

**SAMPLE AGREEMENT – TERMS SUBJECT TO CHANGE**

THE STATE OF TEXAS

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COUNTY OF HARRIS

**THIS AGREEMENT FOR DOCUMENT MANAGEMENT SOFTWARE** (“Agreement”) is made on the date countersigned by the City Controller (“Countersignature Date”), by and between the **CITY OF HOUSTON, TEXAS** (the “City”), a Texas Home Rule City of the State of Texas principally situated in Harris County, and \_\_\_\_\_ (the “Contractor”), a \_\_\_\_\_ doing business in the State of Texas.

**1. PREAMBLE**

**1.1. Addresses of the Parties**

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:

<u>City</u>	<u>Contractor</u>
City Attorney or Designee	_____ (Name,)
City of Houston	{COMPANY NAME}
P.O. Box _____	{ADDRESS}
Houston, Texas _____	{ADDRESS}

The Parties agree as follows:

**1.2. Table of Contents**

1.2.1. This Agreement consists of the following sections:

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EXHIBIT F – DRUG POLICY COMPLIANCE DECLARATION

1.3 Parts Incorporated

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

1.4 Controlling Parts

1.4.1. If a conflict among the sections and exhibits arises, the sections control over the exhibits.

**[THE REST OF THE PAGE IS BLANK]**

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1.5. Signatures

1.5.1. The Parties have executed this Agreement in multiple copies, each of which is an original. 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.

**CONTRACTOR'S NAME**

By: \_\_\_\_\_  
Name:  
Title:

**ATTEST/SEAL:**

**CITY OF HOUSTON, TEXAS**

Signed by:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

**APPROVED:**

**COUNTERSIGNED BY:**

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Controller

\_\_\_\_\_  
Chief Procurement Officer

**APPROVED AS TO FORM:**

**DATE COUNTERSIGNED:**

\_\_\_\_\_  
Assistant City Attorney  
L.D. File No. \_\_\_\_\_

\_\_\_\_\_

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**2. DEFINITIONS**

- 2.1. As used in this Agreement, the following terms have the meanings set out below:
- 2.1.1. “Accept” or “Acceptance” means the act of the City Attorney by which the City assumes for itself, approval of specific products or services, as partial or complete performance of the Agreement.
  - 2.1.2. “Agreement” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
  - 2.1.3. “Business Day(s)” mean(s) any day that is not a Saturday, Sunday, or City Holiday. In the event that any deadline set forth in this Agreement falls on a Saturday, Sunday, or City Holiday, the deadline shall automatically be extended to the next day that is not a Saturday, Sunday, or City Holiday.
  - 2.1.4. “Chief Procurement Officer” (CPO) is the Chief Procurement Officer for the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
  - 2.1.5. “City” is defined in the Preamble of this Agreement and includes its successors and assigns.
  - 2.1.6. “City Council” means the governing body of the City.
  - 2.1.7. “City Personnel” means all employees, but not elected officials.
  - 2.1.8. “Contractor” is defined in the Preamble of this Agreement and includes its successors and assigns.
  - 2.1.9. “Countersignature Date” means the date shown as the date countersigned on the signature page of this Agreement.
  - 2.1.10. “Day” or “Days” means calendar day, including weekends and legal holidays, whether capitalized or not, unless otherwise specifically provided. In the case of plural “days,” those days will be consecutive.
  - 2.1.11. “City Attorney” means the City Attorney or the person he or she designates.
  - 2.1.12. “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.
  - 2.1.13. “Include” and “including,” and words or similar import, shall be deemed to be followed by the words “without limitation.”
  - 2.1.14. “Letter of Authorization” or “LOA” means the fully executed document the City Attorney sends to Contractor authorizing certain services to be performed by Contractor or products to be provided to City in accordance with this Agreement.

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Unless otherwise specified in this Agreement, all references to LOA in this Agreement shall mean an LOA issued in accordance with and pursuant to this Agreement.

