

LIBRARY DIGITAL DATABASES AND COLLECTIONS SERVICES AGREEMENT

ARTICLE 1. PARTIES

THIS LIBRARY DIGITAL DATABASES AND COLLECTIONS SERVICES AGREEMENT (this “Agreement”) is made on the date countersigned by the City Controller between the **CITY OF HOUSTON, TEXAS** (the “City”), a home-rule city of the State of Texas principally situated in Harris County and _____ (“Contractor”), a _____ (state of incorporation) _____ (type of legal entity) doing business in Texas.

1.1. **ADDRESS**

1.1.1 The initial addresses of the Parties, which one Party may change by giving written notice to the other Party, are as follows:

City

Contractor

Director or Designee
Houston Public Library
City of Houston
P. O. Box 1562
Houston, Texas 77251

Attention: _____

The Parties agree as follows:

1.2. **TABLE OF CONTENTS**

1.2.1 This Agreement consists of the following sections:

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| ARTICLE 1. PARTIES | 1 |
| 1.1. ADDRESS..... | 1 |
| 1.2. TABLE OF CONTENTS..... | 1 |
| 1.3. PARTS INCORPORATED..... | 3 |
| 1.4. CONTROLLING PARTS..... | 4 |
| 1.5. SIGNATURES..... | 5 |
| ARTICLE 2. DEFINITIONS | 6 |
| ARTICLE 3. DUTIES OF CONTRACTOR | 7 |
| 3.1 SCOPE OF SERVICES | 7 |
| 3.2 COORDINATE PERFORMANCE | 7 |
| 3.3 TIME EXTENSIONS | 7 |
| 3.4 REPORTS | 7 |
| 3.5 PAYMENT OF SUBCONTRACTORS | 7 |
| 3.6 RELEASE | 8 |
| 3.7 INDEMNIFICATION..... | 8 |
| 3.8 INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION | 9 |
| 3.9 SUBCONTRACTOR’S INDEMNITY..... | 10 |
| 3.10 INDEMNIFICATION PROCEDURES..... | 10 |
| 3.11 INSURANCE..... | 11 |
| 3.12 WARRANTIES..... | 13 |
| 3.13 DATA SECURITY AND LIABILITY FOR LOSS OR CORRUPTION OF DATA... 13 | 13 |
| 3.14 CONFIDENTIALITY | 16 |
| 3.15 CONFIDENTIALITY – PROTECTION OF CITY’S INTEREST | 16 |
| 3.16 WORK PRODUCTS AND OWNERSHIP..... | 17 |
| 3.17 LICENSES AND PERMITS..... | 18 |
| 3.18 COMPLIANCE WITH LAWS | 18 |
| 3.19 COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE.. 18 | 18 |
| 3.20 MWBE COMPLIANCE | 18 |
| 3.21 DRUG ABUSE DETECTION AND DETERRENCE | 19 |
| 3.22 CONFLICTS OF INTEREST | 20 |
| 3.23 PAY OR PLAY | 20 |
| 3.24 CONTRACTOR’S PERFORMANCE..... | 20 |
| 3.26 CHANGES | 21 |
| 3.27 ENVIRONMENTAL LAWS..... | 22 |
| 3.28 ANTI-BOYCOTT OF ISRAEL..... | 23 |
| 3.29 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES..... | 23 |
| 3.30 PRESERVATION OF CONTRACTING INFORMATION..... | 23 |

ARTICLE 4. DUTIES OF CITY..... 24

4.1 PAYMENT TERMS 24

4.2 TAXES..... 24

4.3 LIMIT OF APPROPRIATION 25

ARTICLE 5. TERM AND TERMINATION 26

5.1 AGREEMENT TERM 26

5.2 NOTICE TO PROCEED..... 26

5.3 RENEWALS 26

5.4 TERMINATION FOR CONVENIENCE BY CITY 26

5.5 TERMINATION FOR CAUSE BY CITY 27

5.6 TERMINATION FOR CAUSE BY CONTRACTOR 27

ARTICLE 6. MISCELLANEOUS 28

6.1 INDEPENDENT CONTRACTOR..... 28

6.2 FORCE MAJEURE 28

6.3 SEVERABILITY 29

6.4 ENTIRE AGREEMENT 29

6.5 WRITTEN AMENDMENT..... 29

6.6 GOVERNING LAW AND VENUE..... 29

6.7 NOTICES..... 30

6.8 CAPTIONS 30

6.9 NON-WAIVER..... 30

6.10 INSPECTIONS AND AUDITS 30

6.11 ENFORCEMENT 31

6.12 AMBIGUITIES..... 31

6.13 SURVIVAL..... 31

6.14 PUBLICITY..... 31

6.15 PARTIES IN INTEREST..... 31

6.16 SUCCESSORS AND ASSIGNS 31

6.17 BUSINESS STRUCTURE AND ASSIGNMENTS 31

6.18 REMEDIES CUMULATIVE 32

6.19 CONTRACTOR DEBT 32

EXHIBITS:

