

**AGREEMENT FOR SOFTWARE SOLUTION AND SERVICES FOR TRACKING OF
EMERGENCY MEDICAL, PERSONNEL COMPLIANCE, AND ONLINE
CONTINUING EDUCATION TRAINING**

THIS AGREEMENT FOR SOFTWARE SOLUTION AND SERVICES FOR TRACKING OF EMERGENCY MEDICAL, PERSONNEL COMPLIANCE, AND ONLINE CONTINUING EDUCATION TRAINING (“Agreement”) is made on the 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 _____ (“Contractor”), a _____ {fill in type of entity, e.g., Texas corporation, Texas limited liability company} with a business address of _____.

1. PARTIES

1.1. Address

1.1.1. The initial addresses of the Parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

<u>City</u>	<u>Contractor</u>
Director of Houston Information Technology Services or Designee City of Houston 611 Walker Street, 8 th Floor Houston, TX 77002	
Director of Houston Fire Department City of Houston Address:	

The Parties agree as follows:

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1.2. Table of Contents

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Exhibits

- Exhibit A – Scope of Services
- Exhibit B – Pricing and Rate Card
- Exhibit C – Drug Policy Compliance Agreement
- Exhibit D – Contractor’s Certification of No Safety Impact Positions
- Exhibit E – Drug Policy Compliance Declaration
- Exhibit F – Security Addendum

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.

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1.5. Signatures

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

By: _____
Name:
Title:
Tax Id. No.

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

Director, Houston Information
Technology Services

City Controller

Chief Procurement Officer

Director, Houston Fire Department

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

Assistant City Attorney
L.D. File No. _____

2. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

- 2.1. “Acceptance” means the act of the Director 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, work plans, or any other like document.
- 2.2. “Agreement” means this agreement between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
- 2.3. “Business Day” means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).
- 2.4. “Chief Procurement Officer” or “CPO” is the Chief Procurement Officer for the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
- 2.5. “City” means the City of Houston and is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.6. “City’s Information” or “City Information” means all data, Documents, information, electronically stored information, agendas, reports, notes, meeting minutes, records, or documents provided to, entered in, posted, transmitted, stored, hosted, received, collected, or processed by Contractor on behalf of the City or any software, databases, or applications developed by Contractor for the City and provided by Contractor, and any Documents that Contractor may have access to in connection with this Agreement.
- 2.7. “Contractor” is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.8. “Countersignature Date” means the date the City Controller countersigns this Agreement.
- 2.9. “Department” means Houston Information Technology Services.
- 2.10. “Director” means the City’s Chief Information Officer and Director of Houston Information Technology Services, or the person he or she designates.
- 2.11. “Documents” means any analyses, audio and video recordings, charts, computations, computer programs, correspondence, data or data compilations, databases and diskettes, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, inventions, items, letters, manuals, maps, materials, models, notebooks, notes, operating manuals, original tracings of all drawings and plans, photographs, plans, policies,

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procedures, records, reports, social media communications, software, sound recordings, specifications, tabulations, underlying data, writings, and other work products (and any modifications or improvements to them) that Contractor prepares, obtains, modified, creates, or provides to or for the City pursuant to or in a LOA or in connection with this Agreement.

- 2.12. “HITS” means Houston Information Technology Services of Houston.
- 2.13. “Include” and “including,” and words of similar import, shall mean including by way of example, but “without limitation.”
- 2.14. “Letter of Authorization” or “LOA” means the fully executed document the Director sends to Contractor authorizing certain services to be performed by Contractor or products to be provided to City in accordance with this Agreement . 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.
- 2.15. “Not to Exceed” or “NTE” means the maximum amount for which Contractor has agreed to provide services in connection with a Project or LOA.
- 2.16. “Parties” means all the entities set out in the Preamble who are bound by this Agreement.
- 2.17. “Project” means the services to be performed by Contractor or products to be provided to City as authorized by individual Letters of Authorization in accordance with this Agreement. The work or purchase of products described in each Letter of Authorization is an individual Project.
- 2.18. “Service(s)” is defined in Section 3.1 of this Agreement and described in Exhibit A, Scope of Work.
- 2.19. “Statement of Work” or “SOW” means the scope of work set forth in Exhibit A.
- 2.20. “Writing” or “written” shall mean a written communication from one Party to the other, including an electronic communication or e-mail.

3. DUTIES OF CONTRACTOR

3.1. Scope of Services

- 3.1.1. In consideration of the payments specified in this Agreement, Contractor shall provide to City all software licenses, hardware, support, maintenance, services, and all labor, material, and supervision necessary to perform the professional services described in **Exhibit A** (collectively “Services” or singularly, “Service”) in accordance with this Agreement and any other City signed and authorized

statements of work, LOAs, project plans, and like writings.

- 3.1.2. If adequate funds are available under 4.1 and if the Director provides Contractor with specific, written authorization, including but not limited to a LOA, Contractor shall provide the Services set forth and in accordance with **Exhibit A**. The City shall pay Contractor for the Services at the prices set out in **Exhibit B** in accordance with Section 4.3.

3.2. Access

- 3.2.1. At all times, during and after the Term of this Agreement, Contractor shall not lock, suspend, or disable any software, hardware, storage means, or City's local copy or database; interfere with, cancel, or restrict the City's access to and continuous use of the software, hardware, storage means, or make the City's local copy or database inaccessible to the City.

3.3. Software Restrictions

- 3.3.1. The City may duplicate any software or any part thereof for the purposes of system backup, testing, maintenance, or recovery. The City may duplicate the Documents for internal use.

3.4. Coordinate Performance

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

3.5. Schedule of Performance

3.5.1. Time of Performance.

- 3.5.1.1. Contractor shall begin and complete its obligation in accordance with the detailed project schedule developed after the Countersignature Date and/or in accordance with any City signed and authorized statements of work, LOAs, project plans, and like writings under this Agreement. Contractor shall perform its obligations under this Agreement diligently.

3.5.2. Extension.

- 3.5.2.1. If Contractor requests an extension of time to complete Contractor's performance, 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).

3.5.2.2. If the Director requests an extension of time to complete Contractor's performance, then the CPO may, upon consultation with the Director involved, extend the time so long as the extension does not exceed 90 calendar 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. Reports

3.6.1. Contractor shall submit all reports and progress updates required by the Director.

3.7. Prompt Payment of Subcontractors

3.7.1. 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 REGARDLESS OF WHETHER THE FAILURE TO PAY IS CAUSED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), OR GROSS NEGLIGENCE (WHETHER SOLE, JOINT, OR CONCURRENT), STRICT LIABILITY, INTENTIONAL ACTS, OR OTHER CONDUCT OR LIABILITY OF THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES.** Failure of Contractor to pay its employees as required by law shall constitute a default under this Agreement.

