

**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 AS A SERVICE AGREEMENT  
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND**

**Collection Solutions Software, Inc.**

This agreement (the "Agreement") is made as of November 4, 2016, in the City and County of San Francisco, State of California, by and between: **Collection Solutions Software, Inc. 5950 Canoga Ave Suite 120 Woodland Hills, Ca. 91367**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration, hereinafter referred to as "Purchasing" (collectively the "Parties").

**Recitals**

WHEREAS, the **Office of the Treasurer & Tax Collector** wishes to license certain software as a service from Contractor, including professional, implementation and training services;

WHEREAS, a Request for Proposal ("RFP") was issued on **September 4<sup>th</sup>, 2015**, and City selected Contractor as the highest qualified scorer pursuant to the RFP;

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 49381-16/17 on 01/09/2017; and

WHEREAS, Contractor represents and warrants that it is qualified to provide such software as a service and professional, implementation and training services required by City as set forth under this Agreement.

Now, THEREFORE, 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 Agreement, it shall have the meaning herein set forth.

**Acceptance**

As used herein in Section 7, Exhibits 1 and/or 2, notice from the City to Contractor that the SaaS Application meets the specifications and requirements contained in the Documentation and Exhibit 1. City's Acceptance of the SaaS Application shall be governed by the procedures set forth in Exhibits 1 and/or 2.

**Acceptance Period**

As used herein, Exhibits 1 and/or 2, the period allocated by City to test the SaaS Application to determine whether it conforms to the applicable Specifications and, if appropriate, properly operates in the defined operating environment, is capable of running on a repetitive basis, and is otherwise in compliance with the service level obligations outlined in Exhibit 2 without failure.

**Agreement**

This document and any attached appendices and exhibits, including any future written and executed amendments.

**Authorization;  
Authorization document**

This Agreement, a Blanket Purchase Order, Contract Order, or Purchase Order of the City, properly executed by the Office of the Treasurer & Tax Collector and Purchasing, and certified by the Controller for the specific funding of this Agreement or any modification thereof.

**Authorized Users**

As used herein, Exhibits 1 and/or 2, a person authorized by City to access the City's Website and utilize the SaaS Application, including any City employee, contractor, or agent, or any other individual or entity authorized by City. The number of Authorized Users under this Agreement may not exceed two hundred (200). City shall maintain a written, up to date list of current Authorized Users and provide such list to the Contractor within five (5) Business Days of the Contractor's written request.

**Back-Up Environment**

As used herein, Exhibits 1 and/or 2, Contractor's back-up data center for the SaaS Services.

**Business Hours**

Those hours which fall on any Monday through Friday between the hours of 7 AM (Pacific Time) to 7 PM (Pacific Time).

**City Data**

All data, including all text, sound, or image files that are provided to Contractor by, or on behalf of, the City through use of the SaaS Application. As between the Parties, the City retain all right, title and interest in and to City's and Authorized User Data; and as used herein, Exhibits 1 and/or 2, that data as described in Section 9 of this Agreement which includes: (a) City's data collected, used, processed, uploaded, stored, or generated as the result of the use of the SaaS Services; and, (b) personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the use of the SaaS Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, personal health information, email address, credit card information, or an individual's name in combination with any other of the elements listed herein. City Data shall be known and treated by Contractor as Confidential Information.

**Contractor's Website**

The Website that provides Authorized User access to the SaaS Application Services.

**Custom Enhancement**

Any improvement, modification or addition that, when made or added to the Software, changes its utility, efficiency, functional capability or application.

**Deliverables**

Those items described and/or itemized in Exhibits 1 and/or 2 which both the City and the Contractor commits to provide according to the Scope of Work. The City's acceptance is required.



**Disabling Code**

As used herein, Exhibits 1 and/or 2, computer instructions or programs, subroutines, code, instructions, data or functions, (including but not limited to viruses, worms, date bombs or time bombs), including but not limited to other programs, data storage, computer libraries and programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that alter, destroy, inhibit, damage, interrupt, interfere with or hinder the operation of the City's access to the SaaS Services through the Contractor's Website and/or Authorized User's processing environment, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.

