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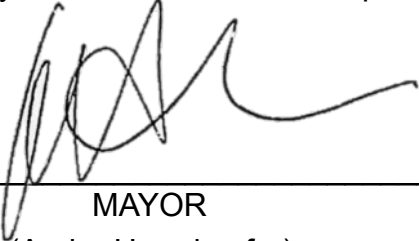
**TRANSMITTAL**

TO The City Council	DATE 11/02/2022	COUNCIL FILE NO.
FROM The Mayor		COUNCIL DISTRICT

**Professional Services Agreement with Ventiv Technology, Inc. to continue providing an integrated workers' compensation claims management system including claims enterprise software licenses, maintenance and support, and hosting services.**

Transmitted for your consideration. The Council has 60 days from the date of receipt to act, otherwise the contract will be deemed approved pursuant to Administrative Code Section 10.5(a).

Please see the City Administrative Officer report attached.



\_\_\_\_\_  
MAYOR  
(Andre Herndon for)

MWS:RR:11230035t

**Report From**  
**OFFICE OF THE CITY ADMINISTRATIVE OFFICER**  
**Analysis of Proposed Contract**  
(\$25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 11-01-22	C.D. No. Various	CAO File No.: 0150-12198-0000				
Contracting Department/Bureau: Personnel Department		Contact: Michael Daco (213) 473-9195					
Reference: Personnel Department transmittal dated August 30, 2022; referred by Mayor for report on September 1, 2022. The Personnel Department submitted a revised transmittal to this Office dated October 20, 2022 on October 27, 2022.							
Purpose of Contract: To provide an integrated workers' compensation claims management system including claims enterprise software licenses, maintenance and support, and hosting services.							
Type of Contract: (X) New contract ( ) Amendment	Contract Term Dates: June 30, 2022 through June 29, 2027						
Contract/Amendment Amount: \$4,101,885							
Proposed amount \$4,101,885 + Prior award(s) \$0 = Total \$4,101,885							
Source of funds: General Fund							
Name of Contractor: Ventiv Technology, Inc.							
Address: Bishop Ranch 8, 5000 Executive Parkway, Suite 340, San Ramon, CA 94583							
	Yes	No	N/A	Contractor has complied with:	Yes	No	N/A
1. Council has approved the purpose	X			8. Business Inclusion Program			X
2. Appropriated funds are available	X			9. Equal Benefits & First Source Hiring Ordinances	X		
3. Charter Section 1022 findings completed	X			10. Contractor Responsibility Ordinance	X		
4. Proposals have been requested		X		11. Disclosure Ordinances	X		
5. Risk Management review completed	X			12. Bidder Certification CEC Form 50	X		
6. Standard Provisions for City Contracts included	X			13. Prohibited Contributors (Bidders) CEC Form 55	X		
7. Workforce that resides in the City:				14. CA Iran Contracting Act of 2010	X		

**RECOMMENDATION**

That the Council approve, and authorize the General Manager of the Personnel Department to execute, the proposed Professional Services Agreement with Ventiv Technology, Inc. to continue providing an integrated workers' compensation claims management system for a five-year term effective June 30, 2022 through June 29, 2027 and an expenditure authority not to exceed \$4,101,885, subject to the City Attorney approval as to form.

**SUMMARY**

The Personnel Department (Department) requests approval to execute the proposed Professional Services Agreement (Agreement) with Ventiv Technology, Inc. (Contractor) to continue providing an integrated workers' compensation claims management system including claims enterprise software licenses, maintenance and support, and hosting services (Services). Approval of the Agreement establishes a five-year term effective June 30, 2022 through June 29, 2027 and an expenditure authority not to exceed \$4,101,885 over the term of the Agreement. The Agreement includes a ratification clause to allow the Contractor to provide services prior to execution of the proposed Agreement.

Robert Roth			
RR	Analyst	11230035	Assistant City Administrative Officer

The scope of services in the proposed Agreement includes providing:

- Claims Enterprise software licenses, maintenance and support, and hosting services;
- Automated calculation of State mandated penalties and interest on late medical payments;
- Medicare Mandatory Reporting services in compliance with the Medicare, Medicaid, and California State Children's Health Insurance Program (SCHIP) Extension Act of 2007 (MMSEA Reporting);
- Medicare Set Asides (MSA) services;
- Document imaging, mapping, and importing services; and,
- Custom reports and data required by the State of California.

The Contractor is compensated on a performance fee basis as outlined in the Agreement.

Pursuant to Los Angeles Administrative Code (LAAC) Section 10.15(a)(10), the Department proposes to award a sole-source contract to the Contractor as the sole provider of licenses and support for the Department's workers' compensation claims management system. The Contractor (formerly known as Aon e-Solutions, Incorporated) has performed similar services since 2012 for the Department through contract C-120638 (C.F. 12-0811 and 12-0811-S1). The Department indicates the Contractor has performed satisfactorily throughout the term of the recently expired contract. Further, the Department states that transitioning to a new system at this time could be both disruptive to claims processing and result in additional costs estimated at approximately \$1.0 million.

The Contractor has complied with all applicable contracting requirements. In accordance with Charter Section 1022, this Office determined that the work proposed to be contracted can be performed more feasibly by a contractor than by City employees. In accordance with LAAC Section 10.5(b)(2), Council approval of the Agreement is required because it is replacing an expired contract involving the same party with no new competitive process and the cumulative term of the expired contract and the proposed Agreement exceeds three years. In accordance with Executive Directive No. 3 (Villaraigosa Series), the approval of the Mayor is required as the total compensation exceeds \$25,000.

## **FISCAL IMPACT STATEMENT**

Funding for 2022-23 expenditures is included in the 2022-23 Adopted Budget within the Human Resources Benefits Contractual Services Account. There is no additional impact to the General Fund.

## **FINANCIAL POLICIES STATEMENT**

As budgeted funds are available to support the proposed expenditures in the current year, and future year expenditures are subject to the appropriation of funds in the annual budget, the recommendation of this report complies with the City's Financial Policies.

**BOARD OF CIVIL SERVICE  
COMMISSIONERS**

Room 360, PERSONNEL BUILDING

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PRESIDENT

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**CITY OF LOS ANGELES  
CALIFORNIA**



ERIC GARCETTI  
MAYOR

**PERSONNEL DEPARTMENT**

PERSONNEL BUILDING  
700 EAST TEMPLE STREET  
LOS ANGELES, CA 90012

Dana H. Brown  
GENERAL MANAGER

October 20, 2022

Honorable Eric Garcetti  
Mayor, City of Los Angeles  
Room 303, City Hall  
Los Angeles, CA 90012

Attention: Heleen Ramirez, Legislative Coordinator

**Subject: REQUEST FOR REVIEW AND APPROVAL OF PROPOSED  
PROFESSIONAL SERVICES AGREEMENT WITH VENTIV TECHNOLOGY,  
INC.**

In accordance with Executive Directive No. 3, attached for your review and approval is the draft professional services agreement ("Agreement") between Ventiv Technology, Inc. ("Contractor") and the City of Los Angeles Personnel Department ("City") to provide an integrated claims management system including claims enterprise software licenses, maintenance and support, and hosting.

**Background**

The City of Los Angeles is self-insured for its workers' compensation obligations. The core function of the Workers' Compensation (WC) Program is to provide injured workers with the medical treatment and time off necessary to recuperate and return to work as quickly as possible. The Personnel Department's WC Division administers the City's WC Program, which currently includes approximately 17,951 open claims. Approximately 8,357 new claims and \$203 million in benefit payments were processed in FY 2020-21. The Division is responsible for all aspects of claims administration, including directing medical care, providing defense support in litigated cases, and making payments for a variety of claims-related activities.

In June 2012, the City Council authorized the General Manager of the Personnel Department to execute a professional services agreement with the Contractor to provide a new, updated and integrated system for the management of workers compensation claims data (C.F. 12-0811). Contract No. C-120638 was executed for a five-year term commencing June 30, 2012 through June 29, 2017 providing for the implementation of the Contractor's integrated claims administration systems software to replace three non-integrated City WC applications.

In May 2014, the fully integrated claims management system, Claims Enterprise (CE) went live. CE currently has over 700 active users including users from the Personnel Department WC Division, City Attorney, WC Third Party Administrators (TPAs), and City departments.

The CE application has a number of custom interfaces, some to outside parties and some to internal City applications. External interfaces include medical bill review, Insurance Services Office (ISO) claims search, Medicare secondary payer service, and State mandated reporting. Internal interfaces include payment export (check printing and treasury/cash management), PaySR/Workday (HR/payroll), and an extract for Riskconnect, the City's risk management system.

In June 2017, Council authorized execution of the First Amended and Restated Agreement. This Council action: 1) extended the term of Contract No. C-120638 for an additional three years through June 29, 2020 with two one-year options to renew, through June 29, 2022; 2) expanded the scope of services covered under the Agreement; and 3) increased the maximum contract ceiling limit to cover the two additional years of service (C.F. 12-0811-S1). Subsequently, a Second Amendment to Contract No. C-120638 was executed, extending the term through June 29, 2022.

### **Basis for Sole Source Contract Requiring City Council Approval**

Contract No. C-120638 ended on June 29, 2022. However, the WC Division continues to need a stable, integrated, and secure workers' compensation claims management system to ensure continuity of medical services and benefits to injured workers. For a workers' compensation program as large as the City's with multiple system interfaces and custom modules, the claims management system must be able to handle complex requirements and streamline claims administration to provide injured workers with prompt medical care and ensure timely return to work. Through years of service and system development, Ventiv Technology, Inc. has demonstrated the unique ability to meet the City's challenging environment and establish a comprehensive, customized, and integrated claims management system.

While there are other WC systems available, the WC Division researched them extensively and determined that CE is the best claims management system capable to meet the City's complex needs. The County of Los Angeles' Request for Proposals for an integrated claims management system produced a limited number of proposals and Ventiv Technology, Inc. was selected as the sole vendor to provide a fully integrated solution. The County's contract with Ventiv Technology, Inc. runs through November 2033. The WC Division plans on leveraging the County's CE system experience to efficiently assess potential future system enhancements and upgrades to the current CE system.

Transitioning to another claims system would be costly and carry undue risk. The WC Division estimates transitioning to another claims management system would take up to two years for system development, data conversion, user acceptance testing, and system implementation. This system transition would require several dedicated, full time senior information technology contractors, over approximately 4,000 hours, and expenditures over \$1 million. Even more significant than the \$1 million cost, the WC Division believes that the transition time could disrupt delivery of medical care and WC benefits to nearly 18,000 injured workers. Accordingly, the Personnel Department WC Division, with concurrence of the City Attorney, determined that competitive bidding for these services under Charter Section 371 is neither practicable, advantageous, nor compatible with City's interests. As such, the City wishes to enter into a sole-source contract with the Contractor to continue to provide the CE system for a five-year term from June 30, 2022 to June 29, 2027.

### **Scope of Services**

Under the terms of the new five-year Agreement, the Contractor will provide the following services:

- Claims Enterprise software licenses, maintenance and support, and hosting.
- Automated Penalty and Interest – State mandated penalties and interest on late medical payments are identified and calculated automatically in the CE system. Users have the ability to review and confirm payments are accurate.
- Advanced Centers for Medicare and Medicaid Services (CMS) Services – Provides full and complete Medicare Mandatory Reporting services in compliance with the Medicare, Medicaid, and SCHIP (State Children’s Health Insurance Program) Extension Act of 2007 (MMSEA Reporting). Also provides full Medicare Set Asides (MSA) services.
- Document Imaging – CE system processes and maps all scanned and imported documents.
- State Mandated Reporting – Custom reports and data required by the State are submitted in accordance with strict file layout requirements.

### **Contract Term**

The term of the professional services agreement is five years from June 30, 2022 through June 29, 2027, subject to the termination provisions in the contract and availability of City budgeted funds.

### **Compensation**

The City’s total obligation shall not exceed \$4,101,885 for the life of the Agreement for complete and satisfactory performance of the services in accordance with the terms of the Agreement.

