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Section 6: Sample Terms and Conditions for PCB22-68

For ERP Software Selection Project

Issue Date: June 27, 2022

Closing Date: July 27, 2022 at 1:00pm CT

RFP documents available:

<https://www.pcbfl.gov/about-us/rfp-posts-list>

<https://www.demandstar.com/>

Pre-Proposal Meeting (Non-mandatory):

July 12, 2022

Time: Jul 12, 2022 02:00 PM Central Time (US and Canada)
Join Via Zoom:
<https://us06web.zoom.us/j/82549183387?pwd=dW1YZXlOblVtaGFPNDh4aTBsMkdiZz09>
Meeting ID: 825 4918 3387
Passcode: 664030

Table of Contents

[6 Sample Contract Terms & Conditions 4](#_Toc107218316)

[6.1 General Terms & Conditions 4](#_Toc107218317)

[6.1.1 Scope of Agreement 4](#_Toc107218318)

[6.1.2 Incorporation by Reference 4](#_Toc107218319)

[6.1.3 Entire Agreement Clause 4](#_Toc107218320)

[6.1.4 Applicable and Governing Law Clause 4](#_Toc107218321)

[6.1.5 Wording Conflicts 5](#_Toc107218322)

[6.1.6 Standard Forms and Contracts 5](#_Toc107218323)

[6.1.7 Term and Termination Clause 5](#_Toc107218324)

[6.1.8 Indemnification 6](#_Toc107218325)

[6.1.9 Insurance 6](#_Toc107218326)

[6.1.10 Public Information Act 14](#_Toc107218327)

[6.1.11 Title and Confidentiality 14](#_Toc107218328)

[6.1.12 Identification of Parties to the Agreement Clause; Assignment 15](#_Toc107218329)

[6.1.13 Notices Clause 15](#_Toc107218330)

[6.1.14 Amendments 15](#_Toc107218331)

[6.1.15 Survival Clause 16](#_Toc107218332)

[6.1.16 Effect of Regulation 16](#_Toc107218333)

[6.1.17 Vendor as Independent Contractor 16](#_Toc107218334)

[6.1.18 Advertisement 16](#_Toc107218335)

[6.1.19 Pricing 17](#_Toc107218336)

[6.1.20 Right to Withhold Payment 17](#_Toc107218337)

[6.1.21 Non-Collusion 17](#_Toc107218338)

[6.1.22 Conflict of Interest 17](#_Toc107218339)

[6.1.23 Vendor Merger or Acquisition 17](#_Toc107218340)

[6.1.24 Equal Opportunity Employment/Nondiscrimination Policy 17](#_Toc107218341)

[6.1.25 Abandonment or Default 19](#_Toc107218342)

[6.1.26 Tax Exemption 19](#_Toc107218343)

[6.2 Software 19](#_Toc107218344)

[6.2.1 Grant of Right to Use Software 19](#_Toc107218345)

[6.2.2 Documentation 19](#_Toc107218346)

[6.2.3 Software Warranty 19](#_Toc107218347)

[6.2.4 Patents, Copyrights, and Proprietary Rights Indemnification 21](#_Toc107218348)

[6.2.5 Liability for Software Vendor Infringement 21](#_Toc107218349)

[6.2.6 Software Interfaces 22](#_Toc107218350)

[6.2.7 Right to Outsource 22](#_Toc107218351)

[6.2.8 Use of Software by Personnel Who Are Not Employees 22](#_Toc107218352)

[6.2.9 Disaster Recovery & Disaster Recovery Testing 22](#_Toc107218353)

[6.2.10 Vendor Merger or Acquisition 22](#_Toc107218354)

[6.3 Software Maintenance and Support 23](#_Toc107218355)

[6.3.1 Extended Services 23](#_Toc107218356)

[6.3.2 Resolution and Response Time Warranty 23](#_Toc107218357)

[6.3.3 Termination of Annual Maintenance and Support 24](#_Toc107218358)

[6.3.4 Federally Mandated Changes 25](#_Toc107218359)

[6.3.5 Future Releases/Upgrades 25](#_Toc107218360)

[6.3.6 Solution Longevity 25](#_Toc107218361)

[6.3.7 Successor Software Products 25](#_Toc107218362)

[6.3.8 Functionality Replacement 25](#_Toc107218363)

[6.3.9 Continuity of Warranty 26](#_Toc107218364)

[6.3.10 Payment Terms – Annual Fees 26](#_Toc107218365)

[6.4 Professional Services 26](#_Toc107218366)

[6.4.1 Intellectual Property 26](#_Toc107218367)

[6.4.2 Contract Extension 26](#_Toc107218368)

[6.4.3 Subcontractors 27](#_Toc107218369)

[6.4.4 Control of Sub-Contractor, Project Team and Project Manager Designation 27](#_Toc107218370)

[6.4.5 Project Schedule and Acceptance 27](#_Toc107218371)

[6.4.6 Programming Services 28](#_Toc107218372)

[6.4.7 Acceptance Testing 28](#_Toc107218373)

[6.4.8 Professional Services Warranty 30](#_Toc107218374)

[6.4.9 Ineffective Training 31](#_Toc107218375)

[6.4.10 Subcontracts 31](#_Toc107218376)

[6.4.11 Force Majeure Clause 31](#_Toc107218377)

[6.4.12 Force Majeure Requisites 32](#_Toc107218378)

[6.4.13 120 Day Maximum 32](#_Toc107218379)

[6.4.14 Liquidated Damages 32](#_Toc107218380)

[6.4.15 Change Orders 32](#_Toc107218381)

[6.4.16 Travel Expense Reimbursement 33](#_Toc107218382)

[6.4.17 Video and Audio Recording 33](#_Toc107218383)

[6.4.18 Payment Terms – Professional Services 33](#_Toc107218384)

[6.5 Hosting Services 34](#_Toc107218385)

[6.5.1 Hosting Services 34](#_Toc107218386)

[6.5.2 Service Audits 34](#_Toc107218387)

[6.5.3 Disaster Recovery 34](#_Toc107218388)

[6.5.4 Penetration Testing 35](#_Toc107218389)

[6.5.5 Back-up and Recovery 35](#_Toc107218390)

[6.5.6 Secure Data Transmission 36](#_Toc107218391)

[6.5.7 Background Checks 36](#_Toc107218392)

[6.5.8 Client Notification if Third-Party Request for Data 36](#_Toc107218393)

[6.5.9 Provision of Client Data upon Termination 36](#_Toc107218394)

[6.5.10 Transition Services 37](#_Toc107218395)

[6.5.11 Annual Hosting Fees 37](#_Toc107218396)

[6.5.12 Payment Terms – Annual Hosting Fees 37](#_Toc107218397)

[6.6 Hosting Service Level Agreement 38](#_Toc107218398)

[6.6.1 Service Level Agreement Overview 38](#_Toc107218399)

[6.6.2 Definitions 38](#_Toc107218400)

[6.6.3 Service Availability 38](#_Toc107218401)

[6.6.4 Applicability 40](#_Toc107218402)

[6.6.5 Contract Terms and Conditions – Non-Comply / Exception Explanations 41](#_Toc107218403)

# Sample Contract Terms & Conditions

The contractual terms and conditions will be fully negotiated after a vendor is selected by the City of Panama City Beach, FL (the “City”).  Responses to the contract terms outlined in this section may be considered in the selection process and such terms shall be included in the final contract between The City and the Vendor (the “Agreement”). For purposes of these terms and conditions, the term “Vendor” means the vendor responding to this RFP and all such terms shall apply to any Sub-vendor of the Vendor. Use of the term “Exhibit <##>” throughout these contract terms refers to supplemental documents that The City expects will be included in the final contract package.

The following contract terms and conditions, substantially in the form contained herein, are expected to be agreed to by the vendors as part of contract negotiations. The City may choose to add additional terms and conditions during final negotiations. Exceptions must be explicitly noted in the Vendor Proposals using the checklist forms provided in at the end of this document. Lack of exceptions listed on the checklist forms shall be considered acceptance of all the terms and conditions as presented in this RFP.

## General Terms & Conditions

### Scope of Agreement

The City agrees to subscribe to the software detailed in Exhibit <##> (“Software”) and receive the services detailed in the Statement of Work detailed in Exhibit <##> (“Services”). Vendor agrees to provide Software and Services (the “Solution”), subject to the terms and conditions stated in this Agreement including all Exhibits. Payment for such services shall be per Exhibit <##> and shall not exceed the total amount included in Exhibit <##> without the prior written consent of The City. The City, without prior and mutual written agreement, will incur no other service costs. The service costs in Exhibit <##> are inclusive of all services described in the Statement of Work included as Exhibit <##>. The City agrees to provide server, desktop and other hardware and configuration based on Vendor’s recommendation per Exhibit <##>.

### Incorporation by Reference

The Vendor shall supply Software and Services adequate to accomplish the requirements as set forth in the Request for Proposal and the Vendor’s response to the Request for Proposal provided herein as Exhibit <##> and Exhibit <##>, respectively (“Contract Documents”) and Vendor’s Documentation. Parties agree that where there is a conflict between terms of this Agreement and the information presented in the Contract Documents, this Agreement shall take precedence. The parties also agree that where there is not a conflict between this Agreement and the information presented in the Contract Documents, that all terms, conditions and offers presented in the Vendor's proposal shall be incorporated into this Agreement and shall be binding upon all parties to the Agreement.

### Entire Agreement Clause

This Agreement, including appendices and referenced attachments, constitutes the entire Agreement between The City and Vendor and supersedes all proposals, presentations, representations, and communications, whether oral or in writing, between the parties on this subject.

### Applicable and Governing Law Clause

Compliance with other laws and certification of eligibility to contract.The execution of this Agreement with The City shall be considered an executed certification that the Vendor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, as amended during the contracting period, and any orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the Agreement, including without limitation, immigration laws, workers’ compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. This Agreement shall be governed by Florida law.

### Wording Conflicts

Should there be a conflict in wording between the Agreement and Vendor’s RFP response, the Agreement shall prevail.

