

**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 TeamDynamix Solutions LLC (herein "Contractor"), wherein Contractor agrees to provide the software and services commonly known as IT Service Management (ITSM) and Project Portfolio Management (PPM). As described in the Schedules comprising this Agreement, Contractor will successfully implement IT Service Management (ITSM) and Project Portfolio Management (PPM) consisting of all system modules and capabilities necessary to meet the City's requirements as defined in the System Feature List presented in Schedule F.

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: Software License and/or Hosting Agreement

SCHEDULE C: Software Maintenance Agreement

SCHEDULE D: Scope of Professional Services

SCHEDULE E: Schedule of Charges and Payments

SCHEDULE F: Associated Exhibits

CONTRACTOR:

CITY OF SUNNYVALE:

Name:

Title:

Dated:

Kent Steffens

City Manager

Dated:

Attest:

City Clerk

Approved as to Form:

City Attorney

SCHEDULE A: GENERAL TERMS AND CONDITIONS

1. 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 the Specifications; (b) expiration of agreed-upon Test Period(s) if City fails to notify Contractor of any material nonconformity during that period, which materially affects the ability of the City to use the Software in accordance with its intended purposes; 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 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 *Compliance Update*: A change made to the Software to reflect a mandated change in the applicable law.
- 1.7 *Computer System*: A complete computing and data processing device or devices made up of computer processor(s), all forms of memory in use, related electronics, storage subsystems, network equipment and software, Database Software, operating system software, and other hardware or software components or programs that are used in conjunction with the Licensed Software.
- 1.8 *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.
- 1.9 *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.
- 1.10 *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.”

- 1.11 *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.
- 1.12 *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.
- 1.13 *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 storage system or sub-system as part of the operation of the Software.
- 1.14 *Defective Work*: Work that (i) is unsatisfactory, faulty, or deficient, (ii) does not materially 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 and any subsequent amendments thereto.
- 1.15 *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”).
- 1.16 *Derivatives* – any and all adaptations, enhancements, improvements, modifications, revisions, or translations, whether to Intellectual Property or otherwise.
- 1.17 *Documentation*: Standard technical publications relating to use of the Licensed Software or Programs, such as reference, installation, administrative, maintenance, programmer manuals, and on-line help or reference material provided by Contractor to City, all of which are made available to City by Contractor by either hard copy or electronic delivery.
- 1.18 *End User*: Any employee(s), affiliate(s), agent(s), or representative(s) of the City, or any other person under the direction or control of the City that uses the Software to perform certain functions or tasks as required by the City.
- 1.19 *Enhancement*: A change or addition, other than maintenance modifications, to Software and related Documentation, including, without limitation, all patches that are generally released to the public by the Software manufacturer that are designed to improve functions, add new functions, or improve performance by changes in system design or coding; *provided, however*, that Enhancements do not include any New Product.
- 1.20 *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.
- 1.21 *Error Correction (may also be referred to as “Patch”)*: Either (a) a repair or replacement, temporary or otherwise, 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.
- 1.22 *Explanatory Documentation*: Documents that describe the details of the City's system configuration.

- 1.23 *Final Acceptance Certificate*: City's final written acceptance of the programs and services to be provided under this Agreement.
- 1.24 *Hardware*: The Computer System components and equipment, other than the Licensed Software and Third-Party Software.
- 1.25 *Local Hardware*: The computer processing device(s) on which the Software is installed, each device of which is auditable by and reported to Contractor. Local Hardware may include physical and/or virtual servers.
- 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 *Installation*: Means all preparation, processing, and other tasks necessary to install the Database Software, Software, or Third-Party Software on the Local Hardware to make it operational.
- 1.28 *Intellectual Property*: Trade Secrets, Copyrights, Derivatives, Documentation, Patents, Software, Technical Information, Technology, and any and all proprietary rights relating to any of the foregoing.
- 1.29 *Licensed or Hosted Subscription 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.
- 1.30 *Maintenance Release*: A Subsequent Release of the Licensed Software that includes Error Corrections and/or Updates.
- 1.31 *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; (3) constitutes a significant improvement in the Software separate from improvements in the ordinary course of developing the Software, and (4) is not made available to Contractor's licensees generally without separate charge.
- 1.32 *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.
- 1.33 *Object Code*: Machine readable compiled form of Licensed Software provided by Contractor.
- 1.34 *Party*: Either Contractor or City, and "Parties" means both of the same.
- 1.35 *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).
- 1.36 *Professional Services*: Any Installation, Customization, Training, Consulting, Support Service(s), and other similar service(s) performed by Contractor under the terms of this Agreement.
- 1.37 *Project Management*: The process of planning, scheduling, and controlling certain activities in order to meet project objectives.
- 1.38 *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.