### **Contract Compliance**

The Contractor’s compliance documentation statuses are as follows:

- Disclosure Ordinance has been requested
- Equal Benefits and First Source Hiring Ordinance has been requested
- Contractor’s insurance certificate has been requested

The headquarters address for this Contractor is as follows:

Ventiv Technology, Inc.  
Bishop Ranch 8  
5000 Executive Parkway, Suite 340  
San Ramon, CA 94583

The draft professional services agreement has been reviewed by the City Attorney as to form and language.

### **Fiscal Impact**

Funding for this Agreement is provided in the FY 2022-23 Human Resources Benefits Budget, Contractual Services Account 3040. There is no additional impact to the General Fund.

**Recommendation**

That the City Council authorize the General Manager of the Personnel Department, or designee, be authorized to execute a professional services agreement with Ventiv Technology, Inc. for an integrated claims management system which provides claims enterprise software licenses, maintenance and support, hosting, and professional services from June 30, 2022 through June 29, 2027, with a total maximum compensation not to exceed \$4,101,885 for the life of the Agreement.

Please contact Michael Daco at (213) 473-9195 with any additional questions.



Dana H. Brown  
General Manager

Attachment

cc: Robert Roth, CAO

**PROFESSIONAL SERVICES AGREEMENT**

**Contractor: VENTIV TECHNOLOGY, INC**

**Regarding: CLAIMS ENTERPRISE SOFTWARE  
LICENSE, MAINTENANCE AND SUPPORT,  
HOSTING, AND PROFESSIONAL  
SERVICES**

**Said Agreement is Number: \_\_\_\_\_**



**Professional Services Agreement**

**VENTIV TECHNOLOGY, INC**

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**ATTACHMENTS**

- Attachment A – Standard Provisions for City Contracts (Rev. 10/21 [v.4])
- Attachment B – Confidentiality Agreement
- Attachment C – Scope of Work
- Attachment D – Fee Schedule
  - Exhibit 1 – Advanced CMS Services and Fees
- Attachment E – Software Maintenance and Support Agreement
  - Exhibit 1 – Service Level Agreement for Ventiv Hosted Environment

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF LOS ANGELES AND  
VENTIV TECHNOLOGY, INC**

THIS AGREEMENT (“Contract” or “Agreement”) is made and entered into by and between the City of Los Angeles (“City”), a municipal corporation, acting by and through its Personnel Department (“Department”) and Ventiv Technology, Inc., f/k/a Aon eSolutions, a California corporation (“Contractor”), with reference to the following:

**RECITALS**

1. City, through the Workers’ Compensation Division (“WCD”) of its Personnel Department, administers City’s self-insured Workers’ Compensation program;
2. City requires an integrated claims management system which provides Claims Enterprise software licenses, maintenance and support, hosting, and professional services;
3. Contractor, pursuant to a previous contract with City, developed and integrated a highly customized software solution (“Contractor Software”) to support the City’s administration of its Self-Insured Workers’ Compensation Program;
4. City has a continuing need to use the Contractor Software;
5. City has determined that, given the cost and resources already invested in developing the Contractor Software, the highly customized nature of that software, and that this software is critical to providing key Workers’ Compensation services to injured City employees, it would not be in the City’s best interests (or the best interests of its employees) to seek competitive bids for a different software product, as securing the services of a new contractor and software solution would cost millions of dollars in fees, thousands of hours in City resources, and could delay or impede the services provided to injured workers;
6. The Contractor Software and related required services are of an expert and technical nature; therefore competitive bidding for these services under Charter Section 371 is neither practicable, nor advantageous nor compatible with City’s interests, as it would be far more expensive and time consuming to develop a new software solution;

7. Pursuant to Charter Section 1022, it was determined that the work proposed to be contracted could be performed more feasibly by a Contractor than by City employees;
8. Contractor has represented that it has the necessary equipment and staff possesses sufficient knowledge, expertise, and experience required to provide the necessary services and is available and willing to perform the services required by City;
9. Contractor has represented that it is duly licensed and certified under the laws of the State of California to engage in the business of software as a service and to provide related services;
10. City and Contractor wish to enter into this agreement, pursuant to which Contractor shall perform the work and furnish the deliverables as described herein for consideration and upon the terms and conditions as hereinafter provided; and

NOW, THEREFORE, in consideration of the promises, covenants, representations, and agreements set forth herein, the parties hereby covenant, represent, and agree as follows:

#### **ARTICLE A – PURPOSE AND SCOPE**

1. Purpose. The purpose of Contractor's work under this Agreement is to:
  - 1.1 Permit City to access and use Contractor's electronic health records software and all constituent components.
  - 1.2 Grant City a non-exclusive and non-transferable license to use the executable code version of Contractor's software and accompanying supporting resources.
  - 1.3 Provide maintenance and support services.
2. Services to be provided. As directed by City, Contractor agrees to provide Claims Enterprise software licenses, maintenance and support, hosting, and professional services, as provided in **Attachment C, Scope of Work**, and Attachment E, Software Maintenance and Support Agreement, which is attached hereto and incorporated herein by reference, and perform such other functions as further articulated in this Agreement.
3. City agrees to perform all tasks assigned to City as set forth in this Agreement, the statement of work ("SOW"), or any work authorization ("WA") or as set forth in an executed project change order and provide all assistance and cooperation to

Contractor in order to accomplish timely and efficiently the services. Contractor will not be deemed in breach of this Agreement WA, or SOW in the event Contractor's failure to meet the responsibilities and time schedules set forth in the SOW or any WA is caused by City's failure to meet (or delay in) its responsibilities and time schedules set forth in the applicable SOW, this Agreement or as otherwise requested by Contractor. In the event of any delay in City's performance of any of the obligations set forth in this Agreement, including any SOW, or any other delays caused by City, the milestones, fees and date(s) set forth in the SOW or WA will be adjusted as reasonably necessary to account for such delays. City acknowledges and agrees that it shall participate fully to meet milestones and other project delivery dates ("Key Dates") and Vendor relies upon City's personnel to meet these Key Dates. If a Key Date is modified by the City due to no fault of Contractor, the original payment schedule will be honored, and City will be billed in accordance with said schedule.

## **ARTICLE B – NOTICES AND TERM**

### **1. Representatives of the Parties and Service of Notices**

1.1 The representatives of the respective parties authorized to administer this Agreement, and to whom formal notices, demands, and communications will be given are as follows:

1.1.1 The representative of City will be, unless otherwise stated in the Agreement:

Dana H. Brown  
General Manager  
Personnel Department  
700 E. Temple Street, Room 305  
Los Angeles, California 90012

With copies to:

Tyrone Spears  
Workers' Compensation Division Chief  
Personnel Department, Workers' Compensation Division  
700 E. Temple Street, Room 210  
Los Angeles, California 90012  
tyrone.spears@lacity.org

1.1.2 The representative of Contractor will be:

General Counsel

3350 Riverwood Parkway,  
Suite 2000, 20th floor  
Atlanta, GA 30339  
Telephone: 866-452-2787  
[melloney.douce@ventivtech.com](mailto:melloney.douce@ventivtech.com)

- 1.2 Formal notices, demands, and communications required hereunder by either party will be made in writing and may be effected by email, personal delivery or by registered or certified mail, postage prepaid, return receipt requested and will be deemed communicated as of the date of mailing or date email is sent.
  - 1.3 If the name of the person designated to receive the notices, demands, or communications, or the address of such person is changed, written notice will be given, in accordance with Section 1.2 within five (5) business days of said change.
2. Time of Performance. The term of this Agreement will commence June 30, 2022 and will end on June 29, 2027, subject to the termination provisions herein and availability of City budgeted funds.
    - 2.1 Ratification Clause. Due to the need for Contractor's services to be provided continuously on an ongoing basis, Contractor may have provided services prior to the execution of this Agreement. To the extent that said services were performed in accordance with the terms and conditions of this Agreement, those services are hereby ratified.

## **ARTICLE C – DATA SECURITY AND PRIVACY**

1. Data Ownership. As between the parties, City is the sole and exclusive owner of all data and information provided to Contractor by or on behalf of City pursuant to this Agreement and any and all updates or modifications thereto or derivatives thereof made by Contractor ("City Data"), and all intellectual property rights in the foregoing, whether or not provided to any other party under this Agreement. City Data is Confidential Information for the purposes of this Agreement. Contractor shall not use City Data for any purpose other than as specified herein. City's data will be anonymized by Contractor. City may request an export of City Data stored within the systems or held by Contractor in any form or format at no charge to City.

Subject to the restrictions articulated elsewhere in this Agreement, City grants Contractor a non-transferable, non-exclusive, terminable at-will license, solely for the term of this Agreement, to use City Data solely for purposes of performing the services pursuant to this Agreement for City's benefit.

2. Data Protection

- 2.1 Contractor shall use best efforts, but in no event less than information security industry standard protections, to prevent unauthorized use, disclosure, or exposure of City Data. To this end, Contractor shall safeguard the confidentiality, integrity, and availability of City Data.
  - 2.2 Contractor shall implement and maintain appropriate administrative, technical, and organization security measures to safeguard against unauthorized access, disclosure, or theft of City Data. Such security measures shall be in accordance with recognized industry best practices and the standard of care imposed by state and federal laws and regulations relating to the protection of such information. In the absence of any legally imposed standard of care and not less stringent than the measures Contractor applies to Contractor's own personal data and non-public data of similar kind.
  - 2.3 Unless otherwise expressly agreed to by City in writing, Contractor shall encrypt all City Data at rest and in transit and limit access to only those individuals whose access is essential for performance of the services contemplated by this Agreement.
  - 2.4 At no time may any content or City processes be copied, disclosed, or retained by Contractor or any party related to Contractor for subsequent use in any transaction that does not include City.
3. Compliance with Privacy Laws. Contractor shall ensure that Contractor's performance of Contractor's obligations under this Agreement complies with all applicable local, state, and federal privacy laws and regulations, including, but not limited to, laws relating to consent to make visual and audio recordings of individuals and consent to collect information from individuals. If this Agreement or any practices which could be, or are, employed in performance of this Agreement are inconsistent with or do not satisfy the requirements of any of these privacy laws and regulations, City and Contractor shall in good faith execute an amendment to this Agreement sufficient to comply with these laws and regulations and Contractor shall complete and deliver any documents necessary to compliance.
  4. Confidential Information. Contractor understands that all original material, whether written or readable by machine, including written or recorded data, documents, graphic displays, reports, and other documentation or other materials which contain information relating to Contractor's performance hereunder are considered confidential property of City. Contractor understands the sensitive nature of the above and therefore agrees that neither its officers, partners, employees, agents, contractors or subcontractors will release, disseminate, or otherwise publish said reports or other such data, information, documents, graphic displays, nor other materials except as provided herein or as authorized, in writing, by City's representative. This section shall remain in effect after the termination of this

Agreement until such time as the Confidential Information has been released by City. Contractor must submit a signed copy of the **Confidentiality Agreement**, that is attached hereto as **Attachment B**, and incorporated herein, and require it from each subcontractor. The provisions of this subsection shall survive expiration or termination of this Agreement.