### Standard Forms and Contracts

Any forms and contracts the Vendor(s) proposes to include as part of any agreement resulting from this proposal response between the Vendor(s) and The City must be submitted as part of this proposal. Any forms and contracts not submitted as part of the proposal and subsequently presented for inclusion may be rejected. The City reserves the right to accept or reject in whole or in part any form contract submitted by a vendor and/or to require that amendments be made thereto, or that an agreement drafted by The City be utilized. This requirement includes, but is not limited to, the following types of forms: sub-vendor, franchise, warranty agreements, maintenance contracts, third party licenses and support agreements. The City will negotiate any and all contracts/agreements and prices/fees with the Vendor, if doing so is deemed in the best interest of The City.

### Term and Termination Clause

* **For Cause other than for Non-Performance**. In the event that either party shall fail to maintain or keep in force any of the terms and conditions of this Agreement, the aggrieved party may notify the other party in writing via certified mail of such failure and demand that the same be remedied within 20 business days. Should the defaulting party fail to remedy the same within said period, the other party shall thereupon have the right to terminate this Agreement by giving the other party 90 days written notice.

**For Cause: Non-Performance**. In the event that The City determines that Vendor is not performing in a manner consistent with the intent and spirit of this Agreement or in a manner consistent with commonly accepted business practices, then The City shall have the right to, in the sequence shown: (a) formally notify Vendor of non-performance, (b) reserve the right to withhold any and all payments pending, including support and maintenance fees, until the non-performance is corrected, (c) request a joint meeting of Vendor and City decision makers to attempt to resolve the non-performance, (d) require a Vendor employee to be on-site at The City’s location until the non-performance is resolved, (e) request mediation of the non-performance dispute in to be held within The City’s jurisdictional limits; (f) invoke the Termination clause herein if the non-performance issues is not resolved to The City’s sole satisfaction within 60 days of placing the Vendor on notice of the issue.

**No Cause.** Notwithstanding the foregoing, The City may, at any time and for any reason, terminate this Agreement by giving 60 days’ notice in writing via certified mail to Vendor. Vendor shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Vendor considering the actual costs incurred by the Professional in performing work to date of termination, the value of the work that is nonetheless usable to The City, the cost to The City of employing another Vendor to complete the work required and the time required to do so, and other factors that affect the value to The City of the work performed at time of termination. Termination under this paragraph shall not relieve the Vendor of any obligation or liability that has occurred prior to cancellation.

**Failure to Fund.** If The City’s governing body does not appropriate funds to make any payment for a fiscal year after The City’s fiscal year in which the contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then this Agreement shall automatically terminate at the beginning of the first day of the successive fiscal year. <client’s statutory requirement>.

###  Indemnification

* **Liability and Indemnity of The City**. Any provision of the Agreement is void and unenforceable if it: (1) limits or releases Vendor from liability that would exist by law in the absence of the provision; (2) creates liability for The City that would not exist by law in the absence of the provision; or (3) waives or limits The City’s rights, defenses, remedies, or immunities that would exist by law in the absence of the provision.
* **Indemnity.** Vendor shall indemnify, save harmless and defend The City, its officers, agents, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney’s fees and any and all other costs or fees (whether grounded in Constitutional law, Tort, Contract, or Property Law, or raised pursuant to local, state or federal statutory provision), arising out of the performance of the resulting agreement and/or arising out of a willful or negligent act or omission of the Vendor, its officers, agents, and employees. It is understood and agreed that the Vendor and any employee or sub-Vendor of Vendor shall not be considered an employee of The City. The Vendor shall not be within protection or coverage of The City’s workers’ compensation insurance, health insurance, liability insurance or any other insurance that The City from time to time may have in force and effect. The City specifically reserves the right to reject any and all Vendor’s employees, representatives or sub-Vendors and/or their employees for any cause, should the presence of any such person on City property or their interaction with City employees be found not in the best interest of The City, harassing, or is found to interfere with the effective and efficient operation of The City’s workplace.
* To the fullest extent permitted by law, the Vendor shall indemnify, hold harmless, and defend The City and its agents, employees, officers and successors, from and against any claims, causes of action, damages, losses and expenses, including but not limited to attorney’s fees, arising out of or resulting in any way from Vendor’s performance of this contract, provided that such claim, cause of action, damage, loss or expense is attributable to bodily injury, sickness, disease, or death to any person, including employees or agents of the Vendor, subcontractor, or construction manager, or to injury to or destruction of tangible property including loss of use resulting there from, but only if caused in whole or in part by a negligent act or omission of the Vendor, a sub, the construction manager, anyone directly or indirectly employed by them, or any for whose acts they may be liable, regardless of whether or not such claim, cause of action, damage, loss or expense is caused in part by a party indemnified hereunder. Vendor shall not be obligated to hold harmless, indemnify, or defend The City or its agents, employees, officers, or successors if any claim, cause of action, damage, loss or expense arises from the sole negligence or fault of a party indemnified hereunder.
* Vendor shall assume the defense of The City pursuant to the provisions of the paragraph above within twenty (20) days of receipt of written notice. Any legal cost or expense, including attorney’s fees, incurred by The City for enforcement of its rights under the paragraph above between the time by which Vendor should have assumed The City defense and the time when Vendor assumes The City’s defense shall be reimbursed by Vendor. Any legal cost or expense, including attorney’s fees, incurred by The City in the successful prosecution of any litigation or arbitration seeking to enforce the provisions of the paragraph above or in negotiating a settlement of such claim, shall also be reimbursed by Vendor.

### Insurance

**Insurance.**

The Vendor must have adequate insurance, for damage or loss, for all equipment and other valuables until such time as The City receives good and clear title. In defining insurance coverage, the Vendor shall secure full replacement value for the system without the requirement that The City be responsible for any payments or deductibles. In the event that it is necessary to make a claim under this policy, any funds received by the Vendor shall be used to secure replacement equipment for The City.

The City, at its option, may require the Vendor to provide certificates describing, to the satisfaction of The City, evidence of proper (as required by the state of Florida) workers compensation and liability insurance for all Vendor staff and representatives involved in the provision of Services by Vendor.The City **shall be named as a primary additional insured without any contribution from any insurance or self-insurance of The City, unless prohibited by Florida Statutes.**

The Vendor agrees to hold harmless and defend The City and its agents, officials and employees from any liability, claim, or injury related to or caused by fault or negligence of Vendor employees or sub-vendors. In order to demonstrate this responsibility, the Vendor shall furnish The City with evidence of valid commercial general liability insurance coverage in the amount of $1,000,000 for each occurrence for personal injury (including death or dismemberment) and property damage related to or resulting from shipping, installation, operation, or removal of the proposed automated system. The insurance policy shall make clear this coverage of The City installation. The City shall be named as a primary additional insured without any contribution from any insurance or self-insurance of The City, unless prohibited by Florida Statutes. The insurance policy shall be initiated prior to the installation of the system and maintained until Final Acceptance of the system by The City according to the prescribed procedures. The Vendor shall furnish to The City a copy of the insurance policy and all subsequent changes or updates. An endorsement or statement waiving the right of cancellation or reduction in coverage unless ninety (90) days prior written notice is given to The City by registered or certified mail shall be included.

**Insurance Coverage.**

SECTION 1: DEFINITIONS

**"Location"** means the location subject of the Subcontract/Purchase Order.

**"Project"** means the project subject of the Subcontract/Purchase Order.

**"Scope"** means the scope of work to be provided by the Subcontractor under the Contract or the Goods and Services to be supplied and performed by Seller under the Purchase Order, as applicable.

**"State"** means a state of the United States or the District of Columbia or the Commonwealth of Puerto Rico, as applicable

**"Alternate/ Leased Employer Endorsement"** is an endorsement added to a workers compensation policy that provides an entity scheduled as an alternate employer with primary workers compensation and employers liability coverage as if it were an insured under the policy. This endorsement is commonly used when a temporary help agency (the insured) is required by its customer (the alternate employer) to protect the alternate employer from claims brought by the insured's employees.

SECTION 2: STANDARD INSURANCE COVERAGES

Successful Bidder shall comply with the following:

1. Unless higher limits or additional coverages are required by the Contract/Purchase Order or Owner Contract, the Successful Bidder shall secure and maintain the minimum from the earlier commencement of work or the effective date of the Contract/Purchase Order insurance coverages and limits required by this Exhibit A.

2. Failure of the Contractor/Buyer to identify deficiencies in any insurance provided by Successful Bidder shall not relieve Successful Bidder from any insurance obligations. Required coverages are as follows:

**2.1. Commercial General Liability Insurance Coverages:**

Commercial General Liability insurance using ISO's CG 00 01 or its substantial equivalent with **City of Panama City Beach** as an additional insured using ISO's CG 20 10 or its substantial equivalent for ongoing operations and ISO's CG 20 37 or its substantial equivalent for completed operations with the following minimum limits:

* **$1,000,000 Each Occurrence**
* **$1,000,000 Personal and Advertising Injury**
* **$2,000,000 General Aggregate**
* **$2,000,000 Products-Completed Operations Limit**
* **$500,000 Damage to Rented Premises**

**Per Project using ISO’s CG 25 04 or its substantial equivalent**

The Successful Bidder must disclose to **City of Panama City Beach** any endorsements that limit or exclude coverage customarily provided by ISO’s CG 00 01.

The Successful Bidder’s Commercial General Liability policy shall not contain an exclusion or restriction of coverage for the following:

1. Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

2. Claims for property damage to the Successful Bidder’s Work arising out of the products-completed operations hazard where a Subcontractor performed the damaged Work or the Work out of which the damage occurs.

3. Claims for bodily injury other than to employees of the insured.

4. Claims for indemnity arising out of injury to employees of the insured.

5. Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

6. Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.

7. Claims related to residential, multi-family, or other habitational projects if the work is to be performed on such a project.

8. Claims related to roofing, if the work involves roofing.

9. Claims related to exterior insulation finish systems (EIFS), synthetic stucco, or similar exterior coatings or surfaces if the work involves such coatings or surfaces.