- EXHIBIT A—SCOPE OF SERVICES
- EXHIBIT B—FEES AND COSTS
- EXHIBIT C—DRUG POLICY COMPLIANCE AGREEMENT
- EXHIBIT D—CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- EXHIBIT E—DRUG POLICY COMPLIANCE DECLARATION

1.3. **PARTS INCORPORATED**

SAMPLE AGREEMENT – SUBJECT TO CHANGE

1.3.1 The above-described sections and exhibits are incorporated into this Agreement.

1.4. **CONTROLLING PARTS**

1.4.1 If a conflict between the sections or exhibits arises, the sections control over the exhibits.

[SIGNATURE PAGE FOLLOWS]

SAMPLE

SAMPLE AGREEMENT – SUBJECT TO CHANGE

1.5. SIGNATURES

1.5.1. The Parties have executed this Agreement in multiple copies, each of which is an original, but all of which shall constitute one and the same Agreement. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party’s obligations hereunder have been duly authorized, and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

**ATTEST/SEAL (if a corporation):
WITNESS (if not a corporation):**

CONTRACTOR

By: _____
Name:
Title:

By: _____
Name:
Title:

**ATTEST/SEAL:
Signed by:**

CITY OF HOUSTON, TEXAS

City Secretary

Mayor

APPROVED:

Director, Houston Public Library

COUNTERSIGNED BY:

City Controller

APPROVED:

Chief Procurement Officer

DATE COUNTERSIGNED:

APPROVED AS TO FORM

Assistant City Attorney
L. D. File No. _____

ARTICLE 2. DEFINITIONS

- 2.1 In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural. The word “shall” is always mandatory and not merely permissive.
- 2.1.1. “Agreement” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
- 2.1.2. “Business Day” means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).
- 2.1.3. “Chief Procurement Officer” (“CPO”) means the Chief Procurement Officer of the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
- 2.1.4. “City” is defined in the preamble of this Agreement and includes its successors and permitted assigns.
- 2.1.5. “Contractor” is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.1.6. “Countersignature Date” means the date shown as the date countersigned on the signature page of this Agreement.
- 2.1.7. “Director” means the Director of the City of Houston Human Resources Department or such other person as he or she designates.
- 2.1.8. “Documents” mean notes, manuals, notebooks, plans, computations, computer databases and diskettes, software, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.
- 2.1.9. “Effective Date” means the date this Agreement is countersigned by the City Controller.
- 2.1.10. “Notice to Proceed” means a written communication from the Director or the CPO to Contractor instructing Contractor to begin performance.

SAMPLE AGREEMENT – SUBJECT TO CHANGE

2.1.11. “Party” or “Parties” means one or all of the entities set out in the Preamble who are bound by this Agreement.

ARTICLE 3. DUTIES OF CONTRACTOR

3.1 SCOPE OF SERVICES

3.1.1 In consideration of the payments specified in this Agreement, Contractor grants City a non-exclusive, non-transferrable license to access the products that the City has purchased as described in **Exhibit A**. During the Term of this Agreement, Contract shall provide the City with updates and feature enhancements to its products whenever such updates and feature enhancements become available.

3.2 COORDINATE PERFORMANCE

3.2.1 Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

3.3 TIME EXTENSIONS

3.3.1 If Contractor requests an extension of time to complete its performance, then the Director, in consultation with the CPO, may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

3.4 REPORTS

3.4.1 Contractor shall submit all reports and progress updates required by the Director or CPO.

3.5 PAYMENT OF SUBCONTRACTORS

3.5.1 In accordance with the Texas Prompt Payment Act, Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment by, through, or under Contractor in the performance of this Agreement.

3.5.2 CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR’S FAILURE TO

MAKE THESE PAYMENTS.

