Standard Terms and Conditions for a Contractor-Hosted Software Solution
December, 2014 Revision

DRAFT AGREEMENT FOR LICENSED SOFTWARE, SERVICES, AND MAINTENANCE
City of Sunnyvale, California

This AGREEMENT is made by and between the **City of Sunnyvale**, a political subdivision of the State of California (herein "City"), and **The Arcanum Group, Inc.** (herein "Contractor"), wherein Contractor agrees to provide the software and services commonly known as **Enterprise Asset Management System per Request for Proposals F16-98 specifications and terms and conditions**. As described in the Schedules comprising this Agreement, Contractor will successfully implement **Enterprise Asset Management System** consisting of all system modules and capabilities necessary to meet the City's requirements as defined in Schedule D and RFP F16-98 specifications and vendor response.

This AGREEMENT, including the following Schedules, constitutes the entire understanding and agreement between the Parties. This AGREEMENT may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

Schedule A: General Terms and Conditions

Schedule B: Subscription License Agreement

Schedule D: Scope of Professional Services

Schedule E: Schedule of Charges and Payments

CONTRACTOR: The Arcanum Group

_____
Name: David Waters
Title: President/CEO

Dated: _____

CITYCITY OF SUNNYVALE:

_____
Deanna J. Santana
City Manager

Dated: _____

Attest: _____

City Clerk

Approved as to Form:

_____
City Attorney

SCHEDULE A: GENERAL TERMS AND CONDITIONS

1.0   Definitions

1.1   *Acceptance:* The Software shall be considered accepted for all purposes upon the earlier of: (a) notification by City that the Software is in compliance with all requirements specified in this Agreement; (b) expiration of the Test Period if City fails to notify Contractor of any material nonconformity during that period; or (c) use of the Software by City into production for at least thirty (30) days.

1.2   *Acceptance Certificate:* A certificate provided by the Contractor that is signed by the City confirming the Acceptance of each phase as defined within the Project Management Plan.

1.3   *Acceptance Plan:* That document, delivered as a component of the Implementation Plan document, that defines and describes the acceptance tests and conditions which define Acceptance.

1.4   *Agreement*: This Agreement, all schedules, appendices and exhibits thereto, and any and all subsequent duly executed amendments thereto.

1.5   *Authorized Representative*: The person or persons authorized by City to work with Contractor to implement changes to the Software, submit Software issues to Contractor to resolve, and authorize the Contractor to make changes to the list of Users who can use the Software.

1.6   *Authorized or End User*s: (i)End User's employees, and (ii) third party contractors authorized by End User to access the Subscription Products. All Authorized/End Users would be covered under a global, City-wide non-disclosure agreement between the City and Contractor that protects the Confidential Information of Contractor and Contractor's Third Party Licensors, in each case registered in the database with a unique UserID and a unique password.

1.7   *Compliance Update*: A change made to the Software to reflect a mandated change in the applicable law.

1.8   *Computer System:*   The computer processer(s), random access memory, disk subsystem, network software, Database Software, operating system software, and other hardware or software components or programs that are used in conjunction with the Licensed Software.

1.9   *Confidential Information* – Copyrights, Trade Secrets, Technical Information, Technology, and any and all other confidential and/or proprietary information provided by one Person ("Discloser") to another Person ("Recipient") pursuant to this Agreement or otherwise, relating to, among other items, the research, development, products, processes, business plans, customers, finances, suppliers, and personnel data of or related to the business of Discloser, including, without limitation, the Software and all Documentation. Confidential Information shall also include all "non-public personal information" as defined in Title V of the Gramm-Leach-Bliley Act (15 U.S. C. Section 6801, et seq.) and the implementing regulations thereunder (collectively, the "GLB Act"), as the same may be amended from time to time. Confidential Information does not include any information: (1) Recipient knew before Discloser provided it; (2) which has become publicly known through no wrongful act of Recipient; (3) which Recipient developed independently, as evidenced by appropriate documentation; or, (4) of which Recipient becomes aware from any third Person not bound by non-disclosure obligations to Discloser and with the lawful right to disclose such information to Recipient. Notwithstanding the foregoing, specific information will not be deemed to be within the foregoing exceptions merely because it is contained within more general information otherwise subject to such exceptions.

1.10   *Copyrights* – copyrighted and copyrightable materials, whether or not registered, published, or containing a copyright notice, in any and all media, and further including,

without limitation, any and all moral rights and corresponding rights under international agreements and conventions, all Derivatives thereof, and any and all applications for registrations, registrations, and/or renewals of any of the foregoing.

1.11   *Customization:* Any improvement, derivation, extension or other change to the Software made by Contractor at the request of the City, including any that result from the joint efforts or collaboration of Contractor and City. Contractor may, from time to time, incorporate Customizations into the Software as "Enhancements."

1.12   *Data:* All data entered or used by City in order to use the Software, including but not limited to user account data and the data for which the Software is designed to store, manipulate, analyze and report in performing its functional requirements.

1.13   *Data Conversion Plan:* The formal plan to be prepared by Contractor with City support that identifies the data conversion elements: schedule, information, personnel, and any other items agreed upon as integral to the conversion of existing systems data to the configured databases by the City's Project Manager and the Contractor's Project Manager.

1.14   *Database Software:* Relational database management systems (RDMS), such as Microsoft SQL Server, Oracle, or similar Third-Party Software that is utilized by the Software to store CITY data on a disk sub-system as part of the operation of the Software.

1.15   *Defective Work*: Work that (i) is unsatisfactory, faulty, or deficient, (ii) does not conform to the Statement of Work, (iii) does not meet the requirements of any inspection, test, or approval referred to in the Acceptance Criteria, or (iv) does not meet or exceed the requirements specified in this Agreement.

1.16   *Deliverables:* Those components, milestones, and/or materials, including, without limitation, the Software, Documentation, Maintenance Modifications, and Enhancements to be completed by one Party and delivered or otherwise provided to the other Party in accordance with the terms of this Agreement and/or an effective Maintenance Agreement. Deliverables can mean either Deliverables required from Contractor ("Contractor Deliverables") or Deliverables required from City ("City Deliverables").

1.17   *Derivatives* – any and all adaptations, enhancements, improvements, modifications, revisions, extensions or translations, whether to Intellectual Property or otherwise.

1.18   *Documentation*: Standard user publications relating to use of the Licensed Software, such as reference, installation, administrative, maintenance, and programmer manuals, provided by Contractor to City, all of which are made available to City by Contractor by either hard copy or electronic delivery.

1.19   Documented Defect: A deviation between the then-current, general release version of the Subscription Product and its Documentation, for which the CITY has given Contractor enough information to replicate the deviation.

1.20   *Enhancement:* A change or addition, other than maintenance modifications, to Software and related Documentation, including, without limitation, all new releases, that improve functions, add new functions, or significantly improve performance by changes in system design or coding; *provided, however,* that Enhancements do not include any New Product.

1.21   Error: Either (a) any error or defect resulting from an incorrect functioning of Software caused by the Software's failure to meet Specifications therefor; or, (b) any error or defect resulting from an incorrect or incomplete statement in Documentation caused by the failure of the Software and/or the Documentation to meet the Specifications therefor.

1.22   *Error Correction (may also be referred to as "Patch")*: Either (a) a temporary repair or replacement or other modification or addition that, when made or added to the Software, corrects an Error, or (b) a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of an Error on the City.

Temporary repair may be made permanent and released in Subsequent Releases of the Software.

1.23   *Explanatory Documentation:* Documents that describe the details of the City's system configuration.

1.24   *Final Acceptance Certificate*: City's final written acceptance of the Programs and services to be provided under this Agreement.

1.25   *Hardware*: The Computer System components and equipment, other than the Licensed Software and Third-Party Software.

1.26   *Implementation Plan*: That deliverable, provided by Contractor, that includes the specific tasks and deliverables required for the implementation of the identified work, and the specific dates for completion thereof. The Implementation Plan shall also include the Test Plan and Acceptance Plan for the identified work.

1.27   *Intellectual Property:* Trade Secrets, Copyrights, Derivatives, Documentation, Patents, Software, Technical Information, Technology, and any and all proprietary rights relating to any of the foregoing.

1.28   *Licensed Software:* The proprietary computer software program(s) identified in the Software License and all related materials, Documentation, all corrections, patches or updates thereto, and other written information received by City from Contractor, whether in machine-readable or printed form.

1.29   *Maintenance Release:* A Subsequent Release of the Licensed Software that includes Error Corrections and/or Updates.

1.30   *New Product*: Any change or addition to Software and/or related Documentation that: (1) has a value or utility separate from the use of the Software and Documentation; (2) as a practical matter, may be priced and offered separately from the Software and Documentation; and, (3) is not made available to Contractor's licensees generally without separate charge.

1.31   *Notice of Completion*: A written notice from Contractor stating that delivery, installation and implementation of all Licensed Software, and/or Third-Party Software at City's site has been completed and that the Software is available for acceptance testing.

1.32   *Object Code*: Machine readable compiled form of Licensed Software provided by Contractor.

1.33   *Party*: Either Contractor or City, and "Parties" means both of the same.

1.34   *Patents*: All patentable materials, letters patent, and utility models, including, without limitation, all reissues, continuations, continuations-in-part, renewals, Derivatives, and extensions of any of the foregoing and all applications therefor (and patents which may issue on all such applications).

1.35   *Professional Services*: Any Installation, Customization, Training, Consulting, Support Service(s), and other similar service(s) performed by Contractor under the terms of this Agreement.

1.36   *Project Management:* The process of planning, scheduling, and controlling certain activities in order to meet project objectives.

1.37   Project Management Plan: A comprehensive plan for execution of the Project to implement the Software, which includes subsidiary plans that include the Project Schedule, List of Deliverables, Data Conversion Plan, Issue Management Plan, Interface Specifications, Training Plan, Risk Management Plan, Resource Plan, Communication Plan, Change Control Plan, Document Control Plan, Acceptance Plan, and Quality Management Plan.

1.38   *Programs:* The Software, as written by the Contractor and approved Third Party Vendors, integrated by Contractor and delivered to the City, in the form of executable code

providing fully compatible communication with the Contractor's licensed software engine, to operate on the Hardware for purposes of accomplishing the functional capabilities as set forth in this Agreement.

1.39   *Release:* Means a version of the Software denoted by the number to the left of the decimal point (as compared to a change in the number to the right of the decimal point). For example, 4.x and 4.1 are the same Release; 4.x and 5.x are two different Releases. Releases include major Enhancements and the incorporation of any Version developed after the Release immediately preceding the most current Release.

1.40   *Site:*   The physical locations for which the Software is licensed. Sites shall include all locations occupied by the City employees who use the software.

1.41   *Software:* The "Subscription Products" or "Subscription software means collectively or individually the computer software programs identified in the applicable Contractor Order Form for which Contractor is to provide the Subscription Services.

1.42   *Software Acceptance Date:* The date of final acceptance of the System by City as described in Schedule D of this Agreement.

