

Project title: Agreement with Rightway Healthcare for Health Benefit Concierge Services.

Council Bill #

Agenda dates requested: 7/28/2021

Briefing
Proposed action Consent
7/28/21 Action
Ordinance
Public hearing

Yes No

Budget amendment:

Yes No

PowerPoint presentation:

Yes No

Attachments:

Department(s) involved:

Contact person:

Kandy Bartlett

Phone number:

425-257-8706

Email:

kbartlett@everettwa.gov

Initialed by:

Department head

Administration

Council President

Consideration: Approve the professional services agreement with Rightway Healthcare

Project:

Partner/Supplier: Rightway Healthcare

Preceding action:

Fund: Fund 508 Self-Insured Health Benefits

Fiscal summary statement: The estimated annual contract cost for the Rightway concierge service is \$39,000. The City's stop loss provider, Sun Life, reduced its annual fee by approximately \$42,000 to offset the cost of this service.

Project summary statement: The Professional Services Agreement with Rightway Healthcare will provide total health plan concierge service, including care navigation and coordination, provider search and pricing, quality rating research, billing assistance and direct support for City employees and their eligible dependents. The goal of this concierge service is to reduce overall claims cost by helping employees and their dependents obtain quality care at a lower cost.

Recommendation (exact action requested of Council): Authorize the Mayor to sign the agreement with Rightway Healthcare for benefit concierge services in substantially the form provided.

ORDERING DOCUMENT

Customer (address for notice):
 City of Everett
 2930 Wetmore Ave, Everett, WA 98201
 Notice to: Marcy Hammer

Billing Frequency: Monthly
 Payment Terms: Net 30

CUSTOMER SERVICE MANAGER
 Name: Marcy Hammer
 Phone: 425.257.7035
 Email: mhammer@everettwa.gov

CUSTOMER BILLING CONTACT
 Name: Chelsi Foote
 Phone: 425.257.8708
 Email: cfoote@everettwa.gov

RIGHTWAY SERVICE MANAGER
 Name: Haritha Reddy
 Phone: 760.985.3404
 Email: Haritha@Rightwayhealthcare.com

Product	Effective Date	Service Start Date	Initial Term (Months)	Number of Authorized Users (1)	Monthly Fee per User
Rightway Navigation	9/1/2021	7/1/21	36	1,000	\$3.25

Monthly Fees: \$3,250.00

(1) This number will be revised monthly based on Customer census files to account for increases or decreases in Authorized Users; provided however that during the term, monthly fees shall not decrease more than 10% below the first month's fees.

1. Summary of Services

- Patient Navigation and Rightway Technology Platform: Rightway shall provide Customers' Authorized Users' (defined below) access to Partner's technology portal and patient navigator, which are designed to help Authorized Users to navigate to the optimal cost and quality option for their condition. Such services are expected to be available from and after September 1, 2021. Services include:
 - Care Navigation and Coordination
 - Provider Search, Pricing, Transparency
 - Quality Ratings
 - Benefits Integrator & Insurance Profile
 - Navigation
 - Outreach to Employees
- Claims Data Analysis: Conditioned upon Customer providing to Partner timely access to information and data required by Partner to provide such analysis, and based upon a timeline to be agreed by the parties, Partner will provide an analysis, based upon completion of Services of no less than a full quarter and thereafter on a quarterly basis (unless a less frequent timeframe is agreed by the parties), of certain of Customer's historical claims in order to assess the nature of Customer's health care expenditures, possible areas of Customer's preventable utilization, information regarding Customer's potential at-risk Authorized Users and a proposed baseline strategy for Customer's population health management plan.
- Authorized Users: Authorized User refers to all employees or other eligible individuals of a Customer.

2. Ordering Document Terms and Conditions:

- (a) This Ordering Document is subject to, and incorporates by reference as though fully set forth herein, the Rightway Healthcare Enterprise Terms of Service set forth as Exhibit A to this Ordering Document (“Terms of Service”) and the Business Associate Agreement executed by the parties. Unless stated otherwise, all capitalized terms used in this Ordering Document have the meanings set forth in the Terms of Service.
- (b) By signing this Ordering Document, each party represents and warrants that (a) it has read and understands the terms hereof and (b) it has full power and authority to accept the Ordering Document and Terms of Service.
- (c) **Payment.** Customer shall pay all Fees within thirty (30) days after the date of the invoice therefor. Customer shall make all payments hereunder in U.S. dollars by wire transfer of immediately available funds to an account specified by Vendor in writing. If any amount owing by Customer under this Agreement 30 or more days overdue, then without limiting Vendor’s other rights or remedies under this Agreement, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by Law, whichever is lower. Customer shall reimburse Vendor for out-of-pocket expenses incurred by Vendor in connection with performing the Services, provided that Vendor shall obtain Customer’s prior approval with respect to any individual incurrence of out-of-pocket expenses in excess of \$250.
- (d) **Taxes.** All Fees and other amounts payable by Customer pursuant to this Ordering Document are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider’s income.
- (e) **Autorenewal.** Customer’s subscription for the Services will automatically renew, after the Initial Term, for successive twelve month periods at Rightway’s then-current price at the time of renewal. If Customer would like to opt out of the autorenewal or change any of the terms of the renewal subscription prior to renewal, Customer must notify Rightway in writing at least 90 days before the renewal term is to start.

