APPENDIX C: CITY'S AGREEMENT FOR SAAS SERVICES

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

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

[insert name of contractor]

This agreement (the "Agreement") is made this _____ day of _____, 20_____, in the City and County of San Francisco, State of California, by and between: [insert name and address of Contractor], hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration, hereinafter referred to as "Purchasing" (collectively, the "Parties").

Recitals

WHEREAS, the **[insert name of the department]** wishes to license certain software as a service from Contractor **[add additional services here]**;

WHEREAS, a Request for Proposal ("RFP") was issued on **[insert date]**, and City selected Contractor as the highest qualified scorer pursuant to the RFP;

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number **[insert PSC number]** on **[insert date of Civil Service Commission action]**; and

WHEREAS, Contractor represents and warrants that it is qualified to provide such software as a service and **[add additional services here]** required by City as set forth under this Agreement.

Now, THEREFORE, the Parties agree as follows:

1.   Definitions. Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Acceptance	Notice from the City to Contractor that the SaaS Application meets the specifications and requirements contained in the Documentation and Appendices 1 and/or 2.

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Acceptance Period	The period allocated by City to test the SaaS Application to determine whether it conforms to the applicable Specifications and, if appropriate, properly operates in the defined operating environment, is capable of running on a repetitive basis, and is otherwise in compliance with the service level obligations without failure.
Agreement	This document and any attached appendices or exhibits, including any future written and executed amendments.
Authorization; Authorization Document	This Agreement, a Blanket Purchase Order, Contract Order, or Purchase Order of the City, properly executed by **[insert name of the department]** and Purchasing, and certified by the Controller for the specific funding of this Agreement or any modification thereof.
Authorized Users	A person authorized by City to access the City's Portal and utilize the SaaS Application, including any City employee, contractor, or agent, or any other individual or entity authorized by City.
Back-Up Environment	Contractor's back-up Data Center for the SaaS Services.
City Data	That data as described in Sections 9 and 28(a) of this Agreement which includes, without limitation all collected, used, maintained, processed, stored, or generated by or on behalf of the City, including as the result of the use of the SaaS Service. City Data includes without limitation Confidential Information.
City Portal	An electronic gateway to a secure entry point via Contractor's Website that allows City and its Authorized Users to log in to an area where they can view and download information or request assistance regarding the SaaS Application and Services.
City's Project Manager	The individual specified by the City pursuant to 6(a) hereof, as the Project Manager authorized to administer this Agreement on the City's behalf.

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Confidential Information Confidential City information including, but not limited to, personally-identifiable information, protected health information, or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

Contractor's Project Manager The individual specified by Contractor pursuant to Section 6(a) hereof, as the Project Manager authorized to administer this Agreement on Contractor's behalf.

Contractor's Website The Website that provides Authorized User access to the SaaS Application Services.

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

Data Center(s) The data center(s) located in the United States that will be used to host the SaaS Application and City's Data.

Deliverables **[add your description of the deliverables, if needed, here and refer to the Appendix that describes them in detail.]**

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Disabling Code	Computer instructions or programs, subroutines, code, instructions, data or functions (including but not limited to viruses, worms, date bombs or time bombs), including but not limited to other programs, data storage, computer libraries and programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that alter, destroy, inhibit, damage, interrupt, interfere with or hinder the operation of the City's access to the SaaS Services through the Contractor's Website and/or Authorized User's processing environment, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.
Documentation	Technical publications relating to use of the SaaS Application, such as reference, administrative, maintenance, and programmer manuals, provided by Contractor to City.
End User	Any Authorized User authorized by City to access the Contractor's Website and utilize the SaaS Application and Services.
Internet	The term "internet" shall mean that certain global network of computers and devices commonly referred to as the "internet," including (without limitation) the World Wide Web.
Open Source Software	Software with either freely obtainable source code, license for modification, or permission for free distribution.
Performance Credit	The credit due to City by Contractor with regard to Contractor's service level obligations in Appendix 4 (Service Level Obligations).
Personally Identifiable Information (PII)	Any information about an individual, including information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked to an individual, such as medical, educational, financial, and employment information.
Precedence	Notwithstanding the terms of any other document executed by the Parties as a part of this Agreement, the terms of this Agreement shall control over any discrepancy, inconsistency, gap, ambiguity, or conflicting terms set forth in any other Contractor Pre-Printed document.