3.8. Personnel of Contractor

3.8.1. Contractor shall make citizen and City personnel satisfaction a priority in providing Services under this Agreement. Contractor shall train its employees and personnel to be customer service-oriented and to positively and politely interact with citizens and City personnel 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 and City personnel, the Director shall direct Contractor to take all remedial steps to conform to these standards. Contractor shall replace any of its personnel or subcontractors assigned to a Project whose work product is deemed unsatisfactory by the Director.

3.9. RELEASE

3.9.1. 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.

3.10. INDEMNIFICATION

3.10.1. 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:

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**
- (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.**

3.11. INTELLECTUAL PROPERTY INDEMNIFICATION

3.11.1. 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.

3.11.2. 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.

3.11.3. 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 CITY FOR THE PURCHASE PRICE OF THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS AS AGREED UPON UNDER THIS AGREEMENT, INCLUDING ANY LOA ISSUED UNDER THE AGREEMENT.

3.12. SUBCONTRACTOR'S INDEMNITY

3.12.1. . 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.

3.13. INDEMNIFICATION PROCEDURES

3.13.1. *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:

3.13.1.1. a description of the indemnification event in reasonable detail,

3.13.1.2. the basis on which indemnification may be due, an

3.13.1.3. the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis

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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. Contractor shall then control the defense and any negotiations to settle the claim. 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, at the City’s sole expense, to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, and (iii) would not result in the City’s full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

3.14. Insurance

3.14.1. *Risks and Limits of Liability.* Contractor shall maintain the following coverage and limits of liability:

Commercial General Liability insurance including Contractual Liability insurance	\$1,000,000.00 per occurrence; \$2,000,000.00 aggregate
Worker’s Compensation including Broad Form All States endorsement	Statutory amount
Professional Liability	\$1,000,000.00 per claim/aggregate
Automobile Liability insurance	\$1,000,000.00 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Employer’s Liability	Bodily Injury by Accident \$500,000.00 (each accident); Bodily Injury by Disease \$500,000.00 (policy limit); Bodily Injury by Disease \$500,000.00 (each

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	employee)
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000.00
Cybersecurity and Data Protection Insurance	\$2,000,000.00
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

3.14.2. 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 (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 \$100,000.00 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 \$500,000.00 per claim.

3.14.3. 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 (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Agreement. 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 Bests 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 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

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for the Project covered by this Agreement with a duration of two years after substantial completion.

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

3.14.6. *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.

3.15. 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 Services, work products, and Downloads provided by Contractor to City under this Agreement. Contractor further warrants that any Services, work products, Documents, and related documentation provided to City does not infringe upon any patent, copyright, trade secret, or any other rightful claim, proprietary or intellectual property right of any third party.

3.15.2. Contractor's performance shall conform to industry standards with respect to the scope, quality, due diligence, and care of the services and products 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.

3.15.3. If the Services do not perform as warrantied (a "Non-Conformity"), Contractor shall correct the Non-Conformity in accordance with this paragraph within a reasonable period of time not to exceed three (3) days 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. Contractor shall undertake to correct or repair at no cost to City such Non-Conformity in the Services, or if correction or repair is not reasonably possible and the Director approves, Contractor shall replace, free of charge, the applicable Services. If neither of the foregoing is commercially practicable, the Director may terminate this Agreement and within thirty (30) days of termination, Contractor shall provide the City with a refund of the entire dollar amount paid by the City to Contractor.

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

(1) that all items are free of defects in title, design, material, and

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workmanship,

- (2) 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,
- (3) 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
- (4) that no item or its use infringes any patent, copyright, or proprietary right.

3.15.5. All Services shall undergo inspection and Acceptance by the Director. City may submit written notification of defects or Non-Conformities at least up to one year after Acceptance of a specific Service(s) provided under a LOA (or longer if provided under a LOA issued under this Agreement).

3.15.6. Any Services corrected or re-performed by the Contractor shall be subject to this Section 3.15 (Warranties) to the same extent as Services initially provided. If the Contractor fails to or refuses to correct or re-perform to Director’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.

3.15.7. *[Other warranties to be negotiated and inserted.]*

3.16. Confidentiality, Data Security and Liability for Loss or Corruption of Data

3.16.1. *Confidentiality.*

3.16.1.1. Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, user information, data, materials, processes, and documents that they receive, or to which they have access (collectively, the “Information”), 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.

3.16.1.2. Upon request by the Director 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 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 unless otherwise directed by the Director:

- 3.16.1.2.1. 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;
- 3.16.1.2.2. 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;
- 3.16.1.2.3. destroy physical media using secure methods;
- 3.16.1.2.4. 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
- 3.16.1.2.5. 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.

3.16.2. *Data Security.*

- 3.16.2.1. Contractor will maintain the security of all City Information, including but not limited to all City-specific data, employee data, user data, and any other data that was provided to Contractor or that Contractor generates, creates, or analyzes for the City. Contractor shall continuously audit its controls designed to (i) protect the security of City Information and City data and (ii) record and monitor any software or hardware provided to City. Contractor shall regularly test and audit the systems, controls, and procedures outlined in this Section 3.17, 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,

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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, organization, 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 provisions 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 or hardware in so far as it relates to Contractor's performance of this Agreement, Contractor shall:

- 3.16.2.1.1. 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;
- 3.16.2.1.2. 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
- 3.16.2.1.3. 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.
- 3.16.2.1.4. Pursuant to this Agreement, Contractor shall be responsible for any fraudulent or dishonest acts committed by Contractor's employees, personnel, temporary employees, agents, subcontractors, directors, or officers

3.16.2.2. 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. Contractor shall not transmit, disclose, have access to, or process City data or City Information outside of the

continental United States. At all times, Contractor shall provide support calls from within the boundaries of the continental United States.

3.16.2.3. SSAE 18 Compliance. Contractor shall 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 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.

3.16.2.4. Data Breach. If Contractor learns that any person (including Contractor personnel and third parties) has gained unauthorized access to City data or City Information, or any person has gained unauthorized access to Contractor’s network and/or data storage facilities such that any City data or City Information is obtained by an outside party, or the City data or City Information 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.

3.16.3. *Liability for Loss or Corruption of Data.*

3.16.3.1. 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.

3.16.3.2. 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 or City data (including but not limited to user data) is not lost or destroyed during any

disaster. For any of the City’s Information or City data (including but not limited to user 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. Work Products and Ownership

3.17.1. The City expressly acknowledges that all copies of off-the-shelf software (expressly excluding any customized or custom software or work product) and Documents 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 (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.

3.17.2. 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 data and City-specific data from the Contractor provided software, hardware, and Documents, and the right to use the City data, City-specific data, and the City’s Information for the City’s own use, for use with other non-Contractor software or hardware, or to load elsewhere. Contractor shall provide a data export tool that is requested or approved by the Director that returns City data and City-specific data on demand. Contractor shall not use City data, City Information, and City-specific data for any other purposes other than what is expressly specified in this Agreement.