- 2.1.15. "Parties" mean all the entities set out in the Preamble, who are bound by this Agreement.
- 2.1.16. "Software" means the software system as further described in **Exhibit A** of this Agreement, including without limitation, the software-as-a-service, any and all associated databases, storage means, equipment, user interfaces, software components or modules, and any related documentation and user guides created or owned by Contractor.
- 2.1.17. "Upgrades" means newer versions, new releases, improvements, software fixes, maintenance item, refreshes, updates, upgrades, modifications, customizations, enhancements, corrections, installation of patches, or other changes that have been made by the developer, seller, manufacturer, or licensor to the Software. The exterior form of the Upgrades may be reflected by changes to the version numbers.

### **3. DUTIES OF CONTRACTOR**

#### **3.1. Scope of Services**

- 3.1.1. Contractor shall provide the Software and perform the services as set out and further detailed in **Exhibit A** (Scope of Services) of this Agreement, and in accordance with **Exhibit C** (Service Level Agreement) (collectively, "Services(s)"). Contractor shall provide all labor, materials, and supervision necessary to perform the Services under this Agreement. City Attorney reserves the right to switch between different available Contractor's products/services and may select a product/service other than the products/services listed in **Exhibit A**, upon mutual written agreement between the Parties, so long as there is sufficient funding to do, without further City Council action.
- 3.1.2. Contractor represents and warrants that it has all the necessary rights, title, and interest to the Software, documentation, and Documents to fully and legally comply with its obligations under this Agreement. In the event there are third-party components in the Software, documentation, and Documents, Contractor represents and warrants that these third-party components have been fully licensed or purchased by Contractor for City's use for all purposes and therefore, City will not be subject to any other further licensing requirements, restrictions, or additional fees.
- 3.1.3. Contractor shall provide all Upgrades with respect to the Software and as specified under this Agreement. Contractor shall maintain the Software so that remote access and use by the City (and its end users) is available at all times. Contractor shall implement commercially reasonable procedures regarding application management, load balancing, back-up, recovery, and file and disk space utilization management, to ensure that the City can access the most recent Upgrades of the Software or that the Software may be reinstalled, if applicable, without undue delay. The Contractor Software shall be capable of continuous operation ninety-

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nine point nine-nine percent (99.99%) of the time, other than for scheduled interruption due to service maintenance and upgrades, such scheduled interruption due to service maintenance and upgrades performed only during non-business hours of 6:00PM CST to 6:00AM CST. Contractor shall ensure the availability of qualified personnel at any and all times, ready to intervene to address any problems or inoperability of the Software, documentation, and Documents, should the need arise.

- 3.1.4. After the Software is installed or used by the City (and/or its end users) pursuant to this Agreement, Contractor shall not lock, suspend, or disable the Software, or the City's local copy or database (if applicable), interfere with, cancel, or restrict the City's (and its end users) access to and continuous use of the Software, or make the City's local copy or database (if applicable) inaccessible to the City and its end users.
- 3.1.5. During the Term of this Agreement and any subsequent renewals or extensions, if Contractor replaces any of the Software or Services named in this Agreement or the corresponding Exhibits and offers products performing the same functions, but using improved technology, then the newer product may be substituted upon written request by the City Attorney. These substitutions may also be noted in any subsequent agreement renewal documents without necessitating an additional process, provided, however, that this clause shall not be construed to allow inclusion of any equipment model, product, software, or service that changes the scope of the intent, technical specifications, or applications described in this Agreement or the corresponding Exhibits.
- 3.1.6. Contractor shall provide an Account Representative dedicated to the City's Legal Department to handle complaints, inquiries about subscription matters, billing errors, and any other problems related to this Agreement. Corrections of billing errors, if any, shall be made within twenty (20) days of receiving notice of the billing errors from the City Attorney.

3.2. Coordinate Performance

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

3.3. Reports and Meetings

- 3.3.1. Contractor shall submit all reports and progress updates required by the City Attorney. Contractor shall attend all meetings scheduled or required by the City Attorney as specified under this Agreement.

3.4. Schedule of Performance

- 3.4.1. Contractor shall begin and complete its obligations in accordance with the detailed project schedule in the Scope of Services in **Exhibit A** or developed after the City and Contractor begins performance in accordance with the City Attorney's



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specifications and requirements, whichever the City Attorney desires. Contractor shall perform its obligations under this Agreement diligently.

