

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

**Software Maintenance Agreement
between the City and County of San Francisco and**

Itron, Inc.

This Software Maintenance Agreement ("***Maintenance Agreement***") is entered into as of (the Effective Date stated below, by and between the City and County of San Francisco ("***City***") and Itron, Inc. ("***Contractor***"). City and Contractor agree that the terms and conditions of this Maintenance Agreement cover support and maintenance services to be provided by Contractor to City for the Contractor Software listed in Appendix A to this Maintenance Agreement. Contractor and City may each be referred to as a "***Party***" and together as the "***Parties***." The Parties agree as follows:

1. Definitions. Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Maintenance Agreement, it shall have the meaning set forth below or, if not set forth below, in Appendix B.

Effective Date Date upon which the Controller has certified to the availability of funds.

Errors A failure of the Contractor Software to substantially comply with the applicable published Contractor specifications.

Fix A correction of an Error, including a work-around, in order for the Software to function in accordance with the applicable published Contractor specifications.

Improvement An update, modification, enhancement, extension, new version (regardless of name or number), new module, or other change to the Contractor Software that is developed or otherwise provided by Contractor.

Software Software identified on Appendix A as "Contractor Software."

Software Release A collection of Fixes or Improvements made available to Contractor customers (either via physical media or download access).

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Maintenance Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization

certified by the City's Controller, and any amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Maintenance Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year, provided that City provides Contractor notice of termination at least thirty (30) days prior to the end of such Maintenance Year in accordance with Section 22. If funds are appropriated for a portion of the fiscal year, this Maintenance Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated, provided that City provides Contractor notice of termination at least thirty (30) days prior to the end of such Maintenance Year in accordance with Section 22.

THIS SECTION SHALL CONTROL AGAINST ANY AND ALL OTHER PROVISIONS OF THIS MAINTENANCE AGREEMENT.

3. Term of the Maintenance Agreement. Subject to Section 2, the term of this Maintenance Agreement shall be from March 30, 2014 to September 30, 2019 ("**Term**").

4. Compensation and Payment.

a. **Definitions**

"**Annual Adjustment**" means Contractor's standard price increase.

"**Annual Fee**" means the annual fee set forth on Appendix A hereto for each category of Software identified thereon plus the Annual Adjustment, if any. The Annual Fee for Maintenance Services to be provided for any partial Maintenance Year (i.e., for Products with a Maintenance Commencement Date that falls after the beginning of the Maintenance Year) shall be prorated based on the applicable number of months City is to receive Maintenance Services during such Maintenance Year.

"**Maintenance Commencement Date**" means the date for commencement of the Maintenance Services for a Product identified on Appendix A hereto.

"**Maintenance Year**" means any period of 1 year during the Term beginning on the Effective Date or any anniversary thereof.

b. **Compensation and Invoicing.** As compensation for the Maintenance Services, City shall, in advance, pay to Contractor the Annual Fee for each Maintenance Year in which it receives Maintenance Services. Contractor shall invoice City for Maintenance Services to be provided during the first Maintenance Year as soon as practicable following the Effective Date. For Maintenance Services provided during any subsequent Maintenance Year, including Maintenance Services for newly purchased Products, Contractor shall provide City with a renewal notice at least 120 days prior to the commencement of each Maintenance Year. City may discontinue Maintenance Services for a Product by providing Contractor with written notice of non-renewal for such Product no less than 90 days prior to the commencement of any subsequent Maintenance Year. Approximately 20 days prior to the commencement of any subsequent Maintenance Year, Contractor shall provide City with an invoice for the Annual Fee payable by City for the forthcoming Maintenance Year. Contractor may, in its discretion, invoice City for Maintenance Services for a Product that is added during the course of any Maintenance Year as soon as such Product has been added or at the beginning of the next Maintenance Year.

c. **City's Payment Obligation.** The City will pay all invoices within thirty (30) days following the date of invoice. However, in no event shall City be liable for interest or late charges for any late payments made after such thirty (30) day period.

Contractor and the City understand and intend that the obligations of the City to pay the Annual Maintenance Fee hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City. The City shall pay the Annual Maintenance Fee, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Maintenance Agreement. Payments will be made by warrant drawn on the Treasurer of the City. In no event shall the amount of this Maintenance Agreement exceed one hundred seventy-one thousand dollars (\$171,000.00) ("**Not to Exceed Amount**"). The breakdown of costs associated with this Maintenance Agreement appears in Appendix A.