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SaaS Application   The licensed and hosted computer program residing on Contractor's servers that provides the SaaS Services that may be accessed by Authorized Users through the Internet.

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

SaaS Issue   A problem with the SaaS Services identified by the City, which requires a response by Contractor to resolve.

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

SaaS Services   The provision by Contractor of the SaaS Services where Contractor's servers host the SaaS Application to perform the functionality listed in the Documentation

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

SaaS Software   Those SaaS licensed programs and associated documentation licensed to City by Contractor as listed in this Agreement and Appendices and any modification or Upgrades or modifications to the program(s) provided under this Agreement.

SaaS Software Error   Any failure of SaaS Software to conform in all material respects to the requirements of this Agreement or Contractor's published specifications.

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

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

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

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

Software   The SaaS Software and Contractor provided Third Party Software. All Software, revisions and versions provided by Contractor shall be subject to the terms and conditions of this Agreement, including any amendments thereto.

Successor Service Provider A new service provider, if any, selected by City in the event the SaaS Services are terminated under this Agreement.

Third Party Software   The software described in Appendix XX as "Third Party Software-Included in this Agreement"

Transition Services   That assistance reasonably requested by City to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider.

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the **[insert name of the department]**. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the **[insert name of the department]**, unless otherwise indicated by the context.

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

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

3. Term of the Agreement. Subject to Section 2, the term of this Agreement shall be from [insert beginning date] to [insert termination date]. The City shall have the option to extend the Agreement for a period of **[insert the number of years]** at the City's sole and absolute discretion.

4. Effective Date of the Agreement. This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

5. SaaS Licensed Software

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

b. Click-Wrap Disclaimer. No "click to accept" agreement that may be required for the City and/or Authorized Users' access to the SaaS Services or Contractor's Website and no "terms of use" or "privacy policy" referenced therein or conditioned for use of the SaaS Services or Contractor's Website shall apply. Only the provisions of this Agreement as amended from time to time shall apply to City and/or Authorized Users for access thereto and use thereof. The Parties acknowledge that City and/or each Authorized User may be required to click "Accept" as a condition of access to the SaaS Services through the Contractor's Website, but the provisions of such "click to accept" agreement and other terms (including Terms of Use and Privacy Policy) referenced therein shall be null and void for City and/or each such Authorized User.

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

d. Authorized APIs. City shall be permitted to access and use Contractor's SaaS Application Program Interfaces (APIs) when commercially available to develop and modify, as necessary, macros and user interfaces for use with any existing or future City systems and infrastructure. For purposes of this Agreement, such development shall be deemed an authorized modification but will not be supported by Contractor. Functionality and compatibility of City

developed macros will be sole responsibility of City. Any such macros or user interfaces developed by City shall become the property of City. All flat-file exchanges will be over an encrypted file transport service (ftps/vsftpd/scp/sftp) to a secure private ftp site.

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

6. Project Managers; Services Contractor Agrees to Perform.

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

Contractor's Project Manager:	[Name]
	[address]
	[email]
	[phone number]
City's Project Manager:	[Name]
	[address]
	[email]
	[phone number]

b. **Services Contractor Agrees to Perform.** During the Term of this Agreement, Contractor will perform all of the services set forth in Appendix 1, "SaaS Implementation and Training Services," Appendix 2, "SaaS Application and Hosted Services," and the following:

i. Provide all hardware, software and other equipment at Contractor's hosting site as described in Appendix 2 or any Description of Services (and any applicable disaster recovery site) as necessary to host and deliver the SaaS Application and Services described in Appendices 1 and 2.

ii. Provide Authorized Users access to the SaaS Application and Services pursuant to the grant of access in Section 5.

iii. Comply with the Service Level Obligations described in Appendix 4. It is mutually agreed and understood, that the Service Level Obligations will be applied beginning on the first full calendar month following the Acceptance of the SaaS Application and Services.

iv. Maintain the correct operation of the SaaS Application and Services, Contractor's Website, and provide SaaS Maintenance Services and support services as specified in this Agreement.

     v.   Provide telephone support for Authorized Users in the operation of the SaaS Application and Services.

     vi.   Provide Disaster Recovery Services as described in Section 26(d) and Appendix 5.