1.43   *Specifications:* The functional, operational, and performance characteristics of the Licensed Software as described in Contractor's current published Documentation.

1.44   *Subsequent Release:* A release of the Licensed Software for use in a particular operating environment which supersedes the Licensed Software. A Subsequent Release is offered and expressly designated by Contractor as a replacement to a specified Licensed Software product. A Subsequent Release will be supported by Contractor in accordance with the terms of this Agreement. Multiple Subsequent Releases may be supported by Contractor at any given time.

1.45   *Support Services*: Those services provided by Contractor as described in Schedule B: Subscription License Agreement.

1.46   *System:* The Licensed Software and associated interfaces furnished by Contractor for the Client and the Equipment on which such software operates, the combination of which shall satisfy the requirements set forth in the Specifications.

1.47   *System Cutover:* The point at which the City approves Contractor's initiation of the System, or a phase of the project, to a production status and the City may terminate use of the current software system it uses to perform the same business functions.

1.48   *Test Period:* The thirty (30) day period following: (a) City's receipt of the Notice of Completion or (b) in the case where City requests or causes a material delay in the performance of implementation services, the date set forth in the Implementation Plan for commencement of Acceptance Testing.

1.49   "Third Party Licensor" means a third party whose software products ("Third Party Products") have been made available to Contractor for distribution and licensing under the terms of its agreement with such Third Party Licensor (a "Third Party Agreement").

1.50   *Third Party Software: S*oftware utilized in tandem with the Licensed Software, and necessary to enable the Licensed Software to perform the Specifications, supplied by Contractor with the Licensed Software or acquired directly by City on the advice of Contractor.

1.51   *Trademarks* – trademarks, service marks, logos, trade names, and/or domain names including, without limitation, any and all common law and/or statutory rights therein and any and all applications to register and/or registrations therefor, anywhere within or outside of the Territory.

1.52   *Update: G*enerally available updates, enhancements or modifications to the then-current, general release version of the Subscription Software that are not separately priced or licensed as new products.

1.53   *Upgrade:* Either an enhancement to the Licensed Software code to add new features or functions to the Licensed Software or software programming revisions containing corrections to Error Corrections that have been reported by users or discovered by the Contractor. Upgrades include revisions that are made to the Software to conform to a newer version of the operating system software.

1.54   *Version:* A new version of the Software that includes minor Enhancements, Error Corrections, and/or Compliance Updates, which is indicated by a different number to the right of the decimal point (e.g., "4.1" and "4.2" represent different Versions of Release "4").

1.55   *Warranty Period:* For a period of twelve (12) months after the date of the applicable Partner Order Form for the Subscription Products, the Subscription Products will operate without a Documented Defect.

1.56   *Work or Project*: The implementation, assembly, installation, optimization, and integration as required by this Agreement, whether completed or partially completed, including all labor, materials, and services provided, or to be provided by Contractor to fulfill Contractor's obligations hereunder. The Work, therefore, constitutes all of the requirements for providing the Programs and all services under this Agreement to the City.

2.0   Notices

This Agreement shall be managed and administered on behalf of the respective parties by the individuals identified below. All invoices shall be submitted to and approved by the City's representative so identified. In addition to personal service, all notices may be given to City and to Contractor by first class mail addressed to said party and shall be deemed received the fifth (5th) day following the date of mailing or the earlier date of personal service, as the case may be.

Contractor: The Arcanum Group, Inc.	**City of Sunnyvale:**
4600 South Syracuse St., 9th Floor	650 West Olive Avenue
Denver, CO 80237	Sunnyvale, California 94086
Contact Person:	Contact Person:
David Waters	**Dhiren Gandhi**
President/CEO	**Information Technology Services Manager**
303-731-1547	**408-730-3043**
David.waters@theArcanumGroup.com	**dgandhi@sunnyvale.ca.gov**

3.0   Standard of Performance

Contractor represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Contractor shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which Contractor is engaged. All products of whatsoever nature which Contractor delivers to City pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in Contractor's profession. Permits and/or licenses shall be obtained and maintained by Contractor without additional compensation. Contractor's personnel, when on the City's premises, shall comply with the City's regulations regarding security, safety and professional conduct, including but not limited to City of Sunnyvale Security Policy (NCSP) 102 regarding data security.

4.0   Contractor as Independent

In providing services hereunder, Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as agents or employees of City.

5.0   Indemnification

5.1   **General**

Contractor shall defend, indemnify and save harmless the City, its officers, officials, employees, agents and volunteers from any and all liabilities, claims, demands, judgments damages, losses or expenses (including, without limitation, defense costs and attorney fees of litigation) arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof, including, but not limited to, any act or omission to act on the part of the Contractor or his agents or employees or other independent contractors directly responsible to him; except those liabilities, claims, demands, judgments damages, losses or expenses to the extent resulting from the negligence or willful misconduct of the City. With respect to any and all liabilities, claims, demands, judgments damages, losses or expenses arising from the joint or concurrent negligence of Contractor and the City, each party shall assume responsibility in proportion to the degree of its respective fault as determined by a court of competent jurisdiction. Contractor's obligation to indemnify City is contingent upon the City giving prompt notice to Contractor of any claims, permitting Contractor to defend, compromise, or settle any claim, and cooperate with the defense of any such claim. Contractor shall notify the City immediately in the event of any accident or injury arising out of or in connection with this Agreement.

5.2   **Intellectual Property**

a. Notwithstanding any language contained herein to the contrary, Contractor warrants that the Software does not infringe upon or violate any patent, copyright, trade secret, contract right, or any other proprietary right of any third party within the United States. Except as otherwise provided, Contractor, at its own expense, will defend, indemnify and hold City harmless from any claim made or threatened or any suit or proceeding brought against City insofar as it is based on an allegation that the Software furnished by Contractor under this Agreement infringes any copyright or patent in existence on the date the Software was initially provided to City, but only if City does all of the following:

   i.   notifies Contractor of that action in writing within a reasonable period of time (such that Contractor suffers no prejudice to its rights);

   ii. gives Contractor the right to control and direct the defense and settlement of that action;

   iii. makes no compromise, settlement, or admission of liability; and

   iv. provides reasonable assistance and cooperates in the defense of that action at Contractor's reasonable expense.

b. Subject to the limitations set forth in this Agreement, Contractor shall pay any resulting damages, costs and expenses finally awarded to a third party, including, but not limited to, reasonable legal fees, incurred as a result of the Software's infringement of a copyright or patent right. Contractor will have no responsibility for the settlement of any claim, suit, or proceeding made by City without Contractor's prior written approval.

c. If the Software is held to infringe, and the use of the Software is enjoined, Contractor, at its expense, will do one of the following:

   i.   procure for City the right to continue using the infringing or potentially infringing Software;

   ii. replace the infringing or potentially infringing Software with non-infringing software; or

   iii. modify the infringing or potentially infringing Software so that it becomes non-infringing.

iv. If none of the foregoing remedies are commercially feasible, Contractor will return to City the initial license fee actually paid by City to Contractor under this agreement, and upon such a return, any licenses granted to City for the Software shall terminate in accordance with section 16.4; Disentanglement..

6.0 Insurance

During the performance of this Agreement, Contractor shall maintain in full force and effect the following insurance coverages:

6.1 Commercial General Liability Insurance: Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following:

a. Broad form coverage for liability for death or bodily injury to a person or persons, and for property damage, combined single limit coverage, in the minimum amount of $1,000,000 per occurrence and $2,000,000 aggregate.

b. An endorsement naming City as an additional insured under said policy, with respect to claims or suits arising from Seller's product(s) and/or the services provided under this contract;

c. A provision that said insurance shall be primary and other insurance maintained by the City shall be excess only and not contributing with Contractor's insurance; and

d. A provision that said insurance shall provide for thirty (30) days written notice to City of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium). Upon receipt of such notice, City will provide Contractor in writing a notice that Contractor has until the effective date of termination, change in coverage protection, or reduction in coverage limits to secure new insurance coverage as required herein, and that Contractor's failure to do so will constitute default under the terms of this Agreement.

6.2 Data Processing Errors and Omissions Insurance: Contractor shall maintain either a professional liability or errors & omissions policy in an amount of no less than $1,000,000, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to City.

6.3 Automobile Liability Insurance: For each vehicle used including non-owned and hired automobiles, Contractor shall promptly provide proof of such insurance evidenced by a certificate of , which insurance shall include the following provisions:

a. Liability protection for death or bodily injury to a person or persons, property damage, and uninsured and underinsured coverage, combined single limit coverage, in the minimum amount of $1,000,000.

b. A provision that said insurance shall be primary and other insurance maintained by the Buyer shall be excess only and not contributing with Seller's insurance; and,

c. A provision that said insurance shall provide for thirty (30) days written notice to City of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium). Upon receipt of such notice, City will provide Contractor in writing a notice that Contractor has until the effective date of termination, change in coverage protection, or reduction in coverage limits to secure new insurance coverage as required herein, and that Contractor's failure to do so will constitute default under the terms of this Agreement.

6.4 Worker's Compensation: Before commencing to utilize employees in providing Services under this Agreement, Contractor warrants that it will comply with the provisions of the California Labor Code, requiring Contractor to be insured for worker's compensation liability or to undertake a program of self-insurance therefor. CONTRACTOR shall maintain said policy or self insurance as required by law, and shall promptly provide proof

of such insurance evidenced by a certificate of insurance, or other documentation acceptable to the City.

6.5   Miscellaneous Insurance Provisions: All policies of insurance required by this Agreement shall remain in full force and effect throughout the life of this Agreement and shall be payable on a "per occurrence" basis unless the City specifically consents to "claims made" coverage. If the City does consent to "claims made" coverage and if Contractor changes insurance carriers during the term of this Agreement or any extensions hereof, then Contractor shall carry prior acts coverage.

At all times, Contractor shall keep and maintain in full force and effect throughout the duration of this Contract, policies of insurance required by this Contract which policies shall be placed with insurers with a current A.M. Best's rating of not less that A: VII, unless otherwise acceptable to City. In the event the Best's Rating or Best's FPR shall fall below the rating required by this paragraph, Contractor shall be required to forthwith secure alternate policies which comply with the rating required by this paragraph, or be in material breach of this Agreement. Failure to provide and maintain the insurance policies (including Best's ratings), endorsements, or certificates of insurance required by this Agreement shall constitute a material breach of this agreement (herein "Material Breach"); and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which City may elect to suspend payments hereunder, or terminate this Agreement, or both.

7.0   Ownership of Data

City is and shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents created for the City under this agreement and/or in support of the City's implementation of the product, and any material for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion, except for computer software which shall be owned or licensed as provided in this Agreement. Contractor shall not release any materials under this section without prior written approval of City.

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as provided in this Agreement or except as determined at the sole discretion of the City. City shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or part, any reports, data, documents or other similar materials prepared under this Agreement, except for the Software and other Intellectual Property, which shall be subject to the ownership and other restrictions set forth in this Agreement.