10. Claims related to earth subsidence or movement, where the work involves such hazards.

11. Claims related to explosion, collapse, and underground hazards, where the work involves such hazards.

The Successful Bidders Commercial General Liability insurance will remain in force with annual policy periods for the period of the statute of repose applicable to this project*.* **Alternatively, suppose a “project-specific” General Liability policy is used to satisfy these requirements. In that case, it must be endorsed to provide extended completed operations for the period of the statute of repose applicable to this project.**

**2.2. Workers Compensation**

Worker's Compensation Insurance and Employer’s Liability Insurance (including occupational disease) to cover statutory benefits and limits under the Worker’s Compensation laws of any applicable jurisdiction in which the Scope is to be performed and minimum limits.

* **Bodily Injury by Accident - $1,000,000 Each Accident**
* **Bodily Injury by Disease - $1,000,000 Policy Limit**
* **Bodily Injury by Disease - $1,000,000 Each Employee**

Policy coverage terms and conditions to include:

* USL&H – where applicable.
* Jones Act – where applicable.
* All State's endorsement – where applicable.
* The certificate must identify that coverage applies in the State where the Project is located.

**2.3. Automobile Liability**

Commercial Automobile Liability insurance covers all owned, leased, and non-owned vehicles used in connection with the Scope. Business Auto Coverage Form using ISO’s CA 00 01 or its substantial equivalent including liability coverage for all autos owned (Symbol 1), rented, hired, or borrowed by the contractors, as well as liability coverage for mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws with the following minimum limit:

* **$1,000,000 – Any One Accident – Combined Single Limit**

Suppose the Contractor/Sub-Contractor/Vendor is responsible for removing any pollutants from a site. In that case, the Successful Bidder will need to cover its automobile exposure for transporting the pollutants from the site to an approved disposal site. Therefore, auto liability coverage should be endorsed to include the required auto pollution endorsements and Motor Carrier Act Endorsement, MCS 90, and the ISO Form CA 9948 (Pollution Liability Broadened Coverage for Business Automobile).

**2.4. Umbrella or Excess Liability Required: Yes**

Also, the Successful Bidder shall provide an umbrella or excess liability insurance providing in excess of the underlying Commercial General Liability, Business Automobile Liability, Pollution Liability (if required), and Employers’ Liability insurance above, with the following minimum limits:

* **$1,000,000 Each Occurrence**
* **$1,000,000 Annual Aggregate (where applicable in the underlying)**

Such umbrella or excess liability policy shall provide substantially the same coverage as the underlying Commercial General Liability (including **City of Panama City Beach** as additional insured), Business Automobile Liability, Pollution Liability, and Employers’ Liability insurance. In addition, it shall expressly provide that the umbrella or excess policy will drop down over the underlying insurance's reduced or exhausted aggregate limit. The umbrella or excess policy shall also be primary insurance to **City of Panama City Beach** (including primary insurance to **City of Panama City Beach**’s own Commercial General Liability and Umbrella policies), and Successful Bidder s umbrella insurer agrees not to seek contribution from **City of Panama City Beach** insurance.

**2.5. Technology E&O coverage (Professional Liability) Required: Yes**

Technology Errors & Omissions Liability Insurance is required to cover liability for claims that arise from the errors, omissions, or acts of the Successful Bidder or any entity the Successful Bidder is legally responsible in the provision of professional services. The policy shall be primary and non-contributory, with the insuring agreement to read: "to pay on behalf of" and shall be effective (retroactively, if applicable) from the commencement date of all professional activities in connection with the Scope. The coverage shall be maintained for three years following the final acceptance of the Project.

Minimum limits are:

* **Technology E&O: $2,000,000 per claim/annual aggregate.**

**2.6. Cyber Liability Insurance (third party coverage) Required: Yes**

Cyber Liability Insurance (third-party coverage) is required to cover claims related to Cyber attacks. The policy shall be primary and non-contributory, with the insuring agreement to read: "to pay on behalf of" and shall be effective (retroactively, if applicable) from the commencement date of all professional activities in connection with the Scope. The coverage shall be maintained for three years following the final acceptance of the Project.

Minimum limits are:

* **Cyber Liability Insurance: $2,000,000 per claim/annual aggregate**

Upon request, a copy of the policy shall be provided to **City of Panama City Beach**. Coverages shall not include any exclusions or other limitations related to the scope of the services, delays in project completion, or cost overruns.

**Deductibles/Denial of Claims:**

Contractor/Vendor shall be responsible, at no additional cost to Contractor/Buyer, for the payment of any deductibles or self-insured retention in connection with the insurance coverages required by this Exhibit A both for itself and all Additional Insureds. Any self-insured retention or deductible in excess of $25,000 must be declared when Subcontractor/Seller submits its bid and must be approved explicitly by Contractor/Buyer before executing the Subcontract/Purchase Order. Subcontractor/Seller shall be responsible for any loss arising from coverage denial by its insurance carrier.

**Leased Successful Bidder Employee Liability**

If the Successful Bidder leases one or more employees through the use of a payroll, employee management, or other company, the Successful Bidder must directly procure workers compensation/employer’s liability insurance. The insurance shall be written on a "Minimum Premium" or "If Any" policy form.

In addition, the worker’s compensation/employer’s liability coverage provided to and for the leased employees by the payroll, employee management, or other company must be evidenced and include an **Alternate / Leased Employer Endorsement** or its substantial equivalent WC endorsement for that State, naming Successful Bidder as the alternate employer.

**Insurer Requirements**

Each insurer providing insurance coverage as required by this contract shall be a licensed admitted insurer authorized to issue such coverages in each State in which any part of the Scope is performed. The insurer shall be acceptable to **City of Panama City Beach** and have an AM Best rating of "A-" or better.

**Before accepting the Contractor/Sub-Contractor/Vendor’s bid, City of Panama City Beach reserves the right** to require more significant limits based on the nature of the operations performed by the Successful Bidder.

**Certificate of Insurance**

Before commencing its performance and throughout the warranty period under the Contract /Purchase Order, the Successful Bidder shall provide **City of Panama City Beach** a current certificate of insurance evidencing the coverages required by this contract (a sample Certificate of Insurance is attached for reference purposes).

**Sub-subcontractor/Sub-Vendor**

Before permitting any lower tier Sub-subcontractor/Sub-vendor to perform Scope under the Contract/Purchase Order, the Successful Bidder shall require its sub-subcontractor/Sub-vendor to maintain insurance in like form and amounts to that required herein. Successful Bidder shall be responsible for ensuring that it's sub-subcontractor/Sub-vendor maintains insurance in like form and amounts and shall provide evidence of same to **City of Panama City Beach** if requested.

*Any subcontractors engaged by the Contractor shall comply with the above requirements. Consideration for specific trades can be made with prior approval.*

**Notice of Cancellation**

All insurance coverages required by this contract shall contain a provision that the coverage afforded hereunder cannot be canceled, non-renewed, allowed to lapse, or have any restricted modifications added unless at least thirty 45) days prior written notice has been given to **City of Panama City Beach.**

**Additional Insureds**

All insurance required by this contract (excluding only Workers Compensation Insurance and Professional Liability Insurance) shall name Indemnified Parties as Additional Insureds and any other parties as required by the Owner Contract, and shall be primary and non-contributory to any insurance maintained by Indemnified Parties and Additional Insureds and any other parties as required by Owner Contract, all of which shall be stated on the Certificate of Insurance provided by the Successful Bidder.

The General Liability Additional Insured Endorsement shall use ISO’s or CG 2010 or its substantial equivalent for ongoing operations and ISO’s CG 20 37 or its substantial equivalent for completed operations. By endorsement or policy language, evidence of Additional Insured and Primary and Non-Contributory coverage must be provided with the certificate of insurance for General Liability. The Successful Bidder’s insurers will provide insurance to **City of Panama City Beach**, on a primary basis and agree not to seek contribution from insurance by using ISO’s CG 20 01 or its substantial equivalent. Successful Bidders insurers also agree to waive rights of subrogation against **City of Panama City Beach** using ISO’s CG 24 04 or its substantial equivalent.

**Waiver of Subrogation**

All insurance coverages maintained by Successful Bidder shall include a waiver of any right of subrogation of the insurers thereunder against Indemnified Parties and Additional Insureds and all of their respective assigns, subsidiaries, affiliates, employees, insurers, and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under any such policy (Workers Compensation – where permitted).

The Successful Bidder further waives all claims and all rights of subrogation against Indemnified Parties’ and Additional Insureds’ other contractors and all of their respective assigns, subsidiaries, affiliates, employees, insurers, and underwriters for loss of, or damage to, contractors Scope, tools, machinery, equipment, material, supplies, or any other losses within the scope of any insurance maintained by **City of Panama City Beach**. If any of the Indemnified Parties and Additional Insureds are partially or wholly self-insured, then the waiver of subrogation shall apply as if their insurance covered them.

**Insurance Policy Review/Exclusions/Copies**

**City of Panama City Beach** can receive copies of all insurance policies upon request. Policies shall not contain any exclusions that are unacceptable to **City of Panama City Beach**. If requested by **City of Panama City Beach**, all insurance carriers must certify all policies as accurate and complete. At their sole discretion, policies shall not contain any unacceptable exclusions to **City of Panama City Beach**. **City of Panama City Beach**’s right to review and approve all insurance policies will not constitute a waiver of any rights created by or provisions contained in this contract should they differ from those contained in such policies.

**Claims-Made Policies**

Except for Technology E&O Insurance, claims-made policies are not acceptable.

**Effect of Specified Coverages**

The Insurance obligations under this agreement shall be 1—all the Insurance coverage and/or limits carried by or available to the Contractor; or 2—the minimum Insurance coverage requirements and/or limits shown in this agreement, whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which apply to a given loss, shall be available to **City of Panama City Beach**. No representation is made that this agreement's minimum insurance requirements are sufficient to cover the Contractor's obligations under this agreement.

**Breach of Insurance Requirements**

Successful Bidder’s failure to obtain and maintain insurance coverages as required by this Exhibit A or any other Exhibit or attachment shall constitute a material breach of the Contract/Purchase Order. In such event, in addition to any other rights and remedies contained in the Contract/Purchase Order, (i) **City of Panama City Beach** may, at its option, terminate the contract for default; (ii) **City of Panama City Beach** may, at its option, purchase such coverage and back charge the premium and associated costs to Successful Bidder; and/or (iii) any of the Indemnified Parties, or Additional Insureds can require, that contractor and/or its subcontractors to pay for all attorney’s fees, expenses, and liability as a result of any claim or lawsuit for which coverage would have been provided to the Indemnified Parties or Additional Insureds under contractors insurance program but for a breach by Contractor or any of its subcontractors.