Rightway Healthcare, Inc.

City of Everett

Name: Jordan Feldman
Title: CEO
Date:

Name:
Title:
Date:

EXHIBIT A TO ORDERING DOCUMENT - RIGHTWAY HEALTHCARE ENTERPRISE TERMS OF SERVICE

These Terms of Service are incorporated by reference into the Ordering Document entered into by and between Rightway Healthcare, Inc. (“Rightway” or “Vendor”) and the Customer as defined on the Ordering Document executed by Rightway and such Customer (collectively herein, the “Parties”). The Ordering Document and these Terms of Service, together with any exhibits thereto, are collectively referred to in these Terms of Service as the “Agreement.” Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto on Schedule A attached hereto.

1. SERVICES

1.1. Services. Subject to Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, during the Term, Vendor will use commercially reasonable efforts to provide to Customer and its Authorized Users the services described the Ordering Document (collectively, the “Services”). Customer agrees to pay Vendor the fees on the Ordering Document in accordance with the payment terms thereon.

1.2. Service and System Control. Except as otherwise expressly provided in this Agreement, as between the Parties: (a) Vendor will retain sole control over the operation, provision, and management of the Services and Vendor Materials, including the (i) Vendor Systems, (ii) selection, deployment, modification and replacement of the Service Software, and (iii) performance of Service maintenance, upgrades, corrections and repairs; and (b) Customer has and will retain sole control over the operation, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and Vendor Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any (i) information, instructions or materials provided by any of them to the Services or Vendor, (ii) results obtained from any use of the Services or Vendor Materials and (iii) conclusions, decisions or actions based on such use. Customer shall employ appropriate physical, administrative and technical controls, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data to Vendor.

1.3. Changes. Vendor reserves the right to make changes to the Services and Vendor Materials that it deems necessary or useful to: (a) maintain or enhance the quality or delivery of Vendor’s services to its customers, the competitive strength of or market for Vendor’s services or the Services’ cost efficiency or performance; or (b) comply with applicable Law. Vendor may suspend, terminate or otherwise deny Customer’s, any Authorized User’s use of all or any part of the Services or Vendor Materials, without incurring any resulting obligation or liability, if: (a) Vendor receives a judicial or other governmental request that requires Vendor to do so; (b) Vendor believes that: (i) Customer or any Authorized User has failed to comply with any term of this Agreement, or has accessed or used the Services beyond the scope of the rights granted; (ii) Customer or any Authorized User is, or has been involved in any fraudulent, misleading or unlawful activities; or (c) this

Agreement expires or is terminated.

2. CONFIDENTIALITY; BAA; MATERIALS

2.1. Confidentiality. “Confidential Information” shall include any information that is clearly identified in writing at the time of disclosure as confidential such as vendor or supplier information, financial projections, business plans and information, client and Customer data, Personal Data (as defined below), sales and product plans and data, product and technical specifications. Confidential Information shall not include information which: (1) is known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the receiving party; or (4) the receiving party becomes aware of, from a third party not bound by non-disclosure obligations to the disclosing party and with the lawful right to disclose such information.

2.2. Each Party agrees: (a) to keep confidential all Confidential Information of the other Party; (b) not to use or disclose the other Party’s Confidential Information except as reasonably necessary to perform under this Agreement; (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information). Notwithstanding the foregoing, this Section 3.a(2) will not prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law (including the Washington State Public Records Act) or order of a court or other governmental authority or regulation provided that the receiving party first provides the disclosing party with prompt written notice of such requirement (provided such notice is legally permissible) and reasonable cooperation to the disclosing party should it seek protective arrangements for the production of such Confidential Information.

2.3. Business Associate Agreement. The parties acknowledge and agree that the terms and conditions set forth in the Business Associate Agreement (“BAA”) executed by the parties are incorporated by reference into this Agreement. In the event of any inconsistency between this Agreement and the BAA as it may relate to “Protected Health Information,” as defined in 45 C.F.R. § 160.103, the provisions of the BAA shall govern.