8.0   Assignment and Subcontracting

Except as specifically provided herein, the rights, responsibilities, duties and Services to be performed under this Agreement are personal to the City and Contractor. They may not be transferred, subcontracted, or assigned without the prior written consent of both parties. Such consent shall not be unreasonably withheld.

Contractor shall cause and require each transferee, subcontractor and assignee to comply with the insurance provisions set forth herein at to the extent such insurance provisions are required of Contractor under this Contract. Failure of Contractor to so cause and require such compliance by each transferee, subcontractor and assignee shall constitute a Material Breach of this Agreement, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which CITY may elect to suspend payments hereunder, or terminate this Agreement, or both.

This section shall not restrict the ability of Contractor's Third Party Licensors to assign or otherwise transfer their obligations relative to the Subscription Products or Subscription Services, whether by law or otherwise.

9.0   Confidentiality

The parties hereto acknowledge that information obtained about the other party pursuant to this Agreement may include confidential and proprietary information (hereinafter the "Confidential Information"). Each party agrees not to use Confidential information except in accordance with the terms of this Agreement or any other agreements between the parties, and not to disclose Confidential Information to any third parties without the prior written consent of the other party, except as required by law. The parties agree that the Confidential Information does not include any information which, at the time of disclosure, is generally known by the public. City shall make no attempt to reverse compile, disassemble, or otherwise reverse engineer the Software or any portion thereof. These obligations of confidentiality shall survive termination of the License and this Agreement.

10.0   Warranty

Contractor warrants the Software to operate in all material respects as specified in the Contractor-provided documentation. If Contractor makes or has made claims in response to specifications listed in a City solicitation, then the Contractor warrants the Software to operate in all material respects as claimed in response to the solicitation. Contractor further warrants that, to the best of its knowledge, the Software does not contain any viruses.

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OF CONDITIONS, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM THE COURSE OF DEALING OR USAGE OF TRADE. CONTRACTOR DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE WILL OPERATE ERROR-FREE OR UNINTERRUPTED AND THAT ALL PROGRAM ERRORS IN THE SOFTWARE CAN BE FOUND IN ORDER TO BE CORRECTED. NOR DOES CONTRACTOR MAKE ANY WARRANTIES REGARDING THE ACCURACY, RELIABILITY OR CURRENCY OF ANY INFORMATION CONTENT.

CONTRACTOR'S LIABILITY AND RESPONSIBILITY FOR ANY AND ALL CLAIMS, DAMAGES OR LOSSES ARISING FROM USE OF THE SOFTWARE BY CITY SHALL BE ABSOLUTELY LIMITED TO THE INSURANCE LIMITS SPECIFIED HEREIN. THIS LIMITATION OF CONTRACTOR'S LIABILITY SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE.   THE STATED EXPRESS WARRANTIES ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON THE PART OF CONTRACTOR ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, AND/OR PERFORMANCE OF THE SOFTWARE.

Unless otherwise stated in the applicable Schedule, Contractor shall not be liable for, and City hereby assumes the risk of and shall indemnify and hold harmless Contractor against, any claim, injury, loss, damage, or expense (including attorneys' fees), either direct or indirect, incurred, made, or suffered by City in connection with or in any way arising out of the furnishing, performance, or use of services provided by any third party contracted by City to perform services in connection with the Software.

11.0   Nondiscrimination and Compliance with Laws

In providing Services hereunder, Contractor agrees to comply with all applicable laws and regulations, including but not limited to those relating to nondiscrimination and civil rights. Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. Contractor shall have and keep current at all times during the term of this contract all licenses and permits required by law.

12.0   Intellectual Property

City acknowledges that Contractor and its Third Party Licensors own all right, title and interest in and to the Software, the Documentation, and other information relating thereto (including all

Customizations developed for City), including all patents, trademarks, copyrights, trade secrets and other Intellectual Property rights. No rights, other than those granted pursuant to the License, are transferred to City.

13.0   Conflict of Interest

Contractor covenants that Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Contractor. This covenant shall not prohibit Contractor from offering the same or similar Software and Services to other entities.

14.0   Responsibilities of City

City shall provide all information reasonably necessary to Contractor in performing the Services provided herein. Contractor shall not be responsible for any delays caused by City's failure to provide information or failure to perform obligations.

15.0   Technology Life Expectancy

City understands, acknowledges, and agrees that the technology upon which the Hardware, Software, and Third-Party Software is based changes rapidly. City further acknowledges that Contractor will continue to improve the functionality and features of the Software to improve legal compliance, accuracy, functionality, and usability. As a result, Contractor does not represent or warrant that the Hardware, Software, and/or Third-Party Software provided to City under this Agreement or that the Computer System recommended by Contractor will function for an indefinite period of time.   Rather, Contractor and City may, from time to time, analyze the functionality of the Hardware, Software, Third-Party Software, and Computer System in response to changes to determine whether upgrades are advised. Contractor shall, for the duration of the maintenance period covered by this Agreement, and at no additional cost to City, maintain the Software to be compatible with Microsoft-supported operating systems and databases   City upgrades may include, without limitation, the installation of a new Release, additional disk storage and memory, and workstation and/or server upgrades. City upgrades may also include the installation and/or removal of Third-Party Software.   City is solely responsible for all costs associated with such future resources and upgrades,

16.0   Term and Termination

16.1   The Term of this Agreement shall commence upon execution by both parties (hereinafter the "Effective Date") and shall continue until all Tasks and Deliverables have been completed unless terminated earlier in accordance with this section. The Terms of the Software Maintenance Agreement shall be as described in the respective Schedules C and F, as applicable.

16.2   Termination by City

a. City may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, whether for City's convenience or because of the failure of Contractor to fulfill the obligations hereunder. Upon receipt of such notice, Contractor shall immediately discontinue all services affected (unless the notice directs that the Disentanglement provision herein shall be invoked), and shall deliver to City all data, estimates, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by Contractor in performing services under this Agreement, whether completed or in process.

b. For Convenience: City may, by written notice stating the extent and effective date, terminate this Agreement in whole or in part at any time. Upon receipt of such notice, Contractor shall promptly cease work and notify City as to the status of its performance. Notwithstanding any other payment provision of this Agreement, City shall pay Contractor for services performed to the date of termination, to include a

prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to City such information as is necessary to determine the mutually agreeable reasonable value of the services rendered by Contractor. The foregoing is cumulative and shall not affect any right or remedy which City may have in law or equity.

c. For Cause: Should Contractor default in the performance of this Agreement or materially breach any of its provisions, the City may elect to immediately suspend payments or terminate the contract, or both, without notice.

16.3   Termination by Contractor

a. For Nonpayment: Should City fail to pay Contractor all or any part of the payment set forth in Schedule E, Contractor may, at Contractor's option, terminate this Agreement if such failure is not remedied by City within thirty (30) days of written notice to City of such late payment.

b. For Cause: Should City default in the performance of this Agreement or materially breach any of its provisions, Contractor shall notify the City in writing of the purported breach or default. The City shall have thirty (30) days to cure such breach or default. If the breach or default is not cured by the City within the 30-day period, Contractor may terminate this Agreement upon thirty (30) days written notice.

16.4   Disentanglement

If directed by City, Contractor shall cooperate with City and City's other vendors and contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with City to accomplish a complete transition of the services as set forth in this Agreement being terminated to City or to any replacement provider designated by City, without any interruption or adverse impact on those services or any other services provided by third parties. Contractor shall fully cooperate with City and any new service provider and otherwise promptly take all steps, including but not limited to providing to City or any new service provider all requested information or documentation required to assist City in effecting a complete transition to the new service provider. Contractor shall provide all information or documentation regarding the services to be transitioned, including but not limited to data conversion tables, client files, interface specifications, and training materials. Contractor shall provide for the prompt and orderly conclusion of all work required under the Agreement, as City may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to City or the City's designee. All Contractor work done as part of the Disentanglement shall be performed by Contractor and will be reimbursed by the City at no more than Contractor's costs, up to the total amount of this Agreement. Contractor shall not receive any additional or different compensation for the work otherwise required by the Agreement. Contractor's obligation to provide the Services shall not cease until the earlier of the following: a) the Disentanglement is completed to the City's reasonable satisfaction, or b) twelve (12) months after the expiration of the then-current Term of the Agreement.

16.5   Return, Transfer and Removal of Data and other Assets

a. Upon termination of this Agreement, Contractor shall return to City all City-furnished assets in Contractor's possession.

b. Upon termination of this Agreement, Contractor shall promptly return all Licensee Data to Licensee in a mutually acceptable format prior to the completion of the disentanglement period, and ensure that said data is securely transmitted to City or City's designee.

16.6 Business Continuity in the Event of Default: Contractor shall put mechanisms in place to ensure the continued and uninterrupted operation of the software in case of default. An Event of Default shall be deemed to have occurred if the Contractor:

a. Cease to market of make available maintenance or support services for the software during a period in which the City is entitled to receive or to purchase, or is receiving or purchasing, such maintenance and support, and the Contractor has not promptly cured such failure.

b. Becomes insolvent, executes an assignment for the benefit of creditors, or becomes subject to bankruptcy or receivership proceedings.

c. Ceases business operations generally.

d. Has transferred all or substantially all of its assets or obligations set forth in this Agreement to a third party which has not assumed all of the obligations of the Contractor set forth in this Agreement.

16.7 Renegotiation Option: In view of the fact that it is unknown how long the products and services will be employed by City and that City will require ongoing maintenance and support of the products for as long as the system is operational, therefore after completion of the initial term of the contract including any extensions and renewals, County and Contractor may renegotiate the contract upon mutual agreement of the parties.

16.8 Effect of Termination: Contractor shall cooperate with City to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall promptly return all Licensee Data to Licensee in a mutually acceptable format and delivery modality.

17.0 Informal Dispute Resolution

If a dispute, controversy, or claim arises between the parties relating to this Agreement, the parties shall promptly notify one another of the dispute in writing. Each party shall promptly designate a representative to resolve the dispute. The representatives shall meet within ten (10) days following the first receipt by a party of such written notice and shall attempt to resolve the dispute within fifteen (15) days.

18.0 Compliance with Public Records Law

Contractor understands that, except for disclosures prohibited in Section 8, Confidentiality, City must disclose to the public upon request any records it receives from Contractor. Contractor further understands that any records that are obtained or generated by Contractor under this contract, except for records that are confidential under Section 8, Confidentiality, may, under certain circumstances, be open to the public upon request under the California open records law. Contractor agrees to contact City immediately upon receiving a request for information under the open records law and to comply with City's instructions on how to respond to the request.

19.0 Books of Record and Audit Provision

Contractor shall maintain complete records relating to this Agreement for a period of five (5) years from the completion of Services hereunder. Said records shall be maintained in sufficient detail to establish the accuracy of charges for services provided and corresponding calculations of any sales tax payable.