**Documentation**

Technical publications relating to use of the SaaS Application, such as reference, administrative, maintenance, and programmer manuals, provided by Contractor to City. The Documentation will accurately and completely describe the functions and features of the SaaS Application and Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the SaaS Application and Services. City shall have the right to make any number of additional copies of the Documentation at no additional charge.

**End User**

As used herein, Exhibits 1 and/or 2, any Authorized User authorized by City to access the Contractor's Website and utilize the SaaS Application and Services.

**Hosted Solution(s)**

The Software, systems and servers which reside at the Contractor's facility or Contractor's chosen third party hosting sites that meet the specifications described in Exhibit 2.

**Hosted Provider**

As used herein, Exhibits 1 and/or 2, the data center(s) which will be used to host the SaaS Application as further described in Exhibit 2.

**Internet**

The term "internet" shall mean that certain global network of computers and devices commonly referred to as the "internet," including (without limitation) the World Wide Web.



<b>Performance Credit</b>	As used herein, Exhibits 1 and/or 2, that credit due to City by Contractor with regard to Contractor's service level obligations in Exhibit 4 (Service Level Obligations).
<b>Precedence</b>	Notwithstanding the terms of any other document executed by the Parties as a part of this Agreement, the terms of this Agreement shall control over any discrepancy, inconsistency, gap, ambiguity, or conflicting terms set forth in any other Contractor Pre-Printed document.
<b>Primary Environment</b>	As used herein, Exhibits 1 and/or 2, Contractor's primary Data Center for providing Hosted Solution(s).
<b>SaaS Application</b>	The licensed and hosted computer program residing on Contractor's servers that provides the Services described in Exhibit 1, and that may be accessed by Authorized Users through the Internet.
<b>SaaS Implementation and Training Services</b>	As used herein, Exhibits 1 and/or 2, those services identified in Exhibit 1 by which the Contractor will implement all necessary Software configurations and modules necessary to make the SaaS Application available and accessible to City.
<b>SaaS Issue</b>	As used herein, a problem with the SaaS Services identified by the City, which requires a response by Contractor to resolve.
<b>SaaS Maintenance Acceptance Period</b>	As used herein, that period of time during which to test any maintenance changes to the SaaS Services prior to Contractor introducing such maintenance changes into production.
<b>SaaS Maintenance Services</b>	As used herein, activities to investigate, resolve SaaS Application and Services issues and correct product bugs arising from the use of the SaaS Application and Services in a manner consistent with the published specifications and functional requirements defined during implementation.
<b>SaaS Services</b>	The provision by Contractor of the SaaS Services where Contractor's servers host the SaaS Application to perform the functionality listed in the Documentation and services described in Exhibits 1 and/or 2.
<b>SaaS Severity Level</b>	A designation of the effect of a SaaS Issue on the City. The Severity of a SaaS Issue is initially defined by the City and confirmed by Service Provider. Until the SaaS Issue has been resolved, the Severity Level may be raised or lowered based on Contractor's analysis of impact to business.

**SaaS Software**

Those SaaS licensed programs and associated documentation licensed to City by Contractor as listed in this Agreement and exhibits and any modification or Upgrades or modifications to the program(s) provided under this Agreement.

**SaaS Software Error**

Any failure of SaaS Software to conform in all material respects to the requirements of this Agreement or Contractor's published specifications. Any nonconformity resulting from City's misuse, improper use, alteration or damage of the SaaS Software, the combination of the SaaS Software with any hardware or software not supplied by or authorized by Service Provider, shall not be considered a SaaS Software Error.

**SaaS Software Error Correction**

As used herein, either a modification or addition that, when made or added to the SaaS Software, brings the SaaS Software into material conformity with the published specifications, or a procedure or routine that, when observed in the regular operation of the SaaS Software, avoids the practical adverse effect of such nonconformity.