3.17.3. Subject to Section 3.17.3, Contractor hereby irrevocably transfers, conveys and assigns to the City and its successors, licensees, and assigns, its entire right, title, interest and full ownership worldwide in and to any work, invention, creation, data, discovery, and all documents, and the copyrights, patents, trademarks, trade secrets, service marks, moral rights, all contract and licensing rights, and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known, and any other proprietary rights therein (collectively “Proprietary Rights”) that Contractor, its agents, employees, contractors, and subcontractors (collectively “Authors”) develop, write, create, invent, discover, compile, or produce under this Agreement or under or in connection with any LOA or Project (collectively “Works”).

3.17.4. In the event Contractor has any rights in the Works which cannot be assigned,

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Contractor shall and does hereby waive enforcement worldwide of the rights against City, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to City with the right to sublicense. These rights are assignable by the City. The Authors shall not claim or exercise any Proprietary Rights related to the Works unless agreed and specified in the LOA under which the Works are developed. If requested by the Director or the City Attorney, Contractor shall place a conspicuous notation on any Works, which states that the City owns the Proprietary Rights.

- 3.17.5. Contractor shall execute (and cause Authors to execute) all documents and perform all necessary steps required by the Director City Attorney to allow the Director and City Attorney to establish and demonstrate ownership of the Works and to further evidence this assignment and ownership. Contractor shall cooperate with the City in registering, prosecuting, creating, and enforcing Proprietary Rights arising under this Agreement. On termination or expiration of this Agreement, or if requested by the Director or the City Attorney, Contractor shall deliver all Works to the Director or the City Attorney at the Contractor's expense. Contractor shall obtain written agreements from the Authors that bind the Authors to the terms in this Section, including without limitation, the assignment of all Works by Contractor (and Authors) to City which are created under, for, or in connection to this Agreement, LOA, or Project.
- 3.17.6. The Works and all rights are being sold in their entirety to the City and do not constitute a mere license or franchise to the City. On termination of this Agreement, and without regard to whether the Works are completed, Contractor shall deliver all Works to the City.
- 3.17.7. All Works developed, written, or produced under this Agreement for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, shall be deemed to be "works made for hire" under 17 U.S.C. §§101 and 201, as amended from time to time. Contractor acknowledges and agrees that all Information, Documents, and Works performed under or pursuant to an LOA in connection with this Agreement shall be deemed "works made for hire." To the extent that title to the Works or any portion of the Works may not, by operation of law, vest in the City or the Works or any portion of the Works may not be considered "works made for hire", Contractor hereby irrevocably assigns, conveys, and transfers to City and its successors, licensees, and assigns, all rights, title, and interest worldwide in and to the Works and all Proprietary Rights.
- 3.17.8. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors performing work under this Agreement which bind them to the terms in this Section.
- 3.17.9. Contractor may retain copies of the Works for its archival purposes only.

Contractor shall not otherwise use, sell, license, distribute, reproduce, publish, commercialize, or market the Works without the express written permission of the City. If such permission is agreed to by the Director, such express written permission shall be given by the City in a separate agreement between the City and Contractor.

3.18. Licenses and Permits

3.18.1. Contractor shall obtain, maintain, and pay for all licenses, approvals, consents, permits, and certificates required to provide the Services, including all professional licenses required by any statute, ordinance, rule, or regulation (collectively “Licenses”). Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against its Licenses.

3.19. Compliance with Laws

3.19.1. Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

3.19.2. In anticipation of the City’s potential use or application for reimbursement of restricted federal funds to pay for some or all of the services provided under this Agreement and any change orders, Exhibits F, G and H are incorporated into this Agreement. The parties agree to take such action as is necessary to amend this Agreement, if the Director determines that any state or federal laws and regulations and grant requirements in connection with federal funding to be used to pay for some or all of the services provided under this Agreement and any change orders. Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the applicable state and federal laws and regulations and grant requirements.

3.19.3. Contractor understands that in certain situations access to information or systems may be restricted by law. Contractor represents and warrants that it has read the Criminal Justice Information Systems (“CJIS”) process and related documents located at <http://www.housotntx.gov/poic/cjis/hpdvencertification.htm> and shall comply with the terms and requirements in these documents and with all applicable state and federal laws.

3.19.4. 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.

3.20. Compliance with Equal Opportunity Ordinance

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

3.21. 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 ("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 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. [Reserved]

3.23. Conflicts of Interest

3.23.1. 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 email or telephone. If the Director consents to Contractor's continued representation of the other clients, the Director 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.

3.24. 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. Compliance with Certain State Law Requirements

3.25.1. *Anti-Boycott of Israel.* 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.

3.25.2. *Anti-Boycott of Energy Companies.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

3.25.3. *Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

3.25.4. *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Texas Government Code, Contractor certifies that, at the time of this Agreement neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or

2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

3.25.5. *Certification of No Business with Foreign-Owned Companies in Connection with Critical Infrastructure.* For purposes of Section 2274.0102 of the Texas Government Code, Contractor certifies that, at the time of this Agreement neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company is owned by or the majority of stock or other ownership interest of the company is held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly headquartered in China, Iran, North Korea, Russia, or a designated country. For purposes of this section, “designated country” means a country designated by the Governor of the State of Texas under Section 2774.0103 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, City Attorney, and the Director 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.

3.27. Preservation of Contracting Information

3.27.1. 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.

3.27.2. 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.

3.28. Quantities Not Guaranteed

3.28.1. Contractor understands, acknowledges, and agrees that the City does not guarantee any particular quantity of Services during the Term of this Agreement. The quantities may vary depending on the actual needs to the City and City shall not be liable for any third party obligations Contractor enters into regarding this Agreement.

3.28.2. Agreement does not create an exclusive right in Contractor to perform all services concerning the subject of this Agreement or any LOA. The City may procure and execute contracts with other companies for the same, similar, or additional Services as those set forth in this Agreement or any LOA.

3.28.3. 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 LOA; nor does the City make any express or implied representations, warranties, or guarantees, whatsoever for the amount or value of revenue that Contractor may ultimately derive from or through this Agreement or any LOA.

4. DUTIES OF THE CITY

4.1. Payment Terms

4.1.1. Upon Acceptance and approval of the Service(s) provided under a Project or LOA, the City shall pay Contractor and Contractor shall accept the pricing and rates set out and in accordance with **Exhibit B** (Pricing and Rate Card), subject to allocation of funds set out in Section 4.5.

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4.1.2. Unless otherwise provided under a LOA, any expenses related to travel will be the responsibility of the Contractor and City shall not reimburse Contractor for any travel-related expenses. In the event a LOA requires travel, Director must approve all travel costs before Contractor incurs them. The compensation for travel shall not exceed the amounts established under the City's then-current travel reimbursement policy for its employees and must be reasonably necessary to accomplish a task in connection with the LOA. The compensation for travel shall never exceed this agreed-upon maximum amount. Travel costs are the actual expenditures Contractor and its subcontractors make while performing services for the project requested by the Director.

