

**CITY OF CARROLLTON**

**REQUEST FOR PROPOSAL (RFP)**

**FOR**

**INFORMATION SUPPORT SERVICES**

**RFP # 15-018**

**Exhibit 7**

# Definitions

“*Affiliate*” isany person, corporation or other form of enterprise, domestic or foreign, including but not limited to subsidiaries, that directly or indirectly, control, are controlled by, or are under common control with, a Party.

*“Agreement”* means this Agreement and any Exhibits and Schedules, as amended in accordance with its terms.

*“Allocation of Pool Percentage”* means the portion of the Pool Percentage assigned by City of Carrollton to a CPI, provided that the sum of all percentage points does not exceed the Pool Percentage.

*“Approved Subcontractors”* are listed in Exhibit x. (to be completed during negotiations)

*“At Risk Amount”* means, for any month, twelve and one-half percent (12.5%) of the aggregate monthly Base Fees (prior to the application of any applicable taxes for such month. The At Risk Amount is the maximum amount that Vendor will have at risk for all Service Level Credits for any month.

“*Baseline Data*” means the actual data measured during a Baseline Measurement Period (or in the case of initial Type 1 Service Levels, applicable historical data of City of Carrollton).

“*Baseline Measurement Period*” means the six (6) consecutive months of measurements following the Commencement Date (or in the case of a New Service, the six (6) consecutive months of measurements following Vendor’ commencement of such Service(s) in a live, production environment) during which Baseline Data will be measured, which may be used by City of Carrollton and Vendor to determine Target Service Levels and/or Minimum Service Levels for any service levels that are not currently measured today. Vendor will measure, collect and report to City of Carrollton the relevant measurements during such period.

“*Business Day*” means a day that COC’s City Hall are open for business.

*“Change”* means a change, amendment, modification, addition, or reduction to Vendor’s scope of the Services under the Statement of Work (including changes to COC Rules, COC Third Party Software, COC Proprietary Tools, COC Equipment, COC Data, COC Documentation, COC IT Environment, COC Licensed Property, COC Regulatory Requirements, COC Retained Processes and Systems, COC System, COC Third Party Documentation, COC Personal Data, COC Resources, COC Sites, COC Third Party Vendors, COC Transition Activities, Vendor Proprietary Tools, Vendor Proprietary Software, Vendor New Software, Vendor Modified Software, Vendor Third Party Vendors, Vendor Resources, Vendor Equipment, Vendor Service Locations, Vendor Documentation, Vendor Modified Documentation, Vendor Proprietary Documentation, Vendor Regulatory Environment), an Extraordinary Event, or changes to the rights or obligations of the Parties under this Agreement.

*“Change Analysis”* will include, as relevant, the following: (1) a description of the proposed Change; (2) an analysis of the impact of the proposed Change on the scope of the Services, the Service Level Agreements and delivery dates; (3) a list of work products or deliverables required by each Party to implement the proposed Change; (4) a timetable for implementation; (5) any additional facilities or labor resources to be provided by COC; (6) any proposed increases, adjustments, or reductions to the Fees; and (6) any other pertinent information. .

*“Change Management”* shall mean the procedures set forth in Section 5.3.5**.**

*“Change Order”* means a signed change order in the form set forth in Exhibit x (Change Order Form) (to be completed during negotiations), which may be modified by the Parties in accordance with the type and extent of the Change.

*“COC Approval”* means written approval by COC in respect of activities which do not require a Change Order in accordance with the Change Management procedures.

*“COC Authorized Users”* means users that are cleared by COC to access determined functions of the system(s).

*“COC Consents”* means, collectively, all consents, assignments, amendments, modifications and/or approvals necessary (1) to effectuate the proper use and/or transfer of the COC Software, COC Equipment or any other documents, technology assets or instruments contemplated by this Agreement by COC and (2) to ensure the transactions contemplated by this Agreement shall not result in any default with respect to any law, rule, regulation, order, decree, license, agreement, contract, commitment or instrument to which COC is a party or by which COC is bound.

*“COC Data”* means information that is produced and stored in electronic or other means as part of the Services provided by Vendor.

*“COC Designee”* is defined in Section 5.5.3.a.

“*COC Documentation*” means documentation owned by or licensed to COC by parties other than Vendor or Vendor Third Party Vendors.

*“COC Equipment”* means the equipment owned or leased by COC and listed in Exhibit x. (to be completed during negotiations)

*“COC IT Environment”* means the entirety of the COC technical environment including all hardware, software and equipment.