**SaaS Software Revision**

As used herein, an update to the current SaaS Software Version of the SaaS Software code which consists of minor enhancements to existing features and code corrections. SaaS Software Revisions are provided and included with the annual service payments made by City to Contractor for the SaaS Service.

**SaaS Software Version**

As used herein, the base or core version of the SaaS Software that contains significant new features and significant fixes and is available to the City. SaaS Software Versions may occur as the SaaS Software architecture changes or as new technologies are developed. The nomenclature used for updates and upgrades consists of major, minor, build, and fix and these correspond to the following digit locations of a release, a,b,c,d, an example of which would be NCC 7.4.1.3, where the 7 refers to the major release, the 4 refers to the minor release, the 1 refers to the build, and the 3 refers to a fix. All SaaS Software Versions are provided and included as part of this Agreement upon request or approval from City for the upgrade.

**Scheduled SaaS Maintenance**

The time (in minutes) during the month, as measured by Service Provider, in which access to the SaaS Services is scheduled to be unavailable for use by the City due to planned system maintenance and major version upgrades.



<b>Contractor Holidays</b>	New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, the day after Thanksgiving, Christmas Eve, Christmas Day and New Year's Eve.
<b>Software</b>	The software identified in <b>Exhibit 2</b> , including the SaaS Software and Contractor provided Third Party Software. All Software, revisions and versions provided by Contractor shall be subject to the terms and conditions of this Agreement, including any amendments thereto.
<b>City Portal</b>	An electronic gateway to a secure entry point via Contractor's Website at tickets.cssimpact.com that allows City and its Authorized Users to log in to an area where they can view and download information or request assistance regarding the SaaS Application and Services.
<b>Successor Service Provider</b>	A new service provider, if any, selected by City in the event the SaaS Services are terminated under this Agreement.
<b>Third Party Software</b>	The software described on the <b>Exhibit 6</b> as "Third Party Software-Included in this Agreement"
<b>Transition Services</b>	That assistance reasonably requested by City to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider.
<b>Unscheduled SaaS Maintenance</b>	The time (measured in minutes) during the month, as measured by Contractor, in which access to SaaS Services is unavailable for use by the City due to reasons other than Scheduled SaaS Maintenance.

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the **Office of the Treasurer & Tax Collector**. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the **Office of the Treasurer & Tax Collector**, unless otherwise indicated by the context.

**2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This 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 Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the



fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration of this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3. Term of the Agreement.** Subject to Section 2, the term of the implementation, professional services and training services detailed in this Agreement and Exhibits shall be from 12/01/2016 through 11/30/2021 with two options to renew for an additional two years each at the City's sole and absolute discretion subject to the limitation that annual price increases shall be capped at 3 percent of the prior year, at a cost not to exceed 3 percent greater than year 5 annually.

**4. Effective Date of the Agreement.** This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

**5. SaaS Grant of Access**

**a. Grant of Access.** Subject to the terms and conditions of this Agreement, Contractor grants City and Authorized Users a renewable, irrevocable, non-exclusive, royalty-free, and worldwide right to access, display, and execute the SaaS Application and SaaS Services during the Term of this Agreement and any renewals thereof, if any.

**b. SaaS Application Title.** City acknowledges that title to each SaaS Application and SaaS Services shall at all times remain with Contractor, and that City has no rights in the SaaS Application or SaaS Services except those expressly granted by this Agreement. City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within any SaaS Application or Services or any related materials or Documentation by Contractor.

**c. Authorized APIs.** City shall be permitted to access and use Contractor's SaaS Application Program Interfaces (API's) when commercially available to develop and modify, as necessary, macros and user interfaces for use with any existing or future City systems and infrastructure. For purposes of this Agreement, such development shall be deemed an authorized modification but will not be supported by Contractor. Functionality and compatibility of City developed macros will be sole responsibility of City. Any such macros or user interfaces developed by City shall become the property of City. All flat-file exchanges will be over an encrypted file transport service (ftps/vsftpd/scp/sftp) to a secure private ftp site.