4.2. Taxes

4.2.1. 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 Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

4.3. Method of Payment

4.3.1. The City shall pay fees to Contractor as specified in this Agreement for all products and services provided and rendered by Contractor in accordance with the terms and conditions of this Agreement and the prices and rates set out in **Exhibit B** (Pricing and Rate Card) of this Agreement **ALL PAYMENTS SHALL ONLY BE MADE FROM ALLOCATED FUNDS, AS PROVIDED IN SECTION 4.5.** The City shall pay invoices submitted by Contractor and approved by the Director, showing the services performed or products provided. The City shall pay within 30 days of the approval of the invoices.

4.3.2. Contractor shall perform or provide Services in response to an LOA signed by Contractor and the Director. The method of payment will be specified in each LOA and may be (a) Time and Materials Based or (b) a Fixed Lump Sum with a Not to Exceed amount. The amount of partial payment due for services performed during the period covered by the invoice may be either: (a) a percentage of the Fixed Lump Sum fee equal to the percentage of Services performed on each LOA or (b) milestone or deliverables based payment amounts as set forth in a payment schedule attached to or incorporated in the individual LOA. Before Contractor commences any work, performs any Services, or provides products under any LOA, the Director and Contractor shall mutually agree, in writing, upon a payment method, partial payment amounts, if any, and a payment schedule.

4.3.3. *Fixed Lump Sum Services.* The City shall make partial payment of the Fixed Lump Sum fees for lump sum services on the basis of monthly invoices submitted by Contractor and approved by the Director. The invoices based on Fixed Lump Sum fees for lump sum services must include all of the following:

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- 4.3.3.1. The purchase order and purchase requisition number for the applicable City department to whom the invoice is submitted;
 - 4.3.3.2. The percentage of the total services completed for each LOA in the preceding month;
 - 4.3.3.3. A summary of the services performed, deliverables provided, and milestones reached for each LOA during the period covered by the invoice;
 - 4.3.3.4. The amount due for the services;
 - 4.3.3.5. The amount of any applicable credits or refunds; and
 - 4.3.3.6. Any other information or supporting documentation required by the Director.
- 4.3.4. *Time and Materials Based Services.* In invoices for Time and Materials Based services, Contractor shall compute the charge for Contractor's services for each employee or personnel who performs services by multiplying the number of hours each employee performs services by the hourly billing rate applicable to that personnel's or employee's job category. The invoices for Time and Materials Based services must include all of the following:
- 4.3.4.1. The purchase order and purchase requisition number for the applicable City department to whom the invoice is submitted;
 - 4.3.4.2. A detailed description of the work performed;
 - 4.3.4.3. The billing rate and number of hours worked, delineated by labor category, for each of Contractor's employees or personnel who worked on each LOA during the invoice period. The supporting documentation must include each personnel's or employee's name, labor category, billing rate, and hours expended. At the Director's sole discretion, supporting documentation may also include copies of original detailed timecards and hourly reports that Contractor certifies are true and accurate copies;
 - 4.3.4.4. Itemized Reimbursable Expenses with receipts and the supporting documentation required by this Agreement, an LOA, or as requested by the Director;
 - 4.3.4.5. Subcontract cost, including a copy of the subcontractor's actual invoice and supporting documentation for subcontractor's itemized Reimbursable Expenses.
 - 4.3.4.6. The amount due for the services;

4.3.4.7. The amount of any applicable credits or refunds; and

4.3.4.8. Any other information or supporting documentation required by the Director.

4.4. Disputed Payments

4.4.1. If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director 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 for any purpose under this Contract 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 (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 makes a Supplemental Allocation by issuing 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,

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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. Suspension of Performance

4.6.1. The Director 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 Director. 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 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 and/or any Project or LOA.

4.7. Changes

4.7.1. At any time during the Agreement Term, the Director and Contractor may agree to and the Director may issue change orders to increase or decrease the scope of Service(s), including adding or deleting like or similar equipment, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services provided under this Agreement or change plans and specifications, as the Director may find necessary to accomplish the general purposes of this Agreement (collectively “Change Orders” or singularly, “Change Order”). Contractor shall furnish the Service(s) 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.

4.7.2. The Director 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 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 Director]

- 4.7.3. The Director may issue more than one Change Order, subject to the following limitations:
- 4.7.3.1. Council expressly authorizes the Director to approve 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.
 - 4.7.3.2. 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.
 - 4.7.3.3. The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25% unless: (1) the additions are exempt from the competitive bidding or proposal requirements, set forth in Texas Local Government Code Chapter 252; or (2) the City acquires the additions from Contractor through a competitive bid or competitive proposal.
- 4.7.4. Whenever Contractor receives a fully executed 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 Director's decision regarding a time extension is final.
- 4.7.5. 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 Agreement as if it had originally been a part of the Agreement, including without limitation, at the pricing and rates provided **Exhibit B** of this Agreement.
- 4.7.6. Change Orders are subject to the Allocated Funds provisions of this Agreement.

4.8. Access to Data

- 4.8.1. The City shall, to the extent permitted by law, allow the Contractor to access and make copies of documents (including electronically stored information) in the possession or control of the City or available to it that are reasonably necessary for the 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 the Contractor's use.

4.8.3. For 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. Access to Site

4.9.1. Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to perform services and any installations together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

4.10. Re-appropriation of Budget Items

4.10.1. The City may reduce the funds allocated and the services required under this Agreement at its discretion. The Director shall notify Contractor in writing of this reduction. Contractor shall not perform any services subtracted from the Agreement. The de-obligation of funds does not require any formal amendment of this Agreement but shall be evidenced by a revised budget approved by the Director, a copy of which must be furnished to the City Controller.

4.11. Early Payment

4.11.1. 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 (Tex. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from vendor as follows:

- Payment Time - 10 Days: 2% Discount
- Payment Time - 20 Days: 1% Discount

4.11.2. 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.

5. TERM AND TERMINATION

5.1. Term

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

5.2. Renewal

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 (2) one-year optional terms on the same terms and conditions. If the Director or the City chooses not to renew this Agreement, the Director 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 the City

5.3.1. The Director may terminate this Agreement or any LOA executed under this Agreement at any time by giving 30 days written notice to Contractor. The City’s right to terminate this Agreement or any LOA executed under 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 or any LOA executed under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement or any LOA executed under 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 or any LOA executed 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 4.3 unless the fees exceed the allocated funds remaining under this Agreement or any LOA executed under this Agreement.

5.3.3. RECEIPT OF PAYMENT FOR SERVICES RENDERED IS CONTRACTOR’S ONLY REMEDY FOR THE CITY’S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT OR ANY LOA EXECUTED UNDER THIS AGREEMENT. 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.

5.4. Termination for Cause by City

- 5.4.1. If Contractor defaults under this Agreement, the Director may either terminate this Agreement or any LOA executed under this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement or any LOA executed under 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 Contract;
 - 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 Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement or any LOA executed under this Agreement on the termination date, at no further obligation of the City.
- 5.4.3. To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement or any LOA executed under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement or any LOA executed under this Agreement.
- 5.4.4. In the event of termination or expiration, whichever is earlier, Contractor shall transfer all City information, all City data, including but not limited to City-specific data Works, and any other Work product created under this Agreement or any LOA executed under this Agreement to the City within ninety days.