*“COC Licensed Property”* means, collectively, the COC Proprietary Tools and the COC Third Party Software as listed in Exhibit x (to be completed during negotiations), and any COC Documentation or COC Third Party Documentation in COC’s possession relating to the COC Proprietary Tools or the COC Third Party Software.

*“COC Personal Data”* means COC Data that can be identified to a specific individual.

*“COC Personnel”* means employees of COC.

*“COC Resources”* is all services, equipment, networks, software, enhancements, upgrades, modifications, processes, technologies and other resources provided by COC or COC Third Party Vendors for utilization by COC in connection with the Services.

*“COC Proprietary Tools”* means those tools owned by COC and listed in Exhibit x, COC Licensed Property. (to be completed during negotiations)

*“COC Regulatory Requirements”* means all Federal, State and local laws, rules, directives, and regulations relating to COC operations, including environmental laws and HIPAA.

*“COC Rules”* means (a) the standards, policies, practices, processes, procedures, controls and rules of COC regarding confidentiality, security, record retention, safety and health and personal, professional and ethical conduct (including those contained in COC employee manuals and other written policies and procedures); (b) the finance, accounting, banking, Internet, security and/or other applicable standards, policies, practices, processes, procedures and controls of COC; and (c) all policies, rules and regulations applicable to the COC Sites and/or the provision of the Services, and all applicable union work rules, and all additions and modifications to each of the foregoing.

“*COC Sites*” means physical or IT/logical locations owned by COC as listed in Exhibit 25.

*“COC System”* means IT systems owned or licensed by COC.

*“COC Third Party Documentation*” means documentation provided by COC Third Party Vendors.

“*COC Third Party Software*”means software licensed to COC, as set forth in Exhibit x. (to be completed during negotiations)

“*COC Third Party Vendor*” means vendors providing services to COC that are not under contract with Vendor.

*“COC Transition Activities”* are, collectively, those services and functions specified as COC responsibilities in the Statement of Work and the Transition Plan.

*“Commencement Date”* is defined in Section 5.2.1.

“*Compound Service Level*” has the meaning set forth in Section 4.1.2.

*“Contract Records”* means records of and supporting documentation for all Fees, all COC Data and all transactions, authorizations, changes, implementations, soft document accesses, reports, filings, returns, analyses, procedures, controls, records, data or information created, generated, collected, processed or stored by Vendor during the course of the performance of its obligations under this Agreement.

“*Critical Performance Indicators*” or “CPIs” means those Service Levels which are (i) described in Section 4.13 (Service Level Matrix) as a CPI and (ii) for which a Service Level Credit may apply. Each CPI has a Target Service Level and a Minimum Service Level associated with it, unless otherwise specified.

*“Day”* is a calendar day unless noted otherwise.

*“Definitions”* mean the defined terms in this Exhibit 7.

*“Disabling Device”* means any Virus, “lockup,” “time bomb” or “key lock” device or program, or disabling code, which has the potential or capability of causing any unplanned interruption of the operations of, or accessibility to, the COC IT Environment to COC or any COC Authorized User or which could (i) alter, destroy or inhibit the use of the COC IT Environment.

*“Disentanglement Plan”* means the plan for implementing the provision of the agreed Disentanglement Services.

*“Disentanglement Services”* means the obligations set forth in Article XIX.

*“Disclosing Party”* means the Party disclosing Proprietary and Confidential Information.

“*Earn Back*” means Vendor’s opportunity to earn back Service Level Credits on Target Service Level Defaults, in accordance with Section 4.6.4.

*“Effective Billing Date”* is (a) the date when a Service or deliverable provided pursuant to the Statement or Work has been installed and is available to COC for use in accordance with the applicable section of the Statement of Work or (b) in accordance with such other payment schedule agreed to by the Parties.

*“Emergency Response”* shall mean the highest level response by Technical Personnel to a priority one failure.

*“Enhanced Technology”* means new information technologies, business processes, shared service strategies and emerging trends that may have interest or applicability to COC and/or that reasonably could be expected to have a positive impact on COC, including in the areas of increased efficiency, increased quality and/or reduced costs.

*“Expiration Date”* is defined in Section 5.2.1.

*“Extended Term”* is defined in Section 5.2.2(b).

*“Extraordinary Event”* means a circumstance in which an event or discrete set of events has occurred or is planned with respect to the operations of COC that results or will result in a change in the measurable volume of the Services that COC will require from Vendor, and which is expected to cause the Fees to increase or decrease.

*“Fees”* means the fees and charges as set forth in section 6 to be paid by COC to the Vendor for the Services.