Contractor shall permit City to audit said records as well as such related records of any business entity controlled by Contractor. Said audit may be conducted on Contractor's premises or at a location designated by City, upon fifteen (15) days notice. Contractor shall promptly refund any moneys erroneously charged and shall be liable for the costs of audit if the audit establishes an over-charge of five percent (5%) or more of the total Contract amount.

20.0   Taxes

With the exception of sales or use taxes which may be levied by the State of California for software or related materials, City shall not be responsible for paying any taxes on Contractor's behalf, and should City be required to do so by state, federal, or local taxing agencies, Contractor agrees to promptly reimburse City for the full value of such paid taxes plus interest and penalty, if any. Similarly, Contractor shall not be responsible for paying any taxes on City's behalf, and should Contractor be required to do so by state, federal, or local taxing agencies, City agrees to promptly reimburse Contractor for the full value of such paid taxes plus interest and penalty, if any (The fees set forth in Schedule E do not include any amounts for sales taxes, as it is anticipated that all software and related materials will be provided by Contractor by electronic delivery.)

21.0   Jurisdiction and Venue

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in the County of Santa Clara.

22.0   Compliance with Applicable Laws

The Contractor shall comply with any and all federal, state and local laws, codes, ordinances, rules and regulations which relate to, concern of affect the Services to be provided by this Contract.

23.0   Authority

All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated an on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

24.0   Expert Witness

If requested by City, Contractor agrees to serve as an expert witness for City in any third party action or proceeding arising out of this Agreement.

25.0   Section Headings

The headings of the several sections of this Schedule A and other Sections which comprise this Agreement, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

26.0   Severability

If any one or more of the provisions of this Agreement shall for any reason be held to be invalid or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

27.0   Amendment and Waivers

Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the Party to be bound thereby. The waiver by a Party of any breach hereof or default hereunder shall not be deemed to constitute a waiver of any other breach or default. The failure of any Party to enforce any provision hereof shall not be construed as or constitute a waiver of the right of such Party thereafter to enforce such provision.

28.0   Force Majeure

Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile action, or catastrophic natural event. Should there be such an occurrence that impacts the ability of either party to perform their responsibilities under this Agreement, the nonperforming party shall give immediate written notice to the other party to explain the cause and probable duration of any such nonperformance.

29.0   Publicity

City authorizes Contractor to use City's name in its list of customers. The parties agree that either party or both may issue a mutually acceptable news release regarding City's use of the applicable Software and Support Services.   Each party's approval of such news release will not be unreasonably withheld or delayed.   Once a press release has been issued, Contractor may publicly refer to City (by name only) as being a customer of Contractor, and only in relation to this Agreement except as otherwise authorized by City.

SCHEDULE B—SUBSCRIPTION LICENSE AGREEMENT

1.Definitions

(a)   "**Discloser**" means the party providing Confidential Information to the Recipient.

(b)   "**Initial Subscription Term"** means the initial subscription period set forth on the applicable Order Form.

(c)   "**License Restriction**" means any limitation on the use of the Subscription Software identified in an Order Form (e.g., number of Authorized Users, locations, connections).

(d)   "**Order Form**" means each order form between the parties incorporating the terms of this Agreement which shall contain, without limitation, a list of the Subscription Software and associated quantity and License Restriction, a description of the Subscription Services, Subscription Fees, and payment terms.

(e)   "**Personal Information**" means information provided to Contractor by or at the direction of Licensee, or to which access was provided to Contractor in the course of Contractor's performance under this Agreement that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers). Personal Information shall include any non-public personal information regarding any individual that is subject to applicable national, state, regional, and/or local laws and regulations governing the privacy, security, confidentiality and protection of non-public personal information.

(f)   "**Recipient**" means the party receiving Confidential Information of the Discloser.

(g)   "**Renewal Term**" means any renewal or extension of Licensee's license to use the Subscription Software following the expiration of the Initial Subscription Term.

(h)   "**Residual Knowledge**" shall mean ideas, concepts, know-how or techniques related to the Discloser's technology and Confidential Information that are retained in the unaided memories of the Recipient who had rightful access to Confidential Information.

(i)   "**Service Level Description**" means the Service Level Description document applicable to the Subscription Services and attached as an exhibit to an Order Form.

(j)   "**Subscription Fees**" means the fees for the Subscription Services set forth on the applicable Order Form.

(k)   "**Subscription Services**" means the Subscription Software-related application hosting services and Support (as defined in Section 3(b)) that Contractor provides Licensee under this Agreement.

(l)   "**Subscription Software**" means collectively or individually the computer software programs identified in the applicable Order Form for which Contractor is providing the Subscription Services.

(m)   "**Subscription Term**" means the Initial Subscription Term or any Renewal Term, as applicable.

(n)   "**Third Party Licensor**" means a third party whose software products (**"Third Party Products"**) have been made available to Contractor for distribution and licensing under the terms of its agreement with such Third Party Licensor (a **"Third Party Agreement"**).

(o)   ""**UserID**" means a unique user identification credential used in combination with a unique password to access the Subscription Services.

2.   License. Subject to the terms and conditions of this Agreement and the applicable Order Form, Contractor hereby grants to Licensee a non-exclusive, non-transferable, limited license (without the right to sublease or sublicense) to access and use the Subscription Software and the Subscription Services, during the Subscription Term, in an operating environment hosted by Contractor, for Licensee's own internal use. Any rights not expressly granted in this Agreement are expressly reserved.

(a) Documentation. Licensee may make a reasonable number of copies of the Documentation for the Subscription Software for its internal use in accordance with the terms of this Agreement.

(b) <u>License Restriction</u>. Licensee's use of the Subscription Software and Subscription Services is subject to any License Restriction specified in the applicable Order Form.

(c) <u>Additional Restrictions on Use of the Subscription Software and Subscription Services</u>. In no event shall Licensee access the Subscription Software on any environment outside the hosted environment selected by Infor as part of the Subscription Services. In no event shall Licensee or its Authorized Users possess or control the Subscription Software or any related software code. Licensee is prohibited from causing or permitting the reverse engineering, disassembly or de-compilation of the Subscription Software. Except as expressly provided by this Agreement, Licensee is prohibited from using the Subscription Software to provide service bureau services to third parties. Licensee will not allow the Subscription Software to be used by, or disclose all or any part of the Subscription Software to, any person except Authorized Users. Licensee acknowledges and agrees that U.S. export control laws and other applicable export and import laws govern its use of the Subscription Software and Licensee will neither export or re-export, directly or indirectly, the Subscription Software, nor any direct product thereof in violation of such laws, or use the Subscription Software for any purpose prohibited by such laws.

(d) <u>Intellectual Property Rights Notices</u>. Licensee is prohibited from removing or altering any of the Intellectual Property Rights notice(s) embedded in the Subscription Software or that Contractor otherwise provides with the Subscription Services. Licensee must reproduce the unaltered Intellectual Property Rights notice(s) in any full or partial copies that Licensee makes of the Documentation.

(e) <u>Ownership</u>. Use of the Subscription Software and Subscription Services does not grant any ownership rights in or to the Subscription Software, the Subscription Services, or the Documentation. Licensee Data shall be the sole property of Licensee; however, Infor may aggregate anonymous statistical data regarding use and functioning of its system by its various licensees, and all such data (none of which shall be considered Licensee Data), will be the sole property of Infor.

3. Subscription Services.

(a) <u>Hosted Environment</u>. Contractor will provide the application hosting environment, including the hardware, equipment, and systems software configuration on which Contractor supports use of the Subscription Software and Subscription Services, on servers located at a facility selected by Contractor.

(b) <u>Support</u>. Contractor shall (a) provide Licensee with access (via the internet, telephone or other means established by Contractor) to Contractor's support helpline, (b) install, when and if generally available, Updates; and (c) use reasonable efforts to correct or circumvent any material deviation between the then-current, general release version of the Subscription Software and its Documentation (the foregoing referred to collectively as "Support"). Support is included in the Subscription Fee.

(c) <u>User Accounts</u>. Licensee is responsible for maintaining its own Authorized User UserIDs and passwords which can be managed through the Subscription Software interface. Licensee is responsible for maintaining the confidentiality of Licensee's UserIDs and passwords and shall cause its Authorized Users to maintain the confidentiality of their UserIDs and Passwords. Licensee is responsible for all uses of and activities undertaken with UserIDs registered on Licensee's account. Licensee agrees to immediately notify Contractor of any unauthorized use of Licensee's Contractor further warrants that, to the best of its knowledge, the Software does not contain any viruses. Contractor further warrants that, to the best of its knowledge, the Software does not contain any viruses. UserIDs of which Licensee becomes aware.

(d) <u>Connectivity</u>. Contractor will be responsible for maintaining connectivity from its network to the Internet which is capable of servicing the relevant Internet traffic to and from the hosted environment. Licensee is responsible for providing connectivity to the Internet for itself and its Authorized Users. Licensee shall also be responsible for ensuring that latency and available bandwidth from the user's desktop to Contractor's hosted routers is adequate to meet Licensee's desired level of performance. If Licensee requires a VPN or private network connection to the Subscription Services, Licensee is responsible for all costs associated with any specialized network connectivity required by Licensee.

(e) <u>Restrictions</u>. Contractor shall have no obligation to correct a problem caused by Licensee's negligence, Licensee's equipment malfunction or other causes beyond the control of Contractor.

5. Limited Warranties, Disclaimer of Warranties, and Remedies.

(b) <u>Limited Subscription Software Warranty by Contractor and Remedy For Breach.</u> Contractor warrants that the Subscription Software licensed to Licensee will operate without a Documented Defect for a period of twelve (12) months from the applicable Subscription Service Ready Date defined in the applicable Order Form Contractor's sole obligation with respect to a breach of the foregoing warranty shall be to repair or replace the Subscription Software giving rise to the breach of warranty. If Contractor is unable to repair or replace such Subscription Software within a

reasonable period of time, then, subject to the limitations set forth in Section 14 of this Agreement, Licensee may pursue its remedies at law to recover direct damages resulting from the breach of this warranty. The remedies in this Section 5(b) are exclusive and in lieu of all other remedies, and represent Contractor's sole obligations, for a breach of the foregoing warranty. Licensee must provide notice to Contractor of any warranty claim within the warranty period. For clarity, Licensee's entitlement to Support (as defined in Section 3(b)) in connection with any Documented Defect shall continue throughout the Subscription Term.