**d. Proprietary Markings.** City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Licensed SaaS Application or any related materials or Documentation.

**a. 6. Services Contractor Agrees to Perform.** During the Term of this Agreement, Contractor will perform all of the services set forth in Exhibit 1, "SaaS Implementation and Training Services," Exhibit 2, "SaaS Application and Hosted Services," and the following: Provide all hardware, software and other equipment at Contractor's hosting site as

described in Exhibit 2 or any Description of Services (and any applicable disaster recovery site) as necessary to host and deliver the SaaS Application and Services described in Exhibit 1 and 2.

b. Provide Authorized User access to the SaaS Application and Services pursuant to the grant of access in Section 5.

c. Comply with the Service Level Obligations described in Exhibit 3. It is mutually agreed and understood, that the Service Level Obligations will be applied beginning on the first full calendar month following the Acceptance of the SaaS Application and Services.

d. Maintain the correct operation of the SaaS Application and Services, Contractor's Website, and provide SaaS Maintenance Services and support services as specified in this Agreement.

e. Provide telephone support for Authorized Users in the operation of the SaaS Application and Services.

f. Provide Disaster Recovery Services as described in Section 26(d) and Exhibit 5.

#### **7. Acceptance Testing; Document Delivery; training.**

a. After City has obtained access to the SaaS Application and Services, and subsequent to each SaaS Software version upgrade, revision and patch as further outlined in Exhibit 2, City and Contractor shall conduct user acceptance testing as outlined in Exhibits 1 and 2, as the case may be, to verify that the SaaS Application and Services substantially conform to the specifications contained therein. In the event that the City determines that the SaaS Services do not meet such specifications, the City shall notify the Contractor in writing, and Contractor shall modify or correct the SaaS Services so that it satisfies the Acceptance criteria. The date of Acceptance will be that date upon which City provides Contractor with written notice of satisfactory completion of Acceptance testing. If City notifies Contractor after the Acceptance Testing Period that the SaaS Services do not meet the Acceptance criteria outlined in Exhibits 1 and 2, as the case may be, then City shall be entitled to terminate this Agreement in accordance with the procedures specified in Section 31(b) herein, and shall be entitled to a full refund of any fees paid as part of this Agreement prior to termination.

b. **Document Delivery.** Contractor will deliver completed Documentation in electronic format for the SaaS Application and Services at the time it gives City access to the SaaS Application and Services. The City may withhold its issuance of the notice of final Acceptance until City receives the completed Documentation.

c. **Trainings.** Contractor will provide training services in accordance with Exhibit 1, "Saas Implementation and Training Services".

**8. Contractor's Default.** Failure or refusal of Contractor to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to City, this Contract may be terminated by City upon ten (10) days written notice. Such termination does not waive any other legal remedies available to City.

#### **9. City Data**



a. **Ownership of City Data.** City Data is and shall remain the sole and exclusive property of City and all right, title, and interest in the same is reserved by City.

b. **Use of City Data.** Contractor is provided a limited license to City Data, including a license to collect, process, store, generate, upload, analyze and display City Data, only to the extent necessary to providing SaaS Services and not for Contractor's own purposes or later use. Contractor shall: (a) keep and maintain City Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose City Data solely and exclusively for the purpose of providing the SaaS Services, such use and disclosure being in accordance with this Agreement and applicable law; and, (c) not use, aggregate, sell, rent, transfer, distribute, create derivative works or otherwise disclose or make available City Data for Contractor's own purposes or for the benefit of anyone other than City without City's prior written consent.

c. **Access to and Extraction of City Data.** City shall have access to City's Data 24 hours a day, 7 days a week. Contractor shall, within five (5) business days of City's request, provide City, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the City Data in a mutually agreed upon machine readable format.