7.   **Acceptance Testing; Document Delivery; training.**

    a.   After City has obtained access to the SaaS Application and Services, and subsequent to each SaaS Software version upgrade, revision and patch as further outlined in Appendix 2, City and Contractor shall conduct user acceptance testing as outlined in Appendices 1 and 2, as the case may be, to verify that the SaaS Application and Services substantially conform to the specifications and City's requirements contained therein. In the event that the City determines that the SaaS Services do not meet such specifications, the City shall notify the Contractor in writing, and Contractor shall modify or correct the SaaS Services so that it satisfies the Acceptance criteria. The date of Acceptance will be that date upon which City provides Contractor with written notice of satisfactory completion of Acceptance testing. If City notifies Contractor after the Acceptance Testing Period that the SaaS Services do not meet the Acceptance criteria outlined in Appendices 1 and 2, as the case may be, then City shall be entitled to terminate this Agreement in accordance with the procedures specified in Section 30 herein, and shall be entitled to a full refund of any fees paid as part of this Agreement prior to termination.

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

    c.   **Trainings. [add the training provisions here]**

8.   **Contractor's Default.** Failure or refusal of Contractor to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to City, this Contract may be terminated by City pursuant to Section 30 (Termination; Disposition of Content) of the Agreement. Such termination does not waive any other legal remedies available to City.

9.   **City Data**

    a.   **Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data shall remain the exclusive property of the City. The Contractor hereby warrants that the SaaS Application does not maintain, store, or export the City Data using a database structure, data model, entity relationship diagram or equivalent which is itself a trade secret or which would cause substantial injury to the competitive position of the Contractor if published.

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       b.   **Use of City Data**. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, including user tracking and exception City Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data by Contractor or third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

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

       d.   **Backup and Recovery of City Data.** As a part of the SaaS Services, Contractor is responsible for maintaining a backup of City Data and for an orderly and timely recovery of such data in the event of data corruption or interruption of the SaaS Services. Unless otherwise described in Appendices 1 and/or 2, Contractor shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Agreement and as outlined in Appendix 4 and maintaining the security of City Data as further described herein. Contractor's backup of City Data shall not be considered in calculating storage used by City.

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

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

          a. the nature of the unauthorized access, use or disclosure;

          b. the Confidential Information accessed, used or disclosed;

c. the person(s) who accessed, used and disclosed and/or received protected information (if known);

d. what Contractor has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and

e. what corrective action Contractor has taken or will take to prevent future unauthorized access, use or disclosure.

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

iii. Contractor shall coordinate with the City in its breach response activities including without limitation:

a. immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;

b. Promptly (within 2 business days) designate a contact person to whom the City will direct inquiries, and who will communicate Contractor responses to City inquiries;

c. As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities;

d. Provide status reports to the City on Breach response activities, either on a daily basis or a frequency approved by the City;

e. Make all reasonable efforts to assist and cooperate with the City in its Breach response efforts;

f. Ensure that knowledgeable Contractor staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and

g. Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City.

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

v. In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no fewer than eighteen (18) months following the date of notification to such individuals;

vi. Perform or take any other actions required to comply with applicable law as a result of the occurrence;

    vii. Without limiting Contractor's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless City for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from City in connection with the occurrence;

    viii. Recreate lost City Data in the manner and on the schedule set by City without charge to City; and

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

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

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

    xii. City shall conduct all media communications, unless at its sole discretion directs Contractor to do so, related to such Data Breach.

10. Warranties of Contractor.

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

  b. Warranty of Performance. Contractor hereby warrants that when fully implemented, the SaaS Application to be configured and provided under this Agreement shall perform in accordance with the Specifications applicable thereto. With respect to all Services to be performed by Contractor under this Agreement, including SaaS Implementation and Training Services outlined in Appendix 1, and SaaS Application and Hosted Services outlined in Appendix 2, Contractor warrants that it will use reasonable care and skill. All services shall be performed in a professional, competent and timely manner by Contractor personnel appropriately qualified and trained to perform such services. In the event of a breach of the foregoing warranty relating to any service under this Agreement within twelve (12) months from the date of the providing of such services, Contractor shall, at its sole cost and expense, re-perform such services.

