations. Following implementation of the course correction, the GRANTEE must forward, within the time specified, verification that the course correction recommendations have been implemented.

In the event FIRST 5 elects to issue a written notice of course correction to GRANTEE, then FIRST 5 shall be entitled to take action, up to and including immediate termination of this Agreement, if and to the extent FIRST 5 determines in FIRST 5's sole discretion that GRANTEE has not implemented, or does not appear willing or able to implement, the course correction recommendations in accordance with the required timetable.

#### **D. Ownership Rights to Materials**

All materials obtained, developed or prepared by GRANTEE in the course of performing services hereunder, including but not limited to videotapes, audio recordings, still photographs, ads or brochures, and the derivative works, patent, copyright, trademark, trade secret or other proprietary rights associated therewith (collectively "Deliverables"), shall be the sole and exclusive property of FIRST 5. To the extent GRANTEE owns or claims ownership rights to said Deliverables, GRANTEE hereby expressly assigns all said rights, title, and interest in and to the Deliverables to FIRST 5 pursuant to the terms and conditions of this Agreement and at no additional cost. FIRST 5 has the exclusive royalty-free irrevocable right to duplicate, publish, or otherwise use for any purpose, all materials prepared under this Agreement. If GRANTEE wishes to use the materials prepared hereunder for any purpose including but not limited to promotional, educational or commercial purposes, GRANTEE shall obtain prior written authorization from FIRST 5, which consent may be withheld by FIRST 5 in its sole discretion.

GRANTEE acknowledges that all original works of authorship which are made by GRANTEE (solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act, and shall belong solely to FIRST 5.

GRANTEE agrees that FIRST 5 will be the copyright owner in all copyrightable works of every kind and description created or developed by GRANTEE, solely or jointly with others, in connection with any agreement with FIRST 5. If requested to, and at no further expense to FIRST 5, GRANTEE will execute in writing any acknowledgments or assignments of copyright ownership of such copyrightable works as may be appropriate for preservation of the worldwide ownership in FIRST 5 and its nominees of such copyrights.

#### **E. Delivery of Materials to FIRST 5**

Immediately upon termination of this Agreement, GRANTEE shall deliver to FIRST 5 all Deliverables defined in Paragraph III.D of this Exhibit Z, and all other documentation, deliverables, and materials GRANTEE used or developed under this Agreement or created during the performance of services identified in this Agreement.

#### **F. Indemnification**

Notwithstanding any other provision of this Agreement, GRANTEE shall indemnify, release, hold harmless and defend, with counsel approved by FIRST 5, FIRST 5 and its officers (including commissioners), agents, and employees from any claim, demand, suit, judgment, liability, loss, injury, damage, obligation, cause of action, judgment, liability, or cost or expense of any kind (including attorney's fees) arising out of or in any way connected with the performance of this Agreement by GRANTEE and/or its officers, agents, employees, or sub-contractors, excepting only loss, injury, or damage caused by the sole negligence or willful misconduct of personnel employed by FIRST 5. It is the

intent of the Parties to this Agreement to provide the broadest possible coverage to FIRST 5.

GRANTEE shall reimburse FIRST 5 for all costs, attorneys' fees, expenses, and liabilities incurred with respect to any litigation or process in which GRANTEE contests its obligation to indemnify, defend, and/or hold harmless FIRST 5 under this Agreement and does not prevail in that contest.

## **G. Insurance**

### **1. Required Insurance Coverage**

Without limiting GRANTEE's indemnification of FIRST 5 under this Agreement, GRANTEE shall, at its own expense, maintain or cause to be maintained the following insurance coverages: (1) a policy of commercial general liability with limits of liability not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate, (2) a policy of worker's compensation providing statutory coverage, and (3) liability insurance for licensed professionals and other insurance as necessary to insure it against any claim for damages arising under this Agreement, errors, and omissions.

### **2. Additional Insured Endorsement**

GRANTEE shall cause its general liability coverage to include an endorsement to provide coverage to "FIRST 5, FIRST 5 commissioners, and the officers, agents, and employees of FIRST 5, individually and collectively" as additional insureds.

### **3. Public Entities May Use Program of Self Insurance**

A program of self-insurance may satisfy the requirements of this provision if GRANTEE is a public entity.

### **4. Certificate of Insurance**

Within fifteen (15) business days after execution of this Agreement, GRANTEE must provide a Certificate of Insurance certifying that GRANTEE has obtained the coverage and the additional insured endorsement required by this Agreement has been obtained or is in full force at the commencement of the term of the Agreement.

### **5. Duty to Notify FIRST 5 of Changes to Insurance**

GRANTEE shall immediately notify FIRST 5 of any change in insurance coverage during the term of the Agreement; provided, however, that GRANTEE shall be exempt from this requirement to the extent it is a public entity (including a county or department or agency thereof; a city or department or agency thereof; a school district; a children and families first commission; or other public entity).