Contractor further warrants that, to the best of its knowledge, the Software does not contain any viruses.(d) <u>Limited Services Warranty and Remedy For Breach.</u> Contractor warrants to Licensee that, Contractor will render the Subscription Services with commercially reasonable care and skill. Contractor further warrants that the hosted environment will be available at all times throughout the Subscription Term, subject to the exceptions and allowances described in the Availability section of the applicable Service Level Description. The level of unavailability shall not exceed one half of one percent (0.5%) per month, excluding Scheduled Maintenance as described in the applicable Service Level Description (the "Down Time Warranty"). In the event of a breach of the foregoing warranty Contractor shall apply service level credits based on the actual availability measure for the applicable period as follows:

Availability	Service Level Credit
99.500% or greater	No Service Level Credit
99.499% - 99.000%	5% of the monthly prorated subscription fee
98.999% - 98.500%	15% of the monthly prorated subscription fee
98.499% - 95.000%	25% of the monthly prorated subscription fee
Below 95.000%	35% of the monthly prorated subscription fee

Service level credits for Subscription Fees paid on an annual basis shall be based on a monthly equivalent fee. For example, a 5% service level credit on an annual subscription fee shall be 5% of 1/12 of the annual fee. Service level credits shall be applied to Licensee's next invoice or, if Licensee has paid the final invoice under this Agreement, service level credits shall be paid to Licensee within thirty (30) calendar days following the determination that the credit is due. The service level credit is the exclusive remedy and is in lieu of all other remedies for breach of the Down Time Warranty.

(e) <u>Disclaimer of Warranties.</u> The limited warranties in this Section 5 are made to Licensee exclusively and are in lieu of all other warranties. **CONTRACTOR AND ITS THIRD PARTY LICENSORS MAKE NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE SUBSCRIPTION SOFTWARE AND SUBSCRIPTION SERVICES PROVIDED UNDER THIS AGREEMENT AND/OR ANY ORDER FORM, IN WHOLE OR IN PART. CONTRACTOR AND ITS THIRD PARTY LICENSORS EXPLICITLY DISCLAIM ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR AND ITS THIRD PARTY LICENSORS EXPRESSLY DO NOT WARRANT THAT THE SUBSCRIPTION SOFTWARE OR SUBSCRIPTION SERVICES, IN WHOLE OR IN PART, WILL BE ERROR FREE, OPERATE WITHOUT INTERRUPTION OR MEET LICENSEE'S REQUIREMENTS.**

(f) <u>Abrogation of Limited Warranty.</u> Contractor will have no obligation under this Section 5 to the extent that any alleged breach of warranty is caused by any modification of the Subscription Software not performed by or on behalf of Contractor. To the extent that an alleged breach of warranty concerns a Third Party Product that is subject to a more limited warranty under a Third Party Agreement than specified in Section 5 above, Contractor's obligations hereunder will be further limited accordingly.

(g) **FAILURE OF ESSENTIAL PURPOSE. THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 5 AND 14 WILL SURVIVE AND APPLY EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND REGARDLESS OF WHETHER LICENSEE HAS ACCEPTED ANY SUBSCRIPTION SOFTWARE OR SUBSCRIPTION SERVICE UNDER THIS AGREEMENT.**

(h) **HIGH RISK ACTIVITIES. THE SUSBSCRIPTION SOFTWARE IS NOT FAULT-TOLERANT AND IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE AS ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICATION SYSTEMS, MASS TRANSIT, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE SUBSCRIPTION SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). ACCORDINGLY, CONTRACTOR AND ITS THIRD PARTY LICENSORS DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. LICENSEE AGREES THAT CONTRACTOR AND ITS THRD PARTY LICENSORS SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM OR RELATED TO THE USE OF THE SUBSCRIPTION SOFTWARE IN SUCH APPLICATIONS.**

6. Confidential Information.

(a) <u>Confidentiality</u>. The Confidential Information disclosed under this Agreement may be used, disclosed or reproduced only to the extent necessary to further and fulfill the purposes of this Agreement. Except as otherwise permitted under this Agreement, the Recipient will not knowingly disclose to any third party, or make any use of the Discloser's Confidential Information. The Recipient will use at least the same standard of care to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. The non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after Recipient's receipt of that item; provided, however, that Licensee's obligations to maintain the Subscription Software and Documentation as confidential will survive in perpetuity. Each of Licensee and Contractor shall be shall be responsible for the breach of the confidentiality terms contained in this Section 6 by any of its directors, officers, employees, Authorized Users, agents, accountants and advisors. Notwithstanding the foregoing, this Section is not intended to prevent (a) a Recipient from using Residual Knowledge, subject to any Intellectual Property Rights of the Discloser, or (b) Contractor or its Third Party Licensors from using aggregated data regarding the use of the Subscription Services to provide reports or analytics to Licensee or to improve the performance of Contractor's or such Third Party Licensor's products, provided such data does not contain any Personal Information regarding Licensee, its employees, customers or Authorized Users. If the Recipient should receive any legal request or process in any form seeking disclosure of Discloser's Confidential Information, or if the Recipient should be advised by counsel of any obligation to disclose such Confidential Information, the Recipient shall (if allowed by law) provide the Discloser with prompt notice of such request or advice so that the Discloser may seek a protective order or pursue other appropriate assurance of the confidential treatment of the Confidential Information. Regardless of whether or not a protective order or other assurance is obtained, the Recipient shall furnish only that portion of the Discloser's Confidential Information which is legally required to be furnished and to use reasonable efforts to assure that the information is maintained in confidence by the party to whom it is furnished.

(b) <u>Security Policies and Safeguards</u>. Contractor shall establish and maintain administrative, technical, and physical safeguards designed to protect against the destruction, loss, unauthorized access or alteration of Licensee Data and Personal Information in the possession or under the control of Contractor or to which Contractor has access, which are: (i) no less rigorous than those maintained by Contractor for its own information of a similar nature; (ii) no less rigorous than generally accepted industry standards; and (iii) required by applicable laws. The security procedures and safeguards implemented and maintained by Contractor pursuant to this Section 6(b) shall include, without limitation:

  (i) User identification and access controls designed to limit access to Licensee's Data to authorized users;

  (ii) the use of appropriate procedures and technical controls regulating data entering Contractor's network from any external source;

  (iii) the use of encryption techniques when Licensee's Data is transmitted or transferred into or out of the hosted environment;

  (iv) physical security measures, including without limitation securing Licensee's Data within a secure facility where only authorized personnel and agents will have physical access to Licensee Data;

  (v) operational measures, including without limitation IT Service Management (ITSM) processes designed to ensure the correct and secure operations of information processing activities;

  (v) periodic employee training regarding the security programs referenced in this Section; and

(vi) periodic testing of the systems and procedures outlined in this Section.

(c) Review of Controls. Once in each 12 month period during the Subscription Term, Contractor shall, at its cost and expense, engage a duly qualified independent auditor to conduct a review of the design and operating effectiveness of Contractor's defined control objectives and control activities in connection with the Subscription Services. Contractor shall cause such auditor to prepare a report in accordance with the American Institute of Certified Public Accountants Statement on Standards for Attestation Engagements No. 16 (SSAE 16) or an equivalent standard, which may include ISAE 3402 (the "Audit Report"). Licensee shall have the right to request and receive a copy of the Audit Report and Licensee may share a copy of such Audit Report with its auditors and regulators, provided that, such Audit Report shall be Contractor's Confidential Information (as defined in this Agreement).

(d) Security Incident Response. In the event that Contractor becomes aware that the security of any Licensee Data or Personal Information has been compromised, or that such Licensee Data or Personal Information has been or is reasonably expected to be subject to a use or disclosure not authorized by this Agreement (an "Information Security Incident"), Contractor shall: (i) promptly (and in any event within 24 hours of becoming aware of such Information Security Incident), notify Licensee, in writing, of the occurrence of such Information Security Incident; (ii) investigate such Information Security Incident and conduct a reasonable analysis of the cause(s) of such Information Security Incident; (iii) provide periodic updates of any ongoing investigation to Licensee; (iv) develop and implement an appropriate plan to remediate the cause of such Information Security Incident to the extent such cause is within Contractor's control; and (v) cooperate with Licensee's reasonable investigation or Licensee's efforts to comply with any notification or other regulatory requirements applicable to such Information Security Incident.

General

Contractor shall defend, indemnify and save harmless the City, its officers, officials, employees, agents and volunteers from any and all liabilities, claims, demands, judgments damages, losses or expenses (including, without limitation, defense costs and attorney fees of litigation) arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof, including, but not limited to, any act or omission to act on the part of the Contractor or his agents or employees or other independent contractors directly responsible to him; except those liabilities, claims, demands, judgments damages, losses or expenses to the extent resulting from the negligence or willful misconduct of the City. With respect to any and all liabilities, claims, demands, judgments damages, losses or expenses arising from the joint or concurrent negligence of Contractor and the City, each party shall assume responsibility in proportion to the degree of its respective fault as determined by a court of competent jurisdiction. Contractor's obligation to indemnify City is contingent upon the City giving prompt notice to Contractor of any claims, permitting Contractor to defend, compromise, or settle any claim, and cooperate with the defense of any such claim. Contractor shall notify the City immediately in the event of any accident or injury arising out of or in connection with this Agreement.

5.3 Intellectual Property

d. Notwithstanding any language contained herein to the contrary, Contractor warrants that the Software does not infringe upon or violate any patent, copyright, trade secret, contract right, or any other proprietary right of any third party within the United States. Except as otherwise provided, Contractor, at its own expense, will defend, indemnify and hold City harmless from any claim made or threatened or any suit or proceeding brought against City insofar as it is based on an allegation that the Software furnished by Contractor under this Agreement infringes any copyright or patent in existence on the date the Software was initially provided to City, but only if City does all of the following:

i. notifies Contractor of that action in writing within a reasonable period of time (such that Contractor suffers no prejudice to its rights);

ii. gives Contractor the right to control and direct the defense and settlement of that action;

iii. makes no compromise, settlement, or admission of liability; and

iv. provides reasonable assistance and cooperates in the defense of that action at Contractor's reasonable expense.

e. Subject to the limitations set forth in this Agreement, Contractor shall pay any resulting damages, costs and expenses finally awarded to a third party, including, but not limited to, reasonable legal fees, incurred as a result of the Software's infringement of a copyright or patent right. Contractor will have no responsibility for the settlement of any claim, suit, or proceeding made by City without Contractor's prior written approval.

f. If the Software is held to infringe, and the use of the Software is enjoined, Contractor, at its expense, will do one of the following:

i. procure for City the right to continue using the infringing or potentially infringing Software;

ii. replace the infringing or potentially infringing Software with non-infringing software; or

iii. modify the infringing or potentially infringing Software so that it becomes non-infringing.

iv. If none of the foregoing remedies are commercially feasible, Contractor will return to City the initial license fee actually paid by City to Contractor under this agreement, and upon such a return, any licenses granted to City for the Software shall terminate in accordance with Schedule A, Section 16.4; Disentanglement.

8. **Term and Termination.**

29.1 The Term of this Agreement shall commence upon execution by both parties (hereinafter the "Effective Date") and shall continue until all Tasks and Deliverables have been completed unless terminated earlier in accordance with this section. The Terms of the Software Maintenance Agreement shall be as described in the respective Schedules A, as applicable.