  c. Compliance with Description of Services. Contractor represents and warrants that the SaaS Application and Services specified in this Agreement and all updates and improvements to the SaaS Application and Services will comply in all material respects with the

Specifications and representations specified in the Documentation (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) as set forth (i) herein or in any amendment hereto, and (ii) the updates thereto.

        d.   **Title.** Contractor represents and warrants to City that it is the lawful owner or license holder of all Software, materials and property identified by Contractor as Contractor-owned and used by it in the performance of the SaaS Services contemplated hereunder and has the right to permit City access to or use of the SaaS Application and Services and each component thereof. To the extent that Contractor has used Open Source Software ("OSS") in the development of the SaaS Application and Services, Contractor represents and warrants that it is in compliance with any applicable OSS license(s) and is not infringing.

        e.   **Disabling Code.** Contractor represents and warrants that the SaaS Application and Services, and any information, reports or other materials provided to Authorized Users as a result of the operation of the SaaS Application and Services, including future enhancements and modifications thereto, shall be free of any Disabling Code at the time of their receipt by Authorized Users.

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

11. Compensation.

        a.   No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by City as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall the amount of this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no ".00"]. The breakdown of charges associated with this Agreement appears below in Sections 11(b) and 11(c). In no event shall City be liable for interest or late charges for any late payments.

        b.   **SaaS Implementation and Training Services:** The breakdown of costs associated with the SaaS Implementation and Training Services appear in Appendix 3 ("Calculation of Charges"), attached hereto and incorporated by reference as though fully set forth herein. Compensation for services rendered pursuant to Appendix 1 shall be made in monthly payments on or before the **30th** day of each month for work that City, in its reasonable discretion, concludes has been performed as of the 1st day of the immediately preceding month. In no event shall the amount for SaaS Implementation and Training Services under this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no ".00"]**.**

        c. **SaaS Application and Hosted Services:** The breakdown of costs associated with the SaaS Application and Hosted Services appear in Appendix 3 ("Calculation of Charges"), attached hereto and incorporated by reference as though fully set forth herein. Compensation for services rendered pursuant to Appendix 2 shall be made in quarterly payments, based on a calendar year, on or before the **1st** day of each quarter. In no event shall the amount for SaaS

Application and Hosted Services under this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no ".00"]. If there is an increase in annual SaaS Application and Hosted Services charges, Contractor shall give City written notice of such increase at least thirty (30) days prior to the expiration of the applicable SaaS Application and Hosted Services period. Annual SaaS Application and Hosted Services charges shall not increase more than 3 % of the rate of the year immediately prior to such increase.

12. **Disallowance** If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

13. **Indemnification.**

   a. **General Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except where such Claims are the result of the sole active negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

   b. **Infringement Indemnification.** If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the SaaS Application and Services infringes a patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the SaaS Application and/or Services constitutes Infringement, Contractor will pay the costs

associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement. In the event a final injunction is obtained against City's use of the SaaS Application and Services by reason of Infringement, or in Contractor's opinion City's use of the SaaS Application and Services is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the SaaS Application and Services as contemplated hereunder, (b) replace the SaaS Application and Services with a non-infringing, functionally equivalent substitute SaaS Application and Services, or (c) suitably modify the SaaS Application and Services to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the SaaS Application and Services. If none of these options is reasonably available to Contractor, then the applicable Authorization Document or relevant part of such Authorization Document may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Agreement for the license of such infringing SaaS Application and/or Services. Any unauthorized modification or attempted modification of the SaaS Application and Services by City or any failure by City to implement any improvements or updates to the SaaS Application and Services, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or combination of the SaaS Application and Services with products or data of the type for which the SaaS Application and Services was neither designed nor intended to be used.

14. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

15. Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique identifying number. All amounts

paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notice to the Parties."

16.   Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

17.   Taxes. Payment of any taxes, including possessory interest taxes, and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor.

18.   Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, the Licensed Software, although the unsatisfactory character of such work, or Licensed Software may not have been apparent or detected at the time such payment was made. Software, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

19.   Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor.

20.   Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees means that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to Contractor, its employees, City employees or third parties, or to property belonging to any of the above.