d. **Backup and Recovery of City Data.** As a part of the SaaS Services, Contractor is responsible for maintaining a backup of City Data and for an orderly and timely recovery of such data in the event that the SaaS Services may be interrupted. Unless otherwise described in [Exhibits 1 and/or 2](#), Contractor shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Agreement and as outlined in [Exhibit 4](#) and maintaining the security of City Data as further described herein. Contractor's backup of City Data shall not be considered in calculating storage used by City.

e. **Loss of City Data.** In the event of any act, error, omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of City Data, Contractor shall, as applicable:

i. Notify City as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence;

ii. Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City;

iii. In the case of personally identifiable information (PII), at City's sole election, (a) notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (b) reimburse City for any costs in notifying the affected individuals;

iv. In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to



comply with applicable law, or, in the absence of any legally required monitoring services, for no fewer than eighteen (18) months following the date of notification to such individuals;

v. Perform or take any other actions required to comply with applicable law as a result of the occurrence;

vi. Without limiting Contractor's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless City for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from City in connection with the occurrence;

vii. Be responsible for recreating lost City Data in the manner and on the schedule set by City without charge to City; and

viii. Provide to City a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence.

ix. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Service Provider.

## **10. Warranties of Contractor.**

**a. Warranty of Authority; No Conflict.** Each Party hereby warrants to the other that it is authorized to enter into this Agreement and that its performance thereof will not conflict with any other agreement.

**b. Warranty of Performance.** Contractor hereby warrants that when fully implemented, the SaaS Application to be configured and provided under this Agreement shall perform in accordance with the Specifications applicable thereto. With respect to all Services to be performed by Contractor under this Agreement, including SaaS Implementation and Training Services outlined in [Exhibit 1](#), and SaaS Application and Hosted Services outlined in [Exhibit 2](#), Contractor warrants that it will use reasonable care and skill. All services shall be performed in a professional, competent and timely manner by Contractor personnel appropriately qualified and trained to perform such services. In the event of a breach of the foregoing warranty relating to any service under this Agreement within twelve (12) months from the date of the providing of such services, Contractor shall, at its sole cost and expense, re-perform such services. Re-performance of such services shall be Contractor's sole liability.

**c. Compliance With Description of Services.** Contractor represents and warrants that the SaaS Application and Services specified in this Agreement and all updates and improvements to the SaaS Application and Services will comply in all material respects with the Specifications and representations specified in the Documentation (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards,



functions and requirements) as set forth (i) herein or in any amendment hereto, and (ii) the updates thereto.

**d. Title.** Contractor represents and warrants to City that it is the lawful owner or license holder of all Software, materials and property identified by Contractor as Contractor-owned and used by it in the performance of the SaaS Services contemplated hereunder and has the right to permit City access to or use of the SaaS Application and Services and each component thereof. To the extent that Contractor has used Open Source Software (“OSS”) in the development of the SaaS Application and Services, Contractor represents and warrants that it is in compliance with any applicable OSS license(s) and is not infringing.

**e. Disabling Code.** Contractor represents and warrants that the SaaS Application and Services, and any information, reports or other materials provided to Authorized Users as a result of the operation of the SaaS Application and Services, including future enhancements and modifications thereto, shall be free of any Disabling Code at the time of their receipt by Authorized Users.

**f.** EXCEPT AS EXPRESSLY INDICATED IN THIS AGREEMENT AND SUBJECT TO ANY STATUTORY WARRANTIES WHICH CANNOT BE EXCLUDED, CONTRACTOR MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SAAS APPLICATION OR SERVICE, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND OR FITNESS FOR A PARTICULAR PURPOSE.

