

RFP 232 Attachment C: Draft Contract Terms

**Please note this is intended as an example only.
Terms will be further updated during contract negotiations.**

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

**SOFTWARE AS A SERVICE AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND**

**[Insert name of contractor]
[Insert Department Contract ID, if any]**

[Insert PeopleSoft Contract ID]

This Agreement is made this [insert day] day of [insert month], 20 [insert year], in the City and County of San Francisco (“City”), State of California, by and between [name of Contractor] (“Contractor”) and City.

Recitals

WHEREAS, the [insert name of department making purchase] (“Department”) wishes to procure [insert short description of services required] from Contractor; and,

WHEREAS, Contractor represents and warrants that it is qualified to provide the Software as a Service Application and perform the Services required by City as set forth under this Agreement; and

WHEREAS, Contractor was competitively selected pursuant to a Request for Proposals entitled [enter RFP name] issued through Sourcing Event ID [Enter Number]; and

WHEREAS, this is a contract for Services and the Local Business Enterprise (“LBE”) subcontracting participation requirement for the Services has been waived pursuant to waiver CMD14BXXXXXXX; and

[Single Contract] WHEREAS, approval for the Agreement was obtained on [insert date of Civil Service Commission action or DHR approval date if under \$100K] from the [Civil Service Commission or Department of Human Resources on behalf of the Civil Service Commission] under PSC number [insert PSC number] in the amount of [insert Dollar Amount] for the period of [insert number of years]; and

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Acceptance” means notice from the City to Contractor that the SaaS Application meets the specifications and requirements contained in the Documentation and Appendices. City’s Acceptance shall be governed by the procedures set forth in Section 4.3.

1.2 “Acceptance Period” means the period allocated by City to test the SaaS Application to determine whether it conforms to the applicable specifications and, if appropriate, properly operates in the defined operating environment, is capable of running on a repetitive basis, and is otherwise in compliance with the service level obligations without failure.

1.3 “Agreement” means this contract document, including all Appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.

1.4 “Appendices” means the appendices listed in Article 15 (“Appendices”) herein.

1.5 “Authorized Users” means a person authorized by City to access City’s Portal and use the SaaS Application, including any City employee, contractor, or agent, or any other individual or entity authorized by City.

1.6 “Back-Up Environment” means Contractor’s back-up Data Center for the SaaS Services.

1.7 “City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing,” and [insert name of department].

1.8 “City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of City in connection with this Agreement, including data resulting from use of the SaaS Service. City Data includes, without limitation, Confidential Information.

1.9 “City Portal” means an electronic gateway to a secure entry point via Contractor’s Website that allows City and its Authorized Users to log in to an area where they can view and download information or request assistance regarding the SaaS Application and Services.

1.10 “City’s Project Manager” means the individual specified by City pursuant to Section 4.2.1 hereof, as the Project Manager authorized to administer this Agreement on City’s behalf.

1.11 “CMD” means the Contract Monitoring Division of the City.

1.12 “Confidential Information” means confidential City information including, but not limited to, personal identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information. These laws include, but are not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act/California Consumer Privacy Act (Civil Code § 1798 et

seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (“Chapter 12M”). Confidential Information includes, without limitation, City Data.

1.13 “Contractor” means [insert name and address of contractor].

1.14 “Contractor Project Manager” means the individual specified by Contractor pursuant to Section 4.2.1 hereof, as the Project Manager authorized to administer this Agreement on Contractor’s behalf.

1.15 “Contractor’s Website” means the Website that provides Authorized User access to the SaaS Application Services.

1.16 “Data Breach” means any access, destruction, loss, theft, use, modification or disclosure of City Data by an unauthorized party or that is in violation of the Agreement terms and/or applicable local, state or federal law.

1.17 “Data Center(s)” means a physical location within the United States where Contractor (or its subcontractor) houses and operates the hardware (including computers, computer servers, routers, and other related equipment and devices) on which Contractor (and or its subcontractor) hosts via the Internet the SaaS Application and City Data pursuant to this Agreement.

1.18 “Deliverables” means Contractor’s or its subcontractors’ work product, including any partially-completed work product and related materials, resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “SaaS Implementation and Training Services,” attached as Appendix A.

1.19 “Deliverable Data” means Project Data that is identified in Appendix A, and required to be delivered to City.

1.20 “Disabling Code” means computer instructions or programs, subroutines, code, instructions, data or functions (including but not limited to viruses, worms, date bombs or time bombs), including but not limited to other programs, data storage, computer libraries and programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that alter, destroy, inhibit, damage, interrupt, interfere with or hinder the operation of City’s access to the SaaS Services through Contractor’s Website and/or Authorized User’s processing environment, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.

1.21 “Documentation” means technical publications provided by Contractor to City relating to use of the SaaS Application, such as reference, administrative, maintenance, and programmer manuals.

1.22 “End Users” means any Authorized User who accesses Contractor’s Website and uses the SaaS Application and Services.

1.23 “Internet” means that certain global network of computers and devices commonly referred to as the “internet,” including, without limitation, the World Wide Web.

1.24 “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, which impose specific duties and obligations upon Contractor.

1.25 “Open Source Software” means software with either freely obtainable source code, a license for modification, or permission for free distribution.

1.26 “Party” or “Parties” means, respectively, City and Contractor either individually or collectively.

1.27 “Performance Credit” means credit due to City by Contractor with regard to Contractor’s service level obligations in Appendix D (Service Level Obligations).

1.28 “Personal Identifiable Information (PII)” means any information about an individual, including information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that can reasonably be linked to an individual, such as medical, educational, financial, and employment information.

1.29 “Precedence” means that, notwithstanding the terms of any other document executed by the Parties as a part of this Agreement, the terms of this Agreement shall control over any discrepancy, inconsistency, gap, ambiguity, or conflicting terms set forth in any other Contractor pre-printed document.

1.30 “Preexisting Data” means data possessed or owned by each Party that exists prior to the Agreement start date.

1.31 “Project Data” means data that is first produced in the performance of this Agreement.

1.32 “SaaS Application/SaaS Software/Software” means the licensed and hosted computer program and associated documentation, as listed in this Agreement and Appendices, and any modification or Upgrades or modifications to the program(s), residing in Contractor’s servers that provides the SaaS Services that may be accessed by Authorized Users through the Internet. The SaaS Application may include Contractor provided Third-Party Software. All Software, revisions and versions provided by Contractor shall be subject to the terms and conditions of this Agreement, including any amendments thereto.

1.33 “SaaS Application Patch” means an update to the SaaS Application comprised of code inserted (or patched) into the code of the SaaS Application, and which may be installed as a temporary fix between full releases of a SaaS Application Revision or SaaS Application Version. Such a patch may address a variety of issues including without limitation fixing a Software bug, installing new drivers, addressing new security vulnerabilities, addressing software stability issues, and upgrading the Software. SaaS Application Patches are included in the annual payments made by City to Contractor for the SaaS Services under this Agreement.

1.34 “SaaS Implementation and Training Services” means the services by which Contractor will implement all necessary Software configurations and modules necessary to make the SaaS Application available and accessible to City.

1.35 “SaaS Issue” means a problem with the SaaS Services identified by City that requires a response by Contractor to resolve.

1.36 “SaaS Maintenance Services” means the activities to investigate, resolve SaaS Application and Services issues and correct product bugs arising from the use of the SaaS Application and Services in a manner consistent with the published specifications and functional requirements defined during implementation.

1.37 “SaaS Services” means the Services performed by Contractor to host the SaaS Application to provide the functionality listed in the Documentation.

1.38 “SaaS Severity Level” means a designation of the effect of a SaaS Issue on City. The severity of a SaaS Issue is initially defined by City and confirmed by Contractor. Until the SaaS Issue has been resolved, the Severity Level may be raised or lowered based on Contractor’s analysis of impact to business.

1.39 “SaaS Software Error” means any failure of SaaS Software to conform in all material respects to the requirements of this Agreement or Contractor’s published specifications.

1.40 “SaaS Software Error Correction” means either a modification or addition that, when made or added to the SaaS Software, brings the SaaS Software into material conformity with the published specifications, or a procedure or routine that, when observed in the regular operation of the SaaS Software, avoids the practical adverse effect of such nonconformity.

1.41 “SaaS Software Revision” means an update to the current SaaS Software Version of the SaaS Software code that consists of minor enhancements to existing features and code corrections. SaaS Software Revisions are provided and included with the annual service payments made by City to Contractor for the SaaS Service.

1.42 “SaaS Software Version” means the base or core version of the SaaS Software that contains significant new features and significant fixes and is available to City. SaaS Software Versions may occur as the SaaS Software architecture changes or as new technologies are developed. The nomenclature used for updates and upgrades consists of major, minor, build, and fix and these correspond to the following digit locations of a release, a,b,c,d, an example of which would be NCC 7.4.1.3, where the 7 refers to the major release, the 4 refers to the minor release, the 1 refers to the build, and the 4 refers to a fix. All SaaS Software Versions are provided and included as part of this Agreement upon request or approval from City for the upgrade.

1.43 “Scheduled SaaS Maintenance” means the time (in minutes) during the month, as measured by Contractor, in which access to the SaaS Services is scheduled to be unavailable for use by City due to planned system maintenance and major version upgrades.

1.44 “Services” means the work performed by Contractor under this Agreement as specifically described in the “SaaS Implementation and Training Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.45 “Successor Service Provider” means a new service provider, if any, selected by City in the event the SaaS Services are terminated under this Agreement.