3.6 RELEASE

3.6.1 CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY’S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY’S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

3.7 INDEMNIFICATION

3.7.1 CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE “CITY”) HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

3.7.1.1 CONTRACTOR’S AND/OR ITS AGENTS’, EMPLOYEES’, OFFICERS’, DIRECTORS’, CONTRACTORS’, OR SUBCONTRACTORS’ (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 1-3, “CONTRACTOR”) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

3.7.1.2 THE CITY’S AND CONTRACTOR’S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

3.7.1.3 THE CITY’S AND CONTRACTOR’S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

3.7.2 CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY’S SOLE NEGLIGENCE.

3.8 INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION

3.8.1 CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) HARMLESS FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY’S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, SERVICE MARK, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

3.8.2 CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY’S PRIOR WRITTEN CONSENT.

3.8.3 WITHIN SIXTY (60) DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

3.9 SUBCONTRACTOR’S INDEMNITY

3.9.1 CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

3.10 INDEMNIFICATION PROCEDURES

3.10.1 Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving Party shall give written notice to the other Party within 30 days. The notice must include the following:

3.10.1.1 a description of the indemnification event in reasonable detail;

3.10.1.2 the basis on which indemnification may be due; and

3.10.1.3 the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

3.10.2 Defense of Claims

3.10.2.1 Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Contractor shall then control the defense and any negotiations to settle the claim, subject to the City Attorney’s consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

3.10.2.2 Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations.

3.11 INSURANCE

3.11.1 Risks and Limits of Liability. Contractor shall maintain the following insurance coverages in the following amounts:

| <u>COVERAGE</u> | <u>LIMIT OF LIABILITY</u> |
|--|--|
| Workers' Compensation | Statutory for Workers' Compensation |
| Employer's Liability | <ul style="list-style-type: none"> • Bodily Injury by Accident \$500,000 (each accident) • Bodily Injury by Disease \$500,000 (policy limit) • Bodily Injury by Disease \$500,000 (each employee) |
| Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage | Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate |
| Automobile Liability | \$1,000,000 combined single limit for: (i) Any Auto; or (ii) All Owned, Hired, and Non-Owned Autos |
| Professional Liability | \$1,000,000 per occurrence; \$2,000,000 aggregate |
| Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability | \$1,000,000 |
| Cyber Liability | \$2,000,000.00 aggregate |
| Aggregate Limits are per 12-month policy period unless otherwise indicated. | |

3.11.2 Insurance Coverage. At all times during the term of this Agreement and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay: (i)

SAMPLE AGREEMENT – SUBJECT TO CHANGE

all premiums; and (ii) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

3.11.3 **Form of insurance.** The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never: (i) excuse non-compliance with the terms of this Section; or (ii) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall: (i) have a Certificate of Authority to transact insurance business in Texas; or (ii) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

3.11.4 **Required Coverage.** The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Agreement with a duration of two years after substantial completion. All certificates of insurance submitted by Contractor shall be accompanied by endorsements for: (i) Additional Insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and (ii) Waivers of Subrogation in favor of the City for Commercial General Liability, Automobile Liability and Workers' Compensation/Employers' Liability policies. The Director will consider all other forms on a case-by-case basis.

3.11.5 **Notice.** **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole

SAMPLE AGREEMENT – SUBJECT TO CHANGE

discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

- 3.11.6 **Other Insurance.** If requested by the Director, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor’s operations under this Agreement.

3.12 **WARRANTIES**

3.12.1 Contractor warrants that it is the sole owner and/or has all necessary intellectual property rights in the entire right, title, and interests in and to the Products, Software, documentation, and Documents (“Products”) that Contractor provides to the City under this Agreement. Contractor further warrants that it has the sole right to grant licenses to the Products and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights that Contractor grants to the City. Contractor further warrants that the Products do not infringe upon any patent, copyright, trade secret, or any other rightful claim, proprietary or intellectual property right of any third party.

3.12.2 Company represents that it has used reasonable best efforts utilizing generally accepted industry tools and practices to provide the Products that Contractor provides to the City under this Agreement that does not contain any “time bombs,” “worms,” “viruses,” “trojan horses,” “protect codes,” “data destruct keys,” or other programming devices that are intended to access, modify, delete, damage, deactivate or disable the Products (“Malicious Code”). If Company is unable to remove or isolate the Malicious Code using reasonable efforts within a reasonable period of time, then Client may pursue its remedies at law to direct damages resulting from the breach of this warranty. Company shall take action immediately to investigate, identify and remove such Malicious Code from the Products, that Contractor provides to the City under this Agreement.