5. Guaranteed Maximum Costs. The City's payment obligation hereunder shall not at any time exceed the Not to Exceed Amount for the Maintenance Services for the Software as described herein for the Term of this Maintenance Agreement. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in this Maintenance Agreement unless this Maintenance Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in this Maintenance Agreement and which were not approved by a written amendment to this Maintenance Agreement having been lawfully executed by the parties. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for this Maintenance Agreement which would exceed the maximum amount of funding provided for in this Maintenance Agreement for Contractor's performance under this Maintenance Agreement. Additional funding for this Maintenance Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. The City is not required to honor any offered or promised additional funding for this Maintenance Agreement which exceeds the maximum provided herein, which requires lawful approval and certification of the Controller, when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

6. Payment; Invoice Format. Deleted by agreement of the parties.

7. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or

approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

8. Taxes. Fees paid pursuant to this Maintenance Agreement, including the Annual Fee, do not include taxes. City will be responsible for and pay all applicable sales, use, excise, value-added and other taxes associated with the provision of the Maintenance Services, excluding taxes on City's income generally. Itron is responsible for submission of all such taxes paid by the City under this Maintenance Agreement to the appropriate tax authority. If City is a tax exempt entity, or pays taxes directly to the state, City will provide Contractor with a copy of its Tax Exemption Certificate or Direct Pay Permit, as applicable, upon execution of this Maintenance Agreement. No endorsement or statement on any check or payment or in any letter accompanying a check or payment or elsewhere shall be construed as an accord or satisfaction. City shall pay all amounts due under this Maintenance Agreement in lawful money of the United States, unless otherwise provided in Appendix A.

9. Scope of Service Coverage. Contractor shall provide City Maintenance Support in accordance with the terms attached hereto as Appendix B.

10. Disallowance. Deleted by agreement of the parties.

11. City Responsibilities Related to Support. City shall provide Contractor support in accordance with the terms attached hereto as Appendix B. City shall be responsible for the interface between the Software and other software products installed on City equipment. Unless otherwise agreed in writing between City and Contractor, City is responsible for installing, managing and operating any Software delivered under this Maintenance Agreement.

12. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of the Contractor to perform its obligations under this Maintenance Agreement.

13. Qualified Personnel. Work under this Maintenance Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall assign adequate personnel resources to provide the level of service within the response times specified in this Maintenance Agreement.

14. Responsibility for Equipment. Deleted by agreement of the parties.

15. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Maintenance Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and

omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Maintenance Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Maintenance Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Maintenance Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Maintenance Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Maintenance Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Maintenance Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Maintenance Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

16. Insurance.

a. Prior to the start of Field Support (as defined in Appendix B), if any, during the Term of this Maintenance Agreement, Contractor will purchase and maintain the following minimum levels of insurance:

- 1) Workers' Compensation for Contractor employees equal to applicable statutory limits and an Employers' Liability policy in an amount not less than \$1,000,000.00; and
- 2) An occurrence form Commercial General Liability policy or policies in an amount not less than \$1,000,000.00 per occurrence \$2,000,000.00 aggregate; and
- 3) Commercial Automobile Liability policy or policies in an amount not less than \$1,000,000.00 combined single limit; and
- 4) Professional Liability policy or policies insuring against liability for errors and omissions covering professional activities contemplated under this Maintenance Agreement in an amount not less than \$1,000,000.00.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That the Commercial General Liability policy is primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Maintenance Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty (30) days' written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the Term of this Maintenance Agreement and, without lapse, for a period of three (3) years beyond the expiration of this Maintenance Agreement, to the effect that, should occurrences during the Term give rise to claims made after expiration of the Maintenance Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the Term of this Maintenance Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Maintenance Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Maintenance Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Maintenance Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, in form evidencing all coverages set forth above.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

17. Indemnification. Deleted by agreement of the parties.

18. Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS MAINTENANCE AGREEMENT, CONTRACTOR DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS INCLUDING,

WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY ARISING OUT OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OR TRADE PRACTICE.

19. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS MAINTENANCE AGREEMENT, THE AGGREGATE LIABILITY OF CONTRACTOR AND ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES OR OTHER REPRESENTATIVES, ARISING IN ANY WAY IN CONNECTION WITH THIS MAINTENANCE AGREEMENT— WHETHER UNDER CONTRACT LAW, TORT LAW, OR OTHERWISE—SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CITY UNDER THIS MAINTENANCE AGREEMENT DURING THE MAINTENANCE YEAR IN WHICH THE CAUSE OF ACTION GIVING RISE TO THE LIABILITY AROSE. CONTRACTOR SHALL NOT BE LIABLE FOR ANY CLAIM MADE THE SUBJECT OF A LEGAL PROCEEDING MORE THAN 2 YEARS AFTER THE CAUSE OF ACTION ASSERTED IN SUCH CLAIM AROSE.