1.46 “Third-Party Software” means the software described in Appendix B, “Third-Party Software-Included in this Agreement.”

1.47 “Transition Services” means that assistance reasonably requested by City to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider.

Article 2 Term of the Agreement

2.1 **Term.** The term of this Agreement shall commence on [insert Contractor’s start date] and expire on [insert expiration date], unless earlier terminated as otherwise provided herein.

2.2 **Options to Extend.** City has the option to renew the Agreement for a period of [enter number] (#) additional years. City may exercise this option at City’s sole and absolute discretion by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.” Extensions may be for the whole or partial period provided for above.

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions.

3.1.1 **Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 of City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.1.2 **Maximum Costs.** City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized emergency per City Charter or applicable Code, no City representative is authorized to offer or promise, nor is City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, “Modification of this Agreement.”

3.2 **Authorization to Commence Work.** Contractor shall not commence any work under this Agreement until City has issued formal written authorization to proceed, such as a purchase order, task order or notice to proceed. Such authorization may be for a partial or full scope of work.

3.3 Compensation.

3.3.1 Calculation of Charges and Contract Not to Exceed Amount. The amount of this Agreement shall not exceed [insert whole dollar amount in numbers and words], the breakdown of which appears in Appendix C, "Calculation of Charges." City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

(a) **SaaS Implementation and Training Services:** The breakdown of costs associated with the SaaS Implementation and Training Services appear in Appendix C ("Calculation of Charges"). Compensation for services rendered pursuant to Appendix A shall be made in monthly payments on or before the 30th day of each month for work that City, in its reasonable discretion, concludes has been performed as of the 1st day of the immediately preceding month. In no event shall the amount for SaaS Implementation and Training Services under this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no ".00"].

(b) **SaaS Application and Hosted Services:** The breakdown of costs associated with the SaaS Application and Hosted Services appear in Appendix C ("Calculation of Charges"). Compensation for services rendered pursuant to Appendix B shall be made in quarterly payments, based on a calendar year, on or before the 1st day of each quarter. In no event shall the amount for SaaS Application and Hosted Services under this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no ".00"]. If there is an increase in annual SaaS Application and Hosted Services charges, Contractor shall give City written notice of such increase at least thirty (30) days prior to the expiration of the applicable SaaS Application and Hosted Services period. Annual SaaS Application and Hosted Services charges shall not increase more than three percent (3%) of the rate of the year immediately prior to such increase.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments until City approves the Services delivered. Payments to Contractor by City shall not excuse Contractor from its obligation to replace the unsatisfactory Services even if the unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Services may be rejected by City and in such case must be replaced by Contractor without delay at no cost to City.

3.3.3 Withhold Payments. If Contractor fails to provide the Services in accordance with Contractor's obligations under this Agreement, City may withhold any and all payments due to Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices submitted by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.5 Reserved.

3.3.6 Payment Terms.

(a) **Payment Due Date.** Unless City notifies the Contractor that a dispute exists, Payment shall be made within 30 calendar days, measured from (1) the rendering of the Services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date City issued a check to Contractor or, if Contractor agreed to electronic payment, the date City has posted electronic payment to Contractor.

(b) **Reserved.**

3.3.7 Getting paid by City for Services.

(a) City utilizes a commercial product through its banking partner to pay City contractors electronically. Contractors shall sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [SF City Partner at sfgov.org](https://sfcitypartner.sfgov.org/pages/training.aspx).

(b) At the option of City, Contractor may be required to submit invoices directly in City's financial and procurement system. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information.

3.3.8 Reserved.

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make copies of such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section.

Article 4 SaaS Services and Resources

4.1 SaaS Licensed Software. Subject to the terms and conditions of this Agreement, Contractor hereby grants City and Authorized Users a renewable, irrevocable, non-exclusive, royalty-free, and worldwide license to access, display, and execute the SaaS Application and SaaS Services during the Term of this Agreement and any renewals thereof, if any.

4.1.1 Click-Wrap Disclaimer. No "click to accept" agreement that may be required for City and/or Authorized Users' access to the SaaS Services or Contractor's Website and no terms of use, terms of service, or privacy policy referenced therein or conditioned for use

of the SaaS Services or Contractor's Website shall apply. Only the provisions of this Agreement as amended from time to time shall apply to City and/or Authorized Users for access thereto and use thereof. The Parties acknowledge that City and/or each Authorized User may be required to click "Accept" as a condition of access to the SaaS Services through Contractor's Website, but the provisions of such "click to accept" agreement and other terms (including terms of use, terms of service, and privacy policy) contained or referenced therein shall be null and void for City and/or each such Authorized User. The foregoing does not apply to City's own click-wrap agreements in the event City chooses to have Contractor include terms of use, terms or service, privacy policies, or similar requirements drafted and approved by City.

4.1.2 SaaS Application Title. City acknowledges that title to each SaaS Application and SaaS Services shall at all times remain with Contractor, and that City has no rights in the SaaS Application or SaaS Services except those expressly granted by this Agreement.

4.1.3 Authorized APIs. City shall be permitted to access and use Contractor's SaaS Application Program Interfaces (APIs) when commercially available to develop and modify, as necessary, macros and user interfaces for use with any existing or future City systems and infrastructure. For purposes of this Agreement, such development shall be deemed an authorized modification but will not be supported by Contractor unless provided for in this Agreement. Functionality and compatibility of City developed macros will be sole responsibility of City. Any such macros or user interfaces developed by City shall become the property of City. All flat-file exchanges will be over an encrypted file transport service (ftps/vsftpd/scp/sftp) to a secure private ftp site.

4.1.4 Proprietary Markings. City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the SaaS Application or any related materials or Documentation.

4.2 Project Managers; Services Contractor Agrees to Perform.

4.2.1 Project Managers. Contractor and City shall each designate a Project Manager, who shall be accessible by telephone throughout the duration of the Agreement and shall be available 9 a.m. to 5 p.m. (Pacific Standard Time), Monday through Friday, excluding City-designated holidays. These hours may be adjusted by mutual agreement of City and Contractor. Contractor shall use its best efforts to maintain the same Project Manager throughout the duration of the Agreement. However, if Contractor needs to replace its Project Manager, Contractor shall provide City with written notice thereof at least forty-five (45) days prior to the date the Project Manager shall be replaced. Notwithstanding the foregoing, Contractor will have the right to appoint temporary Project Managers in connection with short term unavailability, sick leave or reasonable vacations. Contractor shall notify City in advance of any such temporary appointments. City may require Contractor to replace its Project Manager, by giving Contractor notification thereof and City's objective reasons therefor.

Contractor's Project Manager: [Name]
[Address]
[e-mail]
[phone number]

City's Project Manager: [Name]

[Address]
[e-mail]
[phone number]

4.2.2 Services Contractor Agrees to Perform. Contractor will perform all of the services set forth in Appendix A (SaaS Implementation and Training Services), Appendix B (SaaS Application and Hosted Services), and the following: [edit this section to reflect the services Contractor agrees to perform.] Officers and employees of City are not authorized to request and City is not required to compensate Contractor for services beyond those stated.

(a) **Maintenance and Support.** Contractor shall provide Maintenance/Support in accordance with Appendix B (SaaS Application & Hosting Services). Maintenance and Support Services include the provision of upgrades and a service desk, during the term of this Agreement for the SaaS Application(s).

(b) **Hosting.** Contractor shall provide hosting in accordance with Appendix B, including the following:

(i) **Hosting Infrastructure.** Contractor shall provide all hosting infrastructure, including, but not limited to, hardware, software and other equipment, at Contractor's hosting site as required to provide hosting and deliver the SaaS Application and Services.

(ii) **Security.** Contractor shall ensure that all electronic transmission or exchange of City Data will be encrypted using current industry standards. Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes stated in the Agreement. City Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Contractor not involved in administration of this Agreement, unless otherwise permitted in this Agreement. Remote access to view City Data by Contractor for technical support purposes from outside the United States is prohibited without the formal written approval of City as long as City Data remains hosted solely on hardware residing on Data Centers located in the United States and no City Data is downloaded to or stored on any hardware residing on Data Centers not residing in the United States.

(iii) **Access.** Contractor shall provide Authorized Users 24/7 access to the SaaS Application(s).

(iv) **Disaster Recovery and Business Continuity.** Contractor shall provide Disaster Recovery Services and assist with Business Continuity as described in Section 14.4 and Appendix E.

(c) **Service Level Obligations.** Contractor shall comply with the support (24/7 service desk) and Service Level Obligations described in Appendix D.

4.3 Acceptance Testing; Document Delivery; Training.

4.3.1 After City has obtained access to the SaaS Application and Services, and subsequent to each SaaS Software version upgrade, revision and patch as further outlined in Appendix B, City and Contractor shall conduct user acceptance testing as outlined in Appendices A and B, as the case may be, to verify that the SaaS Application and Services substantially conform to the specifications and City's requirements contained therein. In the event that City determines that the SaaS Services do not meet such specifications, City shall notify Contractor in

writing, and Contractor shall modify or correct the SaaS Services so that it satisfies the Acceptance criteria. The date of Acceptance will be that date upon which City provides Contractor with written notice of satisfactory completion of Acceptance testing. If City notifies Contractor after the Acceptance Testing Period that the SaaS Services do not meet the Acceptance criteria outlined in Appendices A and B, as the case may be, then City shall be entitled to terminate this Agreement in accordance with the procedures specified in Article 8 herein, and shall be entitled to a full refund of any fees paid as part of this Agreement prior to termination.