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: (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and (b) 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. The decision of the Director 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.
- 6.2.5. If the Force Majeure continues for more than 14 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.**
- 6.2.6. 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 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 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, 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 1.1 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.

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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, (1) audits of Contractor's books and records that are related to any aspect of this Agreement, 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 five years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

6.10.2. During the Term of this Agreement, the City or its designee is permitted to perform audits of Contractor's environment and the locations where the City's Information is stored, hosted, or resides, as it relates to the receipt, maintenance, use, retention, and protection of the City's Information. Within reasonable timeframes, Contractor shall comply with all reasonable recommendations that request from such inspections, test, and audits.

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, data security and liability, and confidentiality 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. Risk of Loss

6.15.1. Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each Product passes from Contractor to the City upon acceptance by the City.

6.16. Acceptance and Approvals

6.16.1. Any acceptance or approval by the City, or its agents or employees shall not constitute nor be deemed to be a release of the responsibility and liability of the Contractor, its employees, agents, subcontractors, or suppliers for the accuracy, competency, and completeness for any Documents prepared or services performed pursuant to the terms and conditions of this Agreement, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error or omission in any Documents prepared or services performed by the Contractor, its employees, agents, subcontractors or suppliers pursuant to this Agreement.

6.17. Parties in Interest

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

6.18. Successors and Assigns

6.18.1. 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.

6.19. Business Structure and Assignments

6.19.1. 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, which shall not be unreasonably withheld. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Section 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.

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

6.20. Dispute Resolution

6.20.1. For purposes of this Section “Project Administrator” means the person the Director designates to monitor the progress of all Parties’ performance under this Agreement. Except as may Otherwise be provided by law, a dispute that (1) does not involve a question of law; (2) arises during the performance of this agreement and (3) is not resolved between the Project Administrator and the Contractor, must be handled as described below:

6.20.1.1. The Project Administrator shall put its decision in working and mail or otherwise furnish Contractor with a copy. Contractor may abide by the decision or may appeal the decision to the Director

6.20.1.2. If Contractor desires to appeal a decision of the Project Administrator, Contractor must submit a written appeal to the Director. Contractor must file its written appeal within 7 working days following receipt of the Project Administrator’s original decision. The Director shall provide Contractor with a written response to the appeal within 14 working days following its receipt. The decision of the Director is final.

6.21. Remedies Cumulative

6.21.1. 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.

6.22. CONTRACTOR DEBT

6.22.1. 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, THE CITY CONTROLLER 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.

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**EXHIBIT A
SCOPE OF SERVICES**

{To be negotiated and inserted separately}

Subject to the terms of this Agreement, the Contractor shall provide the Services described in this Exhibit A, Scope of Work, including but not limited to the network, network security, voice, computer, storage, and data center services equipment supporting all departments throughout the City. The Contractor shall provide a plan for hardware replacement, software upgrades, licenses, configuration support, Services, maintenance, and installation services that comprise the Services in support of the ongoing operations provided by the Enterprise Infrastructure Services division in HITS.

PART I – SCOPE OF WORK

1.0 PURPOSE

Contractor shall provide a software solution and services for tracking of emergency medical, personnel compliance, and online continuing education training platform to the Houston Fire Department using the required and desired features listed in the scope of work.

2.0 BACKGROUND

The Houston Fire Department/Emergency Medical Services (HFD/EMS) requires all classified members' continuing education (CE). The primary purpose of these requirements is to ensure HFD/EMS does not allow members to staff EMS emergency apparatus without the proper training and current certifications and credentialing to provide safe medical care to our citizens.

In addition, the Department of State Health Services (DSHS) requires a specific number of hours of continuing education for Emergency Medical Technicians (EMTs) and Paramedics. The HFD seeks to accomplish this continuing education requirement through a DSHS approved online training program.

HFD/EMS is also responsible for tracking the status of our member's current certifications, certification expiration dates, exam dates, completion of required CE hours, credentialing status, criminal history, DSHS and HFD investigations, etc. This information is gathered and collected from their original hire date with HFD/EMS.

HFD/EMS tracks certifications, including the following:

- Texas Department of State Health Services (TDSHS)
- National Registry

- Pediatric Advanced Life Support (PALS)
- TDSHS State Instructor/Coordinator
- HDF/EMS Credentialing
- CPR Certification

3.0 SCOPE OF WORK

EMERGENCY MEDICAL SERVICES TRACKING SYSTEM SOFTWARE SOLUTION

3.1 Overview – Project Background

- 3.1.1 During the Agreement term, the selected proposer (“Contractor”) shall use only trained, experienced, skilled, and certified professionals to provide software licensing, hosting, maintenance, support, training, and other professional services, the “Services”. If the City submits a written request for additional services, the Contractor will provide the hourly rates set on a separate complete line-item breakdown, identifying all cost elements corresponding to the additional services.
- 3.1.2 The Contractor shall design, develop, implement, host, maintain and support an emergency medical services tracking system for the HFD/EMS, including, without limitation, all necessary training.
- 3.1.3 Contractor shall consult with the HFD designee and shall ensure that the City-specific application designs, data definitions, business logic, workflow, and report analytics as specified in this scope of work are met.
- 3.1.4 The required scope of services must contain the following components, and the proposed solution must achieve the following features.

3.2 Overview – Implementation Strategy and Process

- 3.2.1 Contractor shall provide their process model for implementation of the software, including but not limited to the design, development, implementation, training methods, and strategies. Contractor should also include estimated timelines and whether any phases or steps are performed concurrently or consecutively. In addition to the foregoing, Contractor shall provide details regarding its hosting, maintenance and support, training, and professional services.

3.3 Requirements

3.3.1 Software Design, Development, and Implementation

- 3.3.1.1 The Contractor shall design, develop, and implement the software containing, without limitation, the following:

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- a. Continuing Education, Certifications, and Credentialing; and
- b. Any other as determined by the Director during the term of the Agreement.

3.3.1.2 The application entry screen shall provide modules, including but not limited to the following sections:

- a. Certifications;
- b. Credentialing status;
- c. Criminal History;
- d. Investigations (DSHS and HFD);
- e. Continuing Education; and
- f. The Director will determine any additional modules during the Agreement term.

3.4 Continuing Education, Certifications, and Credentialing Components

3.4.1 The Contractor shall diligently work with City key personnel and the Director to design, develop, and implement the software with the following functionalities.

3.4.1.1 Import legacy data from the existing HFD SQL database that the City will provide to the Contractor in a mutually agreed file format and via a mutually agreed transfer media.

3.4.1.2 Software must interface with City databases, including but not limited to, Personnel, Transfers, and Staffing databases that the City will provide to the Contractor in a mutually agreed file format and via a mutually agreed transfer media.

3.4.1.3 Ability to record current passwords for members' login credentials, including, without limitation, the TDSHS, Pearson Vue Testing center, and National Registry, also allowing users to view, edit, and add this data.