5. Provision of Data. Upon termination of this Agreement for any cause or reason (including City's breach), Contractor shall provide City with a copy of all City Data in Contractor's possession in a mutually agreeable machine-readable format.
6. Data, Development, and Access-Point Location. Storage of City Data shall be located in the continental United States of America. Contractor shall not allow its personnel or contractors to store City Data on portable devices, including personal computers, except for devices that are used and kept only at Contractor's continental United States of America headquarters or data centers. Contractor shall neither access, nor allow a third party to access systems housing City Data from any location outside of the continental United States of America. Notwithstanding anything to the contrary in this Agreement, and only after obtaining prior written approval of City, Contractor may grant personnel and contractors located outside the continental United States remote read-only access to City Data only as required to provide proctoring and other technical support in relation to the services contemplated herein. Contractor shall obtain City's prior written approval for each of its employees, contractors, officers, partners, consultants, principals, agents, affiliates, or subsidiaries who are essential for the purpose of providing the services under this Agreement ("Authorized Persons"). When Contractor submits a request for City's prior written approval, it shall describe the proposed Authorized Person's role and the necessity for the proposed Authorized Person to access City Data. Contractor shall at all times cause such Authorized Persons to abide strictly by Contractor's obligations under this Agreement and the industry standards for information security. Contractor hereby agrees that only Authorized Persons who are bound in writing by confidentiality and other obligations sufficient to protect City Data in accordance with the terms and conditions of this Agreement will access City Data, and will do so only for the purpose of enabling Contractor to perform its obligations under this Agreement.
7. Data Breach. Contractor shall protect City Data using the most secure means and technology that is consistent with industry standards for the type of data at issue. Contractor shall notify City as soon as reasonably feasible, but in any event within forty-eight (48) hours in writing and telephonically of Contractor's discovery or reasonable belief of any unauthorized access of City Data ("Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security ("Security Incident"), including, but not limited to, denial of service attack, system outage, instability, or degradation due to computer malware or virus. Contractor shall begin remediation immediately. Contractor shall provide daily updates, or more frequently if required by City, regarding findings and actions performed by Contractor

until the Data Breach or Security Incident has been effectively resolved. Contractor shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with City. At City's sole discretion, City and/or its authorized agents shall have the right to participate in the investigation. Contractor shall cooperate fully with City, its agents and law enforcement. To the extent that the Data Breach was caused by Contractor's negligence, Contractor is responsible for all costs associated with said Data Breach or Security Incident, including, if directed by City, the provision of identity theft protection and/or credit monitoring services to individuals affected by the Security Incident. If required by law or directed by City, Contractor will be responsible for notifying individuals impacted by the Security Incident or Data Breach, with City having final approval of the content of the notification. In the event City incurs any costs related to the breach referenced above, City will seek reimbursement from Contractor or reduce Contractor's invoice for costs associated with breach of security. Contractor's liability shall be limited to the extent of its fault and will not be liable for damages arising from City's active negligence or the negligence of third parties.

7.1 Data Breach Liability. If City is subject to any third party claims relating to any Data Breach or Security Incident, to the extent that Contractor is responsible for said claims, Contractor shall indemnify and hold harmless City and defend City against any such claims, including reimbursement of any costs incurred by City relating to those claims. This obligation is in addition to any of Contractor's other indemnification obligations in this Agreement.

## 8. Firewalls and Access Controls

8.1 Access Precautions. Contractor shall use precautions, including, but not limited to, physical software and network security measures, employee screening, training and supervision, and appropriate agreements with employees to:

8.1.1 Prevent anyone other than City, Contractor, and authorized City or Contractor personnel from monitoring, using, gaining access to, or learning the import of City Data;

8.1.2 Protect appropriate copies of City Data from loss, corruption, or unauthorized alteration; and

8.1.3 Prevent the disclosure of City and Contractor passwords and other access control information to anyone other than authorized City personnel.

8.2 Security Best Practices. Contractor shall implement the following security best practices with respect to any service provided:



- 8.2.1 Least Privilege: Contractor shall authorize access only to the minimum amount of resources required for a function.
  - 8.2.2 Separation of Duties: Contractor shall divide functions among its staff members to reduce the risk of one person committing fraud undetected.
  - 8.2.3 Role-Based Security: Contractor shall restrict access to authorized users and base access control on the role a user plays in an organization.
- 8.3 Access Restrictions. Contractor shall restrict the use of, and access to, administrative credentials for City accounts and Contractor's systems to only those of Contractor's employees and other agents whose access is essential for the purpose of providing the services of this Agreement. Contractor shall require these personnel to log on using an assigned user-name and password when administering City accounts or accessing City Data.
9. Right of Audit by City. Without limiting any other audit rights of City, City may review Contractor's data privacy and data security program prior to the commencement of this Agreement and from time to time during the term of this Agreement. During the performance of this Agreement, on an ongoing basis from time to time and without notice, City, may, by itself or by retaining a certified public accounting firm or information security professional, perform, or have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, at City's discretion and upon request by City, Contractor agrees to complete, within fourteen (14) days of receipt, an audit questionnaire provided by City regarding Contractor's data privacy and information security program.
10. Written Information Security Policy. Contractor shall establish and maintain a formal, documented, mandated, company-wide information security program, including security policies, standards, and procedures (collectively "Information Security Policy"), and communicate the Information Security Policy to all of its respective employees and contractors in a relevant, accessible, and understandable form. Contractor shall regularly review and evaluate the Information Security Policy to ensure its operational effectiveness, compliance with all applicable laws and regulations, and to address new threats and risks. Upon execution of this Agreement and thereafter within three (3) business days of City's request, Contractor shall make available for City's review Contractor's Information Security Policy and any related SOC audits, information security certifications, or other evidence that Contractor has in place appropriate policies and procedures regarding information protection and security.

11. Change in Service. Contractor shall notify City of any changes, enhancement, and upgrades to Contractor's systems, or changes in other related software services, as applicable, which can impact the security of the services.

## ARTICLE D – PAYMENT AND INVOICING

1. Payment Terms and Deliverables. City's Total Obligation under this Agreement shall not exceed \$4,101,885 for the term of this Agreement for complete and satisfactory performance of the terms of this Agreement. Contractor shall invoice City at the rates set forth in **Attachment D, Fee Schedule**, which is attached hereto and incorporated herein by reference.
2. Limitation of City's Obligation to Make Payments to Contractor. Notwithstanding any other provision of this Agreement, including any exhibits or attachments incorporated therein, and in order for City to comply with its governing legal requirements, City shall have no obligation to make any payments to Contractor unless City shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in said Agreement. Contractor agrees that any services provided by Contractor, purchases made by Contractor or expenses incurred by Contractor in excess of said appropriation(s) shall be free and without charge to City and City shall have no obligation to pay for said services, purchases or expenses. Contractor shall have no obligation to provide any services, provide any equipment or incur any expenses in excess of the appropriated amount(s) until City appropriates additional funds for this Agreement.
3. Invoicing

### 3.1 Invoicing

- 3.1.1 Invoices must be submitted by email to:

Tyrone Spears or designee  
Workers' Compensation Division Chief  
Personnel Department, Workers' Compensation Division  
tyrone.spears@lacity.org

- 3.1.2 To ensure that services provided under personal services contracts are measured against services as detailed in the Agreement, the Controller of the City of Los Angeles has developed a policy requiring that specific supporting documentation be submitted with invoices.
- 3.1.3 Contractor shall submit invoices that conform to City standards and include, at a minimum, the following information:

- i. Name and address of Contractor
- ii. Name and address of City department being billed
- iii. Date of invoice and date service was completed
- iv. Agreement number or authority (purchase order) number
- v. Task Order or Notice to Proceed
- vi. Description of completed task and amount due for task, including:
  - a) Name of personnel working on task
  - b) Hours spent on task and timesheet supporting charges (if applicable)
  - c) Rate per hour and total due
- vii. Original manufacturer's invoice for items where the cost or cost plus is supported by the contract
- viii. Certification by a duly authorized officer
- ix. Discount and terms (if applicable)
- x. Remittance Address (if different from Contractor's address)

3.1.4 All invoices must be submitted on Contractor's letterhead, contain Contractor's official logo, or other unique and identifying information such as the name and address of Contractor. Evidence that tasks have been completed, in the form of a report, brochure, or photograph, shall be attached to all invoices. Invoices must be submitted within thirty (30) days of service, or monthly, and will be payable to Contractor no later than 30 calendar days after acknowledged receipt of a complete invoice. Invoices are considered complete when appropriate documentation or services provided are signed off as satisfactory by City's Fiscal Officer. Notwithstanding the foregoing, City shall not be responsible for, and Contractor waives the right to seek, any late fees, late charges, penalties, and/or interest.

3.1.5 Invoices and supporting documentation must be prepared at the sole expense and responsibility of Contractor. City shall not compensate Contractor for costs incurred in invoice preparation. City may request, in writing, changes to the content and format of the invoice and supporting documentation at any time. City reserves the right to request additional supporting documentation to substantiate costs at any time.

3.1.6 Subcontractors' Requirements. Tasks that are completed by subcontractors must be supported by subcontractor invoices, copies of pages from reports, brochures, photographs, or other unique documentation that substantiates their charges.

3.1.7 ***Failure to adhere to these policies may result in nonpayment or non-approval of demands, pursuant to Charter Section 262(a)***, which requires the Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and to approve demands before they are drawn on the Treasury.

3.2 Written Approval Request. Before services are provided for the Department, Contractor must first receive written approval to proceed by the Department. The written approval must include a detailed SOW defining the scope of services, duration of engagement, and the budget for the project. Absent a written Amendment or Change Order, Contractor must not exceed the approved scope or budget for any project, nor will City be liable for any work or charges exceeding the approved scope or budget unless prior written approval from the Department is obtained modifying the scope or budget of the project.

## **ARTICLE E – REPRESENTATIONS AND WARRANTIES**

1. Responsibility to Provide Services in Accordance with Applicable Standards and Requirement to Possess All Valid Permits and Licenses. As specified in a statement of work or change order, Contractor shall deliver any completed solution for user acceptance testing. Upon delivery City shall conduct user acceptance testing within the period set forth in the applicable change order (“UAT Period”) and, within that UAT Period, shall notify Contractor in writing of any identified material deficiencies, such notice shall include sufficient detail to permit identification of the deviations between the solution and SOW specifications (“Deficiency Notice”). Contractor shall, within 60 days of receipt of the Deficiency Notice (“Correction Period”) and at no charge to the City, correct any material deficiencies identified in the Deficiency Notice. If Contractor fails to remedy any material deficiencies identified in the City’s Deficiency Notice, City shall have the right to terminate the applicable SOW without the obligation for further payment. For 60 days following the UAT Period (if no Deficiency Notice is submitted by City) or for 60 days following the Correction Period, whichever is later, Contractor represents and warrants that the work performed hereunder shall be completed in a manner consistent with professional standards among those firms in Contractor’s profession, doing the same or similar work, under the same or similar circumstances (“Warranty Period”). Contractor must possess and maintain valid licenses and permits required to perform the services described herein.

Following Production Use of the System, Contractor represents and warrants that during the Term the System will perform substantially in accordance with the Specifications for the System. If Contractor receives written notice that the System does not perform as warranted within sixty (60) days of such non-performance, Contractor will, at its option and at no additional charge to City, undertake to correct

errors, or replace such portions of the System free of charge with software that performs as warranted hereunder.

OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER CONTRACTOR, ITS AFFILIATES, LICENSORS OR SUPPLIERS, NOR THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES MAKES ANY EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO CUSTOMER, OR ANY OTHER PERSON OR ENTITY WITH RESPECT TO THE SOFTWARE, SYSTEM AND SERVICES PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE, SYSTEM OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

2. Compliance with Statutes and Regulations. Contractor, in the performance of this Agreement, shall comply with all applicable statutes, rules, regulations, and orders of the United States, the State of California, the County and City of Los Angeles. Contractor shall comply with new, amended, or revised laws, regulations, and procedures that apply to the performance of this Agreement.

## **ARTICLE F – STANDARD PROVISIONS FOR CITY CONTRACTS**

1. Standard Provisions for City Contracts. Contractor agrees to, and shall comply with, the **Standard Provisions for City Contracts (Rev. 10/21 [v.4])**, which are attached hereto as **Attachment A** and made a part hereof as though fully set forth herein.
2. Disclosure of Border Wall Contracting. Contractor shall comply with Los Angeles Administrative Code (“LAAC”) Section 10.50 et seq., “Disclosure of Border Wall Contracting.” City may terminate this Agreement at any time if City determines that Contractor failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

## **ARTICLE G – INDEMNIFICATION**

1. Contractor Indemnity. Contractor will indemnify, defend, and hold City, its individual directors, officers, employees and agents, harmless from and against any claims, actions or proceedings, arising out of any third-party claim that the Software or the permitted use thereof infringes or violates any third party’s valid U.S. patent, copyright or trade secret (“IP Claim”). If in Contractor’s reasonable judgment any such IP Claims, or threat of an

IP Claim, materially interferes with City's use of the Software, Contractor will consult with City, and Contractor will have the option, in Contractor's sole discretion, to (i) substitute functionally equivalent non-infringing software or documentation, (ii) modify the Software to make it non-infringing, or (iii) obtain for City at Contractor's expense the right to continue using the infringing Software; or, if the foregoing is not feasible in Contractor's sole discretion, Contractor will (iv) require City to cease using the System, refund a pro-rata portion of the Subscription Fees (as defined in the Fee Schedule Attachment D for the System for such period of time in which City was unable to use the Software or System), provided that nothing in this section (iv) shall limit City's rights against Contractor to bring a breach of contract claim in the event that Contractor requires City to cease using the System; Contractor will have no indemnity obligation for claims of infringement resulting or alleged to result from (i) any combination, operation, or use of any Software with any programs or equipment not supplied by Contractor or not specified in this Agreement for such purpose if in Contractor's reasonable judgment such infringement would have been avoided by the combination, operation, or use of such Software with items supplied by Contractor or specified in this Agreement for such purpose; (ii) inclusion of City Data; (iii) any modification of the Software by a party other than Contractor if such infringement would have been avoided in the absence of such modifications; or (iv) the use of the Software in a manner other than for its intended purposes or contrary to the Specifications.