4.3.2 Document Delivery. Contractor will deliver completed Documentation in electronic format for the SaaS Application and Services at the time it gives City access to the SaaS Application and Services. The Documentation will accurately and completely describe the functions and features of the SaaS Application and Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the SaaS Application and Services. City shall have the right to make any number of additional copies of the Documentation at no additional charge. City may withhold its issuance of the notice of final Acceptance until City receives the completed Documentation.

4.4 Qualified Personnel. Contractor represents and warrants that it is qualified to perform the Services required by City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources for timely completion within the project schedule specified in this Agreement.

4.5 Subcontracting. Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City's execution of this Agreement constitutes its approval of the subcontractors listed below and/or in appendices.

4.6 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.6.1 Independent Contractor. For the purposes of this Section 4.6, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that, at all times, Contractor is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, and its agents and employees will not represent or hold themselves out to be employees of City at any time. Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or

distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor is liable for its acts and omissions. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing Services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any of its agents or employees. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this Section. Should City determine that Contractor is not performing in accordance with the requirements of this Section, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.6.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.6 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Section.

4.7 Assignment. The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

Reserved.

Article 5 Insurance; Indemnity and Warranties

5.1 Insurance.

5.1.1 Required Coverages. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. **Policy must include Abuse and Molestation coverage.**

(b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, “Combined Single Limit” for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers’ Compensation, in statutory amounts, with Employers’ Liability Limits not less than **\$1,000,000** each accident, injury, or illness.

(d) Technology Errors and Omissions Liability Insurance, with limits of **\$20,000,000** for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of Services defined in this Agreement and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to City’s or third person’s computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(e) Cyber and Privacy Liability Insurance with limits of not less than **\$20,000,000** per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, PHI or other PII, stored or transmitted in electronic form.

5.1.2 **Additional Insured.**

(a) The Commercial General Liability Insurance policy must include as Additional Insured City and County of San Francisco and, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must include as Additional Insured City and County of San Francisco and, its Officers, Agents, and Employees.

5.1.3 **Waiver of Subrogation.** The Workers’ Compensation Liability Insurance policy(ies) shall include a waiver of subrogation in favor of City for all work performed by Contractor, and its employees, agents and subcontractors.

5.1.4 **Primary Insurance.**

(a) The Commercial General Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.5 Other Insurance Requirements

(a) Thirty (30) days' advance written notice shall be provided to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to City address set forth in Section 11.1 entitled "Notices to the Parties."

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, be maintained for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance including additional insured and waiver of subrogation status, as required, with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name City and County of San Francisco and its officers, agents and employees and Contractor as additional insureds and waive subrogation in favor of City, where required.

5.2 Indemnification.

5.2.1 General Indemnification. Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and

labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants, and experts and related costs, and City's costs of investigating any claims against City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

5.2.2 Infringement Indemnification. If notified promptly in writing of any judicial action or informal claims brought against City based on an allegation that City's use of the SaaS Application and Services infringes a patent, copyright, or any right of a third-party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise, only if Contractor accepts the defense and hold harmless requirements without reservation, and provided, however, that Contractor shall not agree to any injunctive relief or settlement that obligates City to perform any obligation, make an admission of guilt, fault or culpability or incur any expense, without City's prior written consent, which shall not be unreasonably withheld or delayed. In the event a final injunction is obtained against City's use of the SaaS Application and Services by reason of Infringement, or in Contractor's opinion City's use of the SaaS Application and Services is likely to become the subject of Infringement, Contractor may at its option and expense: (i) procure for City the right to continue to use the SaaS Application and Services as contemplated hereunder; (ii) replace the SaaS Application and Services with a non-infringing, functionally equivalent substitute SaaS Application and Services; or (iii) suitably modify the SaaS Application and Services to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the SaaS Application and Services. If none of these options is reasonably available to Contractor, then Agreement may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Agreement for the license of such infringing SaaS Application and/or Services. Any unauthorized modification or attempted modification of the SaaS Application and Services by City or any failure by City to implement any improvements or updates to the SaaS Application and Services, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or combination of the SaaS Application and Services with products or data of the type for which the SaaS Application and Services was neither designed nor intended to be used, unless City has obtained prior written authorization from Contractor permitting such use.

5.2.3 Under no circumstances will City indemnify or hold harmless Contractor.

5.3 Warranties of Contractor.

5.3.1 **Warranty of Authority; No Conflict.** Each Party warrants to the other that it is authorized to enter into this Agreement and that its performance of the Agreement will not conflict with any other agreement.

5.3.2 **Warranty of Performance.** Contractor warrants that when fully implemented, the SaaS Application to be configured and provided under this Agreement shall perform in accordance with the specifications applicable thereto. With respect to all Services to be performed by Contractor under this Agreement, including SaaS Implementation and Training Services outlined in Appendix A, and SaaS Application and Hosted Services outlined in Appendix B, Contractor warrants that it will use reasonable care and skill. All services shall be performed in a professional, competent and timely manner by Contractor personnel appropriately qualified and trained to perform such services. In the event of a breach of the foregoing warranty relating to any service under this Agreement within twelve (12) months from the date of provision such services, Contractor shall, at its sole cost and expense, re-perform such services.

5.3.3 **Compliance with Description of Services.** Contractor represents and warrants that the SaaS Application and Services specified in this Agreement and all updates and improvements to the SaaS Application and Services will comply in all material respects with the specifications and representations specified in the Documentation (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) as set forth (i) herein or in any amendment hereto, and (ii) the updates thereto.

5.3.4 **Title.** Contractor represents and warrants to City that it is the lawful owner or license holder of all Software, materials and property identified by Contractor as Contractor-owned and used by it in the performance of the SaaS Services contemplated hereunder and has the right to permit City access to or use of the SaaS Application and Services and each component thereof. To the extent that Contractor has used Open Source Software (“OSS”) in the development of the SaaS Application and Services, Contractor represents and warrants that Contractor is in compliance with any applicable OSS license(s) and is not infringing. Contractor has not and will not grant any rights to any third party that are in conflict with any of the rights granted to City under this Agreement.

5.3.5 **Disabling Code.** Contractor represents and warrants that the SaaS Application and Services, and any information, reports or other materials provided to Authorized Users as a result of the operation of the SaaS Application and Services, including future enhancements and modifications thereto, shall be free of (i) any Disabling Code; (ii) viruses or other computer programming routines or defects that re intended to damage, detrimentally interfere with, or expropriate any system, data, or information; or (iii) any feature that does, or with the passage of time could, in any way impair the operation of the SaaS Application or Services now or hereafter.

5.3.6 **Warranty of Suitability for Intended Purpose.** Contractor warrants that the SaaS Application and Services will be suitable for the intended purpose of this Agreement.

5.3.7 **Business Continuity.** Contractor warrants and represents to City that it has implemented and will maintain a business continuity and disaster recovery plan in accordance with this Agreement.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 Liability for Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

7.1 Contractor to Pay All Taxes. Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Possessory Interest Taxes. Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to timely report on behalf of City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by City to enable City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 Withholding. Contractor agrees that it is obligated to pay all amounts due to City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination; Disposition of Content; Survival

8.1 **Termination for Cause and/or Convenience.** City shall have the right, without further obligation or liability to Contractor:

8.1.1 To immediately terminate this Agreement if Contractor commits any breach of this Agreement or default (see Section 8.2 below) and fails to remedy such breach or default within ten (10) days after written notice by City of such breach (10-day cure period), in which event, Contractor shall refund to City all amounts paid under this Agreement for the SaaS Application and/or Services in the same manner as if City ceased to use the SaaS Application due to infringement under Section 5.2.2. At City's sole election, the 10-day cure period will **not** apply to termination for data breach and/or breach of confidentiality; or

8.1.2 To terminate this Agreement upon thirty (30) days prior written notice for City's convenience and without cause, provided that except for termination due to an uncured breach as set forth in this Section and in the event of Infringement, City shall not be entitled to a refund of any amounts previously paid under this Agreement.

8.2 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

8.2.1 Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims	11.10	Compliance with Laws
4.7	Assignment	10.10	Alcohol and Drug-Free Workplace
Article 5	Insurance; Indemnity and Warranties	Article 13	Data and Security
Article 7	Payment of Taxes		

8.2.2 Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten (10) days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

8.2.3 Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

8.2.4 A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property; (ii) constituting an order for relief or approving a petition for relief, reorganization or arrangement, any other petition in bankruptcy or for liquidation, or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.5 **Default Remedies.** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default. Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii) any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with City.

8.3 **Bankruptcy.** In the event that Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at City's option this Agreement shall terminate and be of no further force and effect. Upon termination of this Agreement pursuant to this Section, Contractor shall within forty-eight (48) hours return City Data in an agreed-upon machine readable format. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within thirty (30) calendar days clear, purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five (5) calendar days that such clear, purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

8.4 **Transition Services and Disposition of City Data.** Upon request of City, expiration, or termination of the SaaS Services under this Agreement:

8.4.1 **Transition Services.** Contractor shall, upon City's request, for a period of time not to exceed ninety (90) days, provide to City and/or Successor Service Provider assistance to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider. During the transition period, SaaS Application and City Data access shall continue to be made available to City without alteration. Contractor will provide the Transition Services at Contractor's then-current rates for such services immediately prior to the expiration or termination of this Agreement. Transition costs may include: (i) developing a plan for the orderly transition of the terminated SaaS Services from Contractor to Successor Service Provider; (ii) if required, transferring City Data to Successor Service Provider; (iii) using commercially reasonable efforts to assist City in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by

Contractor in connection with the Services; (iv) using commercially reasonable efforts to make available to City, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Contractor in connection with the SaaS Services; and (v) such other activities upon which the Parties may agree. Notwithstanding the foregoing, should City terminate this Agreement due to Contractor's material breach, City may elect to use the Services for a period of no greater than six (6) months from the date of termination at a reduced rate of twenty percent (20%) off of the then-current Services Fees for the terminated Services. All applicable terms and conditions of this Agreement shall apply to the Transition Services.