- 1.39 *Programs*: The Software 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.
- 1.40 *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.
- 1.41 *Seat*: A unique physical device, such as a terminal, microcomputer, or similar computing device that is part of the Computer System at which an End User has access to some or all of the Software or Third-Party Software.
- 1.42 *Site*: The physical location(s) for which the Software is licensed. Sites shall include all locations occupied by City employees who use the software.
- 1.43 *Software*: The software program(s) identified on Schedule E, including Error Corrections, Compliance Updates, and new Versions and Releases of such program(s) that may be provided under this Agreement. The term "Software" excludes any Third-Party Software.
- 1.44 *Software Acceptance Date*: The date of final acceptance of the System by City as described in Schedule D of this Agreement.
- 1.45 *Specifications*: The functional, operational, and performance characteristics of the Licensed Software as described in Contractor's current published product descriptions and technical manuals.
- 1.46 *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.
- 1.47 *Support Services*: Those services provided by Contractor as described in Schedule C: Software Maintenance Agreement.
- 1.48 *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.
- 1.49 *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.
- 1.50 *Test Period*: The fifteen (15) business 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.
- 1.51 *Third Party Software*: Software 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.
- 1.52 *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.

- 1.53 *Update*: A revision of the Software released by Contractor to its end user customers receiving maintenance and support services from Contractor. "Update" does not include the release of a new product or added features for which Contractor generally imposes a separate charge.
- 1.54 *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 Errors, Defects and Malfunctions 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.
- 1.55 *Users*: People who, in accordance with the terms of this Agreement, are authorized by City's Authorized Representatives to access the Software for purposes of performing data entry, analysis, or reporting, or for providing technical support.
- 1.56 *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").
- 1.57 *Warranty Period*: The six (6) month period commencing on the Software Acceptance Date during which reported Errors, Defects and Malfunctions for Licensed Software or Programs products are corrected by the Contractor without charge to the City.
- 1.58 *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. 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:

TeamDynamix Solutions LLC

Contact Person:

David Gladstein

Account Manager

Ph: 630-991-6251

David.gladstein@teamdynamix.com

City of Sunnyvale:

650 West Olive Avenue

Sunnyvale City, California 94086

Contact Person:

Eddie Soliven

IT Manager

Ph: 408-730-3044

esoliven@sunnyvale.ca.gov

3. 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 accordance with 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 an acceptable 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.

4. 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. 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 the negligent acts or omissions 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. Provide all components that will allow for Business Continuity. 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 United State's copyright or patent in existence on the date the Software was initially provided to City, provided, however, that the Software was not modified by 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 on behalf of City; and
 - iv. provides reasonable assistance and cooperates in the defense of that action at City'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, and in its discretion, 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 prorated for the amount of time that City has benefited from its use of the Software, and upon such a return, any licenses granted to City for the Software shall terminate immediately.

6. 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,
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 than 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. Ownership of Data

City is and shall be the owner of the following items incidental to this Agreement upon production, whether or not they are completed: all data collected, all documents of any type whatsoever, and any material necessary 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, unless such release is required in order for Contractor to fulfill its obligations under this Agreement. Any data held by the Contractor shall be released to the City on demand as described in Section 16.5.

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 materials prepared under this Agreement, except for computer software, which shall be subject to the restrictions set forth in this Agreement.

8. 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. City explicitly consents to the performance of certain obligations under this Agreement by Kaseya US Sales, LLC ("Kaseya") and the licensing of certain Software by Kaseya. 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.

9. 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. 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 warrants that the Software does not contain any disabling devices that would allow Contractor to terminate operation of the Software. Contractor further warrants that, to the best of its knowledge, the Software does not contain any viruses. Contractor warrants as follows for all software customization made by Contractor for the City, if applicable: (1) All software customization will continue to be supported by Contractor under its maintenance agreement as defined in Schedule C; (2) All software customizations will be preserved and will remain functional in any future software versions, revisions, or updates provided by Contractor; (3) All future software versions, revision, or updates provided by Contractor will not cause the City to incur any additional cost as a result of the software customizations, unless such customizations constitute a New Product. These provisions shall apply for as long as the City is covered by the Contractor's maintenance agreement.