Furthermore, to the extent of their respective interests, the Insurers of those entities that were to be included as Additional Insureds are deemed third-party beneficiaries of the insurance procurement obligation and have the same rights against the breaching party as the Indemnified Parties or Additional Insureds.

If any of the preceding insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required. If the insurer does not furnish any information concerning the reduction of coverage, it shall be furnished by the contract with reasonable promptness according to the Successful Bidder ‘s information and belief. Suppose Successful Bidder fails to maintain insurance. **City of Panama City Beach** may (at its sole option) terminate the Successful Bidder or place such insurance and deduct any cost, fees, and related expenses from Successful Bidder pay request.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **General Liability**  | **Endorsement #**  | **Edition Dates**  | **Carrier**  | **Policy #'s to be listed**  |
| Added Insured - Ongoing Operations  | CG 20 10  | All  | ISO Standard or Equal  | Yes  |
| Added Insured – Completed Operations  | CG 20 37  | All  | ISO Standard  | Yes  |
| Waiver of Subrogation  | CG 24 04  | ISO Standard  |
| Primary & Non-Contributory  | CG 20 01  | ISO Standard  |
| Automobile Liability  |
| No Endorsements Required  |
| Umbrella or Excess Liability  |
| List all lines this policy applies.  |
| Workers Compensation  |
| Waivers of Subrogation  | WC 00 03 13  | ISO Standard  | Yes  |
| Alternate Employer Endorsement  | WC 00 03 01 A  | ISO Standard  | Yes  |

*Any* Successful Bidder *engaged by the Contractor shall comply with the above requirements. Consideration for specific trades can be made with prior approval.*

Endorsements to be attached:

**Insurance Options.**

General Liability limits may be attained by individual policies or by a combination of underlying policies with umbrella and/or excess liability policies.

**Notify Your Insurance Agent.**

Vendor may prevent unnecessary follow up resulting from incomplete insurance certificates, by sending or faxing a copy of these insurance requirements to Vendor's agent when requesting an insurance certificate.

### Public Information Act

Vendor acknowledges that The City is subject to the Government in the Sunshine Law. Vendor shall comply with the Sunshine Law in all respects and shall not restrict or otherwise inhibit The City from complying. Any provision in the Agreement that attempts to prevent The City’s disclosure of information that is subject to public disclosure under federal or Florida law or regulation, or court or administrative decision or ruling, is invalid.

### Title and Confidentiality

Title and full rights to the Software under this agreement, including, without limitation, all intellectual property rights therein and thereto, and any copies Client make, remain with Vendor. It is agreed the Software is the proprietary, confidential, trade secret property of Vendor, whether or not any portions thereof are or may be copyrighted, and Client shall take all reasonable steps necessary to protect the confidential nature of the Software, as Client would take to protect its own confidential information. Client further agrees that Client shall not make any disclosure of any or all such Software (including methods or concepts utilized therein) to anyone, except to employees or agents working for Client to whom such disclosure is necessary to the use for which rights are granted hereunder. Client shall appropriately notify all employees, and agents to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by them. The obligations imposed by this section upon Client, its employees, and agents, shall survive and continue after any termination of rights under this Agreement. It shall not be a breach of this agreement if Client is required to disclose or make the Software available to a third party or to a court if the Software is required to be disclosed pursuant to Florida "open records" law, or is subpoenaed or otherwise ordered by an administrative agency or court of competent jurisdiction to be produced.

### Identification of Parties to the Agreement Clause; Assignment

Both the Vendor and The City shall be clearly identified by name. Neither of the identified parties to the Agreement shall assign or encumber any of its rights, or delegate or subcontract any of its duties defined in the Agreement, in whole or in part, to other third parties unless the other party to the Agreement gives prior written consent. Subject to the foregoing covenant against assignment and delegation, the rights created by the Agreement shall pass to the benefit of the identified party and the duties and obligations resulting from the Agreement shall bind the identified party and their respective successors and assignees.

### Notices Clause

All notices or communications required or permitted as a part of the Agreement shall be in writing (unless another verifiable medium is expressly authorized) and shall be deemed delivered when:

Actually received, or

Upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the party, or

If not actually received, 10 days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the respective other party at the address set out in the section of the Agreement titled "Identification of the Parties to the Agreement" or such other address as the party may have designated by notice or Agreement amendment to the other party, or

Upon delivery by The City of the notice to an authorized Vendor representative while at The City site.

Consequences to be borne due to failure to receive a notice due to improper notification by the intended receiving party of the intended receiving party’s new address will be borne by the intended receiving party. The addresses of the parties to this Agreement are as follows:

 Vendor City of Panama City Beach, FL

 <Contact Title> Purchasing Manager

 <Address> 17007 Panama City Beach Parkway

 Panama City Beach, FL 32413

### Amendments

The Agreement may be amended only upon the written agreement between The City and the Vendor.

### Survival Clause

All duties and responsibilities of any party that, either expressly or by their nature, extend into the future, shall extend beyond and survive the end of the contract term or termination of this Agreement.

### Effect of Regulation

Should any local, state, or national regulatory authority having jurisdiction over The City enter a valid and enforceable order upon The City which has the effect of changing or superseding any term or condition of this Agreement, such order shall be complied with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, this Agreement shall remain in effect, unless the effect of the order is to deprive The City of a material part of its Agreement with the Vendor. In the event this order results in depriving The City of material parts or raising their costs beyond that defined in this Agreement, The City shall have the right to rescind all or part of this Agreement (if such a rescission is practical) or to end the Agreement term upon ninety (90) days written prior notice to the Vendor. Should the Agreement be terminated under such circumstances, The City shall be absolved of all penalties and financial assessments related to cancellation of the Agreement.

The City shall not be charged for such compliance beyond the cost of the annual [maintenance and support fees] [subscription fees]. The City shall also not be charged for analysis, investigation, design, programming, conversion, or implementation of such compliance beyond the cost of the annual [maintenance and support fees] [subscription fees].

### Vendor as Independent Contractor

It is expressly agreed that the Vendor is an independent contractor, not an agent of The City and no principal agent of employer-employee relationship is created by the Agreement. The Vendor shall not pledge or attempt to pledge the credit of The City or in any other way attempt to bind The City.

### Advertisement

Vendor shall not use, in its external advertising, marketing programs, or other promotional efforts, any data, pictures, or other representation of The City unless Vendor receives specific written authorization in advance from The City. Vendor will limit and direct any of its advertising on The City’s premises and shall make arrangements for such advertising through the City. Vendor shall not install any signs or other displays within or outside of The City’s premises unless in each instance the prior written approval of The City has been obtained. However, nothing in this clause shall preclude Vendor from listing The City on its routine City list for matters of reference.

### Pricing

All prices for Vendor's Software and Services hereunder are firm for the term of the Agreement. The City shall pay Vendor for satisfactory performance of the Software and Services specified in this Agreement, the sums in accordance with Vendor’s response to The City’s RFP, this Agreement and any related addenda. The City reserves the right to delay the purchase of Software components (“Modules”) and related Services. The Modules subject to this price protection are included in Exhibit <##>.

### Right to Withhold Payment

If the Vendor breaches any provision of this Agreement, The City shall have a right to withhold all payments due to the Vendor until such breach has been fully cured.

### Non-Collusion

Vendor hereby represents and agrees that it has in no way entered into any contingent fee arrangement with any firm, employee of The City, or other person or entity concerning the obtaining of this Agreement. In addition, Vendor agrees that a duly authorized Vendor representative will sign a non-collusion affidavit, in a form acceptable to The City that Vendor has not received from The City any incentive or special payments, or considerations not related to the provision of the Software and Services described in this Agreement.

### Conflict of Interest

The Vendor shall not employ as a director, officer, employee, agent, or subcontractor any elected or appointed official of The City or any member of his/her immediate family.

### Vendor Merger or Acquisition

In the event that the Vendor is merged or acquired, the acquiring entity shall honor all of the terms of the existing contract for ten (10) years or until the end of the present Agreement term, whichever is longer.

### Equal Opportunity Employment/Nondiscrimination Policy

It is the policy of The City that all vendors who provide goods and services to The City by contract, shall, as a condition of providing goods and services, adhere to all Federal, State and Local laws, ordinances, rules and regulations, and policies, and if applicable, prohibiting discrimination in regard to persons to be served and employees and applicants for employment including, but not limited to, the following:

* The Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended.
* The Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended.
* Section 504 of the Federal Rehabilitation Act of 1973, PL 93-112, 87 Stat 355, as amended, and rules adopted thereunder.
* The Americans with Disabilities Act of 1990, PL 101-336, 104 Stat 327 (42 USCA § 12101 et seq.), as amended, and regulations promulgated thereunder.

Vendor shall, as a condition of providing Software and Services, as required by law and/or The City’s Equal Opportunity Employment/Nondiscrimination Policy, not discriminate against persons to be served or an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual’s ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation.

Where there has been a conclusive finding that Vendor has violated Federal, State, or Local equal opportunity statutes, ordinances, rules/regulations, or policies, Vendor shall be barred from providing goods and services to The City for three (3) years from the date that a determination of the violation has been made in accordance with applicable statutes, ordinances, rules/regulations, or policies or from the date that such determination becomes known, unless a specific exemption is granted by The City’s governing body.

Any violation of Federal, State, or Local equal opportunity statutes, ordinances, rules/regulations, or policies during the course of time during which Vendor is providing Software or Services to The City shall be regarded as a material breach of the Agreement between The City and the Vendor, and The City may terminate such Agreement effective as of the date of delivery of written notification to the Vendor.

Any employee of Vendor providing goods and services to The City under his Agreement, or any employee of a sub-vendor of Vendor providing goods and services to The City under this Agreement, or any bona fide organization representing such employees may file a written complaint with the governing body or its designated agent, if any, challenging the compliance by Vendor with the terms of this policy, the governing body or its designated agent shall then conduct an investigation to determine whether the policy has been violated.