8.4.2 Disposition of City Data. Contractor may immediately discontinue the SaaS Services and City shall immediately cease accessing the SaaS Application and Services at the conclusion of the Transition Services pursuant to Section 8.4.1. Contractor shall either transition all City Data to the Successor Service Provider or within five (5) calendar days of the expiration or termination of the SaaS Services return City Data in an agreed-upon machine readable format. This provision shall also apply to all City Data that is in the possession of subcontractors, agents or auditors of Contractor. Such data transfer shall be done at no cost to City. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within thirty (30) calendar days clear, purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five (5) calendar days that such clear or purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

8.5 Remedies. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.6 Notice of Default. Any notice of default must be sent in accordance with Section 11.1, "Notices to the Parties."

8.7 Non-Waiver of Rights. The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

8.8 Survival.

8.8.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	8.9	Data Rights
3.3.7(a)	Grant Funded Contracts - Disallowance	9.1	Ownership of Results
3.4	Audit and Inspection of Records	9.2	Works for Hire

3.5	Submitting False Claims	11.6	Dispute Resolution Procedure
4.6	Independent Contractor; Payment of Employment Taxes and Other Expenses	11.7	Agreement Made in California; Venue
Article 5	Insurance; Indemnity and Warranties	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.2.5	Default Remedies	13.2.1	Proprietary or Confidential Information of City
8.4	Transition Services and Disposition of Content	13.2.5	Notification of Legal Requests
8.7	Non-Waiver of Rights		

8.9 Data Rights.

8.9.1 Preexisting Data of each Party that will be included as a Deliverable under this Agreement will be identified in Appendix A. Preexisting Data of City may only be used by Contractor for purposes of the Scope of Work of this Agreement, unless such data is otherwise publicly available.

8.9.2 City shall have the unrestricted right to use the Deliverable Data and delivered Project Data, including all Preexisting Data provided as a Deliverable under this Agreement.

Article 9 Rights in Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors in the Deliverables, any partially-completed Deliverables, and related materials, shall become the property of and will be transmitted to City. Unless expressly authorized in writing by City, Contractor may not retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code, shall be the property of City. If any such Deliverables are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon its subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities provided that any such use is in conformance with the confidentiality provisions of this Agreement.

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (“Mandatory City Requirements”) are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2 Conflict of Interest. By executing this Agreement, Contractor certifies that it does not know of any fact that constitutes a violation of Section 15.103 of City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*); or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*). Contractor further agrees promptly to notify City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141. Information about and the text of Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of Article 141, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements.

10.5.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee

benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Article 131.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 Minimum Compensation Ordinance. Labor and Employment Code Article 111 applies to this Agreement. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

10.8 Health Care Accountability Ordinance. Labor and Employment Code Article 121 applies to this contract. Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9 First Source Hiring Program. Contractor must comply with all of the applicable provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of City for the rendition of personal services, for the furnishing of any material,

supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves; (ii) a candidate for that City elective office; or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Slavery Era Disclosure. Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor's affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company's Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

10.13 Consideration of Criminal History in Hiring and Employment Decisions.

10.13.1 Contractor agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Article 142.

10.13.2 The requirements of Article 142 shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Article 142 shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.14 Nonprofit Contractor Requirements.

10.14.1 **Good Standing.** If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General's Registry of Charitable Trusts and will remain in good standing during the term of this Agreement.

Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City's request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General's Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

10.14.2 Public Access to Nonprofit Records and Meetings. If Contractor is a nonprofit organization, provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries); and receives a cumulative total per year of at least \$250,000 in City or City-administered funds, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

10.15 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.16 Reserved.

10.17 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Article 11 General Provisions

11.1 Notices to the Parties. Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City:	Name Title Agency Address Email Phone
To Contractor:	Name Title Company Address Email Phone

11.2 Any notice of default or data breach must be sent by certified mail or other trackable hard-copy written communication, and also by e-mail, with the sender using the receipt

notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

11.3 Compliance with Laws Requiring Access for People with Disabilities.

11.3.1 Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

11.3.2 Contractor shall adhere to the requirements of (i) the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), (ii) Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), (iii) Section 255 of the Communications Act Guidelines, (iv) the applicable Revised Section 508 Standards published by the U.S. Access Board (<https://www.access-board.gov/ict/>), and (v) the Web Content Accessibility Guidelines (WCAG) 2.1, Level AA, as amended from time to time. Contractor shall ensure that all information content and technology provided under this Agreement fully conforms to the applicable Revised 508 Standard, as amended from time to time, prior to delivery and before the City's final acceptance of the Services and/or Deliverables. Contractor shall provide technical assistance to City when responding to reasonable accommodation requests from City employees respecting their use of the Services provided under this Agreement.

11.4 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.5 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code § 7920 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

11.6 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

11.7 Dispute Resolution Procedure.

11.7.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. Disputes will not be subject to binding arbitration. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the

written directions of City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

11.7.2 Government Code Claim Requirement. No suit for money or damages may be brought against City until a written claim therefor has been presented to and rejected by City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.8 Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.9 Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.10 Entire Agreement. This contract, including the Appendices, sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5 ("Modification of this Agreement").

11.11 Compliance with Laws. Contractor shall keep itself fully informed of City's Charter, codes, ordinances and duly adopted rules and regulations of City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.12 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

11.13 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.14 Order of Precedence. The Parties agree that this Agreement, including all Appendices, sets forth the Parties' complete agreement. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between City's terms and Contractor's printed terms, City's terms shall take precedence. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

Article 12 Department Specific Terms

12.1 Reserved.

Article 13 Data and Security

13.1 Management of City Data.

13.1.1 Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to City Data and any derivative works of City Data is the exclusive property of City. Contractor warrants that the SaaS Application does not maintain, store, or export City Data using a database structure, data model, entity relationship diagram or equivalent.

13.1.2 Use of City Data. Contractor agrees to hold City Data received from, created or collected on behalf of, City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by City. Access to City's City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to City Data, including user tracking and exception City Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

13.1.3 Access to and Extraction of City Data. City shall have access to City Data 24-hours a day, 7 days a week. The SaaS Application shall be capable of creating a digital, reusable copy of City Data, in whole and in parts, as a platform independent and machine-readable file. Such file formats include, without limitation, plain text files such as comma-delimited tables, extensible markup language, and javascript object notation. City Data that is stored in binary formats, including without limitation portable document format, JPEG, and portable network graphics files, shall instead be reproducible in the same format in which it was loaded into the SaaS Application. This reusable copy must be made available in a publicly documented and non-proprietary format, with a clearly-defined data structure and a data dictionary for all terms of art contained in the data. For purposes of this Section, non-proprietary formats include formats for which royalty-free codecs are available to End Users. Contractor warrants that City shall be able to extract City Data from the SaaS Application on demand, but no later than 24-hours of City's request, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees to Contractor).

13.1.4 Backup and Recovery of City Data. As a part of the SaaS Services, Contractor is responsible for maintaining a backup of City Data and for an orderly and timely recovery of such data in the event of data corruption or interruption of the SaaS Services. Unless

otherwise described in Appendices A and/or B, Contractor shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Agreement and as outlined in Appendix D and maintaining the security of City Data as further described herein. Contractor's backup of City Data shall not be considered in calculating storage used by City.

13.1.5 Data Breach; Loss of City Data. In the event of any Data Breach, act, SaaS Software Error, omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of City Data, Contractor shall, as applicable:

(a) Notify City immediately following discovery, but no later than twenty-four (24) hours, of becoming aware of such occurrence or suspected occurrence. Contractor's report shall identify:

- (i) the nature of the unauthorized access, use or disclosure;
- (ii) the Confidential Information accessed, used or disclosed;
- (iii) the person(s) who accessed, used, disclosed and/or received protected information (if known);
- (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and
- (v) what corrective action Contractor has taken or will take to prevent future unauthorized access, use or disclosure.

(b) In the event of a suspected Breach, Contractor shall keep City informed regularly of the progress of its investigation until the uncertainty is resolved;

(c) Contractor shall coordinate with City in its breach response activities including without limitation:

- (i) Immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;
- (ii) Promptly (within 2 business days) designate a contact person to whom City will direct inquiries, and who will communicate Contractor responses to City inquiries;
- (iii) As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by City, and undertake appropriate response activities;
- (iv) Provide status reports to City on Data Breach response activities, either on a daily basis or a frequency approved by City;

- (v) Make all reasonable efforts to assist and cooperate with City in its Breach response efforts;
- (vi) Ensure that knowledgeable Contractor staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and
- (vii) Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City.