**2. General.** The defense and indemnification obligations set forth in this Section 11 are conditioned upon (i) the indemnified party providing the indemnifying party timely notice of any claim or cause of action upon which the indemnified party intends to base a claim of indemnification hereunder, (ii) the indemnified party providing reasonable assistance and cooperation to enable the indemnifying party to defend the action or claim hereunder; and (iii) allowing the indemnifying party to control the defense and all related settlement negotiations; provided that the indemnifying party may not settle any claim that results in the indemnified party's liability and the indemnifying party will be required to consult with the indemnified party during any settlement discussions.

## **ARTICLE H – LIMITATION OF LIABILITY**

**1 LIMITATION OF REMEDY.** EXCEPT AS PROHIBITED BY LAW, IN NO EVENT WILL EITHER PARTY, OR ITS CONTRACTORS, LICENSORS OR SUPPLIERS OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO THE OTHER PARTY, OR ANY OTHER PERSON OR ENTITY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES OR LIABILITIES FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ALL STATEMENTS OF WORK, ORDER FORMS, OR AMENDMENTS THERETO, WHETHER IN CONTRACT OR TORT OR BY WAY OF INDEMNITY OR OTHERWISE, INCLUDING A BREACH THEREOF OR INCLUDING DAMAGES OR LIABILITIES FOR LOST PROFIT, LOST REVENUE, LOSS OF USE, LOSS OF GOODWILL, LOSS OF REPUTATION, LOSS OF DATA, REGULATORY FINES, COSTS OF RECREATING LOST DATA THE COST OF ANY SUBSTITUTE EQUIPMENT, SOFTWARE PROGRAM,

OR DATA, REGARDLESS OF WHETHER THE POSSIBILITY OF SUCH DAMAGES OR LIABILITIES HAVE BEEN COMMUNICATED TO SUCH PARTY AND REGARDLESS OF WHETHER SUCH PARTY HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES OR LIABILITIES.

**2** MAXIMUM LIABILITY. EXCEPT FOR (I) THE RECOVERY OF SUMS DUE UNDER THIS AGREEMENT OR IN AN SOW, (II) AS PROHIBITED BY LAW OR (III) FOR CLAIMS ARISING UNDER SECTION C.4 (OTHER THAN DATA BREACHES), G.1, IN NO EVENT WILL EITHER PARTY'S LIABILITY FOR ANY DAMAGES TO THE OTHER, ANY OF ITS AFFILIATES, OR TO ANY THIRD PARTY REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, EVER EXCEED TWENTY MILLION DOLLARS (\$20,000,000).

## **ARTICLE I – MISCELLANEOUS**

1. Insurance. Contractor shall maintain the level of insurance required in the completed Form Gen. 146, Required Insurance and Minimum Limits, which is attached as [Exhibit 1] to **Attachment A, Standard Provisions for City Contracts (Rev. 10/21 [v.4])**. The insurance must name City as additional insured with respect to liability coverage. No policies or certificates with respect to such insurance may be cancelled or materially changed without at least 30 days' written notice by the respective insurer to City.
2. Separation Assistance. In the event of separation, Contractor shall provide separation assistance to City to facilitate separation. Contractor shall further guarantee elimination from Contractor's services of all City Data upon separation.
3. Contractor's Personnel & Subcontractors. Except as expressly provided in Subsection 3.1 below, Contractor shall use its own employees to perform the services described in this Agreement. City shall have the right to review and approve any personnel who are assigned to work under this Agreement. Contractor agrees to remove personnel from performing work under this Agreement if requested to do so by City. City reserves the right to have Contractor replace any project personnel with equally or better qualified staff upon submitting written notice to Contractor. In addition, City reserves the right to approve in advance any changes in project personnel or levels of commitment by Contractor to the project.
  - 3.1 Subcontractors. Contractor may utilize subcontractors to assist in performance of this Agreement. Notwithstanding the fact that Contractor may utilize subcontractors, Contractor shall remain responsible for performing all aspects of this Agreement. City has the right to approve Contractor's subcontractors and City reserves the right to request replacement of a subcontractor. City does not have any obligation to pay subcontractors and nothing herein creates any

privity between City and the subcontractors. Nothing herein is intended to create a third-party beneficiary in any subcontractor.

- 3.2 Project Manager. Contractor shall assign a project manager with full authority to administer the Agreement for Contractor and with relevant experience in implementing the work required under this Contract.
4. Non-Exclusive Agreement. Contractor understands and agrees that this is a non-exclusive Agreement to provide services to City and that City has entered into contracts with other contractors and will continue to do so. City may terminate this Agreement and use any of the contractors with whom City has current or future contracts and, therefore, City cannot estimate nor guarantee the volume or amount of work to be received by Contractor under this Agreement.
5. Force Majeure. Contractor will not be liable to City for any delay or failure to perform arising out of causes beyond its reasonable control including, but not limited to, riots, epidemics, severe weather, acts of the other party, fire, flood, terrorism, war, acts of the enemy, embargoes or work stoppages, labor disputes or strikes. Contractor will notify City promptly upon learning of any event that may result in any delay or failure to perform. If the force majeure event occurs and continues to prevent substantial performance for more than thirty (30) days, Contractor has the right to terminate this Agreement. Notwithstanding the foregoing, the COVID 19 pandemic, which the parties have been dealing with for over two years, will not be considered grounds for terminating the Agreement unless it is required due to a government order.
6. Assignment. Either party hereto will have the right to assign this Agreement to another entity in connection with a reorganization, merger, consolidation, acquisition or other restructuring involving all or substantially all of the voting securities and/or assets of the assigning party upon written notice to the non-assigning party, subject to written approval by City, such approval will not be unreasonably delayed or withheld. This Agreement will be binding upon and inure to the benefit of the parties, their legal representatives, permitted transferees, successors, and assigns as permitted by this Agreement.
7. Contractor's Interaction with the Media; Publicity. Contractor shall refer all inquiries from the news media to City, shall immediately contact City to inform City of the inquiry, and shall comply with the procedures of City's Public Affairs staff regarding statements to the media relating to this Agreement or Contractor's services hereunder.
8. Ambiguity. No ambiguity in this Agreement may be interpreted against any one party by virtue of that party being drafter of the Agreement. The parties acknowledge that they have read and understood this Agreement and had the opportunity to consult with counsel of their choosing regarding this Agreement.



9. Amendments to Agreement. Any changes in the terms of this Agreement, including changes in the services to be performed by Contractor, extension of the term, and any increase or decrease in pricing, must be incorporated into this Agreement by a written amendment properly executed by both parties.
10. Notice of Delays. Except as otherwise provided under this Agreement, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.
11. Operational Metrics. From time to time, Contractor may collect and process anonymized and aggregated technical and related information about City's use of the Software and System (which may include, without limitation, ingest volume, search concurrency, number of unique user logins, Internet protocol address, session duration, policy, claims and risk data, frequency, severity and type of risk or claim and other similar data), may analyze and aggregate your data and information with data and/or information Contractor may have obtained or may in the future obtain from other of its clients, publicly available sources and/or data providers, and may disclose such analyses and aggregated data to individual prospective or current Contractor clients, provided that (i) City's data is synthesized and made anonymous prior to such use, (ii) Contractor does not use such synthesized and anonymous data of City in a manner which would allow you to be identified, and (iii) City's data is not transferred to such prospective or current clients.
12. **Limitations.**
  - (a) *Use Restrictions*. Unless otherwise expressly authorized in this Agreement, City will not, and will ensure that its end-users will not: (i) modify, adapt, alter, translate, or create derivative works from the System; (ii) merge the System (or any part thereof) with any other software, products or services (other than Contractor-provided interfaces); (iii) sublicense, resell, re-distribute, lease, rent, loan, disclose or otherwise transfer the System (or any part thereof) or any other associated products and services to any third party; (iv) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source or object code of the System (or any part thereof); (v) use the System (or any part thereof) to provide any facility management, service bureau or similar services to third parties, permit third parties to remotely access and use the System (or any part thereof) or use the System (or any part thereof) to develop a product line that is similar to the Software or System; (vi) publish or share with any third party any results of any benchmark or performance tests run on the System (or any part thereof); (vii) otherwise use or copy the System (or any part thereof) except as expressly allowed under this Agreement or (viii) alter, distort, or remove any confidential, proprietary, copyright, trademark, trade secret, or patent legends from any copy of the System (or any part thereof).

**(b) Removal of Files.** Contractor reserves the right to remove from the Contractor Server(s) any files that may damage the System or any files that are in violation of Section 3.3(b), provided that Contractor agrees to give City written notice within two (2) Business Days after removing such files. The removed files will be placed in a temporary quarantined area until both parties mutually agree how to handle the files. City consents to such removal and waives any claim arising out of any such file removal.

**(c) Mapping functionality.** Contractor obtains from selected mapping data source(s) (e.g., ESRI, USGS, AccuWeather, etc.) geographic, hazard and weather mapping data that provides a basis for the mapping of client information in relation to these sources. Neither Contractor, nor these source systems, their affiliates nor any third-party licensor will have any liability for the accuracy or completeness of the information in the source content or for delays, interruptions or omissions therein. Access to the mapping data source(s) content is subject to termination in the event that any agreement between Contractor and the mapping data source(s) is terminated in accordance with its terms.

**(d) Additional Software.** To the extent City wishes to purchase additional Contractor software products other than that set forth in Agreement herein, City and Contractor will execute an Order Form to purchase such additional software.

**(e) Proprietary Rights.** As between the parties, and subject to the terms and conditions of this Agreement and the applicable Statement of Work, Contractor and its third-party suppliers will retain ownership of all Intellectual Property Rights in the System, and any and all Derivative Works made to the System or any part thereof, as well as all Work Product provided to City ("**Contractor Proprietary Technology**"). City acquires no rights to Contractor Proprietary Technology except for the licensed interests granted under this Agreement or any SOW. The term "**Work Product**" means all other materials, reports, manuals, visual aids, documentation, ideas, concepts, techniques, inventions, processes, or works of authorship developed, provided or created by Contractor or its employees or contractors during the course of performing work for City (excluding any City Data or Derivative Works thereof and excluding any output from the System generated by City's use of the System, including without limitation, reports, graphs, charts, modified City Data, etc., but expressly including any form templates of such reports, graphs or charts by themselves that do not include City Data). City also acknowledges that the Contractor Proprietary Technology contains Confidential Information belonging to Contractor and its third-party suppliers, and that nothing herein gives City any right, title or interest in such Contractor Proprietary Technology except as otherwise expressly set forth in this Agreement or in any SOW. City acknowledges and agrees that Contractor may use, without restriction, all suggestions, improvements and ideas concerning any part of the System (including without limitation any Beta Versions as defined in Section 16 below) or Intellectual Property Rights therein that may be communicated to Contractor by City. City agrees to inform Contractor immediately of any infringement or other

improper action with respect to Contractor's Confidential Information, the System or the Intellectual Property Rights therein that comes to City's attention.

**(f) Rights Reserved.** Title, ownership rights, and all Intellectual Property Rights in and to the System will remain the sole property of Contractor or its suppliers. City acknowledges that the Software in source code form remains Confidential Information or a trade secret of Contractor and/or its suppliers that the source code is not covered by any license hereunder and will not be provided by Contractor. Except as set forth in this Agreement, no right or implied license or right of any kind is granted to City, regarding the System or any part thereof. Nothing in this Agreement confers upon either party any right to use the other party's trade names and trademarks, except for permitted license use in accordance with this Agreement.