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 AN AMOUNT EQUAL TO FOUR TIMES (4X) THE FEES PAID BY CITY TO CONTRACTOR IN THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM, PROVIDED, HOWEVER, THAT SUCH LIMITATION SHALL NOT APPLY TO CLAIMS UNDER SECTION 5.2 OR CLAIMS ARISING OUT OF THE WILLFUL MISCONDUCT OR FRAUD OF CONTRACTOR. 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. 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. Intellectual Property

City acknowledges that Contractor, or its licensors, own(s) all right, title and interest in and to the Software, the Documentation, including System Administration and End User Manuals, and other information relating thereto (including all customizations and modifications 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. 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. 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. 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 the then-latest version or the immediately preceding version of 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. Term and Termination

16.1 The Term of this Agreement shall commence upon execution by both parties, and shall continue until three years after the execution date unless terminated earlier in accordance with this section. Upon expiration of the Initial Term, the Agreement will automatically renew for a successive period of one (1) year ("First Renewal Term"), as set forth above at then-current pricing, unless City gives Contractor written notice at least ninety (90) days prior to the expiration date of the Initial Term that the Agreement will not be renewed beyond the Initial Term. Thereafter, the Agreement will automatically renew for successive periods of one (1) year ("Subsequent Term(s)") unless either party gives the other party written notice at least ninety (90) days prior to the expiration of the then current Subsequent Term that such term will not be renewed. The Initial Term, First Renewal Term and the Subsequent Terms are herein collectively referred to as "Term". The Term of the Software Maintenance Agreement shall be as described in Schedule C.

16.2 Termination by City

- a. City may, by written notice to Contractor, terminate this Agreement upon thirty (30) days' written notice to Contractor, if Contractor is in material breach of this Agreement and fails to cure such material breach within fifteen (15) days of receipt of such notice of termination. Upon effectiveness of termination, Contractor shall immediately discontinue all services affected (unless the notice directs otherwise), and 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.

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, at Contractor's sole option, may terminate this Agreement upon thirty (30) days written notice, provided that City shall have an opportunity to cure such default or breach within such thirty (30) day period.

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 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 commercially reasonable 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, provided however, the Contractor shall not be obligated to disclose its Intellectual Property to any third party. Contractor shall provide all information or documentation regarding the services to be transitioned, including but not limited to data conversion tables, client files, and interface specifications. 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 on a time and materials basis at the Contractor's then current hourly rate for technical services. 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 ensure that any and all of City's data maintained by Contractor is extracted in a commercially recognized format reasonably acceptable to City prior to the termination date or the completion of the Disentanglement period, whichever is later, and 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. Ceases to market or 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 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 cooperate with City to ensure that any and all of City's data maintained in the software licensed to the City by Contractor is extracted in a commercially recognized format reasonably acceptable to City prior to the termination date, and that said data is securely transmitted to City. The termination of this Agreement shall not affect the City's rights to the Software pursuant to Schedule B (License Agreement) provided that City has paid all Software license fees set forth in the Schedule E and City is not in breach of any provision of this Agreement or the Schedules. If City terminates this Agreement prior to the payment of all Software license fees, or if City is in breach of this Agreement, City shall immediately cease using the Software and shall either destroy or return the original and all copies, in whole or in part, in any form, of the Software and related materials. City shall certify such action in writing to City within one (1) month after the termination date. Obligations and rights in connection with this Agreement which by their nature would continue beyond the termination of this Agreement, including without limitation, Section 11 of this Schedule A, shall survive termination of this Agreement.

17. 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) business days following the first receipt by a party of such written notice and shall attempt to resolve the dispute within fifteen (15) business days.

18. Compliance with Public Records Law

Contractor understands that, except for disclosures prohibited in Section 9, 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 9, 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. 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. 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. 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. 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 or affect the Services to be provided by this Contract.

23. 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 and 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. 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. 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. 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. 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. 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. 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—SOFTWARE LICENSE and/or HOSTING AGREEMENT

1. Agreement to License

This Agreement provides for the license or use of subscription to license of Software by Contractor as Licensor to City as Licensee, in accordance with the terms and conditions of this Agreement. Contractor shall license to City and City shall license from Contractor, the Software as described in Schedule E: Schedule of Charges and Payments.