(d) In the case of PII or PHI, at City's sole election, (a) notify the affected individuals as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (b) reimburse City for any costs in notifying the affected individuals;

(e) In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no fewer than twenty-four (24) months following the date of notification to such individuals;

(f) Perform or take any other actions required to comply with applicable law as a result of the occurrence;

(g) Recreate lost City Data in the manner and on the schedule set by City without charge to City; and

(h) Provide to City a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence.

(i) Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain (at City's election) information that may include: name and contact information of Contractor's (or City's) representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor.

(j) Contractor shall retain and preserve City Data in accordance with City's instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where City Data is stored.

(k) City shall conduct all media communications related to such Data Breach, unless in its sole discretion, City directs Contractor to do so.

13.2 Proprietary or Confidential Information.

13.2.1 Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement

may involve access to City Data, which includes proprietary or Confidential Information. Contractor and any subcontractors or agents shall use City Data only in accordance with all applicable local, state and federal laws restricting the access, use and disclosure of City Data and only as necessary in the performance of this Agreement. Contractor's failure to comply with any requirements of local, state or federal laws restricting access, use and disclosure of City Data shall be deemed a material breach of this Agreement, for which City may terminate the Agreement. In addition to termination or any other remedies set forth in this Agreement or available in equity or law, City may bring a false claim action against Contractor pursuant to Chapters 6 or 21 of the Administrative Code, or debar Contractor. Contractor agrees to include all of the terms and conditions regarding City Data contained in this Agreement in all subcontractor or agency contracts providing services under this Agreement.

13.2.2 Obligation of Confidentiality. Subject to San Francisco Administrative Code Section 67.24(e), any state open records or freedom of information statutes, and any other applicable laws, Contractor agrees to hold all City Data in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such City Data to third-parties other than its employees, agents, or authorized subcontractors who have a need to know in connection with this Agreement or to use such City Data for any purposes whatsoever other than the performance of this Agreement. Contractor agrees to advise and require its respective employees, agents, and subcontractors of their obligations to keep all City Data confidential.

13.2.3 Nondisclosure. Contractor agrees and acknowledges that it shall have no proprietary interest in any City Data and will not disclose, communicate or publish the nature or content of such information to any person or entity, nor use, except in connection with the performance of its obligations under this Agreement or as otherwise authorized in writing by City, any of City Data it produces, receives, acquires or obtains from City. Contractor shall take all necessary steps to ensure that City Data is securely maintained. Contractor's obligations set forth herein shall survive the termination or expiration of this Agreement. In the event Contractor becomes legally compelled to disclose any City Data, it shall provide City with prompt notice thereof and shall not divulge any information until City has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by City are unsuccessful, or City otherwise waives its right to seek such remedies, Contractor shall disclose only that portion of City Data that it is legally required to disclose.

13.2.4 Litigation Holds. Contractor shall retain and preserve City Data in accordance with City's instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where City Data is stored.

13.2.5 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to any City Data under this Agreement, and in no event later than twenty-four (24) hours after Contractor receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where City Data is stored.

13.2.6 Cooperation to Prevent Disclosure of City Data. Contractor shall use its best efforts to assist City in identifying and preventing any unauthorized use or disclosure of any City Data. Without limiting the foregoing, Contractor shall advise City immediately in the event Contractor learns or has reason to believe that any person who has had access to City Data has violated or intends to violate the terms of this Agreement and Contractor will cooperate with City in seeking injunctive or other equitable relief against any such person.

13.2.7 Remedies for Breach of Obligation of Confidentiality. Contractor acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to City, which damage may be inadequately compensable in the form of monetary damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available, to include, at the sole election of City, the immediate termination of this Agreement, without liability to City.

13.2.8 Surrender of City Data upon Termination. Upon termination of this Agreement, including but not limited to expiration of the term, early termination or termination for convenience, Contractor shall, within five (5) calendar days from the date of termination, return to City any and all City Data received from City, collected or created by Contractor on behalf of City, which are in Contractor's possession, custody, or control. The return of City Data to City shall follow the timeframe and procedure described further in this Agreement (Article 8).

13.2.9 Data Security. To prevent unauthorized access of City Data,

(a) Contractor shall at all times during the Term provide and maintain up-to-date security systems and procedures, and adjust its security systems and procedures in response to relevant changes in technology, with respect to (a) the Services, (b) Contractor's Website, (c) Contractor's physical facilities, (d) Contractor's infrastructure, and (e) Contractor's networks.

(b) Contractor shall provide security for its networks and all Internet connections consistent with industry best practices, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs.

(c) Contractor will maintain appropriate safeguards to restrict access to City Data to those employees, agents or service providers of Contractor who need the information to carry out the purposes for which it was disclosed to Contractor.

(d) For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., most current industry standard encryption for transport and storage, such as the National Institute of Standards and Technology's Internal Report 7977 or Federal Information Processing Standards [FIPS] 140-2 [Security Requirements for Cryptographic Modules] or FIPS-197 or successors, intrusion prevention/detection or similar barriers) and secure authentication (e.g., password protected) access to hosted City Data.

(e) For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of City Data.

(f) City Data shall be encrypted at rest and in transit with controlled access.

(g) Contractor will establish and maintain any additional physical, electronic, administrative, technical and procedural controls and safeguards to protect City Data that are no less rigorous than accepted industry practices (including, as periodically amended or updated, the International Organization for Standardization's standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for Information Security Management, NIST Special Publication 800-53 Revision 5 or its successor, NIST Special Publication 800-18 or its successor, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards or other applicable industry standards for information security), and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

(h) Contractor warrants to City compliance, in performing its obligations hereunder, with the following (as periodically amended or updated) as applicable:

- (i) The California Information Practices Act/California Consumer Privacy Act (Civil Code §§ 1798 et seq);
- (ii) The European General Data Protection Regulation ("GDPR");
- (iii) Relevant security provisions of the Internal Revenue Service (IRS) Publication 1075, including the requirements that Data not traverse networks located outside of the United States;
- (iv) Relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCI DSS) including the PCI DSS Cloud Computing Guidelines;
- (v) Relevant security provisions of the Social Security Administration (SSA) Document Electronic Information Exchange Security Requirement and Procedures for State and Local Agencies Exchanging Electronic Information with the Social Security Administration;
- (vi) Relevant security provisions of the Criminal Justice Services (CJIS) Security policy;
- (vii) Relevant security provisions of the Medi-Cal Privacy and Security Agreement between the California Department of Health Care Services and the County of San Francisco.

13.2.10 Data Privacy and Information Security Program. Without limiting Contractor's obligation of confidentiality as further described herein, Contractor shall establish and maintain a data privacy and information security program and procedures in response to relevant changes in technology and internal and external threats to information security, including physical, technical, administrative, and organizational safeguards, that is designed to: (i) ensure the security and confidentiality of City Data; (ii) protect against any anticipated threats

or hazards to the security or integrity of City Data; (iii) protect against unauthorized disclosure, access to, or use of City Data; (iv) ensure the proper disposal of City Data; and (v) ensure that all of Contractor's employees, agents, and subcontractors, if any, comply with all of the foregoing.

13.2.11 City's Right to Termination for Deficiencies. City reserves the right, at its sole election, to immediately terminate this Agreement, without limitation and without liability, if City reasonably determines that Contractor fails or has failed to meet its obligations under this Article 13.

13.2.12 Data Transmission. Contractor shall ensure that all electronic transmission or exchange of system and application data with City and/or any other parties expressly designated by City shall take place via encrypted secure means (e.g. HTTPS or SFTP or most current industry standard established by NIST). Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor shall ensure that no City Data of any kind shall be copied, modified, destroyed, deleted, transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City. Contractor is prohibited from accessing City Data from outside the United States except as provided for in Section 4.2.2(b)(ii) of this Agreement.

13.3 American Institute of Certified Public Accounts (AICPA) Audit Reports.

13.3.1 Contractor shall provide to City, on an annual basis, an SSAE 18, SOC 2, Type 2 Report, and an SSAE 18, SOC 1, Type 2 Audit Report, to be conducted by an independent third party ("Audit Reports") (if Contractor is using a hosting service provider, Contractor shall provide such Audit Reports it receives from its service provider or providers) as follows: (a) the Audit Reports shall include a 365 day (12-month) testing period; and (b) the Audit Reports shall be available to City no later than thirty (30) days after they are received by Contractor. If Contractor receives a so-called "negative assurance opinion," or the annual Audit Report finds a material data privacy or information security issue, Contractor shall notify City of such opinion within three (3) days of receipt by Contractor. Contractor shall implement reasonably required safeguards as identified by any audit of Contractor's data privacy and information security program or promptly notify City in writing if Contractor is unable to implement mitigation measures to address the issue(s). Upon any such notification, City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

13.3.2 Audit of Contractor's Policies. Contractor agrees to make its policies, procedures and practices regarding Data Security available to City, if needed, and agrees that City reserves the rights, including, but not limited to, making a site visit, scanning for malicious codes, and hiring a third-party to perform a security audit if City determines that the Audit Report is unsatisfactory.

13.3.3 Information Security Audits. Contractor must contract with an independent third party to perform yearly information security audits of their primary and backup Data Centers. The annual audits must include an outside penetration/vulnerability test, and internal penetration and vulnerability tests with the third-party directly on the internal

network. The summary results of the audits must be shared with City. All audit findings must be remedied.

13.3.4 Audit Findings. Contractor shall implement reasonably required safeguards as identified by City or by any audit of Contractor's data privacy and information security program.

13.4 Reserved.

13.5 Protected Health Information. Contractor, all subcontractors, all agents and employees of Contractor, and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all PHI disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Contract. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of PHI given to Contractor or its subcontractors or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, City may terminate the Agreement.