*“Force Majeure Event”* means fire, flood, earthquake, storms, elements of nature or acts of God, acts of a public enemy, war, power outages, explosion, terrorism, riots, civil disorder or disturbances, rebellions, or revolutions, insurrections, blockades, embargoes, sabotage, labor disputes, contagious illness or disease provoking government-imposed quarantines, prohibitions on travel or restrictions on commerce, acts of cyber criminals, acts of any governmental body (whether civil or military, foreign or domestic), or any other similar cause beyond Vendor’s reasonable control.

*“Generally Available Software*” means software that is available as a non-development product, licensed or available for purchase, in the general commercial marketplace, which is commonly referred to as “commercial off the shelf” or “COTS” software, but does not include enterprise software leveraged by Vendor over multiple accounts.

*“Incident”* means a critical situation where any equipment or software normally in operation is no longer in service due to a breakdown.

*“Initial Term”* is the period from the Commencement Date to the Expiration Date.

*“In Service”* means the point at which a server or other device or equipment is on the network functioning in a production or test mode.

*“Installation, Move, Add and Change”* or *“IMAC”* shall mean to install, move, add, change and remove equipment, hardware or software and are generally scheduled tasks.

*“Inter-local Agreements”*mean those agreements between COC and other government agencies and entities pursuant to which COC will arrange for Vendor to provide Services to those agencies and entities in accordance Sec. 5.25.23.

*“Invoice Sample”* is set forth in Exhibit x. (to be completed during negotiations)

“*Key Performance Indicators*” or “KPIs” means those Service Levels which are described in Section 4.13 (Service Level Matrix) as a KPI. Each Key Performance Indicator has a Target Service Level and Minimum Service Level associated with it, unless otherwise specified. No Service Level Credits are available for KPIs.

*“Law”* means Federal, State, and Local laws, rules, directives and regulations that are applicable to COC or Vendor, as appropriate.

*“Local Area Network”* (LAN) shall mean a network that connects computers that are close to each other, usually in the same building, linked by a cable or similar means.

*“Maintenance”* means the upkeep of hardware or software, to keep in an existing state of repair or service.

“*Measurement Window*” means the periodic evaluation and reporting frequency for each individual Service Level as specified in Section 4.13 (Service Level Matrix) (e.g., monthly, quarterly, semi-annually, or annually).

“*Minimum Service Level Default*” means a failure to meet the applicable Minimum Service Level for a specific CPI or KPI in the applicable Measurement Window (e.g., a monthly failure of a CPI).

“*Minimum Service Level*” means the minimum level of performance set forth in Section 4.13 with respect to each CPI or KPI.

“*Modifiers*” means COC, its Affiliates, employees, subcontractors, COC Third Party Vendors, cities who are parties to Inter-local Agreements with COC, or their respective agents (except as directed, authorized or approved by Vendor), or other persons or entities not subject to Vendor’s or COC’ direction or control (e.g., delivery service providers to customers other than COC or Vendor; former employees, etc).

*“Network Infrastructure”* shall mean a data communications system, which includes the backbones, routers, switches, wireless access points, access methods and protocols used for connectivity between computing devices.

*“New Advances”* means technological advances or changes to Vendor’s systems, software or technology to be offered to other Vendor customers to provide services that are the same or similar to the Services, or development by Vendor or its Affiliates of new or enhanced processes, services, software, tools, products or methodologies to be offered to other Vendor customers.

*“New Services”* means services not included in the Services in the Statement of Work, as of the Reference Date.

*“Non-Performing Party”* means the Party claiming the benefit of a Force Majeure event.

*“Normal Business Hours”* shall mean a working day, Monday through Friday when COC City Hall is open for business, during the hours that City Hall is open, or as may be changed by COC by written notice to Vendor.

*“Object Code”* means the code produced by compiled source code.

*“Operating System”* shall mean the master control programs that run the computer system. The operating system sets the standard for the programs that run under it. Single-user operating systems, such as Windows and Mac, are used on the clients, and multi-user network operating systems, such as Windows NT/2000 and UNIX, are used on the servers.

*“Opportunity”* means a potential savings opportunity with respect to the Services and/or potential opportunities for improving the quality of the Services.

*“Party”* is defined in the first paragraph of the MSA.

*“Pass Through Expenses”* means costs that are incurred by the Vendor and passed on to or paid on behalf of COC without additional fees or markup for Vendor Third Party Pass Through Services.

*“Permitted Auditors”* means COC and COC’ internal and external auditors, inspectors, regulators and other representatives that COC may designate from time to time, including COC Authorized Users, vendors, licensees and other third parties to the extent COC is legally or contractually obligated to submit to audits by such entities.