2. Grant of License

Unless this Agreement is terminated in accordance with the provisions of Schedule A: General Terms and Conditions, Contractor grants to City a nontransferable (except as otherwise provided in Section 8 of Schedule A, "Assignment and Subcontracting"), revocable and nonexclusive license for use of the Software (machine readable version) and Documentation therefor in accordance with the terms and conditions of this Agreement beginning on the date that City is granted access to the Software and ending upon the expiration of the Term described in Section 16 of Schedule A. Such use shall be limited to City only. Title to the Software remains in Contractor or its licensors (as applicable), which shall be the sole and exclusive owner of all rights to Patents, Copyrights, Trademarks, Trade Secrets, and all other Intellectual Property rights in the Software and in all Maintenance Modifications, Derivatives and Enhancements thereto. Any data supplied by the City shall remain the property of the City.

3. Right to New Versions

If Contractor creates a new Version of the Software, Contractor will provide that new Version to City at no additional charge through the Maintenance and Support agreement provisions.

4. Third Party Software

City shall execute all documents reasonably requested by Contractor and will abide by all reasonable requirements with respect to Third Party Software licensed or sublicensed by Contractor to City hereunder, or necessary to the performance of the Software hereunder in accordance with the Specifications, and City agrees to maintain in effect all required licenses and approvals of all applicable third persons.

5. Acceptance Testing

During the Test Period, City may test the Software to verify that it conforms in all material respects to the Documentation, provided, however, that City may not reject the Software unless the Software fails to materially conform with its intended purpose. If the Software does not so conform, City shall promptly notify Contractor in writing, and Contractor shall work diligently to correct all nonconformities free of charge to City.

6. Rights of City as Licensee

- 6.1 If the Software is licensed on a Seat basis, City may use and execute the Software only on the licensed number of Seats designated on Schedule E: Schedule of Charges and Payments. Unless otherwise provided on Schedule E, City must purchase a license for each Seat that has access to the Software.
- 6.2 If the Software is licensed on a Site basis, City may use and execute the Software only in connection with the operations of the Site(s).
- 6.3 City may make copies of the Documentation for City's internal use only, provided that Contractor's copyright and other proprietary legends are reproduced on each copy.
- 6.4 City may permit access to the Software to third parties for the purpose of loading data and/or generating reports, subject to execution by said parties of a non-disclosure agreement to be provided by Contractor.
- 6.5 City shall be authorized to receive one "sandbox" test installation without needing additional

licenses.

8. Restrictions

In addition to other restrictions set forth in this Agreement, City may not:

- [8.1](#) Use the Software in any manner that violates the terms of any end user license agreement accompanying or required by the Software;
- [8.2](#) Use, copy, modify or distribute the Software (electronically or otherwise) or any copy, adaptation, transcription, or merged portion thereof except as expressly authorized under this Agreement;
- [8.3](#) Use the Software for any purpose for the benefit of any third party (including any body of government other than the entity that executes this Agreement) in a commercial, retail, service bureau, or similar enterprise;
- [8.4](#) Translate, reverse engineer, decompile, recompile, update, enhance, or create derivations of all or any part of the Software, or merge any Software with any other software or program, including, without limitation, the structure and sequence of any database and/or database files, including those created by City under this Agreement; or
- [8.5](#) Remove the labels or any proprietary legends from the Software or its Documentation, except as agreed to by both parties.

9. City Obligations

- 9.1 City is responsible for the following: (a) protecting the names and passwords of users of the Software and preventing and notifying Contractor of unauthorized use of the Software; (b) the lawfulness of, and results obtained from, all City data submitted by users of the Software and each user's acts and omissions; and (c) all maintenance of the on premises Software other than such maintenance provided by Contractor under the Agreement.
- 9.2 Client acknowledges that the Software is proprietary to Contractor or its licensors, and Contractor or its licensors retain exclusive ownership of the same throughout the world, including all related intellectual property. In order to use the Software, City may be required to acquire third party software directly from third party licensors, and the terms and conditions of such licenses are separate and distinct from this Agreement. Additionally, modifications, updates, or customizations made by Contractor to the Subscription Service shall be owned exclusively by Contractor or its licensors, and City shall receive or possess no right, title, or interest in any modifications, updates, or customizations except for its license to use the Software as expressed herein.
- 9.3 City hereby irrevocably grants all such rights and permissions in or related to City data to Contractor as are necessary or useful to perform the services contemplated by the Software and as necessary for Contractor to enforce its rights under this Agreement.
- 9.4 City is solely responsible for providing all telecommunications, computer, and other equipment necessary for accessing and using the Software, as well as any third-party access charges. Contractor retains the right, at its sole discretion and without prior notice or liability, to restrict or terminate access to the Software by City and/or particular authorized users of City if City and/or such user materially breach the terms of this Agreement or, through use of the Software, violate any applicable federal, state, local or international laws or regulations, or the rights of any third party.
- 9.5 City will not transfer any protected health information (as defined under the Health Insurance Portability and Accountability Act ("HIPAA")) or confidential information under the Family Education Rights Privacy Act ("FERPA") to Contractor without the prior written consent of Contractor. If the activities under this Agreement render Contractor a Business Associate under HIPAA, City shall execute Contractor's standard Business Associate Agreement. Contractor disclaims all liability for breaches under HIPAA, FERPA, or the promulgated regulations thereunder if such breaches were caused in any way by City, or City's employees, agents, officers, or directors.