13.6 Reserved.

Article 14 Force Majeure

14.1 Liability. No Party shall be liable for delay in the performance of its obligations under this Agreement if and to the extent such delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, or any other cause beyond the reasonable control of such Party (a "Force Majeure Event"). In the case of a Force Majeure Event, Contractor shall immediately commence disaster recovery services as described in Section 14.4.

14.2 Duration. In a Force Majeure Event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by telephone (to be confirmed in writing within two (2) days of the inception of such delay) describing the nature of the delay and the non-performing Party's estimate of the length of the delay.

14.3 Effect. If a Force Majeure Event substantially prevents, hinders, or delays performance of the Services as critical for more than fifteen (15) consecutive days, then at City's option: (i) City may terminate any portion of this Agreement so affected and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; or (ii) City may terminate this Agreement without liability to City or Contractor as of a date specified by City in a written notice of termination to Contractor. Contractor shall not have the right to any additional payments from City for costs or expenses incurred by Contractor as a result of any force majeure condition that lasts longer than three (3) days.

14.4 Disaster Recovery. In the event of a disaster, as defined below, Contractor shall provide disaster recovery services in accordance with the provisions of the disaster recovery plan attached as Appendix E hereto, or as otherwise set forth in this Agreement or any Statement of Work. Notwithstanding Section 14.1, a Force Majeure Event shall not excuse Contractor of its obligations for performing disaster recovery services as provided in this Section. In the event that a disaster occurs and Contractor fails to restore the hosting services within 24 hours of the initial disruption to Services, City may, in its discretion, deem such actions to be a material default by Contractor incapable of cure, and City may immediately terminate this Agreement. For purposes of this Agreement, a “disaster” shall mean an interruption in the hosting services or the inability of Contractor to provide City with the SaaS Application and hosting services for any reason that could not be remedied by relocating the SaaS Application and hosting services to a different physical location outside the proximity of its primary Data Center.

14.5 Acknowledgment of Obligations. Contractor expressly acknowledges and agrees that in no circumstance will a Force Majeure Event relieve it from any of its security, disaster recovery, and/or business continuity obligations set forth in this Agreement. Additionally, obligations of indemnification under this Agreement will not be relieved, delayed, or limited due to Force Majeure Events.

Article 15 Appendices

15.1 Appendices. The following appendices are hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

Appendices:

- A. SaaS Implementation and Training Services
- B. SaaS Application & Hosting Services
- C. Calculation of Charges
- D. Service Level Obligations
- E. Disaster Recovery Plan
- F. Business Associate Agreement

Article 16 MacBride And Signature

16.1 MacBride Principles - Northern Ireland. The provisions of San Francisco Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Recommended by:

[company name]

[name]
[title]
[department]

[name of authorized representative]
[title]
[optional: address]
[optional: city, state, ZIP]

City Supplier Number: [Supplier Number]

Approved as to Form:

David Chiu
City Attorney

By: _____
Mary Kamikihara
Deputy City Attorney

Approved:

Sailaja Kurella
Director of the Office of Contract Administration,
and Purchaser

By: _____
[name of Purchaser or "Name: _____"]

Appendix A SaaS Implementation and Training Services

1. Project Definitions

2. Preexisting Data

3. Description of Services

4. Location of Work

5. Project Deliverables

The Contractor shall provide each of the following deliverables in writing to City for review and approval to achieve the project objectives.

- a. Deliverable 1:
- b. Deliverable 2:
- c. Deliverable 3:
- d. Deliverable 4:
- e. Etc.

6. Project Schedule

Deliverable	Due Date
Deliverable 1	
Deliverable 2	
Etc.	

7. Project Evaluation

8. Reports

Contractor shall submit written reports as requested by the [insert name of department]. Format for the content of such reports shall be determined by the [insert name of department]. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

9. Department Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the [insert name of department] will be [insert name of contact person in department].

10. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

Appendix B

SaaS Application & Hosting Services

- I. Description of the SaaS Application and Hosted Services**
- II. SaaS Data Centers**
- III. SaaS Maintenance Services**
- IV. City Responsibilities**
- V. Technical Support & Training**

I. Description of the SaaS Application and Hosted Services: “SaaS Application and Hosted Services” include the following services:

A. Software: Use of Contractor’s Software operating on hosted equipment located at Contractor’s facility and/or any Data Center as further outlined under Section II (SaaS Data Centers) of this Appendix B. This includes:

- 1. ...
- 2.
- 3.

B. Third-Party Software:

1. Providing certain third-party software required to operate the SaaS Software, including, and other bundled third-party software packages required to support the operation of the SaaS Software.

2. Inclusion of regular Software and Contractor-supplied third-party software updates, patches and fixes as scheduled by Contractor.

C. Remote Software: Contractor shall provide access to and use of a remote software tool for City management of Authorized Users, access rights and other similar role-based controls as they pertain to the SaaS Services. Method will be published through Contractor portal and be made available to Authorized Users with elevated privileges.

D. Back-Up of City Data:

1. Contractor shall provide up to thirty-six (36) months of on-line hourly data retention for SaaS Software operation and functionality.

2. Contractor shall provide incremental City Data backups at a minimum of every four (4) hours to an off-site location other than the primary hosting center.

3. Contractor shall provide weekly, off-site backups with a duration that matches the agreed-upon backup schedule and retention to a location other than the primary hosting center. Off-site backups to include previous eight (8) weeks.

E. SaaS Environments: The SaaS Application and Hosted Services shall be hosted in a certified and secure Tier-3 data hosting center.

1. A single Back-up Environment available as needed to serve as the backup or “failover” environment for the SaaS and Hosted Services

2. A single test environment available to City and Contractor for the evaluation and eventual promotion of SaaS Software updates, patches, fixes or otherwise deemed tests. Test Environment shall perform at fifty percent (50%) or better of production environment.

F. Reporting: Contractor shall provide electronic notification within 2 hours of discovery and subsequent monthly reporting of any incidents or breaches that had occurred within the environment or to the hosted application. In the event of a breach, Contractor shall follow the procedures set forth in Section 13.1.5 of the Agreement.

G. Availability of SaaS Services: Contractor (or its Hosting Service contractor) shall host the **SaaS Services** on computers owned or controlled by Contractor (or its contractor) and shall provide City with access to both a production environment with SaaS Application and data and a test environment with SaaS Application via Internet-access to use according to the terms herein.

1. Hosted System Uptime: Other than Scheduled SaaS Maintenance Services as outlined in Section III, emergency maintenance described below, Force Majeure as described in the Agreement and lack of Internet availability as described below, Contractor shall provide uptime to the SaaS Application and Hosted Service to achieve a 99.9% Service Level Availability.

2. Scheduled SaaS Maintenance

i. Contractor shall conduct Scheduled SaaS Maintenance during the following hours: Saturdays between 12 AM (Pacific Time) and 8 AM (Pacific Time), with the same exclusions noted in subsection 1, above.

ii. Scheduled SaaS Maintenance shall not exceed an average of 4 hours per month over a twelve (12) month period except for major scheduled upgrades.

3. Unscheduled SaaS Maintenance. Contractor shall use commercially reasonable efforts to prevent more than one (1) hour of continuous down time during business hours in any month for which unscheduled SaaS maintenance is required. If Contractor fails to meet this obligation for a period of three successive calendar months, Contractor shall furnish City with a Performance Credit in the amount of ten percent (10%) of the Services Fees (as calculated on a monthly basis for the reporting month).

4. Emergency Maintenance. If Force Majeure Events or emergencies arise or continue, Contractor shall be entitled to take any actions that Contractor, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the SaaS systems or the SaaS Software. Such emergency maintenance may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the SaaS Software by City is made available. Contractor shall endeavor to provide advance written notice of such emergency maintenance to City as soon as is reasonably possible.

5. Notice of Unavailability: In the event there will be more than thirty (30) minutes down time of any SaaS or Hosted Service components for any reason, including but not limited to, Scheduled SaaS Maintenance or emergency maintenance, Contractor shall provide notice to users by posting a web page that indicates that the site is temporarily unavailable and to please come back later. Contractor shall also provide advanced e-mail notice to XXXX@sfgov.org which will include at least a brief description of the reason for the down time and an estimate of the time when City can expect the site to be up and available.

H. Changes in Functionality. During the term of this Agreement, Contractor shall not reduce or eliminate functionality in SaaS Services. Where Contractor has reduced or eliminated functionality in SaaS Services, City, in its sole election, shall: (i) have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees; or, (ii) determine the value of the reduced or eliminated functionality and Contractor shall immediately adjust the Services fees accordingly on a prospective basis. Where Contractor increases functionality in the SaaS Services, such functionality shall be provided to City without any increase in the Services fees.

II. SaaS Data Centers

A. Control: The method and means of providing the Services shall be under the exclusive control, management, and supervision of Contractor, giving due consideration to the requests of City. Contractor, or any previously approved subcontractor, shall provide the Services (including data storage) on Data Centers solely from within the United States.

B. Data Center Standards.

Contractor's Data Centers shall have fully redundant and diverse network paths to City endpoints. Data Centers shall be located in geographically different seismic zones characterized by the lowest predicted chance of damage as defined by the US Geological Survey Earthquake Hazards Program.