“*Pool Percentage*” means two hundred fifty percentage points (200%) of the At Risk Amount. For avoidance of doubt, the 200 percentage points shall be apportioned by COC across the CPIs such that the individual pool percentages shall total an amount not greater than 200%.

*“Pooled Resources”* shall mean a set number of hours or funds to be used across all towers, for the completion of agreed upon projects or service requests.

*“Privacy Laws”* means the Local, State, and Federal laws applicable to COC or Vendor which are concerned with the protection and preservation of the privacy rights of individuals.

*“Project”* means a defined scope of work that is carried out to meet a customer request, and having distinct beginning and end points. Service requests that are 40 hours or greater are defined as a project.

*“Proprietary and Confidential Information”* means all nonpublic information, whether in tangible or intangible form, that the Disclosing Party designates as being confidential to the Receiving Party or which, under the circumstances surrounding disclosure ought to be treated as confidential by the Receiving Party, provided that all information disclosed by either Party, regardless of form, that describes or relates to business opportunities, marketing strategies, products and services, business policies or practices, financial information and/or third party contacts (including Vendor’s internal costing data and trade secrets) is deemed Proprietary Information without the necessity of additional or further notice.

*“Receiving Party”* means the Party receiving Proprietary and Confidential Information.

*“Record Retention Period”* means the latest of: (a) ten (10) years after the termination or expiration of this Agreement; (b) the final resolution of all audits; (c) the conclusion of any litigation with respect to this Agreement; or (d) such longer time as may be required by COC’ record retention policy.

*“Reference Date*” is the date set forth in the preamble to this Agreement.

*“Repair”* shall mean to restore by replacing a component part or defective software.

*“Replacement Vendor”* means a replacement provider designated by COC.

*“RFP”* or “*Request for Proposal*s” is defined in the Recitals.

*“Root Cause Analysis”* is a problem analysis process undertaken to identify and quantify the underlying cause(s) of an SLA failure or some other failure, and document the necessary corrective actions to be taken to prevent recurring problems and/or trends which could result in problems.

*“Service Interdependency”* are all work efforts and deliverables, whether performed by Vendor, Subcontractors, Vendor Third Party Vendors, COC or the COC Designee(s) that may impact the delivery of the Services.

“*Service Level*” means, individually and collectively, the quantitative performance standards for the Services set forth in section 4.

“*Service Level Agreements”* or “*SLAs*”are set forth in section 4.

“*Service Level Credit*” means the financial credits to the city incurred by Vendor for Service Level Defaults for CPIs determined in accordance with this Section.

“*Service Level Default*” means a Compound Service Level Default, Minimum Service Level Default or Target Service Level Default that is not excused under the Agreement or as otherwise provided under the provisions of this Section.

“*Service Level Reporting Period*” means each rolling nine (9) month period beginning on each applicable Commencement Date and continuing (rolling) monthly thereafter.

“*Service Level Termination Event*” has the meaning given in the Agreement.

*“Service Locations”* are listed in Exhibit 25, and are comprised of the COC Sites, the Vendor Service Locations, and the Vendor Shared Service Locations. (to be completed during negotiations)

*“Service Request”* shall mean non-incident requests between 0 and 39 hours of work effort under the Agreement that are of a non-critical nature (e.g., impact study, cost analysis, system design, etc.).

*“Service Tower Commencement Date”* is defined in Section 5.3.3g.

*“Services”* are the services that Vendor will provide to COC pursuant to this Agreement, as set forth in the Statement of Work.

*“Source Material”* means printable software source code documentation.

*“Statement of Work”* or “*SOW*” means the statement of work set forth in section 3.

*“Support”* shall mean to provide assistance in using, maintaining or operating information technology systems.

“*Target Service Level Default*” means a failure (and each subsequent failure thereafter) in any Measurement Window to meet the Target Service Level for the same CPI or KPI three (3) times during a Service Level Reporting Period.

“*Target Service Level*” means the generally expected level of performance as set out in Section 4.13.

*“Term”* is the Initial Term and any Extended Term(s).

*“Terminal Services”* allows applications to run on a server for multiple users and only screen changes in the user interface are sent to the individual client machines *(*also known as application server computing).

“*Termination Costs*” are defined in Exhibit x. (to be completed during negotiations)

*“Termination Date”* means the date on which termination of this Agreement is effective.

“*Tools*” means the tools used for service level performance measurement.

*“Transition Milestones”* are the dates by which each transition activity or deliverable are to be completed.