29.2 Termination by City

a. City may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, because of the failure of Contractor to fulfill the obligations hereunder. Upon receipt of such notice, Contractor shall immediately discontinue all services affected (unless the notice directs that the Disentanglement provision herein shall be invoked), and shall deliver to City all data, estimates, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by Contractor in performing services under this Agreement, whether completed or in process.

b. For Convenience: City may, by written notice stating the extent and effective date, terminate this Agreement in whole or in part at any time. Upon receipt of such notice, Contractor shall promptly cease work and notify City as to the status of its performance. Notwithstanding any other payment provision of this Agreement, City shall pay Contractor for services performed to the date of termination, to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to City such information as is necessary to determine the mutually agreeable reasonable value of the services rendered by Contractor. The foregoing is cumulative and shall not affect any right or remedy which City may have in law or equity.

c. For Cause: Should Contractor default in the performance of this Agreement or materially breach any of its provisions, the City may elect to immediately suspend payments or terminate the contract, or both, without notice.

29.3   Termination by Contractor

a. For Nonpayment: Should City fail to pay Contractor all or any part of the payment set forth in Schedule E, Contractor may, at Contractor's option, terminate this Agreement if such failure is not remedied by City within thirty (30) days of written notice to City of such late payment.

b. For Cause: Should City default in the performance of this Agreement or materially breach any of its provisions, Contractor shall notify the City in writing of the purported breach or default. The City shall have thirty (30) days to cure such breach or default. If the breach is not cured by the City within the 30-day period, Contractor may terminate this Agreement upon thirty (30) days written notice.

29.4   Disentanglement

If directed by City, Contractor shall cooperate with City and City's other vendors and contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with City to accomplish a complete transition of the services as set forth in this Agreement being terminated to City or to any replacement provider designated by City, without any interruption or adverse impact on those services or any other services provided by third parties. Contractor shall fully cooperate with City and any new service provider and otherwise promptly take all steps, including but not limited to providing to City or any new service provider all requested information or documentation required to assist City in effecting a complete transition to the new service provider. Contractor shall provide all information or documentation regarding the services to be transitioned, including but not limited to data conversion tables, client files, interface specifications, and training materials. Contractor shall provide for the prompt and orderly conclusion of all work required under the Agreement, as City may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to City or the City's designee. All Contractor work done as part of the Disentanglement shall be performed by Contractor and will be reimbursed by the City at no more than Contractor's costs, up to the total amount of this Agreement. Contractor shall not receive any additional or different compensation for the work otherwise required by the Agreement. Contractor's obligation to provide the Services shall not cease until the earlier of the following: a) the Disentanglement is completed to the City's reasonable satisfaction, or b) twelve (12) months after the expiration of the then-current Term of the Agreement.

29.5   Return, Transfer and Removal of Data and other Assets

a. Upon termination of this Agreement, Contractor shall return to City all City-furnished assets in Contractor's possession.

b. Upon termination of this Agreement, Contractor shall promptly make all Licensee Data available to Licensee in a mutually acceptable format prior to the completion of the disentanglement period.

14. LIMITATIONS OF LIABILITY.

(a) **LIMITED LIABILITY OF CONTRACTOR. EXCEPT WITH RESPECT TO INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS UNDER SECTION 5.2 OF SCHEDULE A, THE TOTAL LIABILITY OF CONTRACTOR, ITS AFFILIATES AND THIRD PARTY LICENSORS IN CONNECTION WITH OR RELATED TO THE SUBSCRIPTION SOFTWARE, THE SUBSCRIPTION SERVICES, OR ANY OTHER MATTER RELATING TO THIS AGREEMENT (WHATEVER THE BASIS FOR THE CAUSE OF ACTION) WILL NOT EXCEED THE SUBSCRIPTION FEES PAID OR PAYABLE TO CONTRACTOR HEREUNDER FOR THE TWELVE-MONTH PERIOD IN WHICH SUCH LIABILITY FIRST AROSE.**

(b) **EXCLUSION OF DAMAGES. IN NO EVENT WILL CONTRACTOR, ITS AFFILIATES OR THIRD PARTY LICENSORS BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL**

DAMAGES OR DAMAGES FOR LOST PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND REGARDLESS OF WHETHER VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

15. **Audit Rights**. Contractor (including any third party auditor retained by Contractor) may audit the records and systems of Licensee to ensure compliance with the terms of this Agreement and each applicable Order Form. Contractor will notify Licensee in writing at least ten (10) business days prior to any such audit. Any such audit will be conducted during regular business hours and will not interfere unreasonably with Licensee's business activities. Contractor may audit Licensee no more than once in any twelve (12) month period. If an audit reveals that Licensee is using the Subscription Software or Subscription Services beyond the scope of the license granted herein (for example, in excess of the License Restriction), then, in addition to any other remedies available to Contractor, Licensee will promptly pay Contractor the underpaid Subscription Fees associated therewith based on Contractor's then-current list rates, as well as any applicable late charges.

SCHEDULE D: SCOPE OF PROFESSIONAL SERVICES

1.0   Objectives of the Project

Contractor will manage and implement a project, in accordance with the methodology described herein, to enable the City to utilize Contractor's **Enterprise Asset Management System** software. In fulfilling their respective obligations as described in this Schedule and the resulting implementation plans, Contractor and City agree to use all commercially reasonable efforts to perform in accordance with the respective plans and schedules.

2.0   Project Personnel

2.1   Contractor will designate a Project Manager and provide individuals to meet the requirements and accomplish the work as stated in this Agreement. If, during the course of the implementation of this Agreement, it becomes necessary for the Contractor to change the person assigned as Contractor's Project Manager, Contractor will notify City in writing. The following positions on the Contractor's project team are identified as Contractor Key Roles:

Project Manager

- Responsible for successful project implementations by managing project scope, project deliverables, project resources, project communication, project timelines, and project risk
- Responsible for transition to support

Business Analysts

- Act as subject matter experts for the product
- Define and document data requirements and mapping elements, and configuration requirements through the product overviews and business process discovery
- Perform testing and work with clients on user acceptance testing
- Train the clients and periodically update user documentation
- Support during project completion through transition

Implementation Engineers
- Responsible for data migration and importing templates into the System's data structure
- Responsible for developing reports, extracts, and interfaces for the project team

2.2   Contractor's Project Manager will be responsible for all aspects of the project implementation and will be fully knowledgeable of the objectives of the project. Contractor's Project Manager will provide leadership to both Contractor and City personnel engaged in the Project implementation, and will coordinate all administrative and technical decisions on the project.

2.3   Contractor Project Manager will coordinate all of Contractor's on-site and off-site personnel working on the Project. The Contractor Project Manager will schedule Contractor implementation team resources and work with the City's Project Manager to ensure that the City's team is available for planned activities.

2.4   City will designate a Project Manager to serve as the primary point of contact with Contractor during the execution of the Project. If, during the course of the implementation of this Agreement, it becomes necessary for the City to change the person assigned as City's Project Manager, City will notify Contractor in writing.

2.5   Contractor's Project Manager shall deliver to City's Project Manager, weekly reports of Contractor's progress on the project, including progress toward completing the Tasks and

Deliverables as described herein. Each report must contain a description of the current status of the project, the Tasks on which time was spent, the estimated progress to be made in the next reporting period and the problems encountered, the proposed solutions to them and their effect, if any, on the project schedule.

2.6   Contractor will solicit and consider input from City prior to substitution of those individuals performing Key Roles as identified herein. Contractor further agrees that any substitution made pursuant to this paragraph must be of equal or higher skills, knowledge, and abilities than those personnel originally assigned and that City's concurrence with a substitution will not be construed as an acceptance of the substitution's performance potential. The personnel furnished must have the knowledge necessary to complete requirements as defined in this Agreement.

2.7   Upon request by City, Contractor shall give reasonable consideration to replacing any Contractor personnel who City determines to be unable to perform the responsibilities of the contract acceptably, e.g., inappropriate or unprofessional personal conduct, professional inabilities, etc.

3.0   City Responsibilities

3.1   The City's Project Manager will coordinate with the Contractor Project Manager regarding the delivery of all tasks and Services. City's Project Manager will be available to Contractor Project Manager as needed to enable Services to be performed efficiently, and will participate in meetings, training, and other activities related to the delivery of Services as reasonably requested by Contractor's Project Manager.

3.2   The City will make available End Users and additional staff as necessary and appropriate to enable the implementation to proceed as planned.

3.3   City will ensure that End Users who participate in Training have the background and experience required to enable them to understand the training and learn how to use the Software, including operation of workstations in a MS Windows environment.

3.4   City will provide a training room to accommodate up to twelve students and one trainer, each with their own PC.

3.5   The City is responsible for meeting the information technology infrastructure needs of the project, including procuring and licensing all hardware and software products, other than the software provided by Contractor, required for the Project. Contractor will provide advice and guidance as necessary to assist City in acquisition and configuration of infrastructure resources. Depending on the nature and extent of such assistance to be provided by Contractor, Contractor's technical services may be billable at then-current rates. Before any non-contract technical services charges are incurred, Contractor will provide a formal quote for said services, which will be managed through the Change Request process.

3.6   The City will provide timely access to its office facilities for Contractor personnel as needed during City's regular business hours (Monday through Friday, 8am to 5pm) for the duration of the project. After-hours access can be arranged in advance with the City Project Manager. The facilities to be provided shall include work areas, desks and chairs, telephones and wireless access, and access to copier and fax machines.

3.7   The City will provide timely access to all areas of its premises required for Contractor to perform its responsibilities under this Agreement. Access to restricted areas (including the server room, wiring closets, etc.) will require an authorized escort.

3.8   The City shall provide access to business, operational, and technical data for its environment, as necessary to meet the objectives of this Project. The City shall provide the necessary extracted data in the agreed upon intermediate format required to complete the data conversion. Data and data access will be provided under a mutually agreed security policy.

3.9   The City is responsible for all data cleansing activities. Contractor will provide subject matter experts to assist with troubleshooting and developing cleansing strategy.

3.10   The City shall be responsible for participating in the Product Overview sessions; Contractor-led 'Train-the-Trainer' sessions; identifying City subject matter experts responsible for defining and documenting the City business process using the Contractor product suite; and providing training resources to conduct the End-User Training sessions in the City offices prior to system deployment.

3.11   The City shall be responsible for developing and documenting the outcome of testing scenarios from defined business processes, documented requirements, and current examples of business use cases. Execution of the functionality testing, as well as data conversion review and validation is the responsibility of the City. Contractor will provide subject matter experts to assist with troubleshooting, system training, and facilitate logging/tracking of identified product defects.

3.12   The City shall provide staging areas for the purpose of hardware and software configuration, and operational state testing before installing upgraded or new equipment at the City site.

4.0   Contractor Responsibilities

4.1   Contractor will provide City with required specifications for Local Hardware, including software specifications for required operating systems and network software, so that City may procure and/or configure the necessary Local hardware at City's expense.

4.2   Contractor will evaluate the City's local hardware: identify network, communications and computer resources required to properly operate the Software; and install and configure the local hardware for the City. Contractor guarantees to the City that, at the time of installation, the Local hardware will be properly configured and installed, and will provide sufficient network communications, and computer resources to support the anticipated number of End Users.