13. Termination for Convenience. Either party may terminate this Agreement, including applicable services, for convenience by giving the other party written notice of 120 days in advance of the termination date. No other termination for convenience rights exist for the parties.
14. Entire Agreement. This Agreement, including all Attachments and documents incorporated herein by inclusion or by reference, contains the full and complete Agreement between the parties. No verbal agreement or conversation with any officer or employee of either party will affect or modify any of the terms and conditions of this Agreement.
15. No Additional Contractor Software Terms. No-shrink-wrap, click-wrap, privacy policy, or other terms and conditions or agreements ("Additional Contractor Software Terms") provided with any products, services, documentation, or software hereunder shall be binding on the City, even if use of the foregoing requires an affirmative "acceptance" of those Additional Contractor Software Terms before access is permitted. All such Additional Contractor Software Terms will be of no force or effect and will be deemed rejected by the City in their entirety.
16. Order of Precedence. In the event of any inconsistency between the provisions in the body of this Agreement and the attachments, the provisions in the body of this Professional Services Agreement take precedence, followed by **Attachment A, Standard Provisions for City Contracts (Rev. 10/21 [v.4])**, followed by any other exhibits or attachments to this Agreement in the order in which they are attached.

This Agreement may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures.

**(Signature Page to Follow)**

**IN WITNESS THEREOF**, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

**THE CITY OF LOS ANGELES**

By: \_\_\_\_\_  
DANA H. BROWN  
General Manager  
Personnel Department

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

**VENTIV TECHNOLOGY, INC.\***

By: \_\_\_\_\_  
Dinesh Senanayake  
Chief Financial Officer and  
Chief Operations Officer

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

**VENTIV TECHNOLOGY, INC.\***

By: \_\_\_\_\_  
Melloney Douce  
General Counsel & Secretary

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

**APPROVED AS TO FORM:**

MICHAEL N. FEUER, City Attorney

By: \_\_\_\_\_  
BRENT NICHOLS  
Deputy City Attorney

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

**ATTEST:**

HOLLY L. WOLCOTT, City Clerk

By: \_\_\_\_\_  
Deputy City Clerk

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

\* Approved Signature Methods:

- 1) Two signatures: One of the Chairman of the Board of Directors, President, or Vice-President, and one of the Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer.
- 2) One signature of a Corporate-designated individual together with a properly attested resolution of the Board of Directors authorizing the individual to sign.

City Business License Number: \_\_\_\_\_

Internal Revenue Service Taxpayer Identification Number: \_\_\_\_\_

Agreement Number: \_\_\_\_\_

**ATTACHMENT A**

Standard Provisions for City Contracts (Rev. 10/21) [v.4]

# STANDARD PROVISIONS FOR CITY CONTRACTS

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## STANDARD PROVISIONS FOR CITY CONTRACTS

### **PSC-1. Construction of Provisions and Titles Herein**

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

### **PSC-2. Applicable Law, Interpretation and Enforcement**

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

### **PSC-3. Time of Effectiveness**

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

#### **PSC-4. Integrated Contract**

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

#### **PSC-5. Amendment**

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

#### **PSC-6. Excusable Delays**

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

#### **PSC-7. Waiver**

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

## **PSC-8. Suspension**

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

## **PSC-9. Termination**

### **A. Termination for Convenience**

**CITY** may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

### **B. Termination for Breach of Contract**

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
  - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
  - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
  - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
  - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
  6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
  7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
  8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

**PSC-10. Independent Contractor**

**CONTRACTOR** is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

**PSC-11. Contractor's Personnel**

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

**CONTRACTOR** shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

#### **PSC-12. Assignment and Delegation**

**CONTRACTOR** may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

#### **PSC-13. Permits**

**CONTRACTOR** and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

#### **PSC-14. Claims for Labor and Materials**

**CONTRACTOR** shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

#### **PSC-15. Current Los Angeles City Business Tax Registration Certificate Required**

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

#### **PSC-16. Retention of Records, Audit and Reports**

**CONTRACTOR** shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

#### **PSC-17. Bonds**

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

#### **PSC-18. Indemnification**

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

#### **PSC-19. Intellectual Property Indemnification**

**CONTRACTOR**, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

#### **PSC-20. Intellectual Property Warranty**

**CONTRACTOR** represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

#### **PSC-21. Ownership and License**

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

**CONTRACTOR** agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

**CONTRACTOR** shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.



**PSC-22. Data Protection**

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the “City Data”). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR’S** discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting, or potentially affecting City Data related to cyber security (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY’S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY’S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

**PSC-23. Insurance**

During the term of this Contract and without limiting **CONTRACTOR'S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY’S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

**PSC-24. Best Terms**

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR’S** customers for similar goods and services provided under this Contract.

**PSC-25. Warranty and Responsibility of Contractor**

**CONTRACTOR** warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

**PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment**

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-27. Child Support Assignment Orders**

**CONTRACTOR** shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-28. Living Wage Ordinance**

**CONTRACTOR** shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-29. Service Contractor Worker Retention Ordinance**

**CONTRACTOR** shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-30. Access and Accommodations**

**CONTRACTOR** represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

**CONTRACTOR** understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-31. Contractor Responsibility Ordinance**

**CONTRACTOR** shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

**PSC-32. Business Inclusion Program**

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

**PSC-33. Slavery Disclosure Ordinance**

**CONTRACTOR** shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-34. First Source Hiring Ordinance**

**CONTRACTOR** shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-35. Local Business Preference Ordinance**

**CONTRACTOR** shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-36. Iran Contracting Act**

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

**PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections**

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR’S** principals, and **CONTRACTOR’S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract # \_\_\_\_\_ . Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at [ethics.lacity.org](http://ethics.lacity.org) or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

**PSC-38.** Contractors’ Use of Criminal History for Consideration of Employment Applications

**CONTRACTOR** shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-39.** Limitation of City’s Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

**PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards**

**CONTRACTOR** shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

**PSC-41. Compliance with California Public Resources Code Section 5164**

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR’S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

**PSC-42. Possessory Interests Tax**

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

### **PSC-43. Confidentiality**

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively “Confidential Information”) are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

### **PSC-44. COVID-19**

Employees of Contractor and/or persons working on its behalf, including, but not limited to, subcontractors (collectively, “Contractor Personnel”), while performing services under this Agreement and prior to interacting in person with City employees, contractors, volunteers, or members of the public (collectively, “In-Person Services”) must be fully vaccinated against the novel coronavirus 2019 (“COVID-19”). “Fully vaccinated” means that 14 or more days have passed since Contractor Personnel have received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen) and all booster doses recommended by the Centers for Disease Control and Prevention. Prior to assigning Contractor Personnel to perform In-Person Services, Contractor shall obtain proof that such Contractor Personnel have been fully vaccinated. Contractor shall retain such proof for the document retention period set forth in this Agreement. Contractor shall grant medical or religious exemptions (“Exemptions”) to Contractor Personnel as required by law. If Contractor wishes to assign Contractor Personnel with Exemptions to perform In-Person Services, Contractor shall require such Contractor Personnel to undergo weekly COVID-19 testing, with the full cost of testing to be borne by Contractor. If Contractor Personnel test positive, they shall not be assigned to perform In-Person Services or, to the extent they have already been performing In-Person Services, shall be immediately removed from those assignments. Furthermore, Contractor shall immediately notify City if Contractor Personnel performing In-Person Services (1) have tested positive for or have been diagnosed with COVID-19, (2) have been informed by a medical professional that they are likely to have COVID-19, or (3) meet the criteria for isolation under applicable government orders.

**EXHIBIT 1**

**INSURANCE CONTRACTUAL REQUIREMENTS**

**CONTACT** For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at [www.lacity.org/cao/risk](http://www.lacity.org/cao/risk). The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

**CONTRACTUAL REQUIREMENTS**

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake



self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

**7. California Licensee.** All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

**8. Aggregate Limits/Impairment.** If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

**9. Commencement of Work.** For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

## Required Insurance and Minimum Limits

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

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

Agreement/Reference: \_\_\_\_\_

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

### Limits

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\_\_\_ **Workers' Compensation (WC) and Employer's Liability (EL)**

WC Statutory

EL \_\_\_\_\_

Waiver of Subrogation in favor of City

Longshore & Harbor Workers

Jones Act

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\_\_\_ **General Liability**

Products/Completed Operations

Sexual Misconduct \_\_\_\_\_

Fire Legal Liability \_\_\_\_\_

\_\_\_\_\_

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\_\_\_ **Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work)

\_\_\_\_\_

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\_\_\_ **Professional Liability** (Errors and Omissions)

\_\_\_\_\_

Discovery Period \_\_\_\_\_

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\_\_\_ **Property Insurance** (to cover replacement cost of building - as determined by insurance company)

\_\_\_\_\_

All Risk Coverage

Boiler and Machinery

Flood \_\_\_\_\_

Builder's Risk

Earthquake \_\_\_\_\_

\_\_\_\_\_

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\_\_\_ **Surety Bonds - Performance and Payment (Labor and Materials) Bonds**

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\_\_\_ **Crime Insurance**

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**Other:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Professional Services Agreement**  
**CONTRACTOR**  
**Attachment B – Confidentiality Agreement**

I \_\_\_\_\_, (hereinafter referred to as “Contractor”), have entered into a contract (hereinafter referred to as the “Agreement”) with the City of Los Angeles to provide various services to the City of Los Angeles (hereinafter referred to as “City”).

I will provide temporary services to City and as part of these services I will have access to confidential information. “Confidential Information” includes all data, records, documents, audio or visual recordings, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media, to me by City pursuant to the Agreement or this Confidentiality Agreement, regardless of whether the information is marked or otherwise identified in writing as confidential, and regardless of whether the Confidential Information is received prior to execution of this Confidentiality Agreement.

I further understand that all Confidential Information provided to me by City, or accessed or reviewed by me during the performance of this assignment will remain the property of City.

I agree to use Confidential Information solely in connection with providing services to City under the Agreement and for no other purpose.

I agree not to provide Confidential Information, nor disclose its content or any information contained in it, either orally or in writing or in any form to transmit information, to any other person or entity, unless required by law or court order. I further agree not to make copies of any Confidential Information unless a formal request is made and approved by City.

I agree to promptly notify City of all requests, notices, subpoenas, pleadings, or other means, for the release of Confidential Information received by me.

I agree that I will not divulge to any unauthorized person, Confidential Information or any other information obtained while performing work pursuant to the Agreement between me and City.

I will be responsible for protecting the confidentiality and maintaining the security of all Confidential Information in my possession. I agree to use the same standard of care to protect City’s Confidential Information as I use to protect my own confidential and proprietary information, but not less than a reasonable standard.



**Professional Services Agreement**  
**CONTRACTOR**  
**Attachment C – Scope of Work**

1. Contractor and City will each provide an Account Manager to act as the single point of contact for all administrative, technical, and scheduling issues related to the Agreement.
2. Contractor will provide iVOS® software licenses, maintenance and support, hosting and professional services of the iVOS® software solution as detailed in the Fee Schedule (Attachment D).
3. Contractor shall provide iVOS® software licenses, maintenance and support, hosting and professional services to City as listed in the Attachment D (Fee Schedule) and Attachment E (Software Maintenance and Support Agreement).
4. The Agreement and associated Attachment and Exhibits, attached hereto and incorporated by reference herein, will describe specific deliverables and service levels to be furnished to City and the tasks to be performed by Contractor.
5. License and Conditions Subject to the terms and conditions of this Agreement, Contractor hereby grants City a nonexclusive, royalty-free, right and perpetual license (the "License") to access and use the Software Product, Software Documentation, and Contractor Proprietary Technology as defined herein, solely for purposes consisting of or related to City's administration of its self-insured Workers' Compensation program. Subject to the terms and conditions of this Contract, as part of the License:
  - 5.1 "Software Product" or "Contractor Software") shall mean Contractor's software product as detailed in the Fee Schedule and Cost Provision attached hereto as Attachment D:
  - 5.2 "Software Documentation" shall mean Contractor's online help documentation, which shall be made available to City;
  - 5.3 Software Product may be accessed and used by the number of user licenses specified in the Fee Schedule and Cost Provisions attached hereto as Attachment D; and
  - 5.4 Software Product may also be accessed and used for backup, failover, disaster recovery, development, staging, technology integration and testing.