21.   Independent Contractor; Payment of Taxes and Other Expenses

       a.   **Independent Contractor**. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have

employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

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

22.   Nondiscrimination; Penalties

a.   **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or

subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

23. Insurance

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

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 each accident, injury, or illness; and

2)   Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence and $2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

4)   Technology Errors and Omissions Liability coverage, with limits of $X,000,000 each occurrence and each loss, and $X,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

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

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

5)   Contractor shall maintain in force during the full life of the Agreement Cyber and Privacy Insurance with limits of not less than $X,000,000 per occurrence and $X,000,000 general aggregate. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of Confidential Information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

b.   Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1)   Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2)   That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c.   Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d.   All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notice to the Parties" section

e.   Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the

effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

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

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

24. Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver of limitation of any rights which City may have under applicable law.

25. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 11 (COMPENSATION) OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

26. Force Majeure.

a. **Liability.** No Party shall be liable for any default or delay in the performance of its obligations under this Agreement: (i) if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, or any other cause beyond the reasonable control of such Party (a "Force Majeure Event"), (ii) provided the non-performing Party is without fault in causing reasonable precautions and cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means (including, with respect to Contractor, by meeting its obligation for performing disaster recovery services as described in Section 26(d)).

b. **Duration.** In such event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances

prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by telephone (to be confirmed in writing within two (2) days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.

      c.   **Effect.** If any event under Section 26(a), above substantially prevents, hinders, or delays performance of the Services as critical for more than fifteen (15) consecutive days, then at City's option: (i) City may terminate any portion of this Agreement so affected and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; or (ii) City may terminate this Agreement without liability to City or Contractor as of a date specified by City in a written notice of termination to Contractor. Contractor shall not have the right to any additional payments from City for costs or expenses incurred by Contractor as a result of any force majeure condition that lasts longer than three (3) days.

      d.   **Disaster Recovery.** In the event of a disaster, as defined below, Contractor will be responsible for providing disaster recovery services in accordance with the provisions of the disaster recovery plan attached as Appendix 5 hereto, or as otherwise set forth in this Agreement or any Statement of Work. Notwithstanding Section 26(a), a Force Majeure Event shall not excuse Contractor of its obligations for performing disaster recovery services as provided in this Section. In the event that a disaster occurs and Contractor fails to restore the hosting services within 24 hours of the initial disruption to Services, City may, in its discretion, deem such actions to be a material default by Contractor incapable of cure, and City may immediately terminate this Agreement. For purposes of this Agreement, a "disaster" shall mean an interruption in the hosting services or the inability of Contractor to provide City with the SaaS Application and hosting services for any reason that could not be remedied by relocating the SaaS Application and hosting services to a different physical location outside the proximity of its primary Data Center.

27.   **Nondisclosure.** Subject to the San Francisco Administrative Code §67.24(e) and to any state open records or freedom of information statutes, and any other applicable laws, City agrees that it shall treat the SaaS Services with the same degree of care as it treats like information of its own, which it does not wish to disclose to the public, from the date the SaaS Services are Accepted by the City until the SaaS Services are terminated as provided herein. The obligations of the City set forth above, however, shall not apply to the SaaS Services, or any portion thereof, which:

      a.   is now or hereafter becomes publicly known;

      b.   is disclosed to the City by a third party which the City has no reason to believe is not legally entitled to disclose such information;

      c.   is known to the City prior to its receipt of the Licensed SaaS Application and Services;

      d.   is subsequently developed by the City independently of any disclosures made hereunder by Contractor;

      e.   is disclosed with Contractor's prior written consent;

      f.   is disclosed by Contractor to a third party without similar restrictions.

APPENDIX C: CITY'S AGREEMENT FOR SAAS SERVICES

28. **Proprietary or Confidential Information.**

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

   b. **Obligation of Confidentiality.** Subject to the San Francisco Administrative Code §67.24(e) and to any state open records or freedom of information statutes, and any other applicable laws, the Parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a Party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The Parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.