3.4.1.4 Hosting of application and database with SQL replication to a local server, retaining the City the ownership of all such data.

3.4.1.5 Tracking the status of employee/member current certifications, certification expiration dates, and exam dates.

3.4.1.6 Track and store certifications and history for Texas DSHS, National Registry, PALS, Texas DSHS instructor/Coordinator,

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HFD credentialing, and other certifications, retaining complete certification and credentialing history for each member from the original hire date, including date of issue and expiration date of certifications along with credentialing status.

- 3.4.1.7 Notification of upcoming expiration dates via email and/or scheduled report.
- 3.4.1.8 Track completion of required CE hours and credentialing status.
- 3.4.1.9 Ability to track and run reports from the learning management system on CE completions based on District/Station/Shift, Division, Rank, certification, or member, including, but not limited to, completion percentage.
- 3.4.1.10 Ability to track completion date of jurisprudence exam course.
- 3.4.1.11 Track history of all courses taken from the original date of hire, including but not limited to completion percentage in the total of hours that must be met in accordance with state requirements and deficiency in hours of required course categories.
- 3.4.1.12 The ability to run CE completion reports using date (month, year) parameters.
- 3.4.1.13 Interface with current online CE provider to capture breakdown of hours by category, calculating the total number of hours completed in comparison with CE hours required for each member.
- 3.4.1.14 The ability to generate form letters based on payroll numbers input, credentialing, de-credentialed, suspension, re-instated, city business, and practicum training.
- 3.4.1.15 The ability to include attachments in members' files, including, without limitation, documents, pictures, and videos.
- 3.4.1.16 The ability to track the class's start date, completion date, course number, and CPR card expiration date from any Education Institution for both Emergency Medical Technician (EMT) classes and paramedic classes.
- 3.4.1.17 The software should have the ability to track the National Registry exam location, fail or pass, dates for each skill and written exam, and the number of attempts to pass the exam.
- 3.4.1.18 The software should have the ability to track suspension status from both certifications and credentialing.

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- 3.4.1.19 The system must have the ability to track the HFD group number assigned to each member when hired and update that information if it changes. During the length of employment tenure in HFD.
- 3.4.1.20 HFD must have the ability to track the history of each HFD group, including, but not limited to dates and names of courses that were assigned to each group, any changes to the courses in which each group has participated and length of time between changes.
- 3.4.1.21 Track the history of assigned HFD locations for all members.
- 3.4.1.22 Track transfer history for all members from the original date of hire.
- 3.4.1.23 The software should have the ability to track payments for the following features:
 - 3.4.1.23.1 National Registry exams (written and skills);
 - 3.4.1.23.2 DSHS application fees (initial and renewals);
 - 3.4.1.23.3 Fingerprinting Fees;
 - 3.4.1.23.4 Fingerprinting voucher codes;
 - 3.4.1.23.5 Track payment dates;
 - 3.4.1.23.6 Track DSHS payment confirmation numbers; and
 - 3.4.1.23.7 Track the type of cards such as national registry, initial and renewal, duplicate card, instructor, or coordinator card received to date, card delivery method, such as interoffice to station/department, picked in-person/another person-by payroll number, picked update or date they received a card at the station.
- 3.4.1.24 Software must have standard reports included and the ability to build customized reports.
- 3.4.1.25 Track certification, credentialing, and rank.
- 3.4.1.26 Rank structure is defined and documented by the following categories:
 - a) Title;
 - b) Paygrade; and

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c) Classification/Rank/Order.

3.4.1.27 Track suspension status for both certifications and credentialing.

3.4.1.28 Customized reports shall include but are not limited to the following:

a) Monthly expirations (DSH certifications, National Registry, etc.);

b) Credentialing Status;

c) Transfers; and

d) Classes EMT & Paramedics.

3.4.1.29 Scheduled reporting at least monthly, including without limitation:

a) The availability to generate ad hoc reports as desired by the Director or City Key Personnel.

b) Receipt of certification cards.

c) Members credentialed by type, including without limitation:

a) EMT;

b) PARA (Paramedic);

c) POP Officers;

d) Supervisors;

e) Department Training Officers; and

f) Removal from internship.

3.4.1.30 Ability to provide “Notes” or Comments” or “Remarks” sections for each member’s file.

3.5 Software Hosting and Maintenance

3.5.1 Contractor shall provide software hosting and maintenance service.

3.5.2 Contractor represents and warrants that Contractor shall comply with HIPAA laws and regulations and any other applicable laws and regulations regarding its software licensing and implementation, hosting, maintenance, support, training, professional services, and any other performance under

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this Agreement. All data, files, and records must be encrypted, and encryption must be HIPAA compliant.

3.5.3 Interfacing and Replication: The contractor shall replicate data to HFD servers, interface with HFD servers, and import legacy data from existing SQL databases.

3.6 Software Support and Training

3.6.1 Software Support: The Contractor shall provide off-site software technical support and be available for calls and emails seven (7) days a week from 7 a.m. (central standard time) to 7 p.m. (central standard time), including holidays.

3.6.2 Contractor shall provide on-site software technical support if the Director requests it. Travel expenses will be subject to the terms and conditions outlined in the Reimbursable Expenses section.

3.6.3 Training: The contractor shall provide on-site, in-person, and group training sessions and webinar training geared towards new or novice users and a refresher course for existing users in the event of new updates, modifications, enhancements, or changes made to the software.

3.6.4 The Director, or his/her designee, may schedule on-site and webinar training during the term of the Agreement. The Contractor shall perform such training scheduled during the term of the Agreement even if the Agreement has expired on the date of the scheduled training session.

3.6.5 Proposers shall provide at a minimum the following types of training and shall provide details relating to each training type available and the number of hours per contract year that Proposer can provide such type of training at no additional cost to the City (“Included Training”). Proposers should also provide the cost of each type of training available should the City exceed the number of hours provided as part of the Included Training.

Training Type	Number of Hours Included Per Contract Year
In-Person One-on-One Training	
In-Person Group Training	
Webinar Training	

In-Person One-on-One Training for New Updates	
In-Person Group Training for New Updates	
Webinar Training	

3.7 Professional Services

3.7.1 Professional Services Credits:

3.7.1.1 The Contractor shall provide the City with professional services credits each contract year of “Professional Credits,” which will be available for the City to use for any professional services not included in the Basic Services. The City may roll over unused hours to the following years during the term of the Agreement. Proposers shall provide the number of Professional Credits available for each contract year at no additional cost to the City.

3.8 Security and Privacy

3.8.1 Contractor shall use best efforts to ensure security within the platform, including but not limited to the following:

3.8.1.1 The application must include security to prevent abuse and malicious activities.

3.8.1.2 The application must include protection from common vulnerabilities, including denial-of-service attacks.

3.8.1.3 The application must prevent operational system security exploits of the operating system for cloud hosting. The Contractor shall apply Windows updates and patches immediately upon release.

3.8.1.4 The application must prevent device-level exploits, including any locally installed gateways, data storage devices, etc.