10. Tools and Customizations

City shall not have any right to independently make changes to the underlying code of the Software. City may develop, and shall retain ownership of, hooks, interfaces, or similar tools for

use with the Software, provided that the hook, interface or tool does not use any part of the Software or require any modification or alteration of the underlying code of the Software. Contractor shall own all right, title, and interest (including all associated intellectual property rights) in and to any Customizations to the Software.

11. Documentation

Contractor will provide documentation of the process and procedures for use of the Software, including all screens. Documentation will be embedded in the Software and accessible to End Users through a “Help” icon or menu.

12. Right to Audit

Contractor shall have the right, up to two (2) times per calendar year and within ten (10) days of Contractor’s written request, during normal business hours and at times mutually agreed upon by the parties, to audit City’s use of the Software to monitor compliance with this Agreement. If an audit reveals that City has exceeded the restrictions on use, City shall be responsible for the prompt payment to Contractor of any underpayment of license fees.

SCHEDULE C—SOFTWARE MAINTENANCE AGREEMENT

1. Scope of Agreement

- 1.1 This Schedule C covers the maintenance of Software licensed or delivered by Contractor for the benefit of the City pursuant to that certain concurrently effective Software License Agreement (Schedule B) between the parties, as listed on Schedule E: Schedule of Charges and Payments. This Agreement provides maintenance services only with respect to Software, including third party software, supplied by Contractor to City pursuant to the terms of the Software License Agreement. This Agreement does not provide for maintenance services for any third party software not provided by Contractor to City or for any hardware.

2. Term of Agreement

- The initial term ("Initial Term") of this Agreement shall begin thirty (30) days following the System Cutover ("Maintenance Agreement Effective Date") with an initial term of thirty six (36) months from the execution date. Unless sooner terminated or extended in accordance with the terms hereof, the term of this Agreement shall remain in effect for a period ending on the date immediately prior to the third (3rd) annual anniversary date of the execution date.
- 2.1 Upon expiration of the Initial Term, subject to the same fees paid by Contractor during the prior term unless adjusted in accordance with Section 7 below, the Agreement will automatically renew for a successive period of one (1) year ("First Renewal Term"), as set forth above, unless City gives Contractor written notice at least ninety (90) days prior to the expiration date of the Initial Term that the Agreement will not be renewed beyond the Initial Term. Thereafter, the Agreement will automatically renew for successive periods of one (1) year ("Subsequent Term(s)") unless either party gives the other party written notice at least ninety (90) days prior to the expiration of the then current Subsequent Term that such term will not be renewed. The Initial Term, First Renewal Term and the Subsequent Terms are herein collectively referred to as "Term".

3. Maintenance Fees

Maintenance fees shall be as detailed in Schedule E, Schedule of Charges and Payments.

4. Covered Maintenance

Contractor will provide to City: (a) all services required to ensure that the Software operates in conformity with all Specifications; and (b) all Enhancements developed by Contractor for the Software and related Documentation during the Term of this Agreement that do not constitute New Product. Covered Maintenance Services do not include training or the costs of accessories and expendable supplies necessary to operate the Software, such as magnetic tape cards, optical disks, disk packs, paper, and similar items, and such items are not provided free of charge by Contractor hereunder.