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

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

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

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

g.   **Surrender of Confidential Information upon Termination**. Upon termination of this Agreement, in whole or in part, each Party shall, within five (5) calendar days from the date of termination, return to the other Party any and all Confidential Information received from the other Party, or created or received by a Party on behalf of the other Party, which are in such Party's possession, custody, or control; provided, however, that Contractor shall return City Data to City following the timeframe and procedure described further in this Agreement. Should Contractor or City determine that the return of any Confidential Information, other than City Data, is not feasible, such Party shall destroy the Confidential Information and shall certify the same in writing within five (5) calendar days from the date of termination to the other Party, pursuant to Section 30(b) of this Agreement.

h.   **Data Security.** Contractor shall at all times during the Term provide and maintain up-to-date security with respect to (a) the Services, (b) the Contractor's Website, (c) Contractor's physical facilities, and (d) Contractor's networks, to prevent unauthorized access or "hacking" of City's Data. Contractor shall provide security for its networks and all Internet connections consistent with best practices observed by well-managed SaaSs working in the financial services industry, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. Contractor will maintain appropriate safeguards to restrict access to City's Data to those employees, agents or service providers of Contractor who need the information to carry out the purposes for which it was disclosed to Contractor. For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., "firewalls", Transport Layer Security (TLS), Secure Socket Layer [SSL] encryption, or most current industry standard encryption, intrusion prevention/detection or similar barriers) and secure authentication (e.g. password protected) access to the City's Confidential Information and hosted City Data. For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of City's Data. City's Data classified as Confidential Information shall be encrypted at rest and in transit with controlled access. Contractor also will establish and maintain any additional physical, electronic, administrative, technical and procedural controls and safeguards to protect the City's Data that are no less rigorous than accepted industry practices (including, as periodically amended or updated, the International Organization for Standardization's standards: ISO/IEC

27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, NIST Special Publication 800-53 Revision 4 or its successor, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards or other applicable industry standards for information security), and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. Contractor warrants to the City compliance with the following (as periodically amended or updated) as applicable:

> i. The California Information Practices Act (Civil Code §§ 1798 et seq):

> ii. Compliance with the following, as applicable:

>> a. Federal Risk and Authorization Management Program (FedRAMP) certification, where federal funding is involved, and show evidence of having an active compliance program;

>> b. Based upon the City's classification of Data:

>>> i. Relevant security provisions of the Internal Revenue Service (IRS) Publication 1075, including the requirements that Data not traverse networks located outside of the United States;

>>> ii. Relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCI DSS) including the PCI DSS Cloud Computing Guidelines;

>>> iii. Relevant security provisions of the Social Security Administration (SSA) Document Electronic Information Exchange Security Requirement and Procedures for State and Local Agencies Exchanging Electronic Information with the Social Security Administration;

>>> iv. Relevant security provisions of the Criminal Justice Services (CJIS) Security policy.

>>> v. Relevant security provisions of the Medi-Cal Privacy and Security Agreement between the California Department of Health Care Services and the County of San Francisco.

 i. Data Privacy and Information Security Program. Without limiting Contractor's obligation of confidentiality as further described herein, Contractor shall be responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (i) ensure the security and confidentiality of the City Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the City Data; (iii) protect against unauthorized disclosure, access to, or use of the City Data; (iv) ensure the proper disposal of City Data; and, (v) ensure that all of Contractor's employees, agents, and subcontractors, if any, comply with all of the foregoing. In no case shall the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by City.

 j. City's Right to Termination for Deficiencies. City reserves the right, at its sole election, to immediately terminate this Agreement without limitation and without liability if City

reasonably determines that Contractor fails or has failed to meet its obligations under this Section.

k.   **Data Transmission.** The Contractor shall ensure that all electronic transmission or exchange of system and application data with City and/or any other parties expressly designated by City shall take place via encrypted secure means (using HTTPS or SFTP or most current encryption methods). The Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor. The Contractor shall ensure that no City Data of any kind shall be copied, modified, destroyed, deleted, transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City. Access to City Data by Contractor from outside the continental United States is prohibited.

29.   SSAE 16, SOC 2/SOC 3 and/or SOC 1 Audit Report. During the Term of the Agreement, Contractor will provide, on an annual basis, the SSAE 16, SOC 2/SOC 3 and/or SOC 1 Audit report ("Audit Reports") (if Contractor is using a hosting service provider, the Audit Report it receives from its service provider) as follows: (a) the Audit Reports will include a 365 day (twelve month) testing period; and (b) the Audit Reports will be available to City no later than thirty (30) days after they are received by Contractor. Upon City's written request, Contractor will provide a so-called "negative assurance opinion" to City as soon as said opinion is received from Contractor's hosting service provider. Contractor shall on an annual basis, and otherwise as reasonably requested by City: (i) provide the foregoing Audit Reports to City and (ii) request such "negative assurance opinions" on City's behalf. Contractor shall implement reasonably required safeguards as identified by City or by any audit of Contractor's data privacy and information security program.