3.12.3 Contractor’s performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and Products that Contractor provides under this Agreement. Upon the Director’s request, Contractor shall promptly re-perform or re-provide, at no charge to the City, any services or Products that fail to reasonably conform to the warranty contained in this section. If Contractor is unable to repair or replace such services or Products within a reasonable period of time, the City may pursue its remedies at law to direct damages resulting from the breach of this warranty.

3.13 **DATA SECURITY AND LIABILITY FOR LOSS OR CORRUPTION OF DATA**

3.13.1 Contractor shall maintain the security of all City data, including all City-specific data. Contractor shall continuously audit its controls designed to (i) protect the

SAMPLE AGREEMENT – SUBJECT TO CHANGE

security of City data or (ii) record and monitor the Software, documentation, and Documents. Contractor shall regularly test and audit the systems, controls, and procedures outlined in this section, which tests and audits shall occur at least once per calendar month. Contractor shall implement and maintain reasonable administrative, technical, and physical controls, safeguards, measures, and procedures to (i) protect and safeguard the privacy, security, integrity, and confidentiality of the City's Information and City data, (ii) prevent, detect, contain, and correct security breaches in, involving, or against the City's Information and City data, and (iii) ensure that the City's Information is not accessed, processed, stored, transmitted, transferred, copied, disposed of, archived, or disclosed contrary to the provisions of this Agreement or applicable laws concerning information technology security, network or data security, and privacy laws. At a minimum, Contractor shall develop, implement, and maintain a reasonable written security program that includes appropriate administrative, technical, organizational, and physical safeguards and security measures that (i) maintain user identification and access controls designed to limit access to authorized users; (ii) protect the City's Information from unauthorized activity; (iii) use encryption technology, and (iv) comply with any specifications as requested by the City. Contractor shall be responsible and liable for the acts and omissions of Contractor's personnel, temporary employees, agents, and subcontractors in connection with the provision of the services required under this Agreement, as if such acts or omissions were Contractor's acts or omissions. With respect to any of Contractor's personnel, temporary employees, agents, and subcontractors who process, store, transmit, access, dispose of, or have access to the City's Information, City data, or the Software in so far as it relates to Contractor's performance of this Agreement, Contractor shall:

- a. Advise these persons of and require that they comply with the provisions of this Agreement applicable to each person, including without limitation, the provisions relating to the privacy, security, integrity, and confidentiality of the City's Information and City data;
- b. Require these persons to execute and deliver to Contractor written agreements that are a direct flow-down of, or substantially similar to (or no less restrictive than) the terms of this Agreement, including without limitation, with respect to privacy, security, integrity, and confidentiality of the City's Information and City data; and
- c. With respect to Contractor's personnel with access to the City's physical property or premises, Contractor shall advise these persons of applicable

SAMPLE AGREEMENT – SUBJECT TO CHANGE

visitor policies and require that they comply with them and only access authorized areas.

Pursuant to this Agreement, Contractor shall be responsible for any fraudulent or dishonest acts committed by Contractor's employees, agents, subcontractors, directors, or officers.

- 3.13.2 United States Restriction. Contractor shall ensure that, at all times, all of the City data shall remain in networks, systems, facilities, data centers, gateways, hosting facilities, and cloud facilities physically located solely in the continental United States. At all times, all support calls shall be provided by Contractor from within the boundaries of the United States.
- 3.13.3 SSAE 16 Compliance. For as long as Contractor has City data, Contractor will maintain an information security program that provides for the security and protection of the City data, including, but not limited to, processes and procedures to respond to security incidents. Contractor will operate in conformance with the physical, technical, operational and administrative measures and protocols regarding data security as set forth in its then current Standards for Attestation Engagements (“SSAE”) No. 16 SOC1 Type II Report (or equivalent report), received from its third party auditors. Contractor will, upon written request, provide City with copies of then-current SSAE No. 16 report issued by its third party independent auditors in relation to the data security policies and procedures designed to meet the requirements set forth in this Agreement with regard to the services.
- 3.13.4 Data Breach. If Contractor learns that any person (including Contractor personnel and third parties) has gained unauthorized access to the Software, City data, or any person has gained unauthorized access to Contractor's network and/or data storage facilities such that any City data is obtained by an outside party, or the City Data has otherwise been disclosed to unauthorized parties in connection with this Agreement (other than in the proper performance of those services or support therefor), (each an “Incident”), then Contractor shall promptly (within 48 hours) (i) notify the City Attorney and Director in writing of the nature and extent of the Incident; (ii) conduct an investigation to determine when and, if possible, how the Incident occurred, and then (iii) reasonably assist the City in investigating and assessing the extent and nature of the Incident; (iv) use all reasonable endeavors to promptly remedy the Incident and prevent the occurrence of any similar Incident; and (v) inform the City upon request as to the current status of such endeavors. Contractor shall be liable for such data breach or unauthorized access, including but not limited to, any related costs or expense and any notification required by law or regulation.
- 3.13.5 If as a result of Contractor's negligence, any City data is lost or corrupted, Contractor shall restore the data to the previous day's uncorrupted state. Loss or