Contractor shall authorize City to utilize an Authorized User which shall mean, without limitation, City's employees, officers, directors, agents, servants, and such consultants, contractors, and service providers, including without limitation third-party contractors and service providers. Authorized Users shall have access to the Software Product, as defined above.

6. City acknowledges that the Software Product and its structure, organization, source code, protocols, data model, and related schemas constitute valuable and proprietary trade secrets and other proprietary intellectual property of Contractor and its suppliers. Accordingly, City will not, and will make commercially reasonable efforts to ensure that all of its employees or other authorized end users will not (unless specifically authorized elsewhere in this Agreement):
  - 6.1 Modify, adapt, alter, translate, or create derivative works from the Software Product;
  - 6.2 Merge the Software Product with any other software, products or services;
  - 6.3 Sublicense, resell, re-distribute, lease, rent, loan, disclose or otherwise transfer the Software Product or any other associated products and services to any third party;
  - 6.4 Reverse engineer, decompile, disassemble, or otherwise attempt to derive the source or object code of the Software Product;
  - 6.5 Use the Software Product to provide any facility management, service bureau or similar services to third parties, permit third parties to use the Software Product to develop a product line that is similar to the Software Product;
  - 6.6 Publish or share with any third party, any results of any benchmark of performance tests run on the Software Product or component thereof; or
  - 6.7 Use or copy the Software Product except as expressly allowed under this Agreement.

**Professional Services Agreement  
CONTRACTOR  
Attachment D – Fee Schedule**

**Base System Enterprise Single Site License**

iVOS® Claims Administration System - Enterprise (Single Site/Server License)

Modules included in base system:

- Workers' Compensation
- Diary, Notepad, Claim Mail, Guest Links, Correspondence, Litigation Management, Litigation Calendar, Caseload Management
- Policy Maintenance
- Business Rules
- iVOS® Security
- Reporter Module including Report Design Tool and Report Distribution Module
- iVOS® Scheduler
- Sticky Note Document Attachments

**User License Fees:**

- 270 - Full Access Workers' Compensation Users. Contractor agrees 270 Full Access Workers' Compensation User licenses are included in this agreement at no additional charge. Full Access Workers' Compensation Users will have full read, update, and add capabilities in the Software Product,
  - For the term of the Agreement, Contractor agrees to provide City with additional user licenses above the 270 concurrent users at Full Access Workers' Compensation Users at \$5,000 per user one-time fee plus 22.5% annual maintenance and support fee.
- Unlimited Number of Concurrent Read Only Users, which means any user of the Software Product who can only read information in the Software Product and use iVOS® Reporter, but cannot update or add any information. Unless a client representative with administrative credentials restricts an iVOS user's "read only" rights, that user will have access to iVOS® Reporter.
- Unlimited Number of Concurrent Reporter Users: City will be required to use administrative tools to restrict access to all other functions of the Software Product other than iVOS® Reporter as well as ticking the box to describe them as a "read only" user to ensure that such "Report Only" user is not counted against a full access license.

- Unlimited Number of Concurrent Guestlink Users; these are users to whom City has granted Guestlink access through ClaimMail who can read, update or add information in the Software Product. Their level of access depends on the level of security defined by City. If the guest link user is set up as a Read Only User, then that user will not count against a concurrent license, otherwise that user will count against a concurrent license. Per user pricing is on a concurrent user basis. For example, City may have any number of users with access to the system but only up to the total number of user licenses (250) may be on the system at any one time, regardless of being remote or local.

### **Additional Licensed Modules**

The following are included within the Software Product license granted to City under this Agreement:

- ISO Claim Search (Index Bureau) Automated Interface
- VOS Express
  - E-mail Express Module
  - Correspondence Express Module
- Accounts Payable Interface - Two-way interface in which payment information is entered, processed, and assigned a unique identifier in iVOS®, then exported to City's accounts payable system that creates the checks to be issued. When the data is passed back, iVOS® receives check amounts, dates and numbers and updates the payment records. The data transfer must adhere to the defined data security protocols.
- California Commutation Calculator
- Employee Interface - When a claim (or injury report) is opened and a Social Security or employee number is entered, the employee information is automatically populated into the claim window of iVOS®, eliminating the need to manually enter the data. City will be responsible for extracting the data from its HR/payroll database into a fixed-length ASCII file format in accordance with the standards provided by Contractor. The data transfer must adhere to the defined data security protocols.
- Contractor Digital Incident Reporting Module
  - New replacement of ACORD form
  - Includes retrieval of Employee Information from iVOS by Employee Number and SSN
  - Includes attachment of supported file types including PDF, JPG, Docx, etc.) to new claim



- Unlimited number of users for data entry into the Contractor Digital Incident Reporting Module
- Central Output Management Module
- Document Imaging Module
- Document Imaging Import
- Document Imaging Export
- Centers for Medicare/Medicaid Services (“CMS”) Compliance Module - The CMS Compliance Module is an interface to support the CMS Section 111 reporting requirement. The solution includes the ability to configure iVOS® to associated claims with appropriate Responsible Reporting Entity (“RRE”) ID for reporting, ability to generate the eligibility query, preliminary report for data review and validation and quarterly claim reporting in file format meeting CMS reporting requirements. Functionality also includes ability for importing / processing of applicable CMS response file transmission requirements. The interface will produce an export file that contains data formatted for transmission to the Coordination of Benefits Contractor (“COBC”)/CMS. Contractor is not an agent and does not perform reporting on behalf of the RRE and in no way does the CMS module represent the responsibilities of an RRE.
- Medical Bill Review and Medical Treatment Interface - The Medical Bill Review and Medical Treatment Interface is a two way, standard interface to import medical payment information into iVOS® from City's bill review vendor for check/voucher issuance and export of Claimant and Contractor data in accordance with existing production file layouts and process. By using this interface, medical treatment information will also be imported into iVOS®, providing the ability to view Explanation of Benefits (“EOB”) information.
- Automated Penalty and Interest - Automated processing of penalty and interest payments on late medical payments sent directly from iVOS®.
- Medicare Reporting Interface - This interface takes the CMS information captured in iVOS® and sends this data to City’s CMS vendor. It works with the CMS Compliance Module.
- Payroll Interface
  - Interface for importing lost hours from City’s payroll system
  - Interface for exporting injury on Duty eligibility
- Accounts Payable Interface

- Any new functionality implemented during the Agreement pertaining to the services described herein.

**MAINTENANCE FEES**

**Base Maintenance Fees**

City shall pay Contractor for the following maintenance fees each year:

<b>Maintenance Year</b>	<b>Maintenance and Support Fee</b>
Year 1 (2022/2023)	\$264,705
Year 2 (2023/2024)	\$277,940
Year 3 (2024/2025)	\$291,837
Year 4 (2025/2026)	\$306,429
Year 5 (2026/2027)	\$321,751
<b>TOTAL</b>	<b>\$1,462,662</b>

**Maintenance Fees for New Software**

If at any point during the term of this Contract, City purchases a license, interface, module, enhancement, or other similar component that requires ongoing maintenance and was not in production use prior to June 30, 2022 (a "New Software"), City shall also pay maintenance fees for that New Software.

The base maintenance fee payable for a New Software will be 22.5% of the cost of the New Software, as agreed upon by City and Contractor, provided however, that in the first year that a New Software is put into production, the maintenance fee for the New Software will be prorated on a monthly basis. Each year subsequent to the first year that the New Software was in production, the maintenance fee for the New Software will increase by 5%.

For Example:

On January 1, 2023, during Year 1 New Software "X" is launched into production. The New Software "X" fee is \$20,000. No New Software is launched from Year 2 to Year 5.

**New Software "X"**

<b>Fee</b>	<b>Description</b>
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\$20,000	New Software "X"
22.5%	Maintenance Fee New Software %
<hr/>	
\$4,500	New Software "X" 12 mo. Fee
50%	Pro rate % (6 mo/12 mo)
<hr/>	
\$2,250	New Software "X" prorated fee

Maintenance fees and New Software fees

	Fee	Description
Year 1	\$264,705	Maintenance and Support
	\$2,250	New Software "X" pro rate fee
	\$266,955	Total Year 1 Fee
<hr/>		
Year 2	\$277,940	Maintenance and Support
	\$4,500	New Software "X" pro rate fee
	\$225	5% increase (\$4,500 x 5%)
	\$282,665	Total Year 2 Fee
<hr/>		
Year 3	\$291,837	Maintenance and Support
	\$4,725	New Software "X" pro rate fee
	\$236	5% increase (\$4,725 x 5%)
	\$296,798	Total Year 3 Fee
<hr/>		
Year 4	\$306,429	Maintenance and Support
	\$4,961	New Software "X" pro rate fee
	\$248	5% increase (\$4,961 x 5%)
	\$311,638	Total Year 4 Fee
<hr/>		
Year 5	\$321,751	Maintenance and Support
	\$5,209	New Software "X" pro rate fee
	\$260	5% increase (\$5,209 x 5%)
	\$327,221	Total Year 5 Fee

Maintenance will be based on the actual site, users, interfaces/optional modules and custom development amounts determined at the invoice date.

Maintenance includes:

1. Unlimited number of calls to Contractor's support center (calls to Contractor's support center will be made by City's support staff)
2. Product updates and upgrades
3. Services required to implement product updates and upgrades
4. Maintenance and support services as outlined in Attachment E, "Software Maintenance and Support Agreement."

Contractor will invoice City for the Annual Maintenance on June 30<sup>th</sup> of each year.

## **Hosting Fees under This Agreement**

### **Hosting Fees**

- Included in the Hosting Fees is the Hosting Environment (see Exhibit 1 to Attachment E) and the provision of a testing environment along with the production environment.
- City shall pay Contractor Hosting Fees according to the following schedule:

<u>Year</u>	<u>Hosting Fee</u>
Year 1 (2022/2023)	\$258,799
Year 2 (2023/2024)	\$271,739
Year 3 (2024/2025)	\$285,326
Year 4 (2025/2026)	\$299,592
Year 5 (2026/2027)	\$314,571
Total	\$1,430,027

### **Payment Terms**

City agrees to be invoiced by Contractor for the Annual Maintenance and Hosting Fees according to the following schedule.

- Annual Maintenance and Hosting Fees on June 30<sup>th</sup> of each year.
- All payments are due thirty (30) days after receipt of complete and approved invoice.
- All pricing is inclusive of travel related expenses.

### **Additional Services Under This Agreement**

- Account Manager - City will have a dedicated Account Manager, billed as hours are used at \$205/hour, with a minimum of 120 hours annually. This Account Manager will provide expedited responses to "how to" questions as well as assist with navigating Contractor's internal organization on an as-needed basis by City, and will only bill for the hours utilized to provide such services.

Year	Account Manager
Year 1 (2022/2023)	\$24,600
Year 2 (2023/2024)	\$24,600
Year 3 (2024/2025)	\$24,600

Year 4 (2025/2026)	\$24,600
Year 5 (2026/2027)	\$24,600
TOTAL	\$123,000

- Advanced CMS Services - Medicare Set Asides (MSA) and Medicare, Medicaid, and SCHIP (State Children’s Health Insurance Program) Extension Act of 2007 (MMSEA) Reporting

Advanced CMS Interface will provide accurate and secure delivery of information to CMS. The following list outlines the functionality of Advanced CMS data platform:

- Monthly query and quarterly reporting unlimited transactions
- Weekly automated data exchange
- Replications of CMS errors pre-reporting
- Manages RRE registration and re-certification process
- Customizable escalation and reporting tools

Advanced CMS Services will:

- Provide full and complete MSA services and be knowledgeable and cost effective in ensuring eligible benefits will be accounted for and paid efficiently in accordance with regulated guidelines.
- Provide full and complete Medicare Mandatory Reporting services and be responsible for compliance with CMS as defined by Medicare/Medicaid laws, and MMSEA.
- Be responsible for and provide services such as, initial claims reporting, verification and monitoring of Medicare/Medicaid eligibility, etc. and ensure compliance with MMSEA.
- Be designated as City’s RRE and will be responsible for fully complying with all reporting requirements in accordance with CMS Reporting, Section 111 of the MMSEA.
- Provide City with all documentation necessary to defend City’s position for any potential Medicare disputes or lien exposures. City will use documentation provided by Contractor for defense purposes only.
- Provide monthly status reports of outstanding debts.
- Provide City with Medicare Resolve letter 60 days from the date of Medicare Valid Dispute letter.