**a. 11. Compensation** No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by City as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

**b. SaaS Implementation and Training Services:** SaaS Implementation and Training Services shall be rendered pursuant to [Exhibit 1](#), attached hereto and incorporated by reference as though fully set forth herein. The breakdown of costs associated with the SaaS Implementation and Training Services appear in [Exhibit 3](#) (“[Calculation of Charges](#)”), attached hereto and incorporated by reference as though fully set forth herein. Compensation for services rendered pursuant to [Exhibit 1](#) shall be made in monthly payments on or before the 30<sup>th</sup> day of each month for work that City, in its reasonable discretion, concludes has been performed as of the 1<sup>st</sup> day of the immediately preceding month. In no event shall the amount for SaaS Implementation and Training Services under this Agreement exceed one hundred eighty thousand dollars and zero cents (\$180,000.00) over the 5-year term. **SaaS Application and Hosted Services:** SaaS Application and Hosted Services shall be rendered pursuant to [Exhibit 2](#), attached hereto and incorporated by reference as though fully set forth herein. The breakdown of costs associated with the SaaS Application and Hosted Services appear in [Exhibit 3](#) (“[Calculation of Charges](#)”), attached hereto and incorporated by reference as though fully set forth herein. Compensation for services rendered pursuant to [Exhibits 2](#) shall be made in quarterly payments, based on a calendar year, on or before the 1<sup>st</sup> day of each quarter. In no event shall the amount for SaaS Application and Hosted Services under this Agreement exceed

two million four hundred sixty-five thousand seven hundred sixty-five dollars and zero cents (\$2,465,765.00).

**12. Disallowance** If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

**13. Indemnification.**

- a. General Indemnification.** Contractor shall indemnify City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. Contractor shall also indemnify, defend and hold City harmless from all suits or claims or administrative proceedings for breaches of federal and/or state law regarding the privacy of health information, electronic records or related topics, arising directly or indirectly from Contractor's performance of this Agreement, except where such breach is the result of the active negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

- b. Infringement Indemnification.** If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the Licensed SaaS



Application and Services infringes a patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Licensed SaaS Application and/or Services constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement. In the event a final injunction is obtained against City's use of the Licensed SaaS Application and Services by reason of Infringement, or in Contractor's opinion City's use of the Licensed SaaS Application and Services is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the Licensed SaaS Application and Services as contemplated hereunder, (b) replace the Licensed SaaS Application and Services with a non-infringing, functionally equivalent substitute Licensed SaaS Application and Services, or (c) suitably modify the Licensed SaaS Application and Services to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Licensed SaaS Application and Services. If none of these options is reasonably available to Contractor, then the applicable Authorization Document or relevant part of such Authorization Document may be terminated at the option of either party hereto and Contractor shall refund to City all amounts paid under this Agreement for the license of such infringing Licensed SaaS Application and/or Services. Any unauthorized modification or attempted modification of the Licensed SaaS Application and Services by City or any failure by City to implement any improvements or updates to the Licensed SaaS Application and Services, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or combination of the Licensed SaaS Application and Services with products or data of the type for which the Licensed SaaS Application and Services was neither designed nor intended to be used.

**14. Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. 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 the contract unless the agreement is amended in writing and approved as required by law to authorize 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 the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the



contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract 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.

**15. Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique identifying number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notice to the Parties."

**16. 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. 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.

**17. Taxes.** Payment of any taxes, including possessory interest taxes, and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor.

**18. 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 Contractor to replace unsatisfactory work, the Licensed Software, although the unsatisfactory character of such work, or Licensed Software may not have been apparent or detected at the time such payment was made. Software, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

**19. Qualified Personnel.** Work under this 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.

**20. Responsibility for Equipment.** City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees means that

Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to Contractor, its employees, City employees or third parties, or to property belonging to any of the above.

## **21. 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 Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. 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 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 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 Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**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 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 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 Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorney's fees, arising from this section.

## **22. Nondiscrimination; Penalties**

**a. Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**b. Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

**d. Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

**e. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this

Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

### **23. Insurance**

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- 2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- 3) (Reserved)
- 4) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:
  - a) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form;
  - b) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and
  - c) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

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

- 1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- 2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this 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 days' advance 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 "Notice 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 Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the 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 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 Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this 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, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

j. Any of the terms of conditions of this Section 23 may be waived by the City's Risk Manager in writing, and attached to this Agreement as Exhibit 8. Such waiver is fully incorporated herein. The waiver shall waive only the requirements that are expressly identified and waived, and under such terms and conditions as stated in the waiver.