5. City Obligations

- 5.1 City may designate up to five (5) persons by whom requests by Customer for Support Services may be made ("Support Team"). Contractor shall not be required to accept calls or requests from anyone other than a designated contact person. City may change its designated contact person, or request that additional people be made contact persons, at any time upon notice to Contractor.
- 5.2 City shall implement and follow the reasonable written instructions of Contractor regarding operation of the Software.
- 5.3 City shall maintain a Computer System that complies with the Hardware Specifications of the proposed solution. The Computer System shall be housed with site conditions that conform to common industry standards for all computer systems and/or media devices. City shall, at its own expense, install and periodically update a computer virus program to

protect its Computer System and database from computer viruses that may, from time to

time, be transmitted or downloaded. Contractor expressly disclaims any liability for loss or damage caused by any computer virus on City's computer platform or database, except those which may prove to be attributed to Contractor's software or activities.

- 5.4 City will provide Contractor with access to City's network using a mutually acceptable solution.
- 5.5 City shall create and maintain timely, accurate, and readable electronic back-ups of all data and program and system files.

6. Compliance Updates

Contractor shall exercise due diligence in accordance with the highest professional standards and provide City, in a timely manner, with Compliance Updates. Contractor agrees to monitor changes in the applicable State and Federal laws and regulations to help the City maintain the system compliance. The City agrees to promptly notify Contractor when it becomes aware of any applicable change in the laws or regulations which the Software is designed to support.

7. Service Level Agreement

- 7.1 Contractor will maintain a website accessible by City, which contains information concerning the Software and Support Services, including access to a service request system.
- 7.2 Contractor will respond to City requests for software support services regarding the licensed software in accordance with the procedures identified below. In each case, City may describe and submit notice of the support need by telephone, facsimile or electronic mail.
- 7.3 All Contractor staff assigned to provide services to City will be appropriately qualified by education, training and experience to deliver those services, and will be familiar with the functional capabilities of the Software.
- 7.4 Telephone Support includes: (i) remote diagnostics; (ii) service desk and dispatch; (iii) question and answer consulting; and, (iv) non-chargeable user error remedies. Contractor shall provide a toll-free maintenance telephone number. Remote diagnostics equipment is required at City's location for remote support, which equipment is to be obtained by City at its sole expense.

Contractor shall provide City with telephone support services for Software from 8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday excluding pre-defined holidays.

7.5 Response Policy

Contractor shall respond to any Errors reported by City based on the priority code assigned to each such Error. City shall identify the priority code when it initially reports the Error to Contractor. Contractor may, in its reasonable discretion, re-classify the Error after its initial investigation. In the event Contractor does not meet the service level response for the Error as described in the table below, the City may request to escalate the Error to a higher priority code, which request the Contractor shall not unreasonably deny.

<Insert table illustrating negotiated SLA, with definitions and response standards for each priority code.>

7.6 Remedies

In the event Contractor fails to meet the service level standards described herein, City may, without penalty, withhold payment for maintenance and support fees until said standards are met.

8. Right to Modify or Cancel Support

- 8.1 City may delete a subset of licenses that are no longer in use from software maintenance and support at the Agreement's next renewal date upon thirty (30) days' notice to Contractor.
- 8.2 City may resume software maintenance and support for lapsed periods by paying Contractor an amount no greater than the support fee that would have been due if maintenance and support had been continued over the lapsed period. Upon payment of such fees for lapsed periods, Contractor agrees to provide City with right to any software upgrades released during that period.
- 8.3 The parties agree that City may request additional services not covered under this Agreement by delivering to Contractor a Change Order request. Services to be provided pursuant to a Change Order may include, without limitation, services related to: (a) additional Training; (b) programming, configuration and data migration or repair; (c) research, development and business analysis related to the estimates and bidding for Customizations and Enhancements. Contractor shall provide City with a written response to the Change Order request which describes in general the work requested, an estimate of the time required to perform such services, and a schedule of the fees related thereto. For clarity, the scope and nature of a requested Change Order may require the development of specific requirements and an analysis of the impact on the Software and reports in order to provide detailed estimate for the requested work. The City understands and acknowledges that Contractor shall not undertake detailed specification development or estimate preparation until a Change Order authorizing such work is signed by City. Any impact on the Software License Fee will also be reflected in the Change Order.

SCHEDULE D: SCOPE OF PROFESSIONAL SERVICES

1. 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 IT Service Management (ITSM) and Project Portfolio Management (PPM) 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. 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 Specialists

- 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. City Responsibilities

- 3.1 The City's Project Manager will coordinate with the Contractor Project Manager regarding the delivery of all tasks and Services, including data conversion. 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.
- 3.13 Upon receipt of evidence that components of the Local Equipment are creating performance problems, the City will correct the offending equipment, software, or configuration.