- Meet in-person with City monthly or as requested by City to discuss the Medicare program, concerns and any issues which may arise.

City shall pay Contractor for Advanced CMS Services according to Exhibit 1 to Attachment D, Advanced CMS Services and Fees.

**Contingency Funds under This Agreement**

City has designated up to \$200,000 per year ("Contingency Funds") that City, at its sole discretion, may utilize, in whole or in part, to purchase iVOS services and modules that: (i) are not otherwise provided by Contractor under this Agreement, and (ii) relate to program modifications resulting from new requirements for workers' compensation claims administration, payment processing and/or reporting requirements.

Examples of permissible expenditures under this Section include the purchase of iVOS modules and professional services that are necessitated by: (i) changes in City requirements which subsequently require updates to iVOS; and (ii) changes requested to improve the efficiency and productivity of claims staff and/or payment processing.

City will request a change order, in the form of a written task order, for the services and/or modules that City will request that Contractor provide in exchange for expenditure of some or all of the Contingency Funds. No amendment to this Agreement will be required if this change order is executed in accordance with this Section, provided that the expenditure of Contingency Funds not exceed \$200,000 annually.

Execution of this Agreement does not guarantee that any or all of these funds will be expended.

Any amounts due to be paid by City to Contractor for Advanced CMS Services listed in Exhibit 1 to Attachment D and not paid under this Contract will be billed after services are rendered and paid against the claim in which the service occurred. Advanced CMS Services will not exceed \$200,000 per contract year and will not exceed \$1,000,000 for the term of the Contract.

The anticipated expenditure for each year is set forth below.

Maintenance Year	Maintenance and Support	Hosting	Account Mgr	Auto P&I	Additional Users	Contingency	TOTAL
Year 1 (2022/2023)	\$264,705	\$258,799	\$24,600	\$6,188	\$10,000	\$200,000	\$764,292
Year 2 (2023/2024)	\$277,940	\$271,739	\$24,600	\$6,188	\$10,500	\$200,000	\$790,967
Year 3 (2024/2025)	\$291,837	\$285,326	\$24,600	\$6,188	\$11,025	\$200,000	\$818,975

Year 4 (2025/2026)	\$306,429	\$299,592	\$24,600	\$6,188	\$11,576	\$200,000	\$848,385
Year 5 (2026/2027)	\$321,751	\$314,571	\$24,600	\$6,188	\$12,155	\$200,000	\$879,265
<b>TOTAL</b>	<b>\$1,462,662</b>	<b>\$1,430,027</b>	<b>\$123,000</b>	<b>\$30,940</b>	<b>\$55,256</b>	<b>\$1,000,000</b>	<b>\$4,101,883</b>

**Professional Services Agreement  
CONTRACTOR TECHNOLOGY, INC**

**Exhibit 1 to Attachment D – ADVANCED CMS SERVICES AND FEES**

**MSA & Medical Allocation Services**

<p>Medicare Set-Aside Allocation Report</p> <ul style="list-style-type: none"> <li>▶ Preliminary investigation of Medicare eligibility</li> <li>▶ Identification of primary cost drivers</li> <li>▶ Obtain a rated age</li> <li>▶ Templates and assistance to mitigate cost drivers</li> <li>▶ Medical and Legal Review</li> <li>▶ Legal opinion</li> <li>▶ Consultation with dedicated legal and medical staff</li> <li>▶ Draft settlement language as requested</li> </ul> <p>CMS Submission</p> <p>Social Security Disability status check</p> <p>MSA Second Look/ Amended Review File consultation with attorney</p> <ul style="list-style-type: none"> <li>▶ Review and full analysis of all medical records dated after the original WCMSA submission</li> <li>▶ Analysis of whether claim will qualify for “Amended Review”</li> <li>▶ Identification of Cost Mitigation Options and Strategies</li> </ul> <p>Amended Review Deadline tracking Executing a CMS request for an Amended review</p>	<p>\$2250 per claim</p>
<p>MSA Allocation Updates</p>	<p>0-6 months after full price MSA – One Free 6-12 months after full price MSA – \$1000 &gt;12 months – \$2000</p>
<p>5 day Rush request for MSA &amp; Medical Allocation Services</p>	<p>\$250 per claim</p>
<p>Legal Zero Allocation</p>	<p>\$1500 per claim</p>
<p>Non-Submit MSA/Limited Allocation</p>	<p>\$1200 per claim</p>
<p>Pre-MSA</p> <ul style="list-style-type: none"> <li>▶ Reviews last 6 months of records and provides a “snapshot” of the potential MSA cost</li> <li>▶ If a full MSA is ultimately requested, the price of the pre-MSA is credited against your MSA price.</li> </ul>	<p>\$1000 per claim</p>
<p>Pre-MSA Plus</p>	<p>\$1500 per claim</p>
<p>Medical Cost Projection (MCP)</p>	<p>\$2000 per claim</p>



MSA Clinical Review (MSA-CR)	TBD on a per case basis
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\*if a referral is cancelled post completion of work, partial billing may be assessed based on work completed.

### **Collateral Services**

Rated Age Services	\$250 per claim
Consulting Services	Complementary
Settlement Resolution Services	Please contact ISO Claims Partners. TBD on a per case basis
Protocol Design	Please contact ISO Claims Partners. TBD on a per case basis

### **Conditional Payment Services**

Case by Case: Conditional Payment Review <ul style="list-style-type: none"> <li>• Obtain Letter of Authority</li> <li>• Request Conditional Payment Letter</li> <li>• Conditional Payment Lien Negotiation Services</li> <li>• Treasury Service             <ul style="list-style-type: none"> <li>▶ Initiate review, analysis and dispute of charges (if appropriate) for files identified with outstanding Treasury debt.</li> </ul> </li> </ul>	\$500 life of claim
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### **Medicare Advantage Plan Services:**

CP Search	\$250 per lien
CP Negotiation	\$250 per lien

**Programmatic: CP Link\***

- ▶ Identify claimant to initiate conditional payment referral/service;
  - ▶ If liability insurance type, seek requisite Medicare authorization from claimant or claimant's counsel (if applicable). Blanket Medicare authorization is required for work-comp/no-fault.
- ▶ Register the matter and request a conditional payment letter from the applicable MSP contractor;
- ▶ Review listed Medicare charges, provide recommendation to customer with regard to potential conditional payment dispute and/or resolution of matter with applicable MSP contractor
- ▶ If requested by adjuster or as agreed to as part of protocol, submit dispute or appeal with the applicable MSP contractor;
- ▶ Where appropriate, will seek Demand / Case Closure with applicable MSP contractor.
- ▶ Treasury Service
  - ▶ Initiate review, analysis and dispute of charges (if appropriate) for files identified with outstanding Treasury debt.

\$250 flat rate life of claim(Medicare beneficiaries identified 3/9/2021 going forward)

\$200 flat rate life of claim (Medicare beneficiaries identified prior to 3/9/2021)

CP Link captures confirmed Medicare beneficiaries identified 2/2018 go forward

**Professional Services Agreement**  
**CONTRACTOR TECHNOLOGY, INC**  
**Attachment E – Software Maintenance and Support Agreement**

If Contractor provides software to the City of Los Angeles ("City") as listed in the Attachment D (FEE SCHEDULE AND COST PROVISIONS) and this Attachment E (Software Maintenance and Support Agreement). This Software Maintenance and Support Agreement ("SMSA") states that Contractor ("Contractor"), will provide technical support to City under the terms and conditions of this Agreement.

**1. Maintenance and Support Service**

- a. Subject to the terms and conditions of this Agreement and this Attachment E, Contractor will provide support and maintenance in order to resolve any failure of the Contractor Software to operate in accordance with the Software Documentation and the SOW ("the Customer Support Services") and in accordance with the Service Level Agreement detailed below in this Attachment. If the Software does not perform in accordance with the Specifications, Contractor will use commercially reasonable efforts to correct the failure to so perform (including providing a work around). The correction may result in a modification of the Software. Such correction may be included in a subsequent release of the Software, unless City, in its sole discretion, instructs Contractor that such a correction is necessary for the City to provide the required services, in which case Contractor shall make such a correction within the timeframe designated by City. The Customer Support Services typically include, but are not limited to: functional or usage support of the application, training, existing report modification, customized or hard copy documentation, data scrubbing, but generally exclude, researching and fixing anomalies caused by other vendors, making changes resulting from internal City business practices, enhancing system configuration and other similar tasks that are requested but not required by the Agreement. Because City has no rights in the source code version of the Software, and may only use the object code version of the Software, City may only maintain the Software at the administrative level. City is prohibited from attempting to support the Software (either itself or through a third party) in any way that would require access to the source code of the Software or would require any reverse engineering, reverse assembly or disassembly of the Software. Contractor currently is the only entity authorized to support the Software at the code level and does not provide any of its customers the right to access the source code in order to support the Software.
- b. Contractor's Guidelines & Service Level Agreement in Exhibit 1 to Attachment E, which defines the support and services provided by Contractor is incorporated

herein as fully set forth in this Agreement. Any modifications to the Guidelines & Service Level Agreement shall be mutually agreed upon by Contractor and City.

- c. During each annual period for which City has paid the applicable Annual Maintenance Fees (as defined in Attachment D) for the Software, Contractor will provide City with, when and if available, Patches and Releases (as both those terms are defined below) for the Software, which are provided at no additional charge to Contractor's customers then receiving the Customer Support Services for the Software. The term "Patch" means, if and when available, a change to the Software that may include patches, fixes, minor updates and error corrections, which Contractor generally provides to its customers who receive customer support services. The term "Release" means a new release of the Software that may include fixes, error corrections, updates or enhancements to existing functionality of the base software, enhancements to the optional software modules customers may or may not have purchased, or add entirely new functionality, which Contractor generally provides to its customers who receive customer support services. Patches and Releases are provided at Contractor's discretion and do not include any Optional Functionality (as defined below) that Contractor licenses separately for an additional fee.
- d. When Contractor develops certain new pieces of functionality for its Software, which is offered to all of its customers as an optional, fee-bearing module, interface, report or other format ("Optional Functionality"), such Optional Functionality is often delivered within a Patch or Release to City as part of the Customer Support Services. Operational Functionality releases shall provide only services or functionality in excess of those to be provided under this Agreement; City shall not pay any additional fees for services already required under this Agreement. Although the Optional Functionality is often included within the Patch or Release delivery, City has no rights to access or use any Optional Functionality that may be provided with a new Patch or Release unless and until City has signed a change order or a new amendment granting rights to City in such Optional Functionality, which will include payment of license and maintenance fees associated with such new Optional Functionality ("New Amendment"). To prevent City from accessing and using the Optional Functionality before payment of the applicable license fees, Contractor will often restrict access to such Optional Functionality through the use of a license file, which City will only receive following a signed change order or new Amendment and payment of the applicable fees for such Optional Functionality.
- e. Contractor will provide the Customer Support Services for the "current release" and "previous release" (major or minor). The "end-of-life" ("EOL") release will be eligible for emergency, external-driven interface changes with less than three (3) months' notice and defect resolution for issues of severity 1 - 3 to allow City to upgrade from the "EOL release" to either the "current release" or the "previous release."

- f. To the extent that Contractor offers a new Release, which is Optional Functionality created by Contractor as a result of a change in law or new law that does not directly apply to existing functionality within the Software, such new Optional Functionality is not included as part of the Customer Support Services and will be subject to additional fees, as negotiated between City and Contractor.