20. No Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS MAINTENANCE AGREEMENT, IN NO EVENT WILL CONTRACTOR BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR COVER OR FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL (INCLUDING LOSS OR CORRUPTION OF DATA OR LOSS OF REVENUE, SAVINGS OR PROFITS) OR EXEMPLARY DAMAGES, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

21. Default. Deleted by agreement of the parties.

22. Term, Termination and Default.

a. **Commencement.** Support Services for the Software begin on the Effective Date.

b. **Termination.** Either party may terminate this Maintenance Agreement effective as of the end of any Maintenance Year by giving the other party written notice of termination at least ninety (90) days prior to the end of such Maintenance Year. If either party commits a material breach of or default under this Maintenance Agreement or any agreement between the Parties related to this Maintenance Agreement, then the other party may give such party written notice of the breach or default (including, but not necessarily limited to, a statement of the facts relating to the breach or default, the provisions of this Maintenance Agreement that are in breach or default and the action required to cure the breach or default) and, at the notifying party's election, this Maintenance Agreement shall terminate pursuant to this Section if the breach or default is not cured within 30 days after receipt of notice (or such later date as may be specified in the notice).

c. **Effect of Termination.** Contractor shall not be obligated to provide any Maintenance Services after the end of the Term. If either party terminates the Maintenance Agreement for a reason other than a termination for breach or default or if Contractor terminates Maintenance Services for one or more Products, City shall be entitled to a prorated refund of the Annual Fee.

d. **End of Support.** Contractor may discontinue Maintenance Services for any Software, effective as of the end of the current Maintenance Year, by giving City written notice of such discontinuance no less than 90 days prior to the end of such Maintenance Year. At City's

request, Contractor may elect to provide custom support for products for which Maintenance Services have been discontinued at Contractor's then-current rates.

23. Rights and Duties Upon Termination or Expiration. Any Section of this Maintenance Agreement, which by its nature is intended to survive termination or expiration, shall survive the termination or expiration of this Maintenance Agreement, including but not limited to this Section and the following Sections:

- | | |
|--|--|
| 7. Submitting False Claims; Monetary Penalties. | 20. No Consequential Damages. |
| 8. Taxes. | 27. Audit and Inspection of Records. |
| 12. Payment Does Not Imply Acceptance of Work. | 28. Subcontracting. |
| 15. Independent Contractor; Payment of Taxes and Other Expenses. | 29. Assignment. |
| 16. Insurance. | 37. Entire Agreement; Modifications. |
| 18. Disclaimer of Warranties. | 39. Non-Waiver of Rights. |
| 19. Limitation of Liability. | 40. Governing Law. |
| | 43. Protection of Private Information. |

Subject to the immediately preceding sentence, upon termination of this Maintenance Agreement, in accordance with Section 22, prior to expiration of the Term specified in Section 3, this Maintenance Agreement shall terminate and be of no further force or effect.

24. Conflict of Interest. Contractor agrees to comply with Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California to the extent applicable to the Maintenance Services provided during the Term of this Maintenance Agreement. Contractor will notify the City if it becomes aware of any violation of these provisions during the Term of this Maintenance Agreement.

25. Proprietary or Confidential Information. With respect to any information supplied in connection with this Maintenance Agreement and designated by either party as confidential, or which the recipient should reasonably believe to be confidential based on its subject matter or the circumstances, the recipient agrees to protect the confidential information in a reasonable and appropriate manner, and to use and reproduce the confidential information only as necessary to perform its obligations under this Maintenance Agreement and for no other purpose. The obligations in this Section will not apply to information that is: (i) publicly known; (ii) already known to the recipient; (iii) lawfully disclosed by a third party; (iv) independently developed; or (v) disclosed pursuant to a legal requirement or order. The recipient may disclose the confidential information on a need-to-know basis to its contractor's, agents and affiliates who agree to confidentiality and non-use terms that are substantially similar to these terms

26. Notices to Parties. Unless otherwise indicated elsewhere in this Maintenance Agreement, any notice required or permitted under this Maintenance Agreement or required by law must be in writing and must be delivered in person, certified U.S. mail, fax, or by nationally recognized overnight service with all freight charges prepaid and shall be addressed as follows:

To City: Darryl Dunn
Manager
Energy Data Systems, Power Enterprise

San Francisco Public Utilities Commission
SF Public Utilities Commission
525 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102
ddunn@sfgwater.org
415.554.3234
415.554.3280 (fax)

To Contractor: Itron, Inc.
Attn: General Counsel
2111 North Molter Road
Liberty Lake, WA 99019

Notices will be deemed to have been given at the time of actual delivery, if in person, or upon receipt (as evidenced by facsimile confirmation, return receipt or overnight delivery verification). Either party may change the address to which notice is to be sent by giving written notice thereof to the other party in accordance with this Section. Notwithstanding the foregoing, notice of renewal or non-renewal of Maintenance Services shall be sent to the email or other address set forth on the signature page hereto.