3.5. Time Extensions

3.5.1. If Contractor requests an extension of time to complete its performance, then the City Attorney, 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).

3.6. Additional Services Reserved.

~~3.6.1. If adequate funds are available under Section 4.5 (Limit of Appropriation) and if the City Attorney provides Contractor with specific, written authorization, including but not limited to a LOA, Contractor shall provide additional services ("Additional Service(s)"). Contractor shall work with City to give the City the best pricing, which shall not exceed current list pricing that is offered to others.~~

~~3.6.2. The City Attorney may also issue specific, written authorization, including but not limited to a LOA, to increase, decrease, or modify the scope of services, software to which the City has access, or change plans and specifications as he may find necessary to accomplish the general purposes of this Agreement. The total charges for additions and deletions to this Agreement may not exceed 25% of the original contract amount unless:~~

~~3.6.2.1. The Additional Services are exempt from competitive bidding or proposal requirements set forth in Chapter 252 of the Local Government Code, or~~

~~3.6.2.2. The City acquires the Additional Services from Contractor through competitive bids or proposals.~~

3.7. Support and Training

3.7.1. The City Attorney and Contractor shall actively promote the effective use of the Services during the term of this Agreement. To this Contractor will establish programs encouraging effective use of all Services, including, at a minimum:

3.7.1.1. Initial and refresher training in the use of the Services, at no charge, by Contractor to all attorneys, associates, paralegals, and other appropriate personnel;

3.7.1.2. Upon request by the City Attorney, training in the use of the Services, at no charge, by Contractor for all new attorneys, associates, paralegals, and other appropriate personnel;

3.7.1.3. Upon request by the City Attorney, additional ongoing programs by Contractor and supported by the City Attorney to update and train

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all appropriate personnel to enhance their understanding and use of the Services.

3.8. **Prompt Payment of Subcontractors**

3.8.1. In accordance with the Texas Prompt Payment Act, Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

3.9. **Personnel of Contractor**

3.9.1. Contractor shall replace any of its personnel or subcontractors whose work product is deemed unsatisfactory by the City Attorney.

3.10. **RELEASE**

3.10.1. **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.**

3.11. **INDEMNIFICATION**

3.11.1. **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:**

**3.11.1.1. CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED**

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PARAGRAPHS 3.10.1.1.-3.10.1.3., “CONTRACTOR”) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES.

**3.12. INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION**

3.12.1. CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) 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, 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.

3.12.2. 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.

3.12.3. WITHIN 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.

**3.13. SUBCONTRACTOR’S INDEMNITY**

3.13.1. 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

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**RELEASE AND INDEMNITY TO THE CITY.**

3.14. Indemnification Procedures

3.13.1. *Notice of Claims.*

3.13.1.1. If the City or Contractor receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving party (i.e., the City or Contractor) shall give written notice to the other party within 30 days. The notice must include the following:

- a. a description of the indemnification event in reasonable detail,
- b. the basis on which indemnification may be due, and
- c. the anticipated amount of the indemnified loss.

3.13.1.2. This notice does not stop 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.

3.13.2. *Defense of Claims.*

3.13.2.1. *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.

3.13.2.2. *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.

3.14. Insurance

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

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<b>COVERAGE</b>	<b>LIMIT OF LIABILITY</b>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> <li>• Bodily Injury by Accident \$500,000 (each accident)</li> <li>• Bodily Injury by Disease \$500,000 (policy limit)</li> <li>• Bodily Injury by Disease \$500,000 (each employee)</li> </ul>
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 (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Corporate Liability	\$3,000,000.00
Event Management Liability	\$1,000,000.00
Crisis Fund Liability	\$50,000.00
<b>Aggregate Limits are per 12-month policy period unless otherwise indicated.</b>	

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

3.14.3. *Form of insurance.* The form of the insurance shall be approved the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) 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.

3.14.4. *Required Coverage.* The City shall be an Additional Insured under this Contract, and all policies, except 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 Contract 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

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liability, must contain coverage waiving such claim. Each policy, except Workers' Compensation, 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 Contract.