Any Vendor found to have retaliated in violation of a Federal or State law against an employee for filing a claim of violation of Federal, State, or Local equal opportunity statutes, ordinances, rules/regulations, or policies shall be ineligible to provide any goods or services to The City for a period of three (3) years from the date of such finding.

### Abandonment or Default

A Vendor who abandons or defaults the work on the contract and causes The City to purchase the services elsewhere may be charged for any increased cost of goods, materials and/or services related thereto and shall be considered disqualified in any re-advertisement of the service and may not be considered in future bids for the same type of work for a period of three years for the same scope of work, goods or services.

### Tax Exemption

The City is not liable to Vendor for any federal, state, or local taxes for which The City is not liable by law, including state and local sales and use taxes and federal excise tax. Accordingly, those taxes may not be added to any item. Vendors shall not charge for said taxes. If billed, The City will remit payment less sales tax.

## Software

### Grant of Right to Use Software

Vendor hereby grants to The City a nonexclusive, nontransferable, [perpetual license][subscription] to use the Software described in Exhibit <##> solely for internal business purposes on a central processing unit owned, leased or otherwise used by The City and/or its designated service provider.

### Documentation

Vendor shall deliver to The City ten (10) complete copies of the user documentation describing the functionality and operation of the Software and technical documentation describing the technical support procedures to assist with the on-going support of the Software (“Documentation”), including an electronic version with the ability to modify to the needs of The City. Vendor agrees that Documentation provided with the Software will be updated to reflect any Customizations contracted by The City with Vendor. The City shall have the right to make as many additional copies of the Documentation for its own use as it may determine.

### Software Warranty

Vendor represents and warrants that it has the right to grant the license set forth under this Agreement. Vendor further represents and warrants that it has good and marketable title to the Software sold hereunder free and clear from all liens, encumbrances, and claims of infringement of patent, copyright, trade secret or other proprietary rights of third parties. Vendor further represents and warrants that neither the Software in the form delivered by Vendor to Client, nor any modifications, enhancements, updates or upgrades thereto, nor the normal use thereof by Client, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party.

In the event that any third party makes a claim or files a lawsuit challenging Client's right to use the Software, Vendor shall defend and indemnify Client and hold it harmless for any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses) arising out of said claim or lawsuit, and for any monies paid in settlement thereof. Provided, however, that Vendor shall have the sole and exclusive right to select and retain counsel for Client in connection with the defense thereof and shall make all decisions relating to the conduct of the Client's defense and any settlement made on behalf of Client. In resolving any such infringement claim, Vendor shall, in its reasonable discretion, either procure a license to enable Client to continue to use the Software or develop or obtain a non-infringing substitute acceptable to Client at Vendor’s cost.

Vendor represents and warrants that the Software and related products as described with this Agreement will perform in accordance with all Documentation, Contract Documents, Vendor marketing literature, and any other communications attached to or referenced in this Agreement.

Vendor represents and warrants that the Software and related products, including all modifications contracted under the terms of this Agreement, will meet the requirements of Client as set forth in the Contract Documents.

Client has: (i) presented detailed technical specifications of the particular purpose for which the Software is intended, (ii) provided detailed descriptions and criteria of how the Software can be defined to accomplish particular purpose, and (iii) defined the exact procedures and techniques to be employed in testing whether the Software has achieved the defined performance of this particular purpose. Given this advanced preparation concerning, and documentation about, Client’s particular purpose, Vendor, at the time this Agreement is in force, has (#) reason and opportunity to know the particular purpose for which the Software is required, (#) that Client is relying on Vendor’s experience and knowledge of the Software to identify those components which are most suitable and appropriate, and (#) that Client is relying on Vendor’s experience and knowledge to identify the appropriate Services that will assist in making the Software operational. Therefore, Vendor warrants that the Software including all products included in this Agreement are fit for the purposes for which they are intended as described in the Contract Documents.

Vendor represents and warrants that all Software products provided under this Agreement are compatible with and certified for use and operation in Client’s operating environment. Furthermore, Vendor acknowledges that it has reviewed the hardware system ordered by Client and represents and warrants that such hardware system as defined in Exhibit <##> is sufficient for Client’s current and reasonably projected use, including account and transaction volumes.

### Patents, Copyrights, and Proprietary Rights Indemnification

The Vendor, at its own expense, shall completely and entirely defend The City from any claim or suit brought against The City arising from claims of violation of United States patents or copyrights resulting from the Vendor or The City’s use of any equipment, technology, documentation, and/or data developed in connection with the Services and Software (together the Solution) described in this Agreement. The City will provide the Vendor with a written notice of any such claim or suit. The City will also assist the Vendor, in all reasonable ways, in the preparation of information helpful to the Vendor in defending The City against this suit.

In the event that The City is required to pay monies in defending such claims, resulting from the Vendor being uncooperative or unsuccessful in representing The City's interest, or in the event that The City is ordered to pay damages as a result of a judgment arising out of an infringement of patents and/or copyrights, Vendor agrees to fully reimburse The City for all monies expended in connection with these matters. The City retains the right to offset against any amounts owed Vendor any such monies expended by The City in defending itself against such claims.

Should a court order be issued against The City restricting The City's use of any portion of the Software related to the claim and should the Vendor determine not to further appeal the claim issue, at The City's sole option the Vendor shall provide, at the Vendor's sole expense, the following:

* Purchase for The City the rights to continue using the contested Software or portions thereof which may include purchase of a third-party software product, or
* Provide substitute software products and related services to The City which are, in The City's sole opinion, of equal or greater quality, or
* Refund all monies paid to the Vendor for the Solution subject to the court action. The Vendor shall also pay to The City all reasonable losses related to the Solution and for all reasonable expenses related to the installation, implementation and conversion to the new Solution.

### Liability for Software Vendor Infringement

The Vendor will reimburse The City for all costs related to infringement (not “finally awarded”). There shall be no limit of liability on behalf of the Vendor if the Software is determined to be infringing.

### Software Interfaces

The City has the right to develop interfaces to, and/or database applications that integrate with, the licensed Software using Vendor’s recommended database and development tools without voiding the terms or warranties herein.

### Right to Outsource

Software [licensed][subscribed] to The City may be used by a third-party vendor hired by The City to perform outsource services on The City’s behalf.

### Use of Software by Personnel Who Are Not Employees

The City’s consultants, Vendors, external customers, and business partners may access and use the Software under The City’s direction.

### Disaster Recovery & Disaster Recovery Testing

There will be no additional software costs to process at another site in the event of a disaster that shuts down the primary location where the Software is hosted or for testing at the disaster recovery site.

### Vendor Merger or Acquisition

In the event the Vendor is merged or acquired, the acquiring entity shall honor all of the terms of the existing contract for ten (10) years or until the end of the present Agreement term, whichever is longer.

Where there has been a conclusive finding that Vendor has violated Federal, State, or Local equal opportunity statutes, ordinances, rules/regulations, or policies, Vendor shall be barred from providing goods and services to the Client for five (5) years from the date that a determination of the violation has been made in accordance with applicable statutes, ordinances, rules/regulations, or policies or from the date that such determination becomes known, unless a specific exemption is granted by the Client’s governing body.

Any violation of Federal, State, or Local equal opportunity statutes, ordinances, rules/regulations, or policies during the course of time during which Vendor is providing Software or Services to the Client shall be regarded as a material breach of the Agreement between the Client and the Vendor, and the Client may terminate such Agreement effective as of the date of delivery of written notification to the Vendor.

Any employee of Vendor providing goods and services to the Client under his Agreement, or any employee of a subcontractor of Vendor providing goods and services to the Client under this Agreement, or any bona fide organization representing such employees may file a written complaint with the governing body or its designated agent, if any, challenging the compliance by Vendor with the terms of this policy, the governing body or its designated agent shall then conduct an investigation to determine whether the policy has been violated.

Any Vendor found to have retaliated in violation of a Federal or State law against an employee for filing a claim of violation of Federal, State, or Local equal opportunity statutes, ordinances, rules/regulations, or policies shall be ineligible to provide any goods or services to the Client for a period of five (5) years from the date of such finding.

## Software Maintenance and Support

### Extended Services

For as long as The City pays the subscription fees (“Annual Fees”) delineated in Exhibit <##>, Vendor will provide The City with maintenance and support services (“Extended Services”) with respect to the Software. Such Extended Services shall consist of the following:

1. Vendor shall provide maintenance for the Software necessary to ensure its operation in material conformance with all Documentation, Contract Documents and all representations and warranties set forth herein.
2. Vendor shall provide The City with any revisions, updates and enhancements of the Software, together with related documentation, during the period in which enhancement and support services under this Agreement are furnished.
3. Vendor agrees that the rates specified for Extended Services shall remain in effect for a period of minimally two (2) years from initial contract signing.
4. Vendor agrees not to assign its Extended Services obligations as contemplated herein, without prior written authorization of The City, which will not be unreasonably withheld. Vendor will not utilize subcontractors for any Extended Services provided herein without the express written authorization of The City.

### Resolution and Response Time Warranty

Vendor warrants that all Resolution and Response Times delineated below shall be adhered to as follows:

**Priority 1 support issues are defined as: Mission Critical – Software is down /undiagnosed but feared critical; situation may require a restore and Software use is suspended until a diagnosis is given.**

* Response to first call time limit – within two (2) business hours.
* Resolution time limit – Vendor shall use its best efforts to resolve within one (1) business day.
* If Vendor and The City are on a support telephone call to resolve a Priority 1 support issue at the time that normal support hours end, Vendor support representatives will remain on the call past the normal support hours to provide what assistance can be provided at no additional cost. The City acknowledges that programmers will not be available at that time.
* Penalty for not adhering to time limits - The City shall receive a ten percent (10%) credit against the Annual Fees, per incident.

**Priority 2 support issues are defined as: Critical Issue – Software is not down, but operations are negatively impacted.**

* Response to first call time limit – within four (4) business hours.
* Resolution time limit – Vendor shall use its best efforts to resolve within two (2) business days.
* Penalty for not adhering to time limits - The City shall receive a ten percent (10%) credit against the Annual Fees, per incident.