4. Contractor Responsibilities

- 4.1 Contractor will provide City with required specifications for local and local hardware or connectivity equipment needed, including installation specifications.
- 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.
- 4.3 In the process of resolving performance issues it is key to not waste time and resources chasing speculative causes for the performance issues. To this end, Contractor may validate the proper installation and configuration of the Local Equipment through their own inspection or inspection by others as approved by the City but no more than one such inspection shall be performed. Following correction of any evidence based recommendations by Contractor to remedy the performance issues, it shall be entirely Contractor's responsibility to correct any remaining issues with the Software.

5. 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. 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.
 - d. Technical Users – City staff members serving as database administrators, system administrators and application administrators will be trained in backup, recovery, and advanced application features such as interface maintenance, table maintenance, data management and manipulation, archiving and error recovery.
- 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 fifteen (15) business 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, provided, however, that City may only reject the Software as a result of a material nonconformity which materially affects the ability of City to use the Software in accordance with its intended purpose. If City rejects it, City will specify in writing its grounds for rejection and Contractor will use its commercially reasonable efforts to make the product conform to the Specifications promptly and at no additional cost to City. Contractor shall continue to use its commercially reasonable efforts to make the product conform to the Specifications until Acceptance occurs or City 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. 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,

8. 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. 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. 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 City'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. 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 of their proposal below. This Deliverables List is subject to revision in the Deliverables section of the Project Plan.
- 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 Customer to memorialize Acceptance.

12. 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 F.

13. 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. License Fees

TeamDynamix Licensing (includes maintenance and support) Years 1-3 (initial 36 month contract)

Year 1 Licensing	\$16,130
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Year 2 Licensing	\$16,614
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Year 3 Licensing	\$17,112
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Total Licensing	Years 1-3: \$49,856
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2. Implementation Costs

Implementation Services Total(one-time):	\$38,060
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Implementation Services payment will be made in accordance with the deliverables as outlined in section 4.1 of the Schedule.

TDX Saas Setup Fee - (one-time):	\$2,500
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KASEYA End-Point Management 36 month Contract:

Breakdown of KASEYA Contract:

Year 1 Total:	\$43,697.35
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Year 2 Total:	\$38,655.50
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Year 3 Total:	\$38,655.50
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Remote Control and Remote Access:	Included in Kaseya Pricing
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3. Projected Renewal License, Maintenance and Support Fees

Contractor projects that renewal fees for years after the expiration of the contract would be as follows, provided, however, that such projections are non-binding and are for discussion purposes only:

Year Four	\$17,626
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Year Five	\$18,154
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Year Six	\$18,699
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Year Seven	\$19,260
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Year Eight	\$19,838
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Year Nine	\$20,433
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Year Ten	\$21,046
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4. 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 20% retention payment to be released upon final project acceptance. Final project acceptance will occur pending satisfactory performance of the system in accordance with Section 6.12(c) of Schedule D.

Stage	Deliverable/Milestone	Description	Amount Due
1.Assessment & Planning	Introduction & Next Steps	This activity is held between CLIENT and the TeamDynamix VP, Professional Services. The TeamDynamix site and initialization documentation is provided	\$11,806.66
	Assessment and Planning discussion	This discussion is a review of the initialization documentation and an assessment of the CLIENT's goals/objectives for the implementation	
	Implementation Plan document and Project Activities review	A plan document is created outlining the project's success factors and timeline as well as roles, responsibilities, and risks	
2.Configuration	TeamDynamix Foundations	TeamDynamix Foundations is the first application configuration module	\$11,806.66
	Application Module Configuration	Each module within the application that is to be configured (per SOW)	
	Configuration Complete	Completion of all application configuration	
3.Transfer	User Acceptance Testing	CLIENT reviews and confirms application configuration prior to training	\$11,806.66
	End-User Training	All licensed users are trained in preparation for go-live	

4.2The 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.

4.3Any 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.

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

4.5The 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.

4.6City 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.

4.7Reimbursement 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 Payment Terms

All payments are due Net 30 Days following City's receipt of an accurate invoice. License, Maintenance, and Support Fees are to be billed annually. Year 1 license fee will be invoiced in full at time the Software is accessible by City staff.