5.0   Place of Performance

Contractor will perform project work at its own locations as well as in City offices. City will make available such office space and meeting space as is reasonably required for Contractor staff to perform their work.

6.0   Project Management Plan

Contractor Project Manager, with the assistance and consultation of the Project Management Team, will develop and maintain a Project Management Plan (PMP) to include the following components, either incorporated into the body of the PMP or presented as exhibits or schedules thereto:

6.1   Project Schedule: A preliminary high-level Project Schedule is provided in Schedule F. The Contractor and City Project Managers shall conduct a joint review of the Project Schedule during the initial stages of the project. Once the Project Schedule is agreed by the Project Management Team it will become the primary tool used to guide the project team, monitor, and control the project.

The Project Schedule will be reviewed and updated by the project management team on a regular basis in response to changing circumstances, actual progress and as more detailed planning becomes possible. Any material changes to the accepted Project Schedule which affect the schedule of milestone tasks or that are considered to be of significant impact by either Project Manager will be handled in accordance with the Change Control Plan.

6.2   Deliverables: A list of the key Deliverables, a form for tracking the completion of the Deliverables, and a sample of the Deliverable Acceptance Statement to be used to document completion of Deliverables. Deliverables will be tracked and City's acceptance of Deliverables will be documented. Deliverable documents will be provided to the City Project Manager in an electronic format via email unless otherwise mutually agreed by the project managers. Electronic documents will be delivered in the format of the tool used to

produce them (e.g. Word, Excel, MS Project) unless specified differently in the Deliverables List or otherwise mutually agreed by the project managers.

Where deliverables are not documents or where deliverable documents are delivered by a means other than email, the Contractor Project Manager will notify the City Project Manager by email that the deliverable is complete with an appropriate description of the delivery method and how the City can take possession of the deliverable. Where delivery method includes a delay before the City is in receipt of the item, e.g. mail, then the delivery date will be when the City receives the item.

6.3   Data Conversion Plan: A description of the overall approach, responsibilities, scope and timing of the process for converting data from the City's legacy databases to the Licensed Software. The Data Conversion Plan will be based on a two-step data conversion effort with multiple iterations and test cycles. The City will design and develop the programs to extract and cleanse the data from the current data structures into an intermediate file format. Contractor will design and develop the programs to convert the data from the intermediate files into the new system. Both parties will build edit and data validation tables/files that at a minimum parallel those currently being utilized by the City for the purpose of validation in the accuracy of the data and files extracted/imported.

6.4   Issue Management Plan: A high-level description of how issues will be classified, logged, and resolved. This plan should include a template of the form to be used for logging issues and their resolutions.

6.5   Interface Specifications: A definition of external interfaces between the Software and other existing or planned information or communications systems. Contractor and City shall have responsibility for preparing and controlling all of the Interface Specifications.

6.6   Training Plan: A description of the strategy for providing comprehensive training in all aspects of system usage, administration and problem resolution will be developed during Project Initiation. The training strategy will include a needs analysis to define who needs training and on what topics, development of training curriculum, arrangement of training logistics, preparation of training materials, and assessing training effectiveness. Training will include classroom lectures and interactive training in concert with the online help resources and user manual. All training will have prescribed user-oriented objectives. Contractor will provide training materials. The Training Plan will incorporate training for the following groups of City staff, and include the indicated content:

a. Trainers – Contractor will provide general end-user 'train-the-trainer' training to designated City 'Trainers'. This training will be conducted during the pre-installation period. The information the City 'Trainers' acquire will be used as they train the End Users. Several different "train the trainer" classes will be taught prior to live implementation.

b. Key Users – City staff members identified by management who will be working with Contractor as a part of the installation and implementation team. This includes members of the City-designated Support Team who will be the principal points of contact with Contractor for ongoing maintenance as described in Schedule C.

c. Supervisors/Managers – City staff members who need to understand and facilitate the system at the operations level will train in a classroom setting. These users will learn how to manage the specifics of daily, weekly, and monthly operations as they pertain to facilitating the program as a whole system. This training will be conducted prior to live implementation.

6.7   Risk Management Plan: A high-level description of activities that Contractor and the City will implement to mitigate identified areas of risk to the successful completion of the Project. Risk management and control consists of keeping risks within agreed to bounds. It includes the identification, reporting and assessment of the status of each Project risk at the appropriate management levels. The set of identified Project risks is monitored via Project cost, schedule and requirements management systems. New risks may be identified when any or all of the project control areas have significant deviation from the

project plan. Risk reviews identify the status and the effectiveness of avoidance and contingency actions for each risk. This process will continually be reassessed during the reporting/status updates for the project. Details on procedures in place for managing risk during the implementation process, including a template for a Risk Log to be used in tracking risks and their mitigations, will be defined in this plan.

6.8   Resource Plan: A description of the roles and responsibilities (task responsibility matrix) of individuals whose efforts will be required to sufficiently staff the Project, as well as a description of how other personnel and non-personnel resources will be allocated and deployed for successful completion of the Project.

6.9   Communication Plan: A description of the communication procedures, reporting requirements and formats, and issue escalation process to be used in communications between Contractor and the City during the execution of the Project.

6.10   Change Control Plan: The procedures to be used for requesting and approving changes to the Project, including changes initiated by either the Contractor or the City. It should include a Change Request form template and list of situations/activities that will require a duly authorized Change Request to be considered valid. Change Control is a formal procedure to manage changes to project deliverables (including requirements, specifications and project plans). Through this process the impact of proposed change(s) on functionality, performance, cost, schedule, and quality objectives will be analyzed, evaluated, and reported. The Change Control Process will include, at a minimum:

   a. A change request must be made in writing by the party desiring the change, to document the potential change.

   b. The change will be reviewed and, if acceptable to City, Contractor will submit to City an estimate of the impact to cost, schedule, scope, and quality.

   c. Contractor will continue performing the services in accordance with the original agreement unless otherwise agreed upon by the City's project manager. Work cannot commence on any new activities related to the change request until all parties agree in writing.

   d. All change requests will be logged and tracked.

   e. Contractor's Project Manager and City's Project Manager will adapt project plans to incorporate approved changes.

6.11   Document Control Plan: A description of the manner in which Contractor will index and publish project documentation, and make that documentation available to the City.

6.12   Acceptance Plan: A description of the criteria for final acceptance of the Project and the procedure by which Acceptance will be demonstrated and documented. Unless otherwise provided for in this Agreement or agreed upon in writing by both parties, acceptance testing will be performed on the City's site, on the City's equipment. The Acceptance Plan shall include the following provisions:

   a. The review, approval, and acceptance of all project Deliverables will be the responsibility of City's Project Manager. The City will apply the following Software Acceptance Process to acceptance of all deliverables:

      i.   For the life of this contract, City has the right to complete a review of any deliverable received from Contractor and notify Contractor of City's findings; and

      ii. If the deliverable is unacceptable, Contractor shall resubmit the deliverable after the appropriate correction or modifications have been made.

      iii. The process described above will be repeated until final acceptance is obtained, the City waives the irregularity, or the Agreement is terminated.

   b. "Final Acceptance" is defined as:

      i.   The successful completion of all deliverables as stated in the Scope of Professional Services and following the Software Acceptance Process described above, AND

      ii.   The final delivered product fully implemented in City's live production environment AND

    c.   City will have thirty-days following completion of the Software Acceptance Process, or such other period that is mutually agreed to by the Parties, in which to accept or reject it in writing. If City rejects it, City will specify in writing its grounds for rejection and Contractor will use its best efforts to make the product conform to the requirements of this contract as soon as possible and at no additional cost to City. Contractor shall continue to use its best efforts to make the product conform to the requirements of this Agreement until City accepts the product or terminates this Agreement upon written notice to Contractor.

6.13   Quality Management Plan: A high-level description of Contractor's procedures for ensuring the overall quality and efficacy of the Software.

7.0 Project Initiation

7.1   Contractor will, in accordance with the Document Control Plan, establish a documentation library that is available to City. City shall have the option of making all documentation available on City's intranet site, provided that all documents are treated as confidential and proprietary, and not a matter of public record.

7.2   Contractor will initiate systems as described in the Project Management Plan for recording and managing issues, risks, and changes.

7.3   Contractor will conduct product overview sessions demonstrating the features of the Software and will review how the Software will be configured to meet the Specifications. The purpose of these sessions is to:

    a.   identify all product configurations necessary to enable functionality to meet defined requirements;

    b.   identify business processes changes required to be adopted by the Client in order to deploy the software; and

    c.   familiarize Client resources with the software for ultimate production usage – as introductory informal training,

7.4   Contractor will install the Software into a test area on City's Local hardware for initial testing and training.

8.0 Project Execution

8.1   Contractor will manage the overall project effort and supervise each project subgroup tasked with all project deliverables.

8.2   Contractor will provide regular status reports in accordance with the Communication Plan.

8.3   Data Mapping Review

    a.   The data mapping review will build on the Data Conversion Plan to complete a detailed study of the data conversion requirements.

    b.   The City will be primarily responsible for providing information about the nature and purposes of the data. Contractor will provide subject matter expertise as specifically related to the Licensed Software and schema

    c.   The Data Mapping Review will consist of the following tasks:

      i.   Confirm the source files containing data to be converted.

      ii.   Identify the data elements to be converted, or not converted, from each source file.

    iii. Outline the programs required to extract the data.

    iv. Provide an approach for controls and reconciliation to ensure the completeness of the mapping.

    v. Identify data purification issues, including problem, magnitude, and correction alternatives.

    vi. Document mapped data elements/files within a working document.

    vii. Provide a "field-level" mapping of source file data elements to the new system database.

d. In order to efficiently move through this process, the City may elect to engage Contractor to perform additional data conversion activities related to the overall data conversion deliverable. This additional work would be arranged through the Change Request process.

8.4   Data Conversion Development and Test

The development and testing of data conversion programs and files primarily consists of two parallel efforts:

a. City will develop and test the programs to extract the data from the current file structures and deliver them to Contractor in an intermediate file structure prescribed and provided by Contractor.

b. Contractor will develop and test the programs to load the intermediate files into the Contractor database. Only data that is absolutely necessary for proper system function and within the scope of the current database structure will be converted. All data not within the current structure will either not be converted or will be converted at Contractor's discretion at the then-current time and materials rate.

c. Contractor and the City will develop a mutually agreeable data conversion test plan including appropriate audit trails and summary reports.