27. Audit and Inspection of Records. Contractor agrees to maintain records pertaining to Contractor charges to the City for Maintenance Services and the City's payment thereof in accordance with Itron's then-existing records retention policy or as otherwise required by applicable law. Contractor may appoint a certified independent auditor reasonably acceptable to Contractor, under appropriate non-disclosure conditions, to audit these records no more than once per year to verify compliance at any time, during Contractor's regular business hours, after giving written notice reasonably in advance of the audit. The City will bear all costs and expenses associated with the exercise of its audit rights. The State of California or any federal agency having an interest in the subject of this Maintenance Agreement shall have the same rights conferred upon City by this Section.

Notwithstanding the foregoing, nothing in this Maintenance Agreement shall permit the City (or any third party on the City's behalf) to receive, review, or audit Contractor's costs of direct materials, direct labor, manufacturing overhead, and/or margin analysis.

28. Subcontracting. Contractor is prohibited from subcontracting this Maintenance Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Maintenance Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

29. Assignment. Neither party will assign this Maintenance Agreement, directly or indirectly, without the prior written consent of an authorized executive officer of the other party, provided that either party may assign all or any part of this Maintenance Agreement to its successor in a merger, consolidation or comparable transaction or to the purchaser of all or substantially all of its assets (or the assets associated with a particular line of business) so long as such successor or purchaser agrees in writing to comply with the terms and conditions of this Maintenance Agreement and, provided further that Contractor may assign this Maintenance Agreement to an affiliate, including to a parent, subsidiary or sister entity. Subject to the specific

provisions of this Maintenance Agreement, this Maintenance Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

30. Limitations on Contributions. Contractor agrees to comply with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved, to the extent applicable to Maintenance Services provided during the Term of this Maintenance Agreement. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more.

31. Drug-Free Workplace. Contractor acknowledges that pursuant to the Federal Drug Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises.

32. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Maintenance Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Maintenance Agreement.

33. Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, Contractors' bids, responses to RFPs and all other records of communications between City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

34. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "**Political Activity**") in the performance of the services provided under this Maintenance Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller to the extent applicable to the Maintenance Services provided during the Term of this Maintenance Agreement. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any

other rights or remedies available hereunder, (i) terminate this Maintenance Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

35. Compliance with Laws. Contractor shall comply with all local, state, and federal laws, ordinances, regulations and orders with respect to Contractor's performance of the Maintenance Services under this Maintenance Agreement in effect as of the Effective Date.

36. Provisions Controlling. Deleted by agreement of the parties.

37. Entire Agreement; Modifications. The Maintenance Agreement, together with the Appendices and/or Exhibits hereto, constitutes the entire agreement between the parties with respect to its subject matter and supersedes any and all prior agreements between Contractor and City related to the Maintenance Services and other items furnished under this Maintenance Agreement. This Maintenance Agreement may not be modified, nor may any of its terms be waived, except by written instrument executed, approved and signed by an authorized representative of each party in the same manner as this Maintenance Agreement. All agreements between the parties are included herein and no promises or statements have been made by either party unless endorsed hereon in writing. Should the application of any provision of this Maintenance Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Maintenance Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

38. Force Majeure. Contractor shall not be liable for failure or delay to perform any obligation under this Maintenance Agreement if such failure or delay is due to a cause beyond its reasonable control, such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to a cause beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities.

39. Non-Waiver of Rights. The failure of either party to insist upon or enforce performance by the other party of any term, covenant or condition hereof shall not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision, right or remedy in that or any other instance.

40. Governing Law. This formation, interpretation and performance of this Maintenance Agreement shall be governed by the laws of the State of California, without reference to California conflicts of law principles or the United Nations Convention on Contracts for the Sale of Goods.

41. Construction. All section headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Maintenance Agreement.

42. Administrative Remedy for Agreement Interpretation. Deleted by agreement of the parties.

43. Protection of Private Information. Contractor agrees to comply with the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private

Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M to the extent applicable to the Maintenance Services provided during the Term of this Maintenance Agreement.

44. Graffiti Removal. Deleted by agreement of the parties.

45. Food Service Waste Reduction Requirements. Deleted by agreement of the parties.

46. Cooperative Drafting. This Maintenance Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Maintenance Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Maintenance Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Maintenance Agreement.

47. Intellectual Property. Between Contractor and City, all patents, copyrights, mask works, trade secrets, trademarks and other proprietary rights in or related to any product, software or deliverable provided in connection with the Maintenance Services are and will remain the exclusive property of Contractor. Any modification or improvement to a Contractor product or deliverable that is based on City's feedback shall be the exclusive property of Contractor. City will not take any action that jeopardizes Contractor's proprietary rights nor will it acquire any right in any such product, software or deliverable or Contractor's confidential information other than rights granted in this Maintenance Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Maintenance Agreement on the day first mentioned above.