2.4. Authorizations. Subject to and conditioned on Customer's payment of the Fees and compliance with the terms hereof, Vendor hereby authorizes Customer to access and use, during the Term, the Services and such Vendor Materials as Vendor may supply or make available to Customer solely for the Permitted Use by and through Authorized Users. Subject to and conditioned upon Vendor's compliance with the terms hereof, Customer hereby grants, during the term of this Agreement, the right to Vendor, its Subcontractors and the Vendor Personnel, as applicable, to access, use, copy, modify, publish, and display Customer Data solely as necessary to perform the Services and perform Vendor's obligations hereunder.

2.5. Vendor and Customer Materials. As between the parties, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto. All right, title and interest in and to the Services, the Vendor Materials and the Third-Party Materials are and will remain with Vendor and the respective rights holders in the Third-Party Materials. Customer shall ensure that neither it nor its Authorized Users access or use the Services or Vendor Materials except as expressly permitted by this Agreement. "Intellectual Property Rights" herein means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

3. TERM AND TERMINATION

3.1. Term. The agreement is effective as of the Effective Date and, unless terminated earlier pursuant to any of this Agreement's express provisions, will continue in effect for the period set forth in the Ordering Document. Except as otherwise agreed in writing by the parties, the "Term" for purposes of determining the initial service period and any renewal periods hereunder shall begin on the Effective Date or, if later, the applicable Service Start Date.

3.2. Termination. In addition to any other express termination right set forth elsewhere in this Agreement: either Party may terminate this Agreement, effective immediately upon written notice to the other Party, (i) if the other Party (A) materially breaches this Agreement, and such breach (1) is incapable of cure or (2) is capable of cure but remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; (B) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (C) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, (D) makes or seeks to make a general assignment for the benefit of its creditors or (E) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any

court of competent jurisdiction to take charge of or sell any material portion of its business.

3.3. Effect of Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement: a) all rights, licenses, consents and authorizations granted by either Party to the other hereunder will immediately terminate and Services shall cease; b) Vendor shall (i) immediately cease all use of any Customer Data or Customer's Confidential Information, (ii) promptly return to Customer or destroy (in Vendor's sole discretion), all documents and tangible materials containing, reflecting, incorporating or based on Customer Data or Customer's Confidential Information, and (iii) permanently erase all Customer Data and Customer's Confidential Information from all systems Vendor directly or indirectly controls; provided that, for clarity, Vendor's obligations under this section do not apply to any Resultant Data; c) Customer shall immediately cease all use of any Services or Vendor Materials and d) notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control (i) each party may retain the other party's Confidential Information, and Vendor may retain Customer Data, in each case in its then current state and solely to the extent required by applicable Law, (ii) Vendor may also retain Customer Data in its backups, archives and disaster recovery systems until such Customer Data is deleted in the ordinary course, and (iii) all information and materials described in this Section will remain subject to all confidentiality, security and other applicable requirements of this Agreement.

4. WARRANTIES AND LIMITATION OF LIABILITY

4.1. Representations. Each Party represents and warrants to the other that: a) this Agreement has been duly authorized, executed and delivered by it, and that it has the full power and authority and is free to enter into this Agreement and to perform its obligations hereunder and 2) it will perform its respective responsibilities under the Agreement in compliance with all applicable federal, state and local laws, rules, and regulations, including, without limitation, HIPAA and other applicable state or federal privacy and security regulations.

4.2. Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, ALL SERVICES AND VENDOR MATERIALS ARE PROVIDED "AS IS" AND VENDOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND VENDOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, VENDOR MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR VENDOR MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR

WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

- 4.3. Limitation of Liability. IN NO EVENT WILL EITHER PARTY OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, SUPPLIERS OR AFFILIATES BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; OR (b) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE SUM OF ALL FEES PAID OR OWED BY CUSTOMER TO VENDOR DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM (THE "DAMAGES CAP"); PROVIDED THAT, SOLELY WITH RESPECT TO CLAIMS ARISING OUT OF A BREACH OF CONFIDENTIALITY OR THE BAA, THE DAMAGES CAP SHALL BE DEEMED TO BE THE GREATER OF (A) THE SUM OF ALL FEES PAID BY CUSTOMER TO VENDOR DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM AND (B) \$1,000,000 (OR SUCH GREATER AMOUNT AS MAY BE AVAILABLE UNDER VENDOR'S INSURANCE POLICIES FROM TIME TO TIME WITH RESPECT TO THE APPLICABLE CLAIMS).

5. MISCELLANEOUS

5.1. Survival. Notwithstanding the expiration or termination of this Agreement, the rights and obligations contained in any provision of this Agreement, which, by its nature would survive termination of this Agreement, including without limitation sections entitled Confidentiality, Vendor and Customer Materials, Effect of Termination, Disclaimer, Limitation of Liability, and Miscellaneous, shall survive the expiration or termination of this Agreement.