8.5   Data Conversion Delivery

a. Contractor will load the converted data into the agreed upon environment, so the City can conduct acceptance testing in accordance with the Acceptance Plan.

b. Contractor and the City will work together to refine the process of extracting and loading the data to optimize time and resources required to execute the conversion at three separate points in time:

    i. Initial data load – This conversion consists of a sample size set of data addressing the majority of business rules used to define/populate City data. Several iterations of this initial data may be loaded for review based on the number of corrections needed for successful use of the data in testing. The system will be configured using the base configuration for the state-specific features.

    ii. Full/Complete data load – This conversion builds from the Initial Data Load to include all business rules and a complete set of the City data. Several iterations of this data load may also be necessary. The system will be configured using client-specific configurations identified in the product overview sessions. The goal is to use this database and conversion to move into the User Acceptance Testing activities. Each iteration will be followed by data acceptance testing according to the data conversion test plan (8.4.c).

    iii. Production data load – this is the final conversion and will be used to deploy the system into production use of the application. The configuration will be the one accepted from the User Acceptance Testing (UAT) activities.

9.0   Training

Contractor will provide training in accordance with the Training Plan. Data used during training will be the City's converted data. In addition to training with the converted data, mock "live" sessions will be run so that the actions currently performed by each department can be simulated on the new system. On completion of each training class, Contractor will provide an assessment of each trainee's skill levels and capabilities with recommendations for any additional recommended training. Additional training will be managed through the Change Request process documented in the PMP at the then-current consulting services rates.

10.0   User Acceptance Testing (UAT)

10.1   User Acceptance Testing is primarily concerned with testing the functionality of the delivered software against the City's business requirements and the Product Feature List provided in Schedule F.

10.2   The City has the primary responsibility for conducting this testing with some assistance from Contractor with process training and troubleshooting.

10.3   Acceptance of the converted data is not a part of UAT; it is addressed during the conversion process and tested with each delivery. If data errors are uncovered during UAT and deemed by the PMCCity's Project Manager as critical, then that error will be tracked and corrected as part of the UAT process.

10.4   Application or data faults or defects uncovered during UAT may require changes to the base application or conversion programs. Prior acceptance of the conversion tasks does not imply that such conversion adjustments will be change requests.

10.5   Additional levels of testing, such as integration testing, may be conducted at the discretion of the City.

11.0   Project Deliverables

11.1   Deliverables Acceptance

For each of the Deliverables there will be a formal acceptance process by which the City Project Manager provides Contractor with assurance that the City is satisfied that the Acceptance Criteria for the respective Deliverable have been met.

The procedure for formal acceptance of a deliverable will have the following steps:

a.   Contractor will complete the deliverable and present documentation or other evidence thereof to the City.

b.   For major project deliverables, Contractor will meet with the City Project Manager in person or by telephone conference call to outline the content of the deliverable and provide any points of clarification.

c.   A Deliverable Acceptance Statement (DAS) will be presented by the Contractor Project Manager to the City Project Manager.

d.   The City Project Manager will review the DAS, confer with the appropriate team members, and sign and return the DAS indicating acceptance, or in the case of non-acceptance, documenting the reasons for the non-acceptance.

e.   In the case of non-acceptance of a deliverable, Contractor will confirm receipt of the City's non-acceptance and provide a written response detailing the plan to address the non-acceptance issue(s).

f.   The Contractor Project Manager will catalog the response on the Deliverable Register and, if the deliverable is not accepted, document the effect on the project in the next Project Status Report.

g. The City will make its best effort to approve, or reject project deliverables, or otherwise request an extension for deliverables. The timeframe for approval of the submitted DAS is also defined for each deliverable. In the event the City does not respond according to the defined acceptance period for a deliverable, Contractor will assume the deliverable is approved.

11.2 Deliverables List: Contractor will provide the deliverables described in the Deliverables List below. This Deliverables List is subject to revision in the Deliverables section of the Project Plan.

Project Initiation
- Project Goals list that will be used to identify and drive upcoming sprint sessions
- Project Kickoff Meeting Notes
- Project Initiation Document

Process Design
- Visio Business process flows and associated documentation from meeting outcomes. (Team TAG)
- Revised Project Initiation Document as applicable (Team TAG)
- Sprint Plan Document

Agile Configuration
- EAM software design and configuration with documentation on "as built" configuration and screen design (Team TAG)
- List of defined reports (Team TAG)
- List of User Groups and security options for each group (Team TAG)

Existing Data Load
- Data collection templates (Microsoft Excel format) – inventory, assets, preventative maintenance schedule etc. as defined by the working sessions and by Infor upload utility requirements
- Load of the Sunnyvale provided data into the training environment

Testing
- Defect log and fixes
- Test Scripts and scenarios (Sunnyvale)
- User Acceptance Testing Certificate
- Final System Configuration (Team TAG)
- Change Management Process (Team TAG)

Training
- Sunnyvale Training Materials (Team TAG)

Go-live
- Go-live plan document
- Lessons learned summary and changes to the configuration, data or processes if needed
- Installed and Approved fully functional Infor EAM system with City Data loaded

11.3 Final Project Acceptance

a. Upon completion of all Deliverables, Contractor will present City with a Notice of Completion.

b. Upon receipt of the Notice of Completion, City will i) sign the Notice of Completion, indicating City's final acceptance of the project; or ii) submit in writing to Contractor notice of any errors that City believes exist within the Software.

c. If City has identified errors, Contractor will have a plan to correct any reproducible Priority 1, errors, as defined in Schedule C. If no Priority 1 errors exist, or if a plan to resolve has been delivered, then Contractor will provide a DAS to be executed by City to memorialize Acceptance.

12.0 Project Schedule

The Project Schedule will be developed during the Project Initiation phase and will include analysis of the current business cycle before determining a System Cutover target date. The Project Schedule is incorporated in Schedule E.

	Milestone/Item	Deliverables	Estimated Completion (Days)	Compensation	%
1	Contract Execution	Deposit		$88,897.06	26%
2	System Provisioning of Test Environment	Function test environment with base configuration parameters and Test Software Licenses	14	$ 23,275.00	7%
3	Process Design	Set of overarching requirements for software implementation		$ 10,568.75	3%
4	System Configuration (all sprints have staggered starts that overlap)				
	4a. Asset Sprints	Configuration and acceptance of Equipment Module	35	$ 31,706.25	9%
	4b. Work Flow Sprints	Configuration and acceptance of Work Module	35	$ 31,706.25	9%
	4c. Materials Sprints	Configuration and acceptance of Parts Module	35	$ 31,706.25	9%
	4d. Purchasing Sprints	Configuration and acceptance of Purchasing Module	35	$ 31,706.25	9%
5	Data Mapping into Test environment (overlaps with sprints)	Confirmed accurate data in test environment	60	$ 38,000.00	11%
6	User Acceptance Testing	Final approval of configuration	14	$ 31,706.25	9%
7	Go Live with Production Environment	City of Sunnyvale using product as designed	14	$ 23,275.00	7%

13.0 Additional Services

City and Contractor contemplate that the Implementation Plan will from time to time be amended during the project. All amendments to the Implementation Plan shall be made in writing on a change control request form and signed by the Project Manager for each party. Services requested of and provided by Contractor that are not within Contractor's obligations under this Agreement shall be subject to the applicable rates as described in Schedule E.

SCHEDULE E—SCHEDULE OF CHARGES AND PAYMENTS

1.0   License Fees

Base System Software per Specifications   **$88,897.06**

2.0   Implementation Costs
Pricing for Data Upload   **$ 38,000.00**
System Installation   **$ 9,500.00**
System Configuration   **$196,650.00**
Training   **$ 9,500.00**
Estimated Travel Cost   **$ 22,500.00**

Subtotal   **$365,047.06**

3.0   Maintenance and Support Fees

The maintenance and support fees for the Licensed Software are as follows;

Year One $ Included
Year Two $88,897.06
Year Three $88,897.06
Year Four $91,119.49

The annual Maintenance and Support fee for Year One is included in the Total Project Charges and will be paid in accordance with the payment scheduled described in Section 4.1 of this Schedule E. Fees for subsequent years are due on the anniversary date the date of Contract Execution.

4.0   Payments

4.1   Payments will be made in strict accordance with the agreed upon payment schedule and the City's acceptance of completed deliverables. This includes a 2.5% retention payment to be released upon final project acceptance. Final project acceptance will occur pending satisfactory performance of the system for 90 days after Go Live

	Milestone/Item	Deliverables	Estimated Completion (Days)	Compensation	%
1	Contract Execution	Deposit		$88,897.06	26%
2	System Provisioning of Test Environment	Function test environment with base configuration parameters and Test Software Licenses	14	$ 23,275.00	7%
3	Process Design	Set of overarching requirements for software implementation		$ 10,568.75	3%
4	System Configuration *(all sprints have staggered starts that overlap)*				

	4a. Asset Sprints	Configuration and acceptance of Equipment Module	35	$ 31,706.25	9%
	4b. Work Flow Sprints	Configuration and acceptance of Work Module	35	$ 31,706.25	9%
	4c. Materials Sprints	Configuration and acceptance of Parts Module	35	$ 31,706.25	9%
	4d. Purchasing Sprints	Configuration and acceptance of Purchasing Module	35	$ 31,706.25	9%
5	Data Mapping into Test environment (*overlaps with sprints*)	Confirmed accurate data in test environment	60	$ 38,000.00	11%
6	User Acceptance Testing	Final approval of configuration	14	$ 31,706.25	9%
7	Go Live with Production Environment	City of Sunnyvale using product as designed	14	$ 23,275.00	7%

4.2 The contractual amounts described in this Schedule to be paid to Contractor constitute the entire compensation due Contractor and all of Contractor's obligations regardless of the difficulty, materials or equipment required. The contractual amount includes fees, licenses, overhead, profit and all other direct and indirect costs incurred or to be incurred by Contractor.

4.3 Any cost adjustments to the contract must be agreed upon by the parties by amending this contract. No claim for additional services, not specifically provided herein, will be allowed by City except to the extent provided by a valid amendment to this contract through the Change Request process.

4.4 Payment will be made by City upon receipt by City of invoices from Contractor. City will be allowed thirty days to process each payment.

4.5 The payment of an invoice by City will not prejudice City's right to object to or question that or any other invoice or matter in relation thereto. Contractor's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by City, on the basis of audits conducted in accordance with the terms of this contract, not to constitute allowable costs. Any payment will be reduced for overpayments, or increased for underpayments on subsequent invoices.

4.6 City reserves the right to deduct from amounts that are or will become due and payable to Contractor under this, or any contract between the parties, any amounts that are or will become due and payable to City by Contractor.

4.7 Reimbursement for Contractor staff travel and travel related costs associated with on-site work done in performance of this contract will be paid at the GSA Standard rate. Meals will be reimbursed on a per diem basis at the current GSA rate. Contractor will make every reasonable attempt to book air travel in advance to reduce costs. Payment for any travel costs that exceed the travel budget as agreed upon by the parties must be approved by City's Project Manager.

5.0 Taxes

The fees set forth in this Agreement do not include any amounts for taxes. Sales, use or excise taxes, to the extent they apply, are the sole responsibility of City. Contractor will not submit an invoice nor will Contractor collect such taxes from the City.

6.0 Payment Terms

All payments are due Net 30 Days following City's receipt of an accurate invoice.