CITY

Recommended by:

Barbara Hale
Assistant General Manager, Power Enterprise
San Francisco Public Utilities Commission

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Margarita Gutierrez
Deputy City Attorney

Approved:

Jaci Fong
Director of the Office of Contract
Administration, and
Purchaser

Billing and Renewal Notice Contact Information

Name: _____

Address: _____

Phone: _____

Email: _____

Appendices

A: Contractor Software Annual Maintenance Fees

B: Technical Support and Software Maintenance

CONTRACTOR

Itron, Inc.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

By: _____

Print Name: _____

Title: _____

Itron, Inc.
2111 North Molter Road
Liberty Lake, WA 99019

City vendor number: 10035

Appendix A-1^{1,2}

Year 0 Annual Maintenance

Contractor Software	Maximum Usage	Annual License and Maintenance Fee	Annual License and Maintenance Term
MetrixND Standard Edition	5 Installations	N/A (previously paid)	May 31, 2013 – May 30, 2014
MetrixLT	2 Installations	N/A (previously paid)	May 31, 2013 – May 30, 2014

Year 1 Annual Maintenance³

Contractor Software	Maximum Usage	Annual License and Maintenance Fee	Annual License and Maintenance Term
MetrixND Standard Edition	5 Installations	\$7,917.54	May 31, 2014 – Sep 30, 2015
MetrixLT	2 Installations	\$1,583.51	May 31, 2014 – Sep 30, 2015

Year 2 Annual Maintenance

Contractor Software	Maximum Usage	Annual License and Maintenance Fee	Annual License and Maintenance Term
MetrixND Standard Edition	5 Installations	\$6,145.99	Oct 1, 2015 – Sep 30, 2016
MetrixLT	2 Installations	\$1,229.20	Oct 1, 2015 – Sep 30, 2016

Year 3 Annual Maintenance

Contractor Software	Maximum Usage	Annual License and Maintenance Fee	Annual License and Maintenance Term
MetrixND Standard Edition	5 Installations	\$6,361.10	Oct 1, 2016 – Sep 30, 2017
MetrixLT	2 Installations	\$1,272.22	Oct 1, 2016 – Sep 30, 2017

Year 4 Annual Maintenance

Contractor Software	Maximum Usage	Annual License and Maintenance Fee	Annual License and Maintenance Term
MetrixND Standard Edition	5 Installations	\$6,583.74	Oct 1, 2017 – Sep 30, 2018
MetrixLT	2 Installations	\$1,316.75	Oct 1, 2017 – Sep 30, 2018

Year 5 Annual Maintenance

Contractor Software	Maximum Usage	Annual License and Maintenance Fee	Annual License and Maintenance Term
MetrixND Standard Edition	5 Installations	\$6,814.17	Oct 1, 2018 – Sep 30, 2019
MetrixLT	2 Installations	\$1,362.84	Oct 1, 2018 – Sep 30, 2019

¹ Each separate computer on which the Software is installed to run from a storage device is one installation (an "*Installation*"). City may install the Software on an individual computer or on a storage device, such as a network server which may be accessed by up to the number of Installations stated in the table above. An Installation may not be shared or used concurrently on more than one computer. The Software may not be installed on a computer that is not part of the City's computer network.

² Subject to the terms of this Software License Agreement by and between City and Contractor dated April 20, 2004, as amended, Contractor grants to City a non-exclusive, limited, term license to use the Software in object form only. City shall pay Contractor the Annual License Fee in order to continue to use the Software. Maintenance Services are included in the Annual License and Maintenance Fee and will be provided if and when City pays the Annual License and Maintenance Fee, in accordance with the terms of the Maintenance Agreement.

³ Annual License and Maintenance Fee and Term are prorated to cover a sixteen (16) month term.

Appendix A-2

Year 0 Annual Maintenance

Contractor Software	Annual Maintenance Fee	Annual License and Maintenance Term
MV-90 xi Network License - Up to 500 Meters	N/A (previously paid)	August 1, 2013 – July 31, 2014
TCP-IP	N/A (previously paid)	August 1, 2013 – July 31, 2014

Year 1 Annual Maintenance¹

Contractor Software	Annual Maintenance Fee	Annual License and Maintenance Term
MV-90 xi Network License - Up to 500 Meters	\$20,513.36	August 1, 2014 – Sep 30, 2015
TCP-IP	\$2,928.08	August 1, 2014 – Sep 30, 2015

Year 2 Annual Maintenance

Contractor Software	Annual Maintenance Fee	Annual License and Maintenance Term
MV-90 xi Network License - Up to 500 Meters	\$18,198.28	Oct 1, 2015 – Sep 30, 2016
TCP-IP	\$2,272.93	Oct 1, 2015 – Sep 30, 2016