**Priority 3 support issues are defined as: Non-Critical Issue – resolution period to be mutually agreed upon.**

* Response to first call time limit – within twelve (12) business hours.
* Resolution time limit – Vendor shall use its best efforts to resolve within four (4) business days.
* Penalty for not adhering to time limits - The City shall receive a ten percent (10%) credit against the Annual Fees, per incident.

### Termination of Annual Maintenance and Support

The City may cancel Extended Services upon ninety (90) day notification to the Vendor.

Extended Services may be reinstated by The City at an amount not to exceed the back fees that would have been due if Extended Services had not been dropped. In the event of reinstatement of Extended Services, The City shall not be forced to move to a new [license][subscription] model.

The Vendor shall give The City at least six (6) months’ notice before unilaterally canceling Extended Services. In addition, the Vendor shall continue to support the Software as long as it is supporting such Software for other customers of Vendor.

### Federally Mandated Changes

Vendor shall supply The City with all federally mandated changes to Vendor’s Software. Vendor will make a good faith effort to provide The City with these changes within ninety (90) days of their enactment dates prescribed by the aforementioned bodies. In the event that Vendor is unable to supply these changes within ninety (90) days of the enactment, The City will be credited a prorated share of the Annual Fees for every week Vendor is tardy in delivering the required change.

### Future Releases/Upgrades

The City shall be entitled to future releases and upgrades, whether of a “minor” or major” nature, of Software for no additional cost beyond the Annual Fees delineated in Exhibit <##>.

### Solution Longevity

The Vendor certifies that the Software will remain available and fully supported by Vendor for a minimum of five (5) years from the date the Agreement is signed and that any material changes to Vendor’s company or products will not affect The City's implementation or Extended Services of the Software as long as The City pays the Annual Fees.

### Successor Software Products

In the event Contractor makes available successor software products with substantially similar functionality as the Software which may be based on a new technical architecture (“Successor Products”) within 10 years of contract signing, Client may transfer the subscription for the Software to the Successor Products for no additional Contractor Annual fees. In such event, Client shall pay the then-current Annual Fees for the Successor Products, in addition to any services and/or third-party fees associated with the Successor Products.

### Functionality Replacement

The City maintains the rights to the Software functionality that is subscribed to herein, even if that functionality later gets renamed or bundled by Vendor as a new product.

### Continuity of Warranty

The City may continue the Software Warranty protection by purchasing and paying for Extended Services described herein. By doing so, all Software Warranty and Resolution and Response Time Warranty conditions included herein shall remain in effect, in perpetuity, as long as payments for Annual Fees are kept current.

### Payment Terms – Annual Fees

The City’s payments under the Agreement, including the time of payment and the payment of interest on overdue amounts, are subject to The City’s payment policies. The City reserves the right to modify any amount due to Vendor presented by invoice to The City if necessary, to conform the amount to the terms of the Agreement.

Vendor shall invoice The City for the Total Amount on Exhibits <##> and <##> according to the following payment schedule:

**Annual Fees**

* First year Annual Fees due upon Final Acceptance
* Subsequent Annual Fees due annually on anniversary of Final Acceptance

Vendor shall submit to The City an invoice in a form agreeable to The City. The invoice shall be accompanied by such supporting documentation as required by The City.

## Professional Services

### Intellectual Property

All information, data, programs, publications and media created specifically for and paid for by The City or as a result of the Services identified in this Agreement is the property of The City unless otherwise noted, copyright protected, or defined or agreed to by both parties to this Agreement.

### Contract Extension

If Vendor anticipates missing a milestone date identified in the Project Schedule, then Vendor must notify The City immediately so that a mutually acceptable revised milestone date can be agreed to. Such revisions will not alleviate The City’s right to Liquidated Damages in the event such a delay is caused by Vendor resulting in a delay of the Go Live date as defined in Project Schedule.

### Subcontractors

Vendors may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Vendor must obtain written prior approval from The City for activities or duties to take place at The City site. In using subcontractors, the Vendor agrees to be responsible for all of their acts and omissions to the same extent as if the subcontractors were employees of the Vendor.

### Control of Sub-Contractor, Project Team and Project Manager Designation

The Vendor understands that the successful installation, testing, and operation of the Software that is the subject of this Agreement shall be accomplished by a cooperative effort. To most effectively manage this process, the Vendor shall designate a single representative to act as an ex-officio member of The City’s project management team (“Project Manager”) and who shall have the authority to act on behalf of the Vendor on all matters pertaining to this Agreement.

The City shall have the right to approve all subcontractors, Project Manager, and staff assigned to The City by Vendor (“Designated Staff”). In the event that a Designated Staff of the Vendor is, in the opinion of The City, uncooperative, inept, incompetent, or otherwise unacceptable, the Vendor agrees to remove such person from the project. In the event of such a removal, the Vendor shall, within thirty (30) days, fill this representative vacancy as described above. Regardless of whom the Vendor has designated to fill this representative vacancy, the Vendor organization remains the ultimate responsible party for performing the tasks and responsibilities presented in this Agreement.

### Project Schedule and Acceptance

Vendor will develop a detailed project schedule that details both Vendor and The City’s responsibilities, timeline for project activities, phases, milestones, and deliverables (“Project Schedule”) in connection with Vendor’s performance of the Services. The Project Schedule should be in sufficient detail to specify the deliverables, conversion, training, testing, acceptance, configuration, modification, integration, and live operation activities. Both Vendor and The City agree that a mutually agreeable Project Schedule will be submitted and approved by The City within thirty (30) days of the date the Agreement is signed by both parties (“Effective Date”). In the event Vendor is unable to provide the Project Schedule within thirty (30) days, The City will have at its option, the ability to terminate the Agreement and obtain all fees paid to Vendor. The Project Schedule will also include the criteria by which the software will be tested and accepted by The City.

### Programming Services

The City may during the implementation period or thereafter require modifications, interfaces, conversion, report writing, etc., services from Vendor (“Customizations”). Vendor agrees to provide a written Change Order describing the work to be performed and estimating the costs for The City approval before any work is initiated by Vendor. Vendor will not exceed the costs set forth in the mutually agreed to Change Orders without justification, in writing, that is acceptable to The City. No costs in excess of the estimates will be paid by The City unless approved in writing in advance of fee incurrence. All Customizations shall be subject to Acceptance Testing before payment is released by The City. Acceptance of the Customizations resulting from each Change Order shall be per the Acceptance Testing clause herein.

### Acceptance Testing

For purposes of acceptance of the Solution (or portions thereof), the parties intend to use the following staged acceptance procedure. All timeframes specified in the following procedures may be overridden by the Project Schedule.

* Written Deliverable: Vendor may submit interim drafts (stamped, noted or otherwise clearly marked “Draft”) of a written deliverable to The City for review. The City agrees to review and provide comments to Vendor on each interim draft within five (5) business days after receiving it from Vendor. The City will have the opportunity to review the written deliverable for an acceptance period of five (5) business days after delivery of the final version (stamped, noted or otherwise clearly marked “Final Draft”) of the written deliverable (the “Acceptance Period”). The City agrees to notify Vendor in writing by the end of the Acceptance Period either stating that the written deliverable is accepted in the form delivered by Vendor or describing in reasonable detail any substantive deficiencies that must be corrected prior to acceptance of the written deliverable. If Vendor does not receive any such deficiency notice from The City by the end of the Acceptance Period, the written deliverable will be deemed to be accepted and an approved document marked “Approved” and dated will be provided to The City. If The City delivers to Vendor a timely notice of deficiencies and the items specified in the notice are deficiencies, Vendor will promptly correct the described deficiencies and return to The City for Acceptance. The City will not unreasonably withhold, delay or condition its approval of a final written deliverable.

Vendor is responsible for tracking status of each deliverable including but not limited to the date in which it was submitted to The City and date returned.

* Software Deliverable: Acceptance testing is an iterative process designed to determine whether each component of the Software combined with related Services delivered by Vendor (“Software Deliverable”) performs the functions described in the Contract Documents and to discover and remove material deviations where the Software Deliverable does not substantially perform the functions described in the Contract Documents (“Defects”) through repeated testing cycles. In the event of conflicts between Contract Documents and Application Software Documentation the Contract Documents will prevail.

Vendor will work with The City and make a good faith effort to develop a test plan with the requisite details, understanding the level of detail required may change depending on the complexity of the requested Software Deliverable and to test each Software Deliverable (the “Acceptance Tests” or “Acceptance Testing”).

1. The “Acceptance Test Period” for each Software Deliverable will be ten (10) business days unless an alternate time is mutually agreed upon between Vendor and The City per the Project Schedule. The Acceptance Test Period for each Software Deliverable will start within three (3) business days, unless an alternate start date is mutually agreed upon by Vendor and The City per the Project Schedule, after the Software Deliverable is installed at The City’s designated site and Vendor has successfully completed Vendor’s installation test and notified The City that the Software deliverable is “Ready for Acceptance Testing.” Vendor will not be obligated to deliver a Software Deliverable to The City until The City demonstrates the readiness of the target technical platform and environment.

 2. If The City determines during the Acceptance Test Period that the Software Deliverable contains a Defect, The City will promptly send Vendor a written notice reporting the alleged Defect describing it to Vendor in sufficient detail reasonably necessary for Vendor to recreate it. Vendor will modify the Software Deliverable to remove the reported Defect and will provide the modifications to The City for re-testing. The City will then re-test the modified portions of the Software Deliverable promptly after receiving the modifications from Vendor. In such a case, Vendor and The City will mutually agree upon an updated Acceptance Test Period.

3. By the end of the Acceptance Testing Period The City will provide Vendor with a final written list reporting any outstanding Defects (the “Punch List”). The City will then have ten (10) business days after the receipt of the modifications to re-test the modified Software Deliverable to confirm that the Defects that were reported on the Punch List have been removed. If any Defects that were reported on the Punch List have not been removed, The City will provide Vendor with written notification by the end of the retesting period reporting any such Defects. In such event, the procedures set forth in this section will be repeated for the remaining Defects on the Punch List.

4. Vendor and The City each agree to work diligently to achieve acceptance of Software Deliverable at the earliest possible date.