3.8.1.5 The Contractor system must meet requirements for HIPAA compliance.

3.8.1.6 Any additional requirements per City of Houston policies and procedures and in accordance with applicable laws and regulations.

3.8.2 The Contractor must provide details on their own security measures and practices.

3.9 Project Schedule

3.9.1 The Contractor shall provide a detailed project schedule with estimated dates, deadlines, timelines, deliverables, and tasks.

3.10 ONLINE CONTINUING EDUCATION TRAINING PLATFORM SOLUTION

3.10.1 Overview – Project Background

3.10.1.1 The Contractor must be a Continuing Education Provider approved by DSHS.

3.10.1.2 The Contractor shall use only approved continuing education programs that have been approved by DSHS for EMS continuing education courses.

3.10.1.3 The Contractor shall provide a robust course catalogue that is available via the internet to authorized users of the online continuing education training program.

3.10.1.4 The Contractor shall offer customized courses that can be designed for content to address critical information specific to EMS Operations and Medical Protocols. These courses shall be developed in coordination with HFD EMS Physicians to meet the EMS Medical Director's requirements.

3.10.1.5 The requirements in the scope of services must contain the following components and the proposed solution must achieve the following features.

3.11.1 Requirements

3.11.1.1 The Contractor shall also offer virtual instructor lead training modules for real time interactive education classes for fire courses and EMS education.

3.11.1.2 Contractor's continuing education program shall have an application programming interface (API) with HFD's internal databases, including but not limited to Human Resource Personnel, Transfer, Staffing and Credential Manager databases.

3.11.1.3 Contractor's continuing education program must populate the following information for each member profile

a) Member Identifiers

- Payroll ID, Name, Email, Rank, Tags

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- b) Member Work Location Tracking
 - o District, Station, Shift
- c) Certification Level, Certification Number and Expiration Date

3.11.1.4 The Contractor shall track and store Certification history as well as Course Completion Certificates obtained during each certification cycle in accordance with DSHS requirements of an approved online continuing education provider.

3.11.1.5 Contractor's continuing education program shall Interface with Credential Manager database real-time DSHS Recertification Progress Percentage.

3.11.1.6 Contractor's continuing education program shall interface with Credential Manager database members Web Hours Completed date.

3.11.1.7 Contractor's continuing education program shall interface with Credential Manager database members Fingerprint Requirement and Completion Date.

3.11.1.8 Contractor's continuing education program shall interface with Credential Manager database members DSHS Application Submitted On date.

3.11.1.9 Contractor's continuing education program shall interface with Credential Manager database members Jurisprudence Requirement and Completion Date.

3.11.1.10 Contractor's continuing education program shall comply with the criteria for Acceptable Continuing Education Activity.

3.11.1.11 Reporting:

- a) Personnel Completion Report – Searchable by License/Certification Expiration and/or License/Certification Type, District, Station, Shift, Rank and Tag.
- b) DTO Feature Report – District Training Officers Completion Reports for Past Due Assignments.
- c) DTO Deficiency Report – 120 Day reporting of members not in compliance for Web Hours Completed, Fingerprint Requirement and DSHS Application.

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- d) Enrollment Report – Completion of Course Assignments.
 - e) DSHS Audit Transcript in accordance with DSHS guidelines.
- 3.11.1.12 Contractor’s education program shall provide Specific Permissions for DTO, Administration, Educators and Doctors.
- 3.11.1.13 Contractor’s education program shall provide ability to import external training records.
- 3.11.1.14 Contractor’s education program shall provide automatic re-assignment for course failures up to 3 attempts before requiring manual override and provide course failure notification by email to HFD administration.
- 3.11.1.15 Contractor’s education program shall provide for the creation of In-House Courses, Exams and Surveys.
- 3.11.1.16 Contractor’s education program shall provide Exam Question Pools and administer Random Exams. After failed exam, the education program shall administer a new exam with a new set of unique questions.
- 3.11.1.17 Contractor’s education program shall provide Course Evaluation Reporting.
- 3.11.1.18 Contractor’s education program shall provide End User Verification during Exams.
- 3.11.1.19 Contractor shall manage all courses 24/7.

3.12.1 Service Level Agreement

- 3.12.1.1 Contractor shall provide a Service Level Agreement (“SLA”) that defines the specific level of service to be achieved by the proposer if proposer becomes a Contractor. The SLA should:
- a) Include a detailed description of the services.
 - b) Set out the overall objectives for the services to be provided.
 - c) Include expectations, metrics, and measurement period.
 - d) Remedies or penalties (compensation/service credits) should the agreed-on service levels not be achieved.
 - e) Define Contractor obligations for reporting of SLA performance.

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- f) Include additional remedies for repeated failures.
- g) Provide an escalation process with e-mail address and direct phone numbers of executive managers if the failure is not resolved satisfactorily at any stage, as needed, as determined by the City.

EXHIBIT B
PRICING AND RATE CARD
{To be negotiated and inserted separately}

If the products or services requested by City are not identified in the rates and fees above, Contractor shall work with Director to give City the best rate, which shall not exceed the Contractor's then-current rates for such related products or services and the rate or fees will be added as an addendum to this pricing and rate card without the need of further approval from City Council. Contractor shall work with Director in selecting the personnel appropriate for the services prior to initiating performance of any services or invoicing City for such services.

**EXHIBIT C
DRUG POLICY COMPLIANCE AGREEMENT**

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

_____ (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 this City Contract. 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)

**EXHIBIT E
DRUG POLICY COMPLIANCE DECLARATION**

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Contractor)

have personal knowledge and full authority to make the following declarations:

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

_____ 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, 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 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)		
			Reasonable Suspicion	Post Accident
				Total
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.

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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)

**EXHIBIT F
SECURITY ADDENDUM**

Section 1. Definitions:

“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, materials, processes, documents, citizen information, and any other information, materials, or data Vendor receives or to which Vendor 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.

“Incident” means as defined in Section 4.1 of this Security Addendum.

“Mitigate” means deployment of security controls as necessary to reduce the adverse effects of threats and reduce risk exposure to a level reasonably acceptable by City.

“Remediation” or “Remediate” means, as applicable, that Vendor has completely resolved a security exposure or Incident, such that the vulnerability no longer poses a risk to City Information, Vendor systems in which City Information is stored or transferred through, and City systems.

Section 2. Vendor’s General Obligations and Responsibilities:

2.1 Vendor shall maintain the security of all City Information, including but not limited to, all City-specific data, user data, citizen data, and any other data that is provided to or made accessible to Vendor by City, by any user, by any citizen, or that Vendor generates, creates, compiles, or analyzes for the City, as further described below and in this Agreement. Vendor shall regularly test and audit the systems, controls, and procedures outlined in this Agreement, which tests and audits shall occur at least once per calendar month. Vendor shall implement and maintain, at least at industry standards, 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, (ii) prevent, detect, contain, and correct security breaches in, involving, or against the City’s Information, 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, Vendor 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.