SAMPLE AGREEMENT – SUBJECT TO CHANGE

corrupted data means data that is inaccessible, and not merely one that contains inaccurate data due to service defects or other reasons.

3.13.6 Contractor shall maintain and implement disaster recovery and avoiding procedures to ensure that the services provided by Contractor are not interrupted during any disaster and the City’s Information and City data is not lost or destroyed during any disaster. For any of the City’s Information or City’s data that is managed, maintained, stored, or hosted by or on behalf of Contractor, Contractor shall execute nightly database or systems backups to a backup server.

3.14 **CONFIDENTIALITY**

3.14.1 Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, the “Information”) that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

3.15 **CONFIDENTIALITY – PROTECTION OF CITY’S INTEREST**

3.15.1 Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, materials, processes, and documents (collectively, “Information” or “City’s Information”) that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section. The placement of a copyright notice on any Information will not be construed to mean that such information has been published and will not release Contractor from its obligation of confidentiality hereunder. The terms and conditions of this Confidentiality section shall survive the expiration or termination of this Agreement for any reason.

3.15.2 Upon request by the Director at any time during the Term and upon the expiration or termination of this Agreement, Contractor shall retain, migrate, or dispose of the City’s Information as directed by the Director. Within two (2) days of Contractor’s receipt of the Director’s written request to retain, migrate, or dispose of the City’s Information, Contractor shall notify the Director in writing of the estimated storage size and types of data to be retained, migrated, or disposed of. Within thirty (30) days of Contractor’s receipt of the Director’s written request to retain, migrate, or dispose of the City’s Information, Contractor shall perform the following to the extent applicable and in accordance with the Director’s requirements:

SAMPLE AGREEMENT – SUBJECT TO CHANGE

- a. Deliver the City’s Information (in whole or in part, as directed by the Director) and physical media owned or provided by the City to the Director, in the format and on the media requested by the Director;
- b. Destroy the City’s Information (in whole or in part, as directed by the Director) and provide a notarized statement of destruction to the Director;
- c. Destroy physical media using secure methods (such methods approved by the Director);
- d. Remove the City’s Information (in whole or in part, as directed by the Director) from the hosted database, storage device, or other repository or storage means; or
- e. Retain the City’s Information (in whole or in part, as directed by the Director) and migrate the designated information to a mutually agreed upon, secure location, database, or storage device for storage and retention of City Information.

3.16 WORK PRODUCTS AND OWNERSHIP

3.16.1 The City expressly acknowledges that the Software in any form provided by Contractor to the City under this Agreement are the sole property of Contractor and/or its suppliers, and that the City shall not have any right, title, or interest to any such Software or copies thereof except as provided in this Agreement. All software, error corrections, bug fixes, patches, updates, or other improvements or modifications to the Software developed by Contractor for the City using the City’s specifications, Contractor’s specifications, or a combination of both shall become the property of Contractor, provided that the City may access and use this modified Software in accordance with its license.

3.16.2 The City is, will be, and shall remain at all times the owner of all of the City’s Information. Contractor expressly acknowledges that the City has all right, title, or other ownership interest in the City’s Information and Contractor shall not possess or assert any lien or other right against the City’s Information. The City is, will be, and shall remain the owner of all City data, including City-specific data created or generated by either party pursuant to this Agreement. The City may use this City data, including data provided by Contractor, for any purpose. At all times, including during or after the termination or expiration of this Agreement or any license Contractor grants to the City, the City retains the right to reveal or extract the City’s Information and all City-specific data from the Contractor Software and Documents, and the right to use the City-specific data and the City’s Information for the City’s own use, for use with other non-Contractor software, or to load

SAMPLE AGREEMENT – SUBJECT TO CHANGE

elsewhere. Contractor shall provide a data export tool that returns City-specific data on demand. Contractor shall not use City-specific data for any other purposes other than what is expressly specified in this Agreement.

3.17 LICENSES AND PERMITS

3.17.1 Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation for the performance under this Agreement. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against its license.