* “User Acceptance Testing” shall mean testing of each Phase identified in the Project Schedule using the process defined above for Software Deliverable.
* “Conditional Acceptance” will occur upon the earlier of correction of Defects reported as part of User Acceptance Testing of the Phase or Go-Live of the Phase. There will be a Conditional Acceptance for each Phase; Conditional Acceptance after the final Phase constitutes Conditional Acceptance of the entire Solution. Unless the Project Schedule determines otherwise, the Acceptance Test Period for User Acceptance Testing will be thirty (30) calendar days, Vendor and The City will work diligently to put the Phase into Go Live operations.
* “Final Acceptance” involves use of the Solution in totality in production operations for a period of ten (10) calendar days, provision of all Services by Vendor, and completion of the Phases and/or the Software previously tested and meeting Conditional Acceptance. If after ten (10) calendar days the Solution performs without Defects, The City and the Vendor will both issue and execute a “Final Acceptance” of the Solution. The ten (10) day period for Final Acceptance will stop if Defects are found during production use and prevent further production use of the Software. The Final Acceptance process will resume on the date the Defect is confirmed as fixed and will continue for the remainder of the ten (10) day period. There will be a Final Acceptance for each Phase; Final Acceptance after the final Phase constitutes Final Acceptance of the entire Solution.

### Professional Services Warranty

Vendor agrees at all times to maintain an adequate staff of experienced and qualified employees for efficient performance under this Agreement. Vendor agrees that, at all times, the employees of Vendor furnishing or performing any services shall do so in a proper, workmanlike, and dignified manner.

Vendor agrees that all persons working for or on behalf of Vendor whose duties bring them upon The City’s premises shall obey the rules and regulations that are established by The City and shall comply with the reasonable directions of The City’s officers. The City may, at any time, require the removal and replacement of any of Vendor's employees for good cause.

Vendor shall be responsible for the acts of its employees and agents while on The City’s premises. Accordingly, Vendor agrees to take all necessary measures to prevent injury and loss to persons or property located on The City’s premises. Vendor shall be responsible for all damages to persons or property caused by Vendor or any of its agents or employees. Vendor shall promptly repair, to the specifications of The City, any damage that it, or its employees or agents, may cause to The City’s premises or equipment; on Vendor's failure to do so, The City may repair such damage and Vendor shall reimburse The City promptly for the cost of repair.

Vendor agrees that, in the event of an accident of any kind, Vendor will immediately notify The City’s contact person and thereafter, if requested, furnish a full written report of such accident.

Vendor shall perform the services contemplated in the Agreement without interfering in any way with the activities of The City’s staff or visitors.

Vendor and its employees or agents shall have the right to use only those facilities of The City that are necessary to perform services under this Agreement and shall have no right to access any other facilities of The City. The City shall also extend parking privileges to properly identified members of Vendor's full-time staff on the same basis as they are extended to The City’s staff.

The City shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of Vendor or its employees or subcontractors.

### Ineffective Training

Vendor will submit to The City an agenda in advance of any training sessions to be covered with the key materials provided during the course of the training. Further, Vendor will provide to The City details associated with the layout of the training facility, computer requirements, as well as all associated media necessary to deliver the course. The City will conduct a rating of the course after its completion and communicate the results of this rating to Vendor for future class improvements. In the event that The City asserts in good faith that any Vendor training consultant lacks the skill or capability to adequately train The City’s staff, Vendor shall replace such training consultant as soon as reasonably possible. If The City notifies Vendor within ten (10) business days of the completion of said training, that in The City’s reasonable judgment the training sessions provided by such training consultant were inadequate or ineffective, then Vendor shall provide a credit in training days to The City for all such training sessions.

### Subcontracts

The Vendor agrees not to subcontract any of the work required by this Agreement without the prior written approval of The City Manager or designee which will be determined during contract negotiations. The Vendor agrees to be responsible for the accuracy and timeliness of the work submitted in the fulfillment of its responsibilities under this Agreement.

### Force Majeure Clause

Timely performance is essential to the successful initial implementation and ongoing operation of the network described herein. However, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by force majeure. Force majeure shall be defined as unexpected or uncontrollable events, including those caused by nature that can impact the contract's price, terms, and conditions. These events are not the result of contractor negligence and may excuse contractor performance during the events and under certain conditions caused by them. Acts of God or disruptive conditions for which a contractor or carrier will not be held responsible.

### Force Majeure Requisites

Force majeure shall not be allowed unless:

* Within ten (10) calendar days of the occurrence of force majeure, the party whose performance is delayed thereby shall provide the other party or parties with written notice explaining the cause and extent thereof, as well as a request for a time extension equal to the estimated duration of the force majeure events.
* Within twenty (20) calendar days after the cessation of the force majeure event, the party whose performance was delayed shall provide the other party written notice of the time at which force majeure ceased and a complete explanation of all pertinent events pertaining to the entire force majeure situation.

### 120 Day Maximum

Under no circumstances shall delays caused by a force majeure extend beyond hundred-twenty (120) days from the scheduled delivery or completion date of a task, unless by prior [to the end of the hundred-twenty (120) day period] written approval is received from the other party. Failure to secure this written prior permission, even in the case of force majeure, shall constitute default by the party failing to meet the requirement.

### Liquidated Damages

Failure on the part of the Vendor to complete critical project milestones as established in the Project Schedule may result in liquidated damages being imposed on the Vendor by The City for breach of contract and for non-compliance. The milestones will be defined in the Project Schedule and extent of damages will be 1% per day for each day the project Go Live date as defined in the Project Schedule is extended.

### Change Orders

The Project Managers appointed pursuant to this Agreement will meet periodically to review the Project Schedule. Changes to the scope of the project including additional Software and Services may be proposed by either party, and if accepted by the parties, the proposed changes shall be reduced to a written document, inclusive of any applicable pricing changes (“Change Order”). Written approval signed by a duly authorized representative of each of the parties of such Change Order must be obtained prior to the provision of any products or services related to such Change Order.

Vendor shall provide to The City a written quotation for any changes in this Agreement, including Software, Services, Customizations, etc. Each Change Order shall be reviewed and approved by The City and shall be subject to the requirements in the section.

### Travel Expense Reimbursement

All travel expense costs must be included in the Vendor’s fixed price cost. The City will not make a separate payment for reimbursable expenses. Per Force Majeure, The City shall not be liable for additional travel costs incurred due for any reason outside Vendor’s control.

### Video and Audio Recording

The City reserves the right to record video and/or audio of any and all training sessions, whether held at a City site, Vendor site, or via teleconference. Use of such recordings shall be strictly for The City staff training purposes.

### Payment Terms – Professional Services

The City’s payments under the Contract, including the time of payment and the payment of interest on overdue amounts, are subject to thirty (30) days. The City reserves the right to modify any amount due to Vendor presented by invoice to The City if necessary, to conform the amount to the terms of the contract.

Vendor shall invoice **The City** for the Total Amount on Exhibits <##> and <##> according to the following payment schedules:

**Services**

* 50% Due in installments based on Conditional Acceptance of Milestones as defined in theStatement of Work
* 50% Due upon Final Acceptance

**Customizations**

* 50% Due as incurred upon completion of design
* 50% Due upon Final Acceptance

Vendor shall submit to The City an invoice in a form agreeable to The City. The invoice shall be accompanied by such supporting documentation as required by The City.

## Hosting Services

### Hosting Services

Vendor will provide hosting services consisting of system administration, system management, and system monitoring activities that Vendor performs for the Software, and includes the right to access and use the Software, resolving performance issues under the terms of the Service Level Agreement (SLA), The City data storage, The City data archiving and disaster recovery services (“Hosting Services”). Hosting Services do not include support of an operating system or hardware other than those used by Vendor at Vendor’s data centers to host and operate the Software, support outside of Vendor’s normal business hours, training, consulting or other professional services.

### Service Audits

Hosting Services are audited at least yearly in accordance with the AICPA’s Statement on Standards for Attestation Engagements (“SSAE”) No. 16, Type 2. Vendor has attained, and will maintain, Type II SSAE compliance, or its equivalent, for so long as this Agreement is in effect. Upon execution of a mutually agreeable Non-Disclosure Agreement (“NDA”), Vendor will provide The City with a summary of Vendor’s SSAE-16 compliance report or its equivalent. Every year thereafter, for so long as the NDA is in effect and in which The City makes a written request, Vendor will provide that same information.

### Disaster Recovery

Vendor has developed and implemented a business continuity/disaster recovery plan that aligns with government standards and requirements and will continue to maintain a commercially reasonable business continuity/disaster recovery plan for the term of this Agreement. As part of Vendor’s business continuity/disaster recovery program, Vendor has fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Software and Hosting Services in the event of a component or system failure or any other unplanned interruption of the Software or Hosting Services whether caused by a disaster or otherwise. In the event any of The City data has been lost or damaged due to an act or omission of Vendor or its sub-vendors or due to a defect in Software, Vendor will use best commercial efforts to restore all the data on servers in accordance with the architectural design’s capabilities and with the goal of minimizing any data loss as greatly as possible. In no case shall the recovery point objective (“RPO”) exceed a maximum of twenty-four (24) hours from declaration of disaster. For purposes of this subsection, RPO represents the maximum tolerable period during which The City data may be lost, measured in relation to a disaster Vendor declares, said declaration will not be unreasonably withheld. The Force Majeure provisions herein shall not limit Vendor’s obligations under this section, meaning that, a Force Majeure event does not relieve Vendor of its obligation to implement its business continuity/disaster recovery plan to the extent it is able to do so in light of the Force Majeure event.

Vendor will test the business continuity/disaster recovery plan on an annual basis. Vendor’s standard test is not The City-specific. If The City requests a City-specific disaster recovery test, Vendor will work with The City to schedule and execute such a test on a mutually agreeable schedule.