**24. Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver of limitation of any rights which City may have under applicable law.

**25. Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 11 (COMPENSATION) OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE,

REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

## **26. Force Majeure.**

**a. Liability.** No Party shall be liable for any default or delay in the performance of its obligations under this Agreement: (i) if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, or any other cause beyond the reasonable control of such Party (a "Force Majeure Event"), (ii) provided the non-performing Party is without fault in causing reasonable precautions and cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means (including, with respect to Contractor, by meeting its obligation for performing disaster recovery services as described in Section 26(d)).

**b. Duration.** In such event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by telephone (to be confirmed in writing within two (2) days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.

**c. Effect.** If any event under Section 26(a), above substantially prevents, hinders, or delays performance of the Services as critical for more than fifteen (15) consecutive days, then at City's option: (i) City may terminate any portion of this Agreement so affected and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; or (ii) City may terminate this Agreement without liability to City or Contractor as of a date specified by City in a written notice of termination to Contractor. Contractor shall not have the right to any additional payments from City for costs or expenses incurred by Contractor as a result of any force majeure condition that lasts longer than three (3) days.

**d. Disaster Recovery.** In the event of a disaster, as defined below, Contractor will be responsible for providing disaster recovery services in accordance with the provisions of the disaster recovery plan attached as Exhibit 5 hereto, or as otherwise set forth in this Agreement or any Statement of Work. Notwithstanding Section 26(a), a Force Majeure Event shall not excuse Contractor of its obligations for performing disaster recovery services as provided in this Section. In the event that a disaster occurs and Contractor fails to restore the hosting services within 24 hours of the initial disruption to Services, City may, in its discretion, deem such actions to be a material default by Contractor incapable of cure, and City may immediately terminate this Agreement. For purposes of this Agreement, a "disaster" shall mean an interruption in the hosting services or the inability of Contractor to provide City with the SaaS Application and hosting services for any reason that could not be remedied by relocating the SaaS Application and hosting services to a different physical location outside the proximity of its primary data center.



**27. Nondisclosure.** Subject to the San Francisco Administrative Code §67.24(e) and to any state open records or freedom of information statutes, and any other applicable laws, City agrees that it shall treat the SaaS Services with the same degree of care as it treats like information of its own, which it does not wish to disclose to the public, from the date the SaaS Services are Accepted by the City until the SaaS Services are terminated as provided herein. The obligations of the City set forth above, however, shall not apply to the SaaS Services, or any portion thereof, which:

- a. is now or hereafter becomes publicly known;
- b. is disclosed to the City by a third party which the City has no reason to believe is not legally entitled to disclose such information;
- c. is known to the City prior to its receipt of the Licensed SaaS Application and Services;
- d. is subsequently developed by the City independently of any disclosures made hereunder by Contractor;
- e. is disclosed with Contractor's prior written consent;
- f. is disclosed by Contractor to a third party without similar restrictions.

**28. Proprietary or Confidential Information.**

**a. Proprietary or Confidential Information of City.** Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

**b. Obligation of Confidentiality.** Subject to the San Francisco Administrative Code §67.24(e) and to any state open records or freedom of information statutes, and any other applicable laws, the Parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a Party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The Parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.