3.18 COMPLIANCE WITH LAWS

3.18.1 Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances in its performance under this Agreement.

3.19 COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE

3.19.1 Contractor shall comply with City’s Equal Employment Opportunity Ordinance as set out in in Section 15-17 of the Code of Ordinances.

3.20 MWBE COMPLIANCE

3.20.1 Contractor shall comply with the City’s Minority and Women Business Enterprise (“MWBE”) programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least ___% of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City’s Office of Business Opportunities (“OBO”) and will comply with them.

3.20.2 Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

[Name of MWBE subcontractor] shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston’s Office of Business Opportunity Director (the “Director”).

[Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform: (i) audits of the books and records of the subcontractor; and (ii) inspections of all places where work is to be undertaken

SAMPLE AGREEMENT – SUBJECT TO CHANGE

in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

Within five Business Days of execution of this subcontract, Contractor and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

Any controversy between the Parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

3.21 DRUG ABUSE DETECTION AND DETERRENCE

3.21.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor’s Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 (the “Executive Order”), which is incorporated into this Agreement and is on file in the City Secretary’s Office.

3.21.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing (“CCODT”):

3.21.2.1 a copy of its drug-free workplace policy;

3.21.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit C**, together with a written designation of all safety impact positions; and

3.21.2.3 if applicable (*e.g.*, no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit D**.

3.21.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially

SAMPLE AGREEMENT – SUBJECT TO CHANGE

similar to **Exhibit E**. Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or, if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

3.21.4 Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor’s employee work force.

3.21.5 Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

3.22 **CONFLICTS OF INTEREST**

3.22.1 If an actual or potential conflict arises between the City’s interests and the interests of other clients Contractor represents, Contractor shall immediately notify the Director by fax transmission or telephone. If the Director consents to Contractor’s continued representation of the other clients, he or she shall notify Contractor in writing. If the Director does not issue written consent within 3 business days after receipt of Contractor’s notice, Contractor shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.

3.23 **PAY OR PLAY**

3.23.1 The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions.

3.24 **CONTRACTOR’S PERFORMANCE**

3.24.1 Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor’s employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director’s opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards

SAMPLE AGREEMENT – SUBJECT TO CHANGE

3.26 CHANGES

3.26.1 At any time during the Agreement Term, the Director or CPO may issue a Change Order to increase or decrease the scope of services or change plans and specifications as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

3.26.2 The CPO or Director will issue the Change Order in substantially the following form:

| | |
|---|--|
| <u>CHANGE ORDER</u> | |
| TO: | [Name of Contractor] |
| FROM: | City of Houston, Texas (the “City”) |
| DATE: | [Date of Notice] |
| SUBJECT: | Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement] |
| Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following: | |
| [Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.] | |
| Signed: | [Signature of CPO or Director] |

3.26.3 The CPO or Director may issue more than one Change Order, subject to the following limitations:

3.26.3.1 The City Council expressly authorizes the CPO or Director to approve a Change Orders up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.

3.26.3.2 If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.

3.26.3.3 The total of all Change Orders issued under this section may not

SAMPLE AGREEMENT – SUBJECT TO CHANGE

increase the Original Agreement amount by more than 25 unless:

3.26.3.3.1 The additions are exempt from the competitive bidding or proposal requirements set forth in Tex. Local Govt. Code Chapter 252; or

3.26.3.3.2 The City acquires the additions from Contractor through a competitive bid or competitive proposal.

3.26.4 Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The CPO's or Director's decision regarding a time extension is final.

3.26.5 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

3.26.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

3.27 **ENVIRONMENTAL LAWS**

3.27.1 Contractor shall comply with all rules, regulations, statutes, and orders of the Environmental Protection Agency, the Texas Commission on Environmental Quality, and any other governmental agency with the authority to promulgate environmental rules and regulations (the "Environmental Laws"). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply with Environmental Laws.