### Penetration Testing

Vendor conducts annual penetration testing of the production network and/or web application. Vendor will maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. Vendor will provide The City with a written or electronic record of the actions taken by Vendor in the event that any unauthorized access to The City database(s) is detected as a result of Vendor security protocols. Further, Vendor recognize that Vendor is storing confidential The City data and any breach of security could have a detrimental impact on The City. The regulation requires breach notification when residents’ computerized personal information is accessed and acquired without authorization. In the event there is such a breach, Vendor will notify The City immediately while the issue is remediated, and all communications shall be coordinated with The City in conformance with applicable law. Vendor will indemnify The City for all costs reasonably incurred by The City due to a breach of security determined to be the result of Vendor’s negligence, subject to the limitation of liability in the Agreement. Vendor will undertake an additional security audit, on terms and timing to be mutually agreed to by the parties, at The City’s written request. The City may not attempt to bypass or subvert security restrictions in the Hosting Services or environments related to the Software. Unauthorized attempts to access files, passwords or other confidential information, and unauthorized vulnerability and penetration test scanning of Vendor network and systems (hosted or otherwise) is prohibited without the prior written approval of Vendor’s IT Security Officer.

### Back-up and Recovery

Vendor will (i) execute nightly database backups to a backup server in a secure offsite location and (ii) save the last ten (10) nightly database backups in a secure offsite location. The City will have the ability to download any of the backups to The City’s location. The Software shall be configured to perform incremental backups every eight (8) hours, such that the database can be restored to the last committed transaction and/or point in time of the last incremental backup, which will have occurred up to two-hours earlier, in the event of a system failure.

Vendor will be responsible for importing back-up and verifying that The City can log-in to the Software. The City will be responsible for running reports and testing critical processes to verify the returned data. At The City’s written request, Vendor will provide test results to The City within a commercially reasonable timeframe after receipt of the request.

### Secure Data Transmission

Vendor will provide secure data transmission paths from each of The City’s workstations to Vendor’s servers; all data transmission between Vendor’s hosted environment and The City’s environment shall be encrypted.

Vendor guarantees that all The City data that Vendor hosts will always be located within the United States.

### Background Checks

For at least the past ten (10) years, all of Vendor’s employees have undergone criminal background checks prior to hire. All employees sign Vendor’s confidentiality agreement and security policies. Vendor’s data centers are accessible only by authorized personnel with a unique key entry. All other visitors must be signed in and accompanied by authorized personnel. Entry attempts to the data center are regularly audited by internal staff and external auditors to ensure no unauthorized access.

### Client Notification if Third-Party Request for Data

Unless the notification is specifically precluded by such law, lawful order, or government authority, as applicable, Vendor shall notify The City in the event that Vendor is required by law, lawful order of a court (including, without limitation, request for production of documents), or governmental authority to disclose The City data. In the event that Vendor is required to produce or disclose The City data, unless prohibited as set forth above, then Vendor shall provide The City with written notice of the request sufficiently in advance of the data specified for the production of the records so that The City can act to protect its data by, for example, seeking a protective order. In addition, to the extent permitted by law, Vendor shall not release the data pending the outcome of any measures taken by The City to contest, otherwise oppose, or seek to limit disclosure by Vendor.

### Provision of Client Data upon Termination

Upon termination or non-renewal of this Agreement, Vendor will promptly provide The City data to The City then residing in Vendor’s hosted environment. The City data shall be provided in ASCII or such other format as may be mutually agreed. Such City data will be provided no later than sixty (60) days prior to the date of expiration or termination, as applicable, (provided at least 10 days advance notice by The City) and again seven (7) days after date of expiration or termination, as applicable.

### Transition Services

Upon expiration or termination of this Agreement, upon The City’s request, Vendor will cooperate with The City and provide services that are reasonably necessary to effectuate an orderly transition to a new system, solution, or provider; provided that The City shall pay Vendor’s then-current rates for such services. Such cooperation and services shall include assistance with data conversion and, at Vendor’s option may include the provision of file layouts to The City on a confidential basis for the purpose of identifying the data Vendor provided to The City.

Data should be returned to the customer in both the SaaS vendor’s native data format and a platform-agnostic format (e.g. MS SQL) with appropriate data schemas and dictionaries. Once a successful hand-off of that data has been confirmed, all customer data should be permanently removed from all SaaS vendor servers.

### Annual Hosting Fees

Annual Hosting Fees shall not be increased by an annual average percentage greater than the annual Consumer Price Index (CPI) for the Central region or three (3) %, whichever is less, for as long as Annual Hosting Fees are paid and this agreement between The City and the Vendor is in effect.

Vendor agrees to send an itemized invoice to The City at least 90 days before Extended Services is up for renewal.

### Payment Terms – Annual Hosting Fees

Vendor shall invoice The City for the Total Amount on Exhibits <##> and <##> according to the following payment schedule:

Annual Hosting Fees

* First year Annual Hosting Fees due upon availability of Software
* Subsequent Annual Fees due annually on anniversary of availability of Software

Vendor shall submit to The City an invoice in a form agreeable to The City. The invoice shall be accompanied by such supporting documentation as required by The City.

## Hosting Service Level Agreement

### Service Level Agreement Overview

This Service Level Agreement (SLA) operates in conjunction with, and does not supersede or replace any part of, the Agreement, specifically, the Hosting Services Section. It outlines the information technology service levels that Vendor will provide to The City to ensure the availability of the application services and Software that The City has requested Vendor to provide. All other support services are documented in the Software Maintenance and Support Section.

###  Definitions

Except as defined below, all defined terms have the meaning set forth in the Agreement.

* *Attainment:* The percentage of time the Software is available during a calendar quarter, with percentages rounded to the nearest whole number.
* *The City Error Incident*: Any service unavailability resulting from The City applications, content or equipment, or the acts or omissions of any of The City service users or third-party providers over whom Vendor exercises no control.
* *Downtime*: Those minutes during which the Software is not available for The City use. Downtime does not include those instances in which only a defect is present.
* *Service Availability*: The total number of minutes in a calendar quarter that the Software is capable of receiving, processing, and responding to requests, excluding maintenance windows, The City Error Incidents and Force Majeure.

### Service Availability

The Service Availability of the Software is intended to be 24/7/365. Vendor sets Service Availability goals and measures whether Vendor has met those goals by tracking Attainment.

A. Client Responsibilities: Whenever The City experiences Downtime, The City must make a support call according to the procedures outlined in the Software Maintenance and Support Section. The City will receive a support incident number. The City must document, in writing, all Downtime that The City has experienced during a calendar quarter. The City must deliver such documentation to Vendor within 30 days of a quarter’s end.

The documentation The City provides must evidence the Downtime clearly and convincingly. It must include, for example, the support incident number(s) and the date, time and duration of the Downtime(s).

 B. Vendor Responsibilities: When Vendor support team receives a call from The City that Downtime has occurred or is occurring, Vendor will work with The City to identify the cause of the Downtime (including whether it may be the result of a The City Error Incident or Force Majeure). Vendor will also work with The City to resume normal operations.

Upon timely receipt of The City’s Downtime report, Vendor will compare that report to Vendor’s own outage logs and support tickets to confirm that Downtime for which Vendor was responsible indeed occurred.

Vendor will respond to The City’s Downtime report within 30 day(s) of receipt. To the extent Vendor has confirmed Downtime for which Vendor is responsible, Vendor will provide The City with the relief set forth below.

C. Client Relief: When a Service Availability goal is not met due to confirmed Downtime, Vendor will provide The City with relief that corresponds to the percentage amount by which that goal was not achieved, as set forth in The City Relief Schedule below.

Notwithstanding the above, the total amount of all relief that would be due under this SLA per quarter will not exceed 100% of one quarter of the then-current Annual Fees. The total credits confirmed by Vendor in one or more quarters of a billing cycle will be applied to the Annual Fees for the next billing cycle. Issuing of such credit does not relieve Vendor of its obligations under the Agreement to correct the problem which created the service interruption.

Every quarter, Vendor will compare confirmed Downtime to Service Availability. In the event actual Attainment does not meet the targeted Attainment, the following The City relief will apply, on a quarterly basis:

| Targeted Attainment | Actual Attainment | City Relief |
| --- | --- | --- |
| 100% | 99.5-100% | Remedial action will be taken. |
| 100% | <99.49% | 10% credit of Annual Fees paid for affected calendar quarter for each 1% by which Actual Attainment is less than 10%, such credit not to exceed Annual Fees actually paid in any circumstance. Credit for affected calendar quarter will be posted to next billing cycle. |

The City may request a report from Vendor that documents the preceding quarter’s Service Availability, Downtime, any remedial actions that have been/will be taken, and any credits that may be issued.

D. Failure by Vendor to Meet Attainment Levels:In the event Vendor fails to achieve an Actual Attainment Level of 10% or greater for three (3) consecutive quarters, The City shall be entitled to terminate the Agreement on written notice to Vendor with no liability, obligation, or penalty to The City by reason of such termination. Without limitation, if The City terminates the Agreement pursuant to this Section, then any early termination penalties shall not apply. Alternatively, The City shall have the option to terminate the Agreement, without penalty, and to purchase perpetual licenses from Vendor for the Software to be hosted by The City in-house or by its designated hosting provider. If The City exercises this option, The City shall pay the then-current license fees for the Software, discounted ##% for each full year that this Agreement has been in force, with such discount, in no event, to exceed ##% of the list price for the Software so licensed. The City’s license rights are not otherwise expanded, The City may not modify the Software so acquired or use if for any other purpose than was provided for in this Agreement.

### Applicability

The commitments set forth in this SLA do not apply during Vendor maintenance windows, The City Error Incidents, and Force Majeure. Vendor performs maintenance during limited windows that are historically known to be reliably low-traffic times. Vendor will not perform maintenance during normal business hours (8 am-8 pm EST, Mon - Fri). If and when maintenance is predicted to occur, Vendor will provide at least one-week advance notice and will coordinate to the greatest extent possible with The City. The foregoing notwithstanding, Vendor reserves the right to provide maintenance without such advance notice if circumstances require immediate action; provided that any notice provided without such advance notice that occurs during normal business hours will count as Downtime for the purposes of this SLA.

### Contract Terms and Conditions – Non-Comply / Exception Explanations

Vendor must indicate any Terms and Conditions in the Agreement Terms and Conditions section (insert section #), that they either will not comply with or take exception to in the table below. Vendors must fully explain any exceptions on the Exception Explanations form below.

|  |
| --- |
| Non-Comply/Exception Explanations |
| # | Title | Explanation of Non-Comply / Exception |
|  |  |  |
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