- 3.14.5. **Notice. CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE CITY ATTORNEY 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 City Attorney, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

3.15 Warranties

- 3.15.1. 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 Software, Software documentation, and Software documents and records that Contractor provides to City under this Agreement. Contractor further warrants that it has the sole right to grant licenses to the Software and documentation 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 Software, Software documents and records, and related documentation do not infringe upon any patent, copyright, trade secret, or any other rightful claim, proprietary or intellectual property right of any third party. Contractor further warrants that it has the all necessary rights to disclose and provide to City any records for any use by the City.

3.15.2. Contractor represents and warrants that the Software and Services provided to the City under this Contract (including without limitation any exhibits) shall perform as described in the user guides, documentation, training materials, and marketing materials.

3.15.2.3.15.3. 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 Contractor provides under this Agreement. Contractor shall perform as specified in the Scope of Services in **Exhibit A** and the Service Level Agreement in **Exhibit C**. Upon the City Attorney's request, Contractor shall promptly re-perform, at no charge to the City, any Services which fail to reasonably conform to the warranty contained in this section, any statement of work, project plan, or LOA.

3.15.3.3.15.4. If the Software or Services performed by Contractor do not perform as warranted (a "Non-Conformity"), Contractor shall correct the Non-Conformity in accordance with this paragraph within a reasonable period of time not to exceed twenty-four (24) hours from the date Contractor discovers the Non-Conformity or receives notice from the City of the Non-Conformity, whichever is earlier. Contractor acknowledges that time is of the essence in any Non-Conformity or interruption of the City's use of or access to the Software, documentation,

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Documents, or Services. Contractor shall undertake to correct or repair at no Cost to City such Non-Conformity in the Software, documentation, Documents, or Services, or if correction or repair is not reasonably possible and the City Attorney approves, Contractor shall replace, free of charge, the Software, documentation, Documents, or Services. If neither of the foregoing is commercially practicable, the City Attorney may terminate this Agreement and within thirty (30) days of termination, Contractor shall provide the City with a refund of the entire fee paid under this Agreement. City may submit written notification of a Non-Conformity at least up to two years (or longer if provided for under a LOA, statement of work, Project plan, task order, or similar document issued under this Agreement) after Acceptance of a specific Software or Services provided under this Agreement, Project, LOA, statement of work, task order, work plans, or any other like document.

~~3.15.4.3.15.5.~~ With respect to any parts and goods it furnishes, Contractor warrants:

- (a) that all items are free of defects in title, design, material, and workmanship,
- (b) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,
- (c) that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and
- (d) that no item or its use infringes any patent, copyright, or proprietary right.

~~3.15.5.3.15.6.~~ All Software, documentation, Documents, and Services shall undergo inspection and Acceptance by the City Attorney (or his/her designee). "Acceptance" means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services or delivery of specific products, as partial or complete performance of the Agreement, project, LOA, or any other like document.

~~3.15.6.3.15.7.~~ Any Software, documentation, Documents, or Services corrected or re-performed by the Contractor shall be subject to this section to the same extent as the Software, documentation, Documents, or Services initially provided. If the Contractor fails to or refuses to correct or re-perform to City Attorney's satisfaction, the City may in its sole discretion, by contract or otherwise, correct or replace with similar services or products and charge to the Contractor the cost to the City for the correction or replacement.

### 3.16. Data Security and Liability for Loss or Corruption of Data

3.16.1. Contractor shall maintain the security of all City data, including all City-specific data, user data, and any other data that is provided to Contractor by City or by any user, or that Contractor generates, creates, or analyzes for the City. Contractor shall continuously audit its controls designed to (i) protect the security of City data or (ii) record and monitor the Software, documentation, and

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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:

- 3.16.1.1. 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;
- 3.16.1.2. 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
- 3.16.1.3. With respect to Contractor's personnel with access to the City's physical property or premises, Contractor shall advise these persons of applicable visitor policies and require that they comply with them and only access authorized areas.

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

**3.16.3. 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. Contractor shall not transmit,

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disclose, have access to, or process City data or City Information outside of the continental United States.