3.27.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Laws. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants, or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

3.28 **ANTI-BOYCOTT OF ISRAEL**

3.28.1 Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

3.29 **ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES**

3.29.1 The requirements and terms of the City of Houston’s Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of the Countersignature Date. Contractor shall notify the CPO, City Attorney, and the Director of any information regarding possible violation by Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

3.30 **PRESERVATION OF CONTRACTING INFORMATION**

3.30.1 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that this Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Contractor shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Contractor shall provide any Contracting Information related to this Agreement that is in the custody or possession of Contractor. Upon the expiration or termination of this Agreement, Contractor shall, at the Director’s election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

SAMPLE AGREEMENT – SUBJECT TO CHANGE

If Contractor fails to comply with any one or more of the requirements of this Section, Preservation of Contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Contractor and may terminate this Agreement. To effect final termination, the Director must notify Contractor in writing with a copy of the notice to the CPO. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

ARTICLE 4. DUTIES OF CITY

4.1 PAYMENT TERMS

4.1.1 The City shall pay Contractor the Subscription Fees annually for access to and use of the products as described in **Exhibit B**, subject to allocation of funds as set out below. For Initial Term, City shall pay the Subscription Fees 30 days after the Countersignature Date of this Agreement. For any Renewal Term after the Initial Term, Contractor shall invoice City for Fees for the Renewal Term ninety (90) days in advance of the applicable due date and City shall pay the Subscription Fees listed in **Exhibit B** to Contractor within thirty (30) days of the anniversary of the Countersignature Date of each Renewal Term.

4.1.2 Early Payment Discount. The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tex. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from Contractor as follows:

Payment Time - 10 Days: 2% Discount

Payment Time - 20 Days: 1% Discount

4.1.3 If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following Business Day.

4.2 TAXES

4.2.1 The City is exempt from payment of Federal Excise and Transportation Tax and

SAMPLE AGREEMENT – SUBJECT TO CHANGE

Texas Limited Sales and Use Tax. Contractor’s invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City’s exemption certificate and federal tax identification number to Contractor if requested.

4.3 LIMIT OF APPROPRIATION

4.3.1 The City’s duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

4.3.2 In order to comply with Article II, Sections 19 and 19a of the City’s Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$ _____ to pay money due under this Agreement during the City’s current fiscal year (the “Original Allocation”). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds (each a “Supplemental Allocation” and collectively, the “Supplemental Allocations”) for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:

4.3.2.1 The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the Director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This Supplemental Allocation has been charged to such appropriation.

\$ _____

4.3.2.2 The Original Allocation plus all Supplemental Allocations are the “Allocated Funds.” The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor’s only remedy is suspension or termination of its performance under this Agreement, and

SAMPLE AGREEMENT – SUBJECT TO CHANGE

it has no other remedy in law or in equity against the City and no right to damages of any kind.

ARTICLE 5. TERM AND TERMINATION

5.1 AGREEMENT TERM

5.1.1 This Agreement is effective on the Countersignature Date and shall remain in effect three (3) years, unless sooner terminated under this Agreement (the “Initial Term”).

5.2 NOTICE TO PROCEED

5.2.1 Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the CPO or Director.

5.3 RENEWALS

5.3.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two (2) successive one-year terms on the same terms and conditions. If the Director chooses not to renew this Agreement, he or she shall notify Contractor and the CPO of non-renewal at least 30 days before the expiration of the then-current term.

5.4 TERMINATION FOR CONVENIENCE BY CITY

5.4.1 The Director may terminate this Agreement at any time by giving 30 days’ written notice to Contractor, with a copy of the notice to the CPO. The City’s right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.

5.4.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in this Agreement unless the fees exceed the allocated funds remaining under this Agreement.

5.4.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR’S ONLY REMEDIES FOR THE CITY’S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT.

SAMPLE AGREEMENT – SUBJECT TO CHANGE

CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

5.5 TERMINATION FOR CAUSE BY CITY

5.5.1 If Contractor defaults under this Agreement, the Director may terminate this Agreement after providing Contractor written notice and an opportunity to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies that exist now or in the future. Default by Contractor occurs if:

5.5.1.1 Contractor fails to perform any of its material duties under this Agreement;

5.5.1.2 Contractor becomes insolvent;

5.5.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

5.5.1.4 a receiver or trustee is appointed for Contractor.

5.5.2 If a default occurs and the Director determines that the City wishes to terminate the Agreement, then the Director must deliver a written notice to Contractor describing the default and the proposed termination date, with a copy of the notice to the CPO. The date must be at least 30 days after Contractor receives notice. The Director, at his or her sole option, may extend the termination date to a later date. If Contractor cures the default before the proposed termination date, then the proposed termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

5.5.3 To effect final termination, the Director must notify Contractor in writing, with a copy of the notice to the CPO. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and promptly cancel all orders or subcontracts chargeable to this Agreement.