30.   Termination; Disposition of Content.

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

(i)   To immediately terminate this Agreement if Contractor commits any breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by City of such breach (30-day cure period), in which event, Contractor shall refund to City all amounts paid under this Agreement for the Licensed SaaS Application and/or Services in the same manner as if City ceased to use the SaaS Application due to infringement under Section 13(b). At City's sole election, the 30-day cure period shall ***not*** apply to termination for data breach and/or breach of confidentiality; or

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

b.   **Transition Services and Disposition of Content.** Upon expiration or termination of the SaaS Services under this Agreement:

i.   Contractor may immediately discontinue the SaaS Services and City shall immediately cease accessing the SaaS Application and Services. Contractor shall within five (5)

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

        ii.   Contractor shall provide to City and/or Successor Service Provider assistance requested by City to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider. During the transition period, SaaS and City Data access shall continue to be made available to City without alteration. Such Transition Services shall be provided on a time and materials basis if the City opts to return to its own servers or City chooses a Successor Service Provider. Transition costs may include: (a) developing a plan for the orderly transition of the terminated SaaS Services from Contractor to Successor Service Provider; (b) if required, transferring the City Data to Successor Service Provider; (c) using commercially reasonable efforts to assist City in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Contractor in connection with the Services; (d) using commercially reasonable efforts to make available to City, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Contractor in connection with the SaaS Services; and, (e) such other activities upon which the Parties may agree. Notwithstanding the foregoing, should City terminate this Agreement due to Contractor's material breach, City may elect to use the Services for a period of no greater than six (6) months from the date of termination at a reduced rate of twenty (20%) percent off of the then-current Services Fees for the terminated Services. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.

31.   **Survival.** This section and the following sections of this Agreement shall survive termination of expiration of this Agreement:

13.	Indemnification	30.	Termination; Disposition of Content
16.	Submitting False Claims; Monetary Penalties		
17.	Taxes	36.	Audit and Inspection of Records
18.	Payment Does Not Imply Acceptance of Work	42.	Non-Waiver of Rights
20.	Responsibility for Equipment	43.	Modification of Agreement
21.	Independent Contractor; Payment of Taxes and Other Expenses	44.	Administrative Remedy for Agreement Interpretation
23.	Insurance	45.	Agreement Made in California; Venue
24.	Incidental and Consequential Damages	46.	Construction

25.	Liability of City	47.	Entire Agreement
27.	Nondisclosure	53.	Notification of Legal Requests
28.	Proprietary or Confidential Information of City	57.	Ownership of Results

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

To City:	**[name and title of department contact person]**
	[name of department]
	[mailing address]
	[e-mail address; fax number is optional]

To Contractor:	**[name of contractor]**
	[mailing address]
	[e-mail address; fax number is optional]

Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

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

34.   **Subcontracting.** Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither Party shall, on the basis of this Agreement, contract on behalf of or in the name of the other Party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

35.   **Drug-Free Workplace.** Contractor acknowledges that pursuant to the Federal Drug Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use

of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by the Contractor, its employees, agents or assigns shall be deemed a material breach of the Agreement.

36.   Audits.

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

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

    c.   Information Security Audits. The Contractor must contract with a third -party to perform a yearly Information Security Audits of their primary and backup datacenter. All findings must be remedied. Included must be an outside penetration/vulnerability test as well as putting the third party directly on the internal network for the third- party to provide internal penetration and vulnerability tests. The summary results of the audits must be shared with the City.

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

37.   Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

38.   Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement. Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. Sec. 1201 et seq.) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d).

39.   Sunshine Ordinance. In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

40.   Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

41.   Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

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

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

44. Administrative Remedy for Agreement Interpretation.

      a.   **Negotiation; Alternative Dispute Resolution**. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. After written notice the City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement until such failure or refusal has been corrected. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

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

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

  47.   **Entire Agreement.** This Agreement sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision. Contractor further agrees that in the event of conflicting language between this Agreement and any of Contractor's printed forms, the provisions of this Agreement shall take precedence.