~~3.16.3.~~

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- 3.16.4. **SSAE 18 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. 18 SOC2 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. 18 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.
- 3.16.5. **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 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.
- 3.16.6. 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 corrupted data means data that is inaccessible, and not merely one that contains inaccurate data due to service defects or other reasons.
- 3.16.7. Contractor shall maintain and implement disaster recovery and avoiding procedures to ensure that the Software or 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.

3.17. **Confidentiality - Protection of City's Interest**

- 3.17.1. "City's Information" or "City Information" means any and all City information or data, including but not limited to, City-specific information, user information, data,

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materials, processes, documents, citizen information, and any other information, materials, or data Contractor receives or to which Contractor has access to, in any form whatsoever including oral, written, and machine-readable form, video, audio, phonorecord, recorded media, drawings, schematics, samples, devices, software, formulas, services, processes, procedures, protocols, trade secrets, intellectual property, and business or strategic plans. Contractor, its agents, employees, contractors, and subcontractors shall hold all City 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 City Attorney 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.

3.17.2. Upon request by the City Attorney at any time during the Term and upon expiration or termination of this Agreement, Contractor shall retain, migrate, or dispose of the City's Information as directed by the City Attorney. Within two (2) days of Contractor's receipt of the City Attorney's written request to retain, migrate, or dispose of the City's Information, Contractor shall notify the City Attorney 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 City Attorney'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 City Attorney's requirements:

- 3.17.2.1. deliver the City's Information (in whole or in part, as directed by the City Attorney) and physical media owned or provided by the City to the City Attorney, in the format and on the media requested by the City Attorney;
- 3.17.2.2. destroy the City's Information (in whole or in part, as directed by the City Attorney) and provide a notarized statement of destruction to the City Attorney;
- 3.17.2.3. destroy physical media using secure methods (such methods approved by the City Attorney);
- 3.17.2.4. remove the City's Information (in whole or in part, as directed by the City Attorney) from the hosted database, storage device, or other repository or storage means; or
- 3.17.2.5. retain the City's Information (in whole or in part, as directed by the City Attorney) and migrate the designated information to a mutually agreed upon, secure location, database, or storage device for storage and retention of City Information.

3.18. Work Products and Ownership

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3.18.1. 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 City Information as defined in Section 3.16.1 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 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.

3.18.2. The City expressly acknowledges that the Software (expressly excluding any customized or custom software or work product and expressly excluding equipment) 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 (expressly excluding any customized or custom software or work product and expressly excluding equipment) and except as provided, authorized, or acquired in or under this Agreement. This applies only to the equipment and services provided under this Agreement and does not affect any license or assignment Contractor conveys to the City under other agreements.

3.18.3. Diagnostic software, documentation, equipment, or other material Contractor uses to do installation, warranty, or service may be furnished with the products or stored separately at the City's facility. Contractor conveys no title or license to this material, and it remains Contractor's exclusive property. The City shall properly secure this material and shall not use it or make it available to third parties without Contractor's prior written consent, unless required by law.

3.19. **Licenses and Permits**

3.19.1. Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the City Attorney of any suspension, revocation, or other detrimental action against his or her license.

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3.20. Compliance with Laws

3.20.1. Contractor shall comply with all applicable state and federal laws and regulations, including without limitation all export laws and regulations, and the City Charter and Code of Ordinances.

3.21. ~~Compliance with Environmental Laws~~Reserved.

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

3.22. Compliance with Equal Opportunity Ordinance

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

3.23. Drug Abuse Detection and Deterrence

3.23.1. 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 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

3.23.2. Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- 3.23.2.1. a copy of its drug-free workplace policy,
- 3.23.2.2. the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit D**, together with a written designation of all safety impact positions and,
- 3.23.2.3. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit E**.

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- 3.23.3. 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 similar to **Exhibit F**. 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.
- 3.23.4. 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.
- 3.23.5. Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

3.24. Pay or Play

- 3.24.1. 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.

3.25. Anti-Boycott of Israel

- 3.25.1. 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.

3.26. Zero Tolerance Policy for Human Trafficking and Related Activities

- 3.26.1. 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 this Agreement's effective date. Contractor shall notify the City's Chief Procurement Officer and City Attorney of any information regarding possible violation by the 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.