*“Transition Plan”* is a transition plan for the Transition Services which is provided in accordance with Section 5.3.3(b)

*“Transition Services”* are listed in Exhibit 9.

“*Type 1 Service Level*” has the meaning provided in Section 4.2.3.

“*Type 2 Service Level*” has the meaning provided in Section 4.2.3.

*“Vendor Bid”* is defined in the Recitals.

*“Vendor Cap”* is defined in 5.16.1(b).

*“Vendor Consents”* means, collectively, all consents, assignments, amendments, modifications and/or approvals necessary (1) to effectuate the proper use and/or transfer of the Vendor Software, Vendor Equipment or any other documents, technology assets or instruments contemplated under this Agreement by Vendor and (2) to ensure the transactions contemplated by this Agreement shall not result in any default with respect to any law, rule, regulation, order, decree, license, agreement, contract, commitment or instrument to which Vendor is a party or by which Vender is bound.

*“Vendor Equipment”* meansthe equipment listed in Exhibit x*.* (to be completed during negotiations)

*“Vendor Infringement Exclusions”* is defined in Section 5.13.11.c.

“*Vendor Items”* means Services, Vendor Software, Vendor Documentation, Vendor Modified Software, Vendor Modified Documentation, Vendor Modified Intellectual Property, COC Customer Software, Vendor Equipment, hardware or other deliverables or any part thereof.

*“Vendor Key Employees”* is defined in Section 5.9.1.a and are listed in Exhibit x. (to be completed during negotiations)

*“Vendor Modified Documentation”* means documentation owned by the Vendor that has been modified by the Vendor specifically for COC.

*“Vendor Modified Software”* is COC Software which has been custom-modified by Vendor for COC.

*“Vendor Modified Software Warranty Period”* means a specified number of months after the installation, testing and acceptance of such Vendor Modified Software by COC.

*“Vendor New Software”* is software which may be later added to the list of Vendor Proprietary Software or Vendor Third Party Software, subject to applicable licensing terms to be negotiated on a product by product basis.

*“Vendor Personnel”* refers to Vendor staff that will be providing Services to COC under the scope of this Agreement.

*“Vendor Proprietary Documentation”* means proprietary documentation owned by the Vendor in respect of Vendor Proprietary Software or Vendor Proprietary Tools, including user manuals, system documentation, design documents, templates, database designs, and descriptions of programming language.

*“Vendor Proprietary Software”* is proprietary software owned by Vendor listed in Exhibit x (to be completed during negotiations) (e.g., FIREHOUSE Software®), but does not include any Vendor Proprietary Tools.

“*Vendor Proprietary Tools*”means proprietary tools including help desk tools, systems proprietary processes, procedures or methodologies owned or used by Vendor or Vendor’s Third Party Vendors in the delivery of the Services, as listed in Exhibit x. (to be completed during negotiations)

*“Vendor Resources”* is all services, equipment, networks, software, enhancements, upgrades, modifications, processes, technologies and other resources provided by Vendor or Vendor Third Party Vendors and/or approved by Vendor for utilization by COC in connection with the services.

*“Vendor* *Regulatory Requirements”* means all Federal, State and local laws, rules, directives and regulations relating to Vendor’s capacity as an information technology service provider and/or data processor, including, without limitation, the privacy and security of confidential, personal, sensitive or other protected COC Data, environmental laws and HIPAA.

*“Vendor Service Locations”* means the locations owned or leased by Vendor from which Vendor will provide the Services, as set forth in Exhibit 25, Service Locations. (to be completed during negotiations)

*“Vendor Shared Service Locations”* are listed in Exhibit 25, Service Locations. (to be completed during negotiations)

*“Vendor Third Party Documentation*” means documentation owned by Vendor Third Party Vendors.

*“Vendor Third Party Pass Though Services”* are listed in Exhibit x. (to be completed during negotiations)

*“Vendor Third Party Software”* is defined as software licensed to Vendor by Vendor Third Party Vendors as listed in Exhibit x. (to be completed during negotiations)

*“Vendor Third Party Vendors”* means vendors providing software, documentation, and/or services that are under contract with Vendor.

“*Vendor Transition Manager*” is the Vendor Key Employee responsible for providing Transition Services pursuant to this Agreement.

*“Virus”* means a form of harmful or surreptitious code, including Malware, Trojan horses, system monitors, keyloggers, dialers, adware, and adware cookies.

*“Wide Area Network”* or “*WAN”* shall mean a network in which computers are connected to each other over a long distance using telephone lines or wireless devices.

*“Wireless LAN”* shall mean a network in which a mobile user can connect to a local area network (LAN) through a wireless (radio) connection.