Environmental systems must monitor/detect temperature, humidity, fluid leaks, fire/smoke/particulate and have accompanying suppression systems. Fire suppression systems should be dry pipe. Power should be fully conditioned to avoid spikes and other aberrations that can damage equipment. Temporary power units, such as generators, must be in place to support SaaS Services in the event of a power outage for up to three calendar days, and fuel replenishment contracts must be in place to keep temporary power operational for longer periods.

C. Location: The location of the approved Data Centers that will be used to host the SaaS Application are as follows:

Primary Tier 3 data center:

[name and address]\

Back-up Tier 2 data center:

[name and address]

D. Replacement Hosted Provider: In the event Contractor changes the foregoing Hosted Provider, Contractor shall provide City with prior written notice of said change and disclose the name and location of the replacement Hosted Provider. The replacement Hosted Provider shall be a reputable Hosted Provider comparable to Contractor's current Hosted Provider, and said replacement Hosted Provider shall be located within the United States. The replacement Hosted Provider shall perform a SSAE 18, SOC 1 and/or SOC 2, Type 2 Report Audit Report at least annually, in accordance with Section 13.3 of this Agreement.

E. Notice of Change: If the location of the Data Center used to host the SaaS Application is changed, Contractor shall provide City with written notice of said change at least sixty (60) days prior to any such change taking place. Contractor shall disclose the address of the new facility, which shall be within the United States. The Data Centers referenced above are subcontractors that must be approved by City.

F. Subcontractors. Contractor shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Agreement, without City's prior written consent and any attempt to do so shall be void and without further effect and shall be a material breach of this Agreement. Contractor's use of subcontractors shall not relieve Contractor of any of its duties or obligations under this Agreement.

III. SaaS Maintenance Services.

A. The SaaS Software maintained under this Agreement shall be the SaaS Software set forth in Appendix A to this Agreement.

B. The following SaaS Maintenance Services are included as part of this Agreement:

1. Contractor Software Version Upgrades, Software Revisions and Patches. Contractor shall provide and implement all SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches to ensure: (a) that the functionality of the SaaS Software and Services, as described in the Documentation, is available to Authorized Users; (b) that the functionality of the SaaS Software and Services is in accordance with the representations and warranties set forth herein, including but not limited to, the SaaS Software and Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the Documentation; (c) that the Service Level Standards can be achieved; and (d) that the SaaS Software Services work with the non-hosted browser version.

- i. **Planning:** Contractor must assist City with the planning and logistics of upgrades and updates.
- ii. **Technical Assistance.** Contractor must provide technical assistance regarding release notes, new functionality, and new application workflows.
- iii. **Deployment:** Deployment of these revisions will be mutually agreed upon between Contractor and City.
- iv. **Software Releases:** Release of Software revisions as defined will be conducted on a schedule as determined by Contractor. Contractor shall provide no less than a thirty (30) calendar day prior written notice of when any such revision is scheduled to be released. City will be granted a fifteen (15) calendar day evaluation window to review release documentation regarding software modules being impacted and general revision changes.
- v. **Testing.** After the evaluation period, Contractor shall conduct a deployment of the revision to City test environment. The Software deployment will be scheduled in writing five (5) calendar days prior to actual deployment activities. As part of the upgrade activities within the Test Environment, Contractor may provide nominal testing to ensure all systems are functional and the revision deployment was successful. Post deployment activities include an e-mail or portal post to serve as written notification that this service has been completed. City shall have forty-five (45) calendar day test window in which City has ability to test and raise issues with Contractor. Test environment deployment activities will be conducted during a mutually agreed-to time window and may not necessarily align with the production maintenance windows as described within this document.
- vi. **Severity 1 and Severity 2 Incident Correction:** If a SaaS Severity Level 1 or Severity Level 2 Issue is identified and appropriately triaged and classified by both Contractor and City during the test environment deployment test window, Contractor shall correct the SaaS Issue. The severity of a SaaS Issue will be initially defined by City and confirmed by Contractor. Until the SaaS Issue has been resolved, the Severity Level may be raised or lowered based on Contractor's analysis of impact to business. If the SaaS Issue can be corrected and can be redeployed within the remainder of the deployment test window, City will have an additional five (5) testing days in which to evaluate and further test for the SaaS Issue resolution. If the SaaS Issue cannot be corrected within the remainder of the test window, Contractor will deploy immediately upon availability with as much notice as practicable.

City will be allowed an additional five (5) testing days to evaluate the correction post the test window if desired.

- vii. **Testing Suspension:** If at any time during the testing window City identifies the presence of multiple SaaS Severity Level 1 or Severity Level 2 Issues that can be shown to materially impact City ability to continue testing, City may in writing elect to suspend testing until corrections for the SaaS Issues can be provided. Contractor will deploy corrections immediately upon availability with as much notice as practicable. Upon release of corrections, City will have five (5) calendar days to commence the testing within the then available remaining testing window.
- viii. **Software Promotion:** Contractor will promote revision from Test Environment to Production and Back-up environments after the provided test window has elapsed. The Software promotion will be scheduled in writing five (5) calendar days prior to actual deployment activities. As part of the promotion activities within the Production and Back-up environment, Contractor may provide nominal testing to ensure all systems are functional and the revision promotion was successful. Post promotion activities include an e-mail or portal post to serve as written notification that this service has been completed. At the point of e-mail or portal posting, the new revision will be considered “in production” and supported under the maintenance service terms described here within.
- ix. **Documentation.** In support of such SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software patches, Contractor shall provide updated user technical documentation reflecting the SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software patches as soon as reasonably practical after the SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches have been released. Updated user technical documentation that corrects SaaS Software Errors or other minor discrepancies will be provided to Contractor’s customers when available.
- x. **Training.** Contractor must provide standard training using Contractor’s upgrade tools and provide ongoing knowledge transfer to City.

2. Third-Party Software Revisions. At its election, Contractor will provide periodic software revisions of Third-Party Software with the SaaS Software without further charge provided the following conditions are met: (i) the Third-Party Software revision corrects a malfunction or significant publicly disclosed security threat in the Third-Party Software that affects the operation or ability to provide secure use of the SaaS Software; (ii) the Third-Party

Software Revision has, in the opinion of Contractor, corrected malfunctions or a significant security threat identified in Contractor's Technology System and has not created any additional malfunctions; and (iii) the Third-Party Software revision is available to Contractor. City is responsible for obtaining and installing or requesting installation of the Third-Party Software revision if the Third-Party Software was not licensed to City by or through Contractor. Contractor Software revisions provided by Contractor are specifically limited to the Third-Party Software identified and set forth in Appendix B to this Agreement.

C. Response to SaaS Issues. Contractor shall provide verbal or written responses to SaaS Issues identified by City in an expeditious manner. Such responses shall be provided in accordance with the Target Response Times defined under Section V (Technical Support).

D. SaaS Software Maintenance Acceptance Period. Unless otherwise agreed to by City on a case-by-case basis, for non-emergency maintenance, City shall have a twenty (20) business day period to test any maintenance changes prior to Contractor introducing such maintenance changes into production. If City rejects, for good cause, any maintenance changes during the SaaS Software Maintenance Acceptance Period, Contractor shall not introduce such rejected maintenance changes into production. At the end of the Maintenance Acceptance Period, if City has not rejected the maintenance changes, the maintenance changes shall be deemed to be accepted by City and Contractor shall be entitled to introduce the maintenance changes into production.

E. SaaS Hardware: Contractor shall use commercially reasonable efforts to ensure that all hardware (including servers, routers, and other related equipment) on which the SaaS Application is deployed are attached to back-up power systems sufficient to maintain the site's availability for so long as any power outage could reasonably be expected to occur, based on the experience of Contractor at its deployment location and consistent with the Tier rating of the Data Center required under Section (I)(E) of this Appendix.

IV. City Responsibilities

A. City shall provide Contractor with timely notification of any SaaS Issues or SaaS Software Errors by either of these methods:

1. **Contacting Contractor's Customer Support at 1-800-xxx-xxxx.**
2. **By entering the problem on Contractor's Service Portal.** Notifications can be submitted through the City Portal. This is the preferred method by which to contact Contractor.
3. If City cannot readily access Contractor's portal, City may contact Contractor at the "800" number listed above.

B. Support for Problem Investigation. City shall support all reasonable requests by Contractor as may be required in problem investigation and resolution.

C. SaaS Incident Manager: Designation of Point of Contact. City shall assign an individual or individuals to serve as the designated contact(s) for all communication with Contractor during SaaS Issue investigation and resolution.

D. Discovery of SaaS Software Errors. Upon discovery of a SaaS Software Error, City agrees, if requested by Contractor, to submit to Contractor a listing of output and any other data that Contractor may require in order to reproduce the SaaS Software Error and the operating conditions under which the SaaS Software Error occurred or was discovered.

V. 24X7 Technical Support:

A. 24x7 Technical Support: Authorized Users will make Technical Support requests 24/7 by calling or submitting a request via Contractor's service desk web portal. The Technical Support staff shall assign to the request the Incident Severity Level indicated by City. Severity Level 1 and 2 Incidents items will be addressed 24/7/365. Severity Level 3 and 4 Incidents will be addressed during the standard business hours of 6:00 a.m. - 6:00 p.m. US Pacific Time.