**4. DUTIES OF CITY**

4.1. Payment Terms

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4.1.1. Subject to the terms and conditions of this Agreement, upon City's Acceptance or approval of the Software or Service(s) provided under this Agreement, the City shall pay to Contractor and Contractor shall accept the pricing, rates, and payment schedule as set forth and in accordance with **Exhibit B** (Pricing and Fee Schedule), subject to the Limit of Appropriations provision set out in this Agreement. The Products or Services accessed by the City that are not listed in **Exhibit B** may be subject to additional fees, which must be negotiated in advance between the Parties and approved by the City Attorney, subject to the allocation of funds. All charges and fee must only be paid from Allocated Funds, as provided in Section 4.5 below.

4.2. Expenses and Reimbursement

4.2.1. Any expenses related to travel will be the responsibility of the Contractor and City shall not reimburse Contractor for any travel-related expenses.

4.3. Taxes

4.3.1. The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The City Attorney will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

4.4. Method of Payment

4.4.1. The City shall pay fees to Contractor as specified herein for all products and services provided and rendered by Contractor in accordance with the terms and conditions of this Agreement and the prices and fee schedule as set out in **Exhibit B** (Pricing and Fee Schedule). Such payment shall only be made from allocated funds, as provided below. The City shall pay invoices submitted by Contractor and approved by the City Attorney or his or her designee, showing the services performed and the attendant fee, if applicable. The City shall pay Contractor within 30 days of an approved invoice.

4.4.2. Disputed Payments: If the City disputes any items in an invoice Contractor submits for any reason, including but not limited to lack of supporting documentation, the City Attorney shall temporarily delete the disputed item and pay the remainder of the invoice. The City Attorney shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

4.5. Limit of Appropriation

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

4.5.2. 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

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the City's current fiscal year (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

- 4.5.3. 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 responsible 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.

\$ \_\_\_\_\_

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

4.6. Changes

- 4.6.1. At any time during the Agreement Term, the City Attorney 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.

- 4.6.2. The City Attorney will issue the Change Order in substantially the following form:

**CHANGE ORDER**

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

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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 City Attorney]

4.6.3. The City Attorney may issue more than one Change Order, subject to the following limitations:

4.6.3.1. Council expressly authorizes the City Attorney to approve a Change Order ofs up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.

4.6.3.2. 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.

4.6.3.3. The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

4.6.4. 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 City Attorney's decision regarding a time extension is final.

4.6.5. 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.

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

4.7. Suspension of Performance

4.7.1. The City Attorney may suspend Contractor's performance under this Agreement (including any specific project or LOA), with or without cause, by notifying Contractor in writing. Contractor shall resume work when directed to do so by the City Attorney. The Parties may negotiate and mutually agree in writing to a plan to reduce Contractor's stand-by costs during the suspension period. The City shall



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not grant any compensation or extension of time under this Section if the suspension results from non-compliance of Contractor or its subcontractors with any requirement of this Agreement or any project or LOA.

4.8. Access to Data

- 4.8.1. The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents in the possession or control of the City or available to it that is reasonably necessary for Contractor to perform under this Agreement.
- 4.8.2. The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Contractor's use.
- 4.8.3. For any raw data created, assembled, used, maintained, collected, or stored by the Contractor for or on behalf of the City, Contractor shall provide the City either the raw data itself or the ability to extract the raw data in a format mutually agreed upon by both parties at no additional cost to the City.

4.9. Early Payment

- 4.9.1. 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 (Tx. 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
- 4.9.2. 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.

4.10. No Quantity Guarantees and Non-Exclusivity

- 4.10.1. This Agreement does not create an exclusive right in Contractor to perform all services concerning the subject of this Contract. The City may procure and execute contracts with other consulting firms for the same, similar, or additional services as those set forth in this Agreement or any Scope of Services or Change Order.
- 4.10.2. The City makes no express or implied representations, warranties, or guarantees whatsoever, that any particular quantity, type, task area, or dollar amount of services will be procured or purchased from Contractor through this Agreement or any Scope of Services or Change Order; nor does the City make any express or implied representations, warranties, or guarantees, whatsoever for the amount or

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value of revenue that Contractor may ultimately derive from or through this Agreement or any Scope of Services or Change Order.