  48.   **Compliance with Laws**. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws.

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

50.   Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Maintenance Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Maintenance Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Contractor's use of profit as a violation of this section.

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

52.   Order of Precedence. Contractor agrees to perform the services required in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated [Insert Date of Proposal]. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement shall take precedence, followed by any implementing task orders, the RFP, and the Contractor's proposal, respectively.

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

54.   Laws Incorporated by Reference. The full text of the laws listed in this Section 54, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at www.sfgov.org under "Government."

      a.   **Consideration of Criminal History in Hiring and Employment Decisions.**

           i.   Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this

Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at http://sfgov.org/olse/fco. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

ii.	The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**b.	Local Business Enterprise Utilization; Liquidated Damages.** Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least [enter percentage] of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

**c.	Minimum Compensation Ordinance**. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

**d.	Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

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

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

**55.	Public Access to Meetings and Records.** If the Contractor receives a cumulative total per year of at least $250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing

this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

56.   PCI Requirements. Contractors providing services and products that handle, transmit or store cardholder data, are subject to the following requirements:

a.   Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Contractor whose application has achieved PA-DSS certification must then be listed on the PCI Councils list of PA-DSS approved and validated payment applications.

b.   Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers (https://www.pcisecuritystandards.org/index.shtml), including the PCI DSS Cloud Computing Guidelines. Compliance with the PCI DSS shall be achieved through a third party audit process. The Contractor shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

c.   For any Contractor that processes PIN Debit Cards, payment card devices supplied by Contractor shall be validated against the PCI Council Pin Transaction Security (PTS) program.

d.   For items 56(a) to 56(c) above, Contractor shall provide a letter from their qualified security assessor (QSA) affirming their compliance and current PCI or PTS compliance certificate.

e.   Contractor shall be responsible for furnishing City with an updated PCI compliance certificate 30 days prior to its expiration.

f.   Bank Accounts. Collections that represent funds belonging to the City and County of San Francisco shall be deposited, without detour to a third party's bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

57.   Ownership of Results. Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors, shall become the property of and will be transmitted to City. All models developed by the Contracting Team, LBE Subcontractor Team, or Second Subcontractor Team shall be property of the City at the conclusion of the project, and may not be re-used without written permission from the City. To allow the City to utilize written materials in City-prepared reports, the Contractor shall submit all written materials in machine-readable form using templates provided by the City. All presentations and reports prepared by the

Contractor become City property and may not be re-used without written permission from the City.

58.   **Works for Hire**. If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

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

60.   **Business Associate Addendum.** Contractor shall comply with the Health Insurance Portability and Accountability Act (HIPAA) Business Associate Addendum ("Addendum") terms and conditions, attached and incorporated as though fully set forth herein as Appendix 6. To the extent that the terms of the Agreement are inconsistent with the terms of this Addendum, the terms of the Addendum shall control.

61.   **Additional Appendices.** The following appendices are hereby attached and incorporated into this Agreement as though fully set forth herein and together form the complete Agreement between the Parties:

>   **Appendices:**
>
>   1: SaaS Implementation and Training Services
>
>   2: SaaS Application & Hosting Services
>
>   3: Calculation of Charges
>
>   4: Service Level Obligations
>
>   5: Disaster Recovery Plan

6: Business Associate Agreement

62.   MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

APPENDIX C: CITY'S AGREEMENT FOR SAAS SERVICES

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

CITY

Recommended by:

[name]	
[title]	
[department]	

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
    [name of Deputy City Attorney]
    Deputy City Attorney

Approved:

_____
Jaci Fong
Director of the Office of Contract
Administration, and
Purchaser

CONTRACTOR

[company name]

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

City vendor number: **[vendor number]**

**APPENDIX C: CITY'S AGREEMENT FOR
SAAS SERVICES**

**Appendix 1
SaaS Implementation and Training Services**

APPENDIX C: CITY'S AGREEMENT FOR SAAS SERVICES

Appendix 2
SaaS Application & Hosting Services Description

Appendix 3
Calculation of Charges

Appendix 4
Service Level Obligations

Appendix 5
Disaster Recovery Plan