Incident Severity Level	<i>Target Response Time</i>
Severity Level 1: Requires immediate attention– Critical production functionality is not available or a large number of users cannot access the SaaS Application. Causes a major business impact where service is lost or degraded and no workaround is available, preventing operation of the business.	Request Response Time: 15 minutes. Request Resolution Time Target: < 2 hours. Maximum Permitted Request Resolution Time: < 12 hours <i>City shall be entitled to a Service Credit of 15% of the Monthly Hosting Fee paid for each failure timely to achieve resolution. If Fees are paid annually, the 15% shall apply to 1/12 of that annual fee.</i>
Severity Level 2: Requires priority attention - Some important production functionality is not available, or a small number of users cannot access the system. Causes significant business impact where service is lost or degraded and no workaround is available; however, the business can continue to operate in a limited fashion.	Request Response Time: 30 minutes Request Resolution Time Target: < 4 hours Maximum Permitted Request Resolution Time: < 48 hours <i>City shall be entitled to a Service Credit of 10% of the Monthly Hosting Fee paid for each failure timely to achieve resolution. If Fees are paid annually, the 10% shall apply to 1/12 of that annual fee.</i>

Incident Severity Level	<i>Target Response Time</i>
Severity Level 3: Requires attention –There is a problem or inconvenience. Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.	Request Response Time: 1 hr. Request Resolution Time Target: < 8 hours Maximum Permitted Request Resolution Time: < 96 hours <i>City shall be entitled to a Service Credit of 5% of the Monthly Hosting Fee paid for each failure timely to achieve resolution. If Fees are paid annually, the 15% shall apply to 1/12 of that annual fee.</i>
Severity Level 4: There is a problem or issue with no loss of service and no business impact.	Request Response Time: 4 hr. Request Resolution Time Target: < 96 hours Maximum Permitted Request Resolution Time: < 7 days

1. SERVICE CREDIT ESCALATION.

In the event of a Severity Level 1 issue that is not resolved sufficiently quickly as determined in City's sole discretion, City may escalate the problem to Contractor's Chief Technology Officer.

2. ROOT CAUSE ANALYSIS

Following the resolution of a Severity Level 1 OR Level 2 incident, Contractor will discuss with City the cause of the failure, the actions Contractor took to resolve the failure, a timeline of the event and the actions Contractor plans to take to prevent such failure from recurring, and, if requested, Contractor will provide City a written summary of such discussion. Contractor will, on request, provide detailed documentation of the root cause analysis and preventative actions taken or planned with clear dates for completion of the action(s).

Appendix C Calculation of Charges

- 1. Project Cost.** In accordance with Article 3 of this Agreement, Contractor's total compensation under this Agreement is detailed below, inclusive of all costs required to complete all work specified in Appendix A. In no event shall the total costs under this Agreement exceed the amount provided in Article 3, Section 3.3, of this Agreement.

Deliverable or Description	Target Completion Dates	Cost
Total Cost		

- 2. Fixed Price v Time and Materials.**

- 3. Travel and Expense Reimbursement.**

- 4. Price Adjustments.**

Contractor's Prices or Rates are to be firm for the first two years of the Agreement.

Thereafter, City and Contractor may agree to increase Contractor's Prices or Rates by an amount mutually acceptable to the parties.

- 5. Retainage.**

- 6. Invoicing.**

- 7. Other.**

Appendix D

Service Level Obligations

A. Time is of the Essence. For the term of this Agreement, Contractor shall provide SaaS Services, Force Majeure events excepted, during the applicable Service Windows and in accordance with the applicable Service Levels as described herein, time being of the essence.

B. Service Levels.

1. Availability Service Level:

a. Definitions:

- i. Actual Uptime:** The total minutes in the reporting month that the Services were actually available to Authorized Users for normal use.
- ii. Scheduled Downtime:** The total minutes in the reporting month during which Scheduled SaaS Maintenance was performed.
- iii. Scheduled Uptime:** The total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.

b. Service Level Standard. Services shall be available to Authorized Users for normal use 100% of the Scheduled Uptime.

- i. Calculation:** $(\text{Actual Uptime} / \text{Scheduled Uptime}) * 100 = \text{Percentage Uptime}$ (as calculated by rounding to the second decimal point)

ii. Performance Credit.

- 1) Where Percentage Uptime is greater than 99.9%:** No Performance Credit will be due to City.
- 2) Where Percentage Uptime is equal to or less than 99.9%:** City shall be due a Performance Credit in the amount of 20% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Uptime.

2. Response Time Service Level.

a. Definition(s).

i. Response Time: The interval of time from when an Authorized User requests, via the Services, a Transaction to when visual confirmation of Transaction completion is received by the Authorized User. For example, Response Time includes the period of time representing the point at which an Authorized User enters and submits data to the Services and the Services display a message to the Authorized User that the data has been saved.

- ii. **Total Transactions:** The total of Transactions occurring in the reporting month.
- iii. **Transaction(s):** Services web page loads, Services web page displays, and Authorized User Services requests.

b. **Service Level Standard.** Transactions shall have a Response Time of two (2) seconds or less 99.9% of the time each reporting month during the periods for which the Services are available.

- i. **Calculation.** $((\text{Total Transactions} - \text{Total Transactions failing Standard}) / \text{Total Transactions}) * 100 = \text{Percentage Response Time}$ (as calculated by rounding to the second decimal point).

ii. **Performance Credit.**

- 1) **Where Percentage Response Time is greater than 99.9%:** No Performance Credit will be due to City.
- 2) **Where Percentage Response Time is equal to or less than 99%:** City shall be due a Performance Credit in the amount of 20% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Response Time.

3. **Technical Support Problem Response Service Level.**

a. **Definition.**

- i. **Total Problems:** The total number of problems occurring in the reporting month.

b. **Service Level Standard.** Problems shall be confirmed as received by Contractor 100% of the time each reporting month, in accordance with the Request Response Time associated with the SaaS Severity Level.

- i. **Calculation.** $((\text{Total Problems} - \text{Total Problems failing Standard}) / \text{Total Problems}) * 100 = \text{Percentage Problem Response}$ (as calculated by rounding to the second decimal point). Note: This Calculation must be completed for each SaaS Severity Level.

ii. **Performance Credit.**

1) **SaaS Severity Level 1 – 2.**

- i) **Where Percentage Problem Response is greater than 99.9%:** No Performance Credit will be due to City.

- ii) **Where Percentage Problem Response is equal to or less than 99%:** City shall be due a Performance Credit in the amount of 20% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.

2) SaaS Severity Level 3 – 4.

- i) **Where Percentage Problem Response is greater than 99.9%:** No Performance Credit will be due to City.
- ii) **Where Percentage Problem Response is equal to or less than 99%:** City shall be due a Performance Credit in the amount of 20% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.

C. Service Level Reporting. On a monthly basis, in arrears and no later than the fifteenth (15th) calendar day of the subsequent month following the reporting month, Contractor shall provide reports to City describing the performance of the SaaS Services and of Contractor as compared to the service level standards described herein. The reports shall be in a form agreed-to by City, and, in no case, contain no less than the following information: (a) actual performance compared to the Service Level Standard; (b) the cause or basis for not meeting the service level standards described herein; (c) the specific remedial actions Contractor has undertaken or will undertake to ensure that the service level standards described herein will be subsequently achieved; and, (d) any Performance Credit due to City. Contractor and City will meet as often as shall be reasonably requested by City, but no less than monthly, to review the performance of Contractor as it relates to the service level standards described herein. Where Contractor fails to provide a report for a service level standard described herein in the applicable timeframe, the service level standard shall be deemed to be completely failed for the purposes of calculating a Performance Credit. Contractor shall, without charge, make City's historical service level standard reports to City upon request.

D. Failure to Meet Service Level Standards. In the event Contractor does not meet a service level standard described herein, Contractor shall: (a) owe to City any applicable Performance Credit, as liquidated damages and not as a penalty; and, (b) use its best efforts to ensure that any unmet service level standard described herein is subsequently met. Notwithstanding the foregoing, Contractor will use its best efforts to minimize the impact or duration of any outage, interruption, or degradation of Service. In no case shall City be required to notify Contractor that a Performance Credit is due as a condition of payment of the same.

E. Termination for Material and Repeated Failures. City shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees where Contractor fails to meet any service level standards described herein: (a) to such an extent that City's ability, as solely

determined by City, to use the SaaS Services is materially disrupted, Force Majeure events excepted; or, (b) for four (4) months out of any twelve (12) month period.

F. Audit of Service Levels. No more than quarterly, City shall have the right to audit Contractor's books, records, and measurement and auditing tools to verify service level obligations achievement and to determine correct payment of any Performance Credit. Where it is determined that any Performance Credit was due to City but not paid, Contractor shall immediately owe to City the applicable Performance Credit.

Appendix E

Disaster Recovery Plan

Contractor shall maintain a high availability configuration in the primary data center, with a mirrored instance of City production system and supporting infrastructure in the secondary data center. Contractor shall maintain a standard procedure that governs the management of business continuity events. A disaster recovery test plan must be reviewed and exercised at least annually. Upon reasonable notice from City, disaster recovery testing documentation shall be made available to City. Contractor will provide City's Chief Information Security Officer with access to review business continuity and disaster recovery plan.

Contractor shall provide City with a business continuity strategy and disaster recovery plan and procedures that can be implemented in the event of a catastrophic failure at the primary hosting site. Such a strategy should provide how quickly the secondary site will be available to Authorized Users. The business continuity strategy must include drills and exercises to test the readiness to execute the disaster recovery plan. If requested, the first drill must happen within six months of contract signing and then once per year thereafter. The drill plans, action items and project plan for follow-ups must be shared with City.

Appendix F
Business Associate Agreement