Year 3 Annual Maintenance

Contractor Software	Annual Maintenance Fee	Annual License and Maintenance Term
MV-90 xi Network License - Up to 500 Meters	\$18,835.22	Oct 1, 2016 – Sep 30, 2017
TCP-IP	\$2,352.48	Oct 1, 2016 – Sep 30, 2017

Year 4 Annual Maintenance

Contractor Software	Annual Maintenance Fee	Annual License and Maintenance Term
MV-90 xi Network License - Up to 500 Meters	\$19,494.45	Oct 1, 2017 – Sep 30, 2018
TCP-IP	\$2,434.81	Oct 1, 2017 – Sep 30, 2018

Year 5 Annual Maintenance

Contractor Software	Annual Maintenance Fee	Annual License and Maintenance Term
MV-90 xi Network License - Up to 500 Meters	\$20,176.76	Oct 1, 2018 – Sep 30, 2019
TCP-IP	\$2,520.03	Oct 1, 2018 – Sep 30, 2019

¹ Annual Maintenance Fees are prorated to cover a fourteen (14) month term.

Appendix A-3

Year 0 Annual Maintenance

Contractor Software	Annual Maintenance Fee	Annual License and Maintenance Term
MVRS	N/A (previously paid)	October 1, 2013 – September 30, 2014

Year 1 Annual Maintenance

Contractor Software	Annual Maintenance Fee	Annual License and Maintenance Term
MVRS	\$3,804.59	October 1, 2014 – September 30, 2015

Year 2 Annual Maintenance

Contractor Software	Annual Maintenance Fee	Annual License and Maintenance Term
MVRS	\$3,937.75	October 1, 2015 – September 30, 2016

Year 3 Annual Maintenance

Contractor Software	Annual Maintenance Fee	Annual License and Maintenance Term
MVRS	\$4,075.57	October 1, 2016 – September 30, 2017

Year 4 Annual Maintenance

Contractor Software	Annual Maintenance Fee	Annual License and Maintenance Term
MVRS	\$4,218.21	October 1, 2017 – September 30, 2018

Year 5 Annual Maintenance

Contractor Software	Annual Maintenance Fee	Annual License and Maintenance Term
MVRS	\$4,365.85	October 1, 2018 – September 30, 2019

Appendix B

1. Technical Support

a. *Support Services.*

Contractor will make available qualified technical representatives by telephone, email or other remote means during its then-current normal business hours to assist City Coordinators (defined below) with the operation of and answer questions related to the Software identified on Appendix A, which are covered by the services described herein (the "**Maintenance Services**"). Such technical support shall include, but is not limited to, troubleshooting, problem diagnosis, release or system management, and recommendations for fully utilizing the Software.

Contractor's current Support Services contact and support hours are described in the "Contractor Supports Services Contacts" document (the "**Contacts Document**"), which can be obtained by calling (877) 487-6602. Consistent with Section 1.c hereof, City will not use Support Services technical representatives in lieu of having qualified and trained support personnel of its own.

b. *Field Support.*

Upon mutual agreement of the Parties, Contractor will dispatch support personnel to City's location to provide technical support. Such support will be billed at Contractor's then-current hourly rates (with reasonable travel and living expenses invoiced at Contractor's cost) unless the cause of the reported problem is found to be the fault of Contractor.

c. *City Coordinators and Service Requests.*

City will identify no more than 2 supervisory level employees (each a "**City Coordinator**") for each Contractor product line, as identified in the Contacts Document, to serve as administrative liaisons to Contractor for all matters pertaining to the Maintenance Services for such product line. City Coordinators shall report problems with Software or Equipment (each such report, a "**Service Request**") as soon as practicable for entry into Contractor's support tracking system. Before a City Coordinator interfaces with Contractor, he or she will attend training sessions offered by Contractor to ensure that he or she is (a) knowledgeable about the operation of the Software, and (b) qualified to perform problem determination and remedial functions with respect to the Software. Such training sessions will be at Contractor's then-current rates. City will be solely responsible for all travel and other expenses incurred in connection with such training sessions. If Contractor notifies City that additional training is necessary, City will promptly ensure that all applicable employees and/or City Coordinators receive such training.

2. Software Maintenance

a. *Fixes.*

Contractor shall make commercially reasonable efforts to provide Fixes for Errors identified in a Service Request in accordance with the Response Time, Effort Level, and Escalation Path guidelines (together, the "**Service Levels**") outlined below for the applicable Severity Levels identified therein. Contractor's obligations with respect to Service Levels are contingent upon City (i) devoting the same level of effort to resolving the Error as is required of Contractor, (ii) responding to requests made by Contractor within the applicable Response Time, and (iii) assigning its most qualified personnel to help Contractor address the Error.