**5. TERM AND TERMINATION**

5.1. Agreement Term

5.1.1. This Agreement is effective on the Countersignature Date and expires four years after the Countersignature Date, unless sooner terminated under this Agreement (“Initial Term”).

5.1.2. The City Attorney may issue an LOA, signed by the City Attorney, at any time during the Initial Term of this Agreement or subsequent renewals or extensions to it. After expiration or termination of this Agreement, no additional LOAs may be issued; however, for any LOA issued prior to the expiration or termination of this Agreement, Contractor shall complete the work or services thereunder and this Agreement shall likewise remain in effect only for those purposes necessary and appropriate for the LOA to continue until its own expiration or termination, unless Contractor is otherwise notified in writing by the City Attorney.

5.2. Renewals

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

5.3. Termination for Convenience by City

5.3.1. The City Attorney 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.

5.3.2. 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 Section 4.4 unless the fees exceed the allocated funds remaining under this Agreement.

5.3.3. 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. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN

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THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

5.4. Termination for Cause by the City

5.4.1. If Contractor defaults under this Agreement, the City Attorney may either terminate this Agreement or allow Contractor 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 which exist now or in the future. Default by Contractor occurs if:

5.4.1.1. Contractor fails to perform any of its duties under this Agreement, including but not limited to the payment of Concession Fees to the City;

5.4.1.2. Contractor becomes insolvent;

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

5.4.1.4. a receiver or trustee is appointed for Contractor.

5.4.2. If a default occurs, the City Attorney will deliver a written notice to Contractor describing the default and the termination date. The City Attorney, at his or her sole option, may extend the termination date to a later date. If the City Attorney allows Contractor to cure the default and Contractor does so to the City Attorney's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Attorney may terminate this Agreement on the termination date, at no further obligation of the City.

5.4.3. To effect final termination, the City Attorney 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.

5.5. Effect of Termination

5.5.1. In the event of termination or expiration, whichever is earlier, Contractor shall transfer all City Information, Works, and City data, including but not limited to, City-specific data, user data, and any other data received under this Agreement by Contractor, in Contractor's possession to City within two days of the expiration or termination effective date.

5.5.2. In the event of termination of this Agreement for convenience or Contractor's default prior to the end of the Agreement term, Contractor shall be obligated to refund to the City a pro-rate share of any advance payments, if any, made by the City to Contractor reflecting the number of weeks (including any portions of a week) that Contractor did not provide the Services or Deliverables identified in this

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Agreement for which the City paid in advance.

**6. MISCELLANEOUS**

**6.1. Independent Contractor**

6.1.1. Contractor is an independent contractor and shall perform the services provided for in this Agreement in that capacity. 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, 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

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

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

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.

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6.2.5. If the Force Majeure continues for more than 30 days from the date performance is affected, the City Attorney 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.**

6.2.6. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

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. 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 City Attorney 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 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 Section I 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.

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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 City Attorney, 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 City Attorney 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, (1) audits of Contractor's books and records, and (2) 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 5 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 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. Risk of Loss

6.14.1. Unless otherwise specified elsewhere in this Agreement, and subject to all

**SAMPLE AGREEMENT – TERMS SUBJECT TO CHANGE**

Warranties, risk of loss or damage for each product passes from Contractor to the City upon Acceptance by the City.

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. Publicity

6.16.1. 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 City Attorney.

6.17. Successors and Assigns

6.17.1. 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.

6.18. Business Structure and Assignments

6.18.1. Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Attorney's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City 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.

6.18.2. Contractor shall not delegate any portion of its performance under this Agreement without the City Attorney's prior written consent.