2.2 Vendor shall be responsible and liable for the acts and omissions of Vendor’s personnel, temporary employees, agents, contractors, representatives, counsel, and subcontractors in connection with the provision of the services required under this Agreement, as if such acts or omissions were Vendor’s acts or omissions. With respect to any of Vendor’s personnel, temporary

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employees, agents, contractors, representatives, counsel, and subcontractors who process, store, transmit, access, dispose of, or have access to the City's Information or the Software in so far as it relates to or is the result of Vendor's performance of this Agreement, Vendor shall: (i) Advise these persons of and require that they comply with the provisions of this Agreement, which includes this Security Addendum, applicable to each person, including without limitation, the provisions relating to the privacy, security, integrity, and confidentiality of the City's Information; (ii) Require these persons to execute and deliver to Vendor written agreements that are a direct flow-down of, or substantially similar to (or no less restrictive than) the terms of this Agreement, including this Security Addendum, and including without limitation, with respect to privacy, security, integrity, and confidentiality of the City's Information; and (iii) With respect to Vendor's personnel, temporary employees, agents, contractors, representatives, counsel, and subcontractors with access to the City's physical property or premises, Vendor shall advise these persons of applicable 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, personnel, temporary employees, agents, contractors, representatives, counsel, subcontractors, directors, or officers.

2.3 Vendor shall ensure that, at all times, all of the City Information shall remain in networks, systems, facilities, data centers, gateways, hosting facilities, and cloud facilities physically located solely in the continental United States. Vendor shall not transmit, disclose, have access to, or process City Information outside of the continental United States of America. At all times, Vendor shall provide support calls from within the boundaries of the continental United States of America.

2.4 Vendor represents and warrants it has used and will use commercially reasonable efforts utilizing generally accepted industry tools and practices to provide services 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 software or services. Furthermore, Vendor shall utilize up-to-date and comprehensive virus and malware protection capabilities, and commercially reasonable practices, including but not limited to, detection, scanning, and removal of known viruses, worms, and other malware on any Vendor-controlled, owned, or hosting systems. These virus protection capabilities shall be in force on all computers, equipment, and/or devices utilizes in connection with the services provided under this Agreement, as well as on all data files or other transfers that have access or are connected to Vendor's hosting systems. Vendor shall mitigate security vulnerabilities through the use of perimeter and host countermeasures such as intrusion prevention, web application firewall, IP address shunning, and other measures designed to prevent exploitation of vulnerabilities.

2.5 Vendor shall use best efforts to prevent, monitor, mitigate, and remediate against: (i) services that sends or stores infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (ii) any upload to the services or use the services to send or store viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents, or programs; (iii) interference with or disruption of the integrity or performance of the services or the data contained therein; attempts to gain unauthorized access to the services or its related systems or networks; or (iv) export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or

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information to anyone outside of the United States in connection with this Agreement without first complying with all applicable export control laws and regulations that may imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Vendor operates or does business, and shall not Cause City to violate the same.

2.6 Vendor shall proactively address security risks by applying released security patches, including, but not limited to, Windows security patching and updates to patch known vulnerabilities in an applicable operating system.

2.7 Vendor shall provide City and Director with the vendor name, location, and any other security information of any third-party hosting or cloud facility that will be utilized to hold, store, transmit, or otherwise have access to City Information within two (2) days of the Director's request. Vendor shall provide City and Director with at least 90 days' prior written notice of any relevant material changes to Vendor's information technology infrastructure, facilities (including but not limited to, vendor or location changes of any third-party hosting or cloud facility), or resources associated with information security governance and oversight, security, network, and infrastructure operations and any key personnel responsible for ensuring a secure environment spanning Vendor, any of its subcontractors, and the City.

Section 3. Vendor's Security Assessment Requirements:

3.1 Vendor shall maintain an information security program that provides for the security and protection of the City Information, including, but not limited to, processes and procedures to respond to security incidents. Vendor shall 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 Report (or equivalent report), received from its third-party auditors. Vendor shall, 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, which includes this Security Addendum. This provision shall survive the expiration or termination of this Agreement so long as Vendor holds or has access to City Information.

Section 4. Security Monitoring and Response:

4.1 Vendor shall maintain formal processes to detect, report, respond to, and mitigate and remediate Incidents in a timely manner. If Vendor learns or has reasonable suspicion that any person (including without limitation, Vendor's personnel and third parties) has gained unauthorized access to City Information, or any person has gained unauthorized access to Vendor's network and/or data storage facilities such that any City Information is obtained by an outside party, or the City Information has otherwise been disclosed to unauthorized parties (other than in the proper performance of those services or support therefor), each an "Incident", then Vendor shall promptly (within 24 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) 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. Vendor shall be liable for such data breach or unauthorized

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access, including but not limited to, any related costs or expense (including cost of notification) and any notification required by law or regulation.

Section 5. Incident Remediation:

5.1 Upon becoming aware of an Incident, Vendor shall Mitigate or Remediate any Incident within 48 hours from the time Vendor becomes aware of the Incident. With respect to Incidents that are Mitigated (but not Remediated), Vendor shall Remediate such Incidents within five business days after being Mitigated. If Vendor fails to Mitigate or Remediate any Incident within the required timeframe: (a) such failure shall be deemed a material breach of this Agreement; and (b) City may immediately terminate this Agreement or Vendor's access to City Information, including any system interfaces, connectors, or links without cost or penalty, and Vendor shall not be relieved of its obligation to continue to provide services under this Agreement, except to the extent such services are directly impacted by the termination of access.

Section 6. Data Recovery:

6.1 If as a result of Vendor's performance under this Agreement, any City Information is lost or corrupted, Vendor 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.

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

Section 7. Confidentiality Obligations and Information Disposal Procedures

7.1 Vendor and its personnel, temporary employees, agents, contractors, representatives, counsel, and subcontractors shall hold all City Information that they receive, or to which they have access, in strictest confidence. Vendor and its personnel, temporary employees, agents, contractors, representatives, counsel, and subcontractors shall not disclose, disseminate, or use the City Information unless the Director authorizes it in writing prior to such disclosure, dissemination, or use. Vendor shall obtain written agreements from its personnel, temporary employees, agents, contractors, representatives, counsel, and subcontractors which bind them to the terms in this Security Addendum and shall provide a copy of such written agreement to City upon request by City or the Director. The placement of a copyright notice on any City Information will not be construed to mean that such information has been published and will not release Vendor 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.

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

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migrate, or dispose of the City's Information, Vendor shall perform the following to the extent applicable unless otherwise directed by the Director at no additional cost to the City:

- (1) 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;
- (2) destroy the City's Information (in whole or in part, as directed by the Director) and provide a certified statement of destruction to the Director;
- (3) destroy physical media using secure industry standard methods;
- (4) remove the City's Information (in whole or in part, as directed by the Director) from the hosted database, storage device, server, or other repository or storage means; or
- (5) 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.

7.3 In the event the Director directs the Vendor to destroy City Information without the destruction of the physical media, then Vendor shall destroy City Information in a manner that prevents attempts to restore that City Information.