Severity Level	Response Times	Effort Level and Escalation Path
<p>Severity Level 1. An Error, reported by *phone contact, for which there is no work-around, which causes the Product/Software or a critical business function / process of the Contractor system to be unavailable.</p> <p>*Severity 1 errors must be reported by phone to initiate the Severity 1 response process. SRs initiated by email or web interface are logged as a Severity 3 until reviewed by Contractor Technical Support Services and validated as a higher priority.</p>	<p>During after-hour periods, Contractor will respond to a critical support voice messages within 15 minutes by a return call to City, which will validate receipt of the critical support call and begin the SR process.</p> <p>During regular business-hours Contractor will begin the SR process during the initial call.</p> <p>Following the start of the SR process Contractor will respond to City within 4 business hours with an initial response. Following the initial response to the SR, Contractor will update City at three hour intervals each day for unresolved SRs, or as otherwise agreed by the Parties.</p> <p>City will respond to an Contractor inquiry or request within three hours.</p>	<p>Contractor will make diligent efforts on a 24x7 basis*, or as otherwise agreed by the Parties. A SR shall be escalated to Contractor's TSS Management Team if a Fix is not provided within 1 business day of Contractor's receipt of the City's call and creation of the SR.</p> <p>*24X7 support for Severity Level 1 Errors is not currently available for Contractor Meter Software, Energy Forecasting and Load Research Software, and Distribution Software.</p>
<p>Severity Level 2. An Error other than a Severity Level 1 Error for which there is no work-around that results in a loss of access to the Software or that causes features of the Software to not work.</p> <p>*Severity 2 errors must be reported by phone to initiate the Severity 2 response process. SRs initiated by email or web interface are logged as a Severity 3 until reviewed by Contractor Technical Support Services and validated as a higher priority.</p>	<p>Contractor will respond to the City within 1 business day and will update the SR at least every other day. City will respond to an Contractor inquiry or request within 1 business day.</p>	<p>Contractor will make diligent efforts during normal business hours. SRs shall be escalated to Contractor's TSS Management Team if a Fix is not provided within 3 business days of Contractor's receipt of the City's call and creation of the SR.</p>

Severity Level	Response Times	Effort Level and Escalation Path
Severity Level 3. An Error other than a Severity Level 1 or Severity Level 2 Error that has a material impact on the functionality of the Software (e.g., a feature is not working as documented but a work-around is available and significant business functions are not materially impaired).	Contractor will respond to the SR within 2 business days.	Contractor will have technical representatives make diligent efforts during normal business hours.
Severity Level 4. An Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error.	Contractor will respond to the SR within 3 business days, or as otherwise agreed by the Parties.	Contractor will have its support representatives devote commercially reasonable efforts during normal business hours.
Severity Level 5. A SR for an enhancement or new functionality.	N/A	The SR will be evaluated for future product enhancement. If the enhancement or new functionality requires more immediate attention, Contractor will engage the Professional Services Group to create a customized proposal at Contractor's then-current services rates.

b. *Improvements.*

Contractor shall provide Improvements, if any, at its then-current price for such Improvements (or at no charge if such Improvements are made available to Contractor customers generally at no charge).

c. *Software Releases.*

i. **Release Numbering Convention.** Fixes and/or Improvements are made available to customers through periodic Software Releases. For informational purposes, Contractor's current practice (which may be changed at any time in Contractor's discretion) is to provide Releases using the numbering convention "XX.YY.ZZ."

- The "XX" in Contractor's numbering convention refers to a "**System Release**," which is a new version of the item of Software. A System Release may include Fixes, Improvements or interfaces to new functional modules or platforms not previously supported by Contractor.

- The "YY" in Contractor's numbering convention refers to a "**Service Pack Release**," which is an update to a System Release. Service Pack Releases may include Fixes or Improvements and are provided to Contractor customers generally on a periodic basis.

- The "ZZ" in Contractor's numbering convention refers to a "**Hot Fix Release**," which is an unscheduled release provided to one or more customers as a short-term, temporary fix to a Severity Level 1 Error. While not utilized by all Contractor Software product lines, Hot Fix Releases are not made available to Contractor customers generally but may be included in the next scheduled Service Pack for general release.

ii. **Support for Releases of Contractor Enterprise Edition and OpenWay Software.** This subsection applies only to Contractor Enterprise Edition and OpenWay software products. Maintenance Services for Contractor Enterprise Edition and OpenWay software products shall be limited to the most recent System Release and the prior System Release (and the most current Service Pack Release associated with such System Release). City will test and install Service Pack Releases associated with the System Release in use by City within 12 months of such Service Pack Releases being made available to City. City will upgrade to the latest System Release at least every twenty-four (24) to thirty-six (36) months. At City's request, Contractor may provide Release installation services at its then-current hourly rates. Contractor may elect to provide Maintenance Services for an unsupported Release of Contractor Software at its then-current rates for City support.