## **2. Fees and charges**

The fee for the maintenance and support services provided for herein shall initially be as per the Payment Terms referenced in Attachment D of the Agreement (FEE SCHEDULE). Thereafter, the fee for maintenance and support services shall be payable in advance of each one-year period. A refund equal to the prorated maintenance fee (i.e., maintenance fee/12 times the remaining months) shall be given if this Agreement is terminated, other than by Contractor for cause, pursuant to the terms and conditions of this Agreement

## **3. City's Obligations Related to Support**

City will be responsible for the following: (a) reporting errors promptly; (b) providing sufficient information for Contractor to duplicate the circumstances of a reported Software defect or duplicate the error, as described in the Specifications, so Contractor can duplicate the error, assess the situation, and/or undertake any needed or appropriate maintenance action hereunder; and (c) carrying out procedures for the rectification of errors or malfunctions within a reasonable time after such procedures (or revisions, upgrades, enhancements, *etc.*) have been received from Contractor. In addition, City is expected to provide up to three (3) City contacts to act as liaisons between City and Contractor ("City Contacts"). These individuals must be knowledgeable in the operation of the Software in order to serve as City Contacts. All of City's support inquiries should be initiated through City contacts. City agrees to perform all tasks assigned to City as set forth in this Agreement, the SOW, or any Project Plan or as reasonably requested by Contractor and provide all assistance and cooperation to Contractor in order to accomplish timely and efficiently the Services. Contractor will not be deemed in breach of this Agreement or SOW in the event Contractor's failure to meet the responsibilities and time schedules set forth in the SOW or any Project Plan is caused by City's failure to meet (or delay in) its responsibilities and time schedules set forth in the applicable SOW, this Agreement or as otherwise requested by Contractor. In the event of any delay in City's performance of any of the obligations set forth in this Agreement, including any Statement of Work, or any other delays caused by City, the milestones, fees and date(s) set forth in the Statement of Work, WA or project plan will be adjusted as reasonably necessary to account for such delays.

# Professional Services Agreement CONTRACTOR

## Exhibit 1 to Attachment E Service Level Agreement for Contractor Hosted Environment

1. **Definitions.** The following terms will have the meanings indicated for purposes of this Exhibit 1 to Attachment E and the provision of Customer Support under this Agreement.
  - **"Availability"**: Time in which Software is available for use during Measurement Period.
  - **"Business Hours"**: Defined as the hours of 08:00 am to 9:00 pm Eastern Time Monday through Friday.
  - **"Follow-up Frequency"**: The frequency of time that a support consultant will update the customer on the progress of commercially reasonable efforts to resolve an issue.
  - **"Hosting Environment"**: The data center and related infrastructure encompassing the system as a whole maintained by Contractor, including the data loading servers and application reporting servers as well as the system servers.
  - **"Measurement Period"**: Thirty (30) days.
  - **"Outage"**: Any incident that restricts the ability of the end-user access to the Software or the Hosting Environment.
  - **"Response Time"**: The amount of time from when the customer properly reports an issue until a support consultant acknowledges receipt and initiates troubleshooting to resolve.
  - **"Resolution Goal"**: Amount of time that is set as a goal to resolve an incident. Commercially reasonable efforts will be used to meet this goal.
  - **"Recovery Declaration"**: Time period in which a disaster would be declared and recovery plans are enacted.
  - **"RPO"**: Recovery Point Objective. Maximum amount of potential data loss in the event of a disaster.
  - **"RTO"**: Recovery Time Objective, period of time to restore services from point of Recovery Declaration.
  - **"Severity Level"**: Impact level assigned to an issue based on the level of service degradation or loss of functionality.
  - **"Service Credit"**: Credit based calculated against Hosting Fees as defined in Attachment D.
  - **"Uptime"**: The time goal the Hosting Environment is up for use by City and application services.

**2. Customer Support/Service Desk**

Contractor provides the following Customer Support as part of the services referenced in Attachment E of this Contract.

Support Type	Support Description	Expectation	Exclusions
Toll Free Live Phone Support	Hours available for live phone support	Monday - Friday 5:00am – 6:00 pm (Pacific)	New Year's Memorial day Independence Day Labor Day Thanksgiving Day Christmas Day
Emergency after-hours Support	Emergency after normal Business Hours on-call support (24 hours a day, 7 days a week - Severity 1&2 issues only)	24x7x365	
Self-Service Portal	Online access to ticketing system to report an incident.	Response will be end of next Business Day	Use live or emergency for Severity 1

**Note: If an issue is considered Severity 1 / Critical, City must call the Support Desk.**

**Proactive Support**

Support Type	Support Description	Quarterly	Monthly	Weekly
Self-Service Portal	Online access to ticketing system to monitor status of outstanding tickets	✓	✓	✓
System Health Check	Regular scheduled health check of environment	✓	✓	✓
Account Review	Regular meeting with Account Management Team to review overall status including outstanding tickets and usage reports.	✓		
KPI Performance Report	System Key Performance Indicator report.		✓	

**3. Functionality**

The System is designed and configured to meet minimal functionality standards as described in this Contract. The following table illustrates the response level for loss of functionality of the System:

<b>Severity Classification</b>	<b>Severity Description</b>	<b>Response Time</b>	<b>Follow-up Frequency</b>	<b>Resolution Goal</b>
<b>Severity 1 Critical</b>	<ul style="list-style-type: none"> <li>• Critical service functionality is down</li> <li>• Major impact to City's business</li> <li>• No reasonable workaround(s) exists</li> <li>• No current patch set or service pack available</li> </ul>	30 minutes during Business Hours	Every 60 minutes during Business Hours. After hours, update frequency will be mutually agreed upon.	4 Business Hours
<b>Severity 2 Major</b>	<ul style="list-style-type: none"> <li>• Critical functionality is impaired or degraded</li> <li>• There are time-sensitive issues that impact ongoing production</li> <li>• Workaround exists, but it is only temporary</li> <li>• Hotfix, patch or service pack or upgrade is available</li> </ul>	60 minutes during Business Hours	One Daily Update sent during Business Hours.	3 Business Days or by next scheduled maintenance window; whichever is less
<b>Severity 3 Minor</b>	<ul style="list-style-type: none"> <li>• Non-critical functionality is down or impaired</li> <li>• Does not have significant current production impact</li> <li>• Performance is degraded</li> <li>• A short to medium term work-around is available</li> <li>• Patch, service pack or upgrade is available</li> </ul>	1 Business Day	Every 5 Business Days	As Agreed
<b>Severity 4 Low Impact</b>	<ul style="list-style-type: none"> <li>• Non-critical function impaired</li> <li>• No business impact</li> <li>• A medium to long term work-around is available</li> <li>• Patch, service pack or upgrade is available</li> </ul>	5 Business Days	Monthly	As Agreed
<b>Severity 5 No Impact</b>	<ul style="list-style-type: none"> <li>• Cosmetic issues have been identified</li> <li>• Does not have any impact on the functionality or performance of the software, or a usability question</li> </ul>	N/A	As Agreed	As Agreed



Severity Classification	Severity Description	Response Time	Follow-up Frequency	Resolution Goal
	<ul style="list-style-type: none"> <li>Patch, service pack or upgrade is available</li> </ul>			
<b>Severity 6 Enhancement Request</b>	<ul style="list-style-type: none"> <li>Software and System is working according to specification but City has identified an enhancement to improve product experience</li> </ul>	N/A	N/A	N/A

#### 4. Escalation Levels

Escalation Level	Contact Notified	
State 1	Front-Line Support Manager	
State 2	Global Support Services Director	
State 3	VP Customer Management / Managing Director	

Severity	Support State Levels	Escalation within the following time frames
Severity Level 1 - Critical	State 1	1 Business Hour
	State 2	2 Business Hours
	State 3	8 Business Hours
Severity Level 2 – Major	State 1	4 Business Hours
	State 2	8 Business Hours
	State 3	12 Business Hours
Severity Level 3 – Minor	State 1	When agreed resolution time is not met.
	State 2	Resolution time agreed + 1 Business Day
	State 3	Resolution time agreed + 2 Business Days
Severity Level 4 – Low Impact	All	N/A
Severity Level 5 – No Impact	All	N/A
Severity Level 6 – Enhancement Request	All	N/A

#### 5. Availability

The Software will be available ninety-nine percent (99%) of the time, twenty-four (24) hours per day, seven (7) days per week (a week will be deemed to commence at midnight Eastern Time on Sunday and extend for seven (7) days), including all legal holidays, with the exception of scheduled interruptions for maintenance.

$$\text{Availability \%} = \frac{\text{Total Minutes minus Scheduled Down Minutes minus Unscheduled Down Minutes of the Software}}{\text{Total Minutes minus Scheduled Down Minutes of the Software}}$$

**6. Hosting and Operations Incident Response**

Contractor provides proactive monitoring of the Hosting Environment. Contractor IT Operations staff is automatically notified by the monitoring systems within ten (10) minutes of an incident occurring that causes a disruption, performance degradation or outage to the Hosting Environment. Contractor customer support team will coordinate resolution and communication (status updates) with Contractor IT Operations staff and City. Contractor IT Operations will respond to issues with the Hosting Environment based on the severity levels defined below (each an “Application Availability and Resolution Goal Service Level”):

<b>Severity Classification</b>	<b>Severity Description</b>	<b>Response Time</b>	<b>Follow-up Frequency</b>	<b>Resolution Goal</b>	<b>Monthly Metric</b>
<b>Severity 1 Critical</b>	Total inability to use any material part of the Hosting Environment, resulting in a critical impact on user objectives.	30 Minutes	Every 60 minutes during Business Hours; after hours, update frequency will be mutually agreed upon.	8 Business Hours	95% closed within resolution goal
<b>Severity 2 Major</b>	Ability to use Hosting Environment, but user operation is severely restricted or where users notice degraded system performance.	1 hour	One Daily Update sent during Business Hours.	3 Business Days or by next scheduled maintenance window; whichever is less	90% closed within resolution goal

Severity Classification	Severity Description	Response Time	Follow-up Frequency	Resolution Goal	Monthly Metric
Severity 3 Minor	Ability to use the Hosting Environment with minor faults that cause little disruption to service or use of the product. Failure relates to functions that are not critical to overall user operations.	1 Business Day	Every 2 days	5 Business Days or as agreed	90% closed within resolution goal

**7. Maintenance Windows**

Contractor will conduct regular weekly maintenance. The standard maintenance window will be six (6) hours in length. In the event that the required maintenance will require a greater amount of time, Contractor will provide a written notice at least ten (10) Business Days in advance. Such time will not exceed fifteen (15) total hours per week and all reasonable efforts will be taken for such extensions not to occur more than once in a five (5) week period. Contractor will communicate directly with City on any maintenance specific to any dedicated resources. Contractor will complete installation of all upgrades to the Contractor Software outside of City's normal business hours and within the Standard Maintenance or Extended Maintenance Windows identified below. If it is not possible for Contractor to complete installation of an upgrade within the Standard Maintenance Window or Extended Maintenance Window per the paragraph above, a schedule will be set through mutual agreement.

<b><u>Standard Maintenance Window:</u></b>
ATLANTA Time: Friday 23:00– Saturday 05:00

<b><u>Extended Maintenance Window:</u></b>
ATLANTA Time: Friday 21:00 – Saturday 12:00

**8. Disaster Recovery**

Objective	Metric
Recovery Declaration	< 12 hours

Objective	Metric
RTO	< 24 hours
RPO	< 12 hours

**9. Hosting Environment**

The data center and related infrastructure encompassing the system as a whole maintained by Contractor, including the data loading servers and application reporting servers as well as the system servers.

Objective	Metric
Vulnerability Management	Weekly Vulnerability Scans and review of hosting and applications
Penetration Testing	Quarterly Penetration hosting and application testing performed by trusted independent third party
Uptime	99%, 24x7x365 excluding scheduled maintenance
Calculation	$\% = \frac{\text{Total Minutes minus Scheduled Down Minutes minus Unscheduled Down Minutes}}{\text{Total Minutes minus Scheduled Down Minutes of the Hosting Environment}}$
Monitoring	24x7x365
Redundancy	Maintain redundant or high availability infrastructure for production environment
Control Audit	Maintain a minimum of a SOC1 Type 2 or AICPA current standard process control certification

**10. Service Credit**

City's sole and exclusive remedies for Contractor's failure to meet the foregoing Application Availability and Resolution Service Levels will be the provision of Service Credits against the Hosting Fees as detailed in the table below:

<b>Availability/Resolution</b>	<b>Service Credit</b>	<b>Measurement Period</b>
<99.00 - $\geq$ 95.0	5%	30 Days
<95.00 - < 90.0	10%	30 Days
<90.00	20%	30 Days

The Service Credit is applied after two (2) concurrent months of Availability or Resolution Breach. If the breach is remedied during the following measurement period and does not recur for three (3) consecutive months, the Service Credit will not be applied.