## **H. Relationship of Parties; Independent Contractor**

None of the provisions of this Agreement are intended to create, or be deemed or construed to create, any relationship between the Parties other than that of independent parties contracting with each other for purposes of effecting the provisions of this

Agreement. The Parties are not, and will not be construed to be, in a relationship of joint venture, partnership, or employer-employee. GRANTEE is solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any.

**I. No Representations on Behalf of Other Party without Prior Consent**

Neither Party is authorized to make any statements, representations, or commitments of any kind on behalf of the other Party, without the written consent of the other Party or as explicitly provided in this Agreement.

**J. Conflicts of Interest**

GRANTEE shall comply, and require its subcontractors, assignees, and delegees to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Notwithstanding any other provision of this Agreement, GRANTEE's failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by FIRST 5.

In accepting this Agreement, GRANTEE covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. GRANTEE further covenants that, in the performance of this Agreement, it will not use any contractor or employ any person having such an interest. GRANTEE, including but not limited to GRANTEE's employees, agents, subcontractors, assignees, and delegees, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) require such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibit such persons from making or participating in making decisions that will foreseeably financially affect such interests.

**K. Nondiscrimination**

GRANTEE shall not discriminate against any subcontractor, employee, or applicant for employment, or in the provision of services, because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall GRANTEE discriminate in the provision of services because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.



**L. Religious Activities**

GRANTEE shall not use any funding provided by FIRST 5 (i) for religious worship, instruction, or proselytization or to pay for equipment or supplies to be used for religious worship, instruction, or proselytization; and (ii) to construct, rehabilitate, or restore any property that is used for religious worship, instruction, or proselytization.

GRANTEE shall not conduct, sponsor, authorize, or permit any religious worship, instruction, or proselytization in connection with the performance of this Agreement. GRANTEE will accommodate children and families of all faiths who desire to express their religious beliefs.

**M. Confidentiality**

FIRST 5 and GRANTEE agree to maintain confidentiality of all information and records regarding program participants and their families obtained in the course of providing services, in compliance with and to the extent required or permitted by federal and state law. GRANTEE will notify FIRST 5 of any requests for confidential information.

**N. California Public Records Act**

FIRST 5 is a public agency subject to the disclosure requirements of the California Public Records Act (CPRA). If GRANTEE’s proprietary information is contained in documents or information submitted to FIRST 5, and GRANTEE claims that such information falls within one or more CPRA exemptions, GRANTEE must clearly mark such information “CONFIDENTIAL AND PROPRIETARY,” and identify the specific lines containing the information. In the event FIRST 5 receives a request under the CPRA for such records, FIRST 5 will make best efforts to provide notice to GRANTEE prior to such disclosure. If GRANTEE contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law with competent jurisdiction before FIRST 5 is required to respond to the CPRA request. If GRANTEE fails to obtain such remedy within the timeframe in which FIRST 5 is required to respond to the CPRA request, FIRST 5 may disclose the requested information.

GRANTEE further agrees that it shall defend, indemnify and hold FIRST 5 harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney’s fees) that may result from denial by FIRST 5 of a CPRA request for information arising from any representation, or any action (or inaction), by GRANTEE.

**O. Legal Requirements**

GRANTEE must comply with all applicable federal, state, and local laws, rules, regulations, and policies relating to its performance under the Agreement.

**P. No Third Party Beneficiaries**

This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the Parties.

**Q. Severability**

If any term, covenant, condition, or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, covenants, conditions, and provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

**R. Survival**

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the Parties to survive this Agreement, shall survive the termination or expiration of this Agreement, including but not limited to all terms (1) providing for indemnification of FIRST 5; (2) relating to the California Public Records Act; and (3) relating to GRANTEE's obligations upon termination or expiration of this Agreement.

**S. Governing Law; Venue**

This Agreement has been executed and delivered in the State of California, and shall be construed and enforced in accordance with the laws of the State of California. Venue for any legal action regarding this Agreement shall be in Santa Clara County.

**T. Entire Agreement**

This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties. This Agreement incorporates and supersedes all the agreements, covenants, and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants, and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**U. Amendments**

This Agreement may only be amended by a written instrument signed by the Parties.

**V. Waiver**

No delay or failure to require performance of any provision of this Agreement will constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party must be expressly stated in writing and shall apply only to the specific instance stated.

**W. Contract Execution**

Unless otherwise prohibited by law or FIRST 5 policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract. The term

“electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by FIRST 5.

**X. Authorized Signatory**

The person(s) signing this Agreement on behalf of GRANTEE represents and warrants to FIRST 5 that they have the requisite legal authority and power to execute it, and to bind GRANTEE to the obligations contained herein.