iii. **Support for Releases of all Other Contractor Software.** This subsection applies to all Contractor Software other than Contractor Enterprise Edition and OpenWay Software products. Maintenance Services for all Contractor Software other than Contractor Enterprise Edition and OpenWay software products shall be limited to the most recent System Release and the two prior Service Pack Releases. City will test and install System Releases and Service Pack Releases within 12 months of such Releases being made available to City. At City's request, Contractor may provide Release installation services at its then-current hourly rates. Contractor may elect to provide Maintenance Services for an unsupported Release of Contractor Software at its then-current rates for City support.

d. *Mandatory Revision.*

In the event that Contractor, in its sole reasonable discretion, determines that any Contractor Software is, or may (as applicable) be: (i) subject to a material Error; (ii) the subject of a material security breach; or, (iii) be subject to a third party infringement claim or suit of any kind, Contractor may issue a mandatory revision in correction of one or more of these issues (a "**Mandatory Revision**"). Contractor disclaims all liability and obligations that arise due to, or are result of, City's failure to test and install a Mandatory Revision in a timely fashion.

e. *Interoperability.*

Contractor makes no representation or warranty regarding the ability of the Contractor Software to interoperate with third party hardware or software other than software or hardware identified as compatible with the Contractor Software in Contractor's published documentation for such Contractor Software (the "**Documentation**").

f. *Documentation and Software Library.*

Contractor will make an electronic copy of the Documentation available to City at no additional charge via physical media or download access. Contractor will maintain a copy of its most recent supported version of the executable Contractor Software to be made available to City as necessary in the event of corrupted or inoperative Contractor Software.

g. *Restoring Software to Maintenance Services.*

If City declines Maintenance Services after the end of warranty or discontinues Maintenance Services for any Contractor Software, and thereafter wishes to resume Maintenance Services for the most recent Release of such Contractor Software, City shall, prior to receiving such

Maintenance Services, notify Contractor in writing of its request for Maintenance Services and pay Contractor's then-current re-initiation fee.

h. *Exclusions.*

Contractor shall have no obligation to City to the extent any Contractor Software is adversely affected by: (i) use of the Contractor Software in combination with other software, equipment or communications networks that are not referenced in the Documentation; (ii) any modification to the software or operating environment that is made other than through the fault of Contractor, after the Effective Date; (iii) the use of a version of the Contractor Software that is not supported by Contractor; (iv) City's failure to implement a Fix provided by Contractor; (v) the operation or maintenance of the Contractor Software other than through the fault of Contractor; (vi) viruses introduced through no fault of Contractor; (vii) use of the Contractor Software other than as permitted by Contractor, including Software operated on Equipment that has been serviced or repaired by a third party that is not Contractor certified; or (viii) City's failure to perform City responsibilities in accordance with this Maintenance Agreement.

i. *City Responsibilities.*

i. Remote Communications.

City will obtain, install, operate, and maintain remote communications software and equipment in a manner that will allow for remote access to the Software. City will make such remote access available to Contractor representatives, as necessary, for remote diagnosis and troubleshooting of the Software.

ii. System Configuration and Administration.

City will ensure that its equipment, system peripherals, operating system, and data communications environment associated with the Software is configured, operated, and maintained in accordance with the Documentation and any applicable third party documentation. These administrative activities shall include but not be limited to: checking audit logs, clearing discovered exceptions, and performing daily, weekly, and monthly operational tasks and system responsibilities. City will consult with Contractor prior to making changes that may affect the operation of the Software.

iii. Network Administration.

City will monitor and maintain, repair, replace and upgrade its local, and wide area network components (if any)—including network servers, network clients, network hubs, routers, modems, and other software components necessary for efficient and reliable network operations associated with the Software—to ensure continued conformance with the Documentation. In addition, City will administer related host names, Internet Protocol addresses, network interfaces, access, security, communications, and equipment and software version control.

iv. Database Administration.

City will administer the agreed upon database(s) associated with the Software, including hardware and software components, in accordance with the Documentation or any applicable third party documentation, which administration shall include, monitoring the database server, backing up electrical power sources, and configuring and administering of database schema, application interfaces, networking operating system, communications, and file transfer software.

City will maintain database files (e.g., truncate, cleanup, and delete files consistent with industry standard practices) and perform regular data backup and data archiving.

v. Data Review.

If Contractor determines that it is necessary to evaluate City data in order to reproduce error conditions not reproducible with Contractor's standard test data sets, City will provide Contractor with access to such data. Contractor will manage such data in a secure manner while in use and delete the data from Contractor systems upon completion of the investigation. Contractor shall not be liable for any delay or failure to resolve the problem if access to such production data is denied to Contractor.