6.19. Remedies Cumulative

6.19.1. 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 which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

6.20. CONTRACTOR DEBT

6.20.1. 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/SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF

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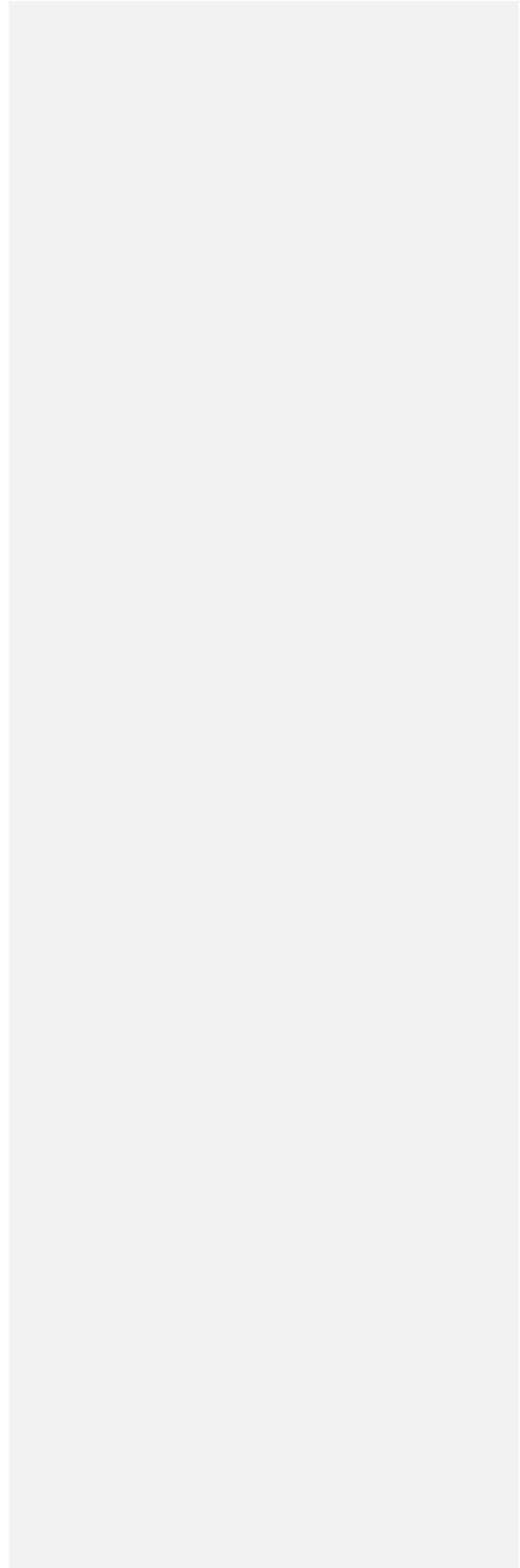
CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

SAMPLE



## EXHIBITS



**EXHIBIT A**  
**SCOPE OF SERVICES**  
**[TO BE NEGOTIATED]**

**EXHIBIT B**  
**PRICING AND FEE SCHEDULE**  
**[TO BE NEGOTIATED]**

**EXHIBIT C**  
**SERVICE LEVEL AGREEMENT**  
**[TO BE NEGOTIATED]**

**EXHIBIT D**  
**DRUG POLICY COMPLIANCE AGREEMENT**

I, \_\_\_\_\_ as an officer or  
(Name) (Print/Type) (Title)  
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 Engineer 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 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 E**

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

I, \_\_\_\_\_, \_\_\_\_\_, (Contractor)  
(Name) (Title)

as an owner or officer of \_\_\_\_\_ have authority to bind  
(Name of Company)

Contractor with respect to its bid, and hereby certify that Contractor has no employee safety  
impact positions, as defined in Section 5.18 of Executive Order No. 1-31, that will be involved

in performing \_\_\_\_\_ . Contractor  
(Project)

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT F**  
**DRUG POLICY COMPLIANCE DECLARATION**

I, \_\_\_\_\_ as an officer or  
 (Name) (Print/Type) (Title)

officer of \_\_\_\_\_  
 (Contractor) (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\_\_\_\_.

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

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

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

\_\_\_\_\_  
 Initials Appropriate safety impact positions have been designated for employee positions 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	_____	_____	_____	_____

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

\_\_\_\_\_  
 Initials I affirm that falsification or failure to submit this declaration timely in accordance 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)