5.6 TERMINATION FOR CAUSE BY CONTRACTOR

5.6.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the

SAMPLE AGREEMENT – SUBJECT TO CHANGE

Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days after the Director receives the notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date

ARTICLE 6. MISCELLANEOUS

6.1 **INDEPENDENT CONTRACTOR**

6.1.1 Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

6.2 **FORCE MAJEURE**

6.2.1 Timely performance by both Parties is essential to this Agreement. However, neither Party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a Party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected Party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn, or other factors of general application, or an event that merely makes performance more difficult, expensive, or impractical. Force Majeure does not entitle Contractor to extra reimbursable expenses or payment.

6.2.2 This relief is not applicable unless the affected Party does the following:

6.2.2.1 uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

SAMPLE AGREEMENT – SUBJECT TO CHANGE

6.2.2.2 provides the other Party with prompt written notice of the cause and its anticipated effect.

6.2.3 The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days.

6.2.4 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

6.2.5 If the Force Majeure continues for more than 7 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

6.3 **SEVERABILITY**

6.3.1 If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

6.4 **ENTIRE AGREEMENT**

6.4.1 This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties with respect to this subject matter hereof. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

6.5 **WRITTEN AMENDMENT**

6.5.1 Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.6 **GOVERNING LAW AND VENUE**

6.6.1 This Agreement shall be construed and interpreted in accordance with the

SAMPLE AGREEMENT – SUBJECT TO CHANGE

applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

6.7 NOTICES

6.7.1 All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Article 1 of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

6.8 CAPTIONS

6.8.1 Captions contained in this Agreement are for reference only and therefore have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

6.9 NON-WAIVER

6.9.1 If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

6.9.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

6.10 INSPECTIONS AND AUDITS

6.10.1 City representatives may perform, or have performed: (i) audits of Contractor's books and records; and (ii) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least three years after this Agreement terminates. If the books and records are located outside of Harris County, Texas, Contractor agrees to make them available in Harris County, Texas. This provision does not affect the applicable statute of limitations.

6.11 **ENFORCEMENT**

6.11.1 The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

6.12 **AMBIGUITIES**

6.12.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

6.13 **SURVIVAL**

6.13.1 Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including, but not limited to, the indemnity provisions.

6.14 **PUBLICITY**

6.14.1 Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

6.15 **PARTIES IN INTEREST**

6.15.1 This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

6.16 **SUCCESSORS AND ASSIGNS**

6.16.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

6.17 **BUSINESS STRUCTURE AND ASSIGNMENTS**

6.17.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the

SAMPLE AGREEMENT – SUBJECT TO CHANGE

creation of a security interest under Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the Director and CPO with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

6.17.2 Contractor shall not delegate any portion of its performance under this Agreement without the Director’s prior written consent.

6.18 **REMEDIES CUMULATIVE**

6.18.1 Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies that exist now or in the future. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

6.19 **CONTRACTOR DEBT**

6.19.1 IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, HE OR SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

EXHIBIT A

SCOPE OF SERVICES

SAMPLE

EXHIBIT B

FEES AND COSTS

SAMPLE

SAMPLE AGREEMENT – SUBJECT TO CHANGE

EXHIBIT C

DRUG POLICY COMPLIANCE AGREEMENT

I, _____, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor’s Amended Policy on Drug Detection and Deterrence (Mayor’s Drug Policy) and the Mayor’s Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor’s Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor’s Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date

Contractor Name

Signature

Title

EXHIBIT D

CONTRACTOR’S CERTIFICATION OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT

I, _____, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing _____.
(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

SAMPLE AGREEMENT – SUBJECT TO CHANGE

EXHIBIT E

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or officer of _____ (Contractor)
(Name) (Print/Type) (Title) (Name of Company)
have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, 20____.

_____ A written Drug Free Workplace Policy has been implemented and employees notified.
Initials The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

_____ Written drug testing procedures have been implemented in conformity with the Mayor's
Initials Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

_____ Collection/testing has been conducted in compliance with federal Health and Human
Initials Services (HHS) guidelines.

_____ Appropriate safety impact positions have been designated for employee positions
Initials performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.

From _____ to _____ the following test has occurred
(Start date) (End date)

| | <u>Random</u> | <u>Reasonable Suspicion</u> | <u>Post Accident</u> | <u>Total</u> |
|----------------------------|---------------|-----------------------------|----------------------|--------------|
| Number Employees Tested | _____ | _____ | _____ | _____ |
| Number Employees Positive | _____ | _____ | _____ | _____ |
| Percent Employees Positive | _____ | _____ | _____ | _____ |

_____ Any employee who tested positive was immediately removed from the City worksite
Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ I affirm that falsification or failure to submit this declaration timely in accordance
Initials with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)