5.2. Notices. Any notice, request, instruction, or other document to be given hereunder by any Party to any other Party shall be in writing and shall be given by delivery in person, by electronic mail, by reputable overnight courier, or by registered or certified mail, postage prepaid. If to Customer, to the address first listed or otherwise designated in the Ordering Document.

if to Vendor to:

Rightway Healthcare,
Inc.
55 Hudson Yards, 29th Fl
New York, NY 10001
Attention: Jordan
Feldman, CEO
jordan@rightwayhealthcare.com

with a copy (which will not constitute notice) to:

Gibson, Dunn & Crutcher
LLP
200 Park Avenue
New York, NY 10166
Attn: Stefan dePozsgay
stefandepozsgay@gibson
dun.com

or at such other address for a Party as shall be specified by like notice. Any such notice shall be deemed given (i) on the date of delivery, if delivered personally; (ii) on the date of transmission if delivered via email transmission, with confirmation by return email of receipt by recipient, or if no such confirmation is received, then on the next business day of the recipient after such transmission; (iii) on the business day after the date of delivery to a reputable overnight courier; or (iv) three business days after being mailed by registered or certified mail.

5.3. Dispute Resolution; Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without giving effect to conflicts of law principles.

5.4. Force Majeure. In no event will either Party be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any payment obligation) when and to the extent such failure or delay is caused by any circumstances beyond a Party's reasonable control including without limitation acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the Effective Date, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including imposing an embargo, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation (any such circumstance, a "Force Majeure Event"). Either Party may terminate this Agreement if a Force Majeure Event affecting the other Party continues substantially uninterrupted for a period of thirty (30) days or more. In the event of any failure or delay caused by a Force Majeure Event, the affected Party shall give prompt written notice to the other Party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

5.5. Other. No amendment, modification, or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by Customer and Vendor; except that any of the terms or provisions of this Agreement may be waived in writing (including electronically) at any time by the Party that is entitled to the benefits of such waived terms. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereof. No delay on the part of any Party in exercising any right hereunder shall operate as a waiver thereof.

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties; provided, however, that this Agreement may not be assigned by a Party without the prior written consent of the other Party, which shall not be unreasonably withheld; provided, further, that notwithstanding the foregoing, this Agreement may be assigned by Vendor to an acquirer of all or substantially all of the assets of Vendor, without the prior written consent of Customer. This Agreement is intended to be solely for the benefit of the Parties, and no other Party shall be entitled to rely on this Agreement or accrue any benefit or right of any kind pursuant to or under this Agreement. This Agreement may be executed in the original, by any generally accepted electronic means (including transmission of a pdf file containing an executed signature page), in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. This Agreement (including the Exhibits attached hereto and the Business Associate Agreement executed by the parties) constitute the sole understanding of the Parties with respect to the subject matter hereof. This Agreement supersedes any and all prior and contemporaneous understandings between the Parties with respect to the subject matter hereof.

5.6. Cyber Security Liability Insurance. Vendor will maintain for the duration of the contract minimum cyber security liability insurance coverage of \$3,000,000 per occurrence for any loss resulting from a data breach.

5.7. Breach Notification and Recovery. Vendor will provide breach notification to Customer if Customer personally identifiable information processed by Vendor is lost or stolen from Vendor's system. Vendor will provide notification without unreasonable delay and all communication with Customer's Authorized Users shall be coordinated with the City of Everett.

5.8. Third Party Supplier Access to Confidential Employee Data. Vendor will provide an initial list of suppliers with access to confidential employee data and maintain the list for the duration of the contract. Vendor will notify Customer within 90 days of any change to the supplier list.

SCHEDULE A - DEFINITIONS

“Customer Data” means, other than Resultant Data, information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services.

“Customer Systems” means Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

“Documentation” means any manuals, instructions or other documents or materials that Vendor provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the Services or Vendor Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

“Process” means to take any action or perform any operation or set of operations that the Service Software is capable of taking or performing on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy. “Processing” and “Processed” have correlative meanings.

“Vendor Materials” means the Service Software, Documentation and Vendor Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or

functional descriptions, requirements, plans or reports, that are provided or used by Vendor or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Vendor Systems. For the avoidance of doubt, Vendor Materials include Resultant Data and any information, data or other content derived from Vendor’s monitoring of Customer’s access to or use of the Services, but do not include Customer Data.

“Vendor Personnel” means all individuals involved in the performance of Services as employees, agents or independent contractors of Vendor or any Subcontractor.

“Vendor Systems” means the information technology infrastructure used by or on behalf of Vendor in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Vendor or through the use of third-party services.

“Resultant Data” means information, data and other content that is derived by or through the Services from Processing Customer Data and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Processing of such information, data or content.

“Service Software” means Vendor’s software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Vendor provides remote access to and use of as part of the Services.

“Third-Party Materials” means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Vendor.