**c. Nondisclosure.** The receiving Party of proprietary or Confidential Information agrees and acknowledges that it shall have no proprietary interest in the Confidential Information and will not disclose, communicate nor publish the nature or content of such information to any person or entity, nor use, except in connection with the performance of its obligations under this Agreement or as otherwise authorized in writing by the disclosing Party, any of the Confidential Information it produces, receives, acquires or obtains from the disclosing Party. The receiving Party shall take all necessary steps to ensure that the Confidential Information is securely

maintained. The receiving Party's obligations set forth herein shall survive the termination or expiration of this Agreement. In the event the receiving Party becomes legally compelled to disclose any of the Confidential Information, it shall provide the disclosing Party with prompt notice thereof and shall not divulge any information until the disclosing Party has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by the disclosing Party are unsuccessful, or the disclosing Party otherwise waives its right to seek such remedies, the receiving Party shall disclose only that portion of the Confidential Information which it is legally required to disclose.

**d. Cooperation to Prevent Disclosure of Confidential Information.** Each Party shall use its best efforts to assist the other Party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each Party shall advise the other Party immediately in the event either Party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each Party will cooperate with the other Party in seeking injunctive or other equitable relief against any such person.

**e. Remedies for Breach of Obligation of Confidentiality.** Each Party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other Party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a Party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of City, at the sole election of City, the immediate termination, without liability to City, of this Agreement.

**f. Surrender of Confidential Information upon Termination.** Upon termination of this Agreement, in whole or in part, each Party shall, within five (5) calendar days from the date of termination, return to the other Party any and all Confidential Information received from the other Party, or created or received by a Party on behalf of the other Party, which are in such Party's possession, custody, or control; provided, however, that Contractor shall return City Data to City following the timeframe and procedure described further in this Agreement. Should Contractor or City determine that the return of any Confidential Information, other than City Data, is not feasible, such Party shall destroy the Confidential Information and shall certify the same in writing within five (5) calendar days from the date of termination to the other Party.

**g. Data Security.** Contractor shall at all times during the Term provide and maintain up-to-date security with respect to (a) the Services, (b) the Contractor's Website, (c) Contractor's physical facilities, and (d) Contractor's networks, to prevent unauthorized access or "hacking" of City's Confidential Information and City's hosted Data. Contractor shall provide security for its networks and all internet connections consistent with best practices observed by well-managed SaaSs working in the financial services industry, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. Contractor will maintain appropriate safeguards to restrict access to City's Confidential Information to those employees, agents or service providers of Contractor who need the information to carry out the purposes for which it was disclosed to Contractor. For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., "firewalls", Secure Socket Layer [SSL] encryption, or most current industry standard encryption, intrusion detection or similar barriers) and password protected access to the



City's Confidential Information and hosted Data. For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of City's Confidential Information. Contractor also will establish and maintain any additional physical, electronic and procedural controls and safeguards to protect the City's Confidential Information and hosted Data from unwarranted disclosure.

**h. Undertaking by Service Provider.** Without limiting Contractor's obligation of confidentiality as further described herein, Contractor shall be responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (i) ensure the security and confidentiality of the City Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the City Data; (iii) protect against unauthorized disclosure, access to, or use of the City Data; (iv) ensure the proper disposal of City Data; and, (v) ensure that all employees, agents, and subcontractors of Service Provider, if any, comply with all of the foregoing. In no case shall the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by City.

**i. City's Right to Termination for Deficiencies.** City reserves the right, at its sole election, to immediately terminate this Agreement without limitation and without liability if City reasonably determines that Contractor fails or has failed to meet its obligations under this Section.

**j. Data Transmission.** The Contractor shall ensure that all electronic transmission or exchange of system and application data with City and/or any other parties expressly designated by City shall take place via secure means (using HTTPS or SFTP or equivalent). The Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor. The Contractor shall ensure that no City Data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City.

## **29. Protection of Private Information.**

(a) Contractor has read and agrees to 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, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

(b) **Protected Health Information.** Contractor, all subcontractors, all agents and employees of Contractor and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information disclosed to Contractor by City in the performance

of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Contract. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected health information given to Contractor or its subcontractors or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract.

**30. SSAE 16, SOC 2 and/or SOC 1 Audit Report.** During the Term of the Agreement, Contractor will provide, on a semi-annual basis, the SSAE 16, SOC 2 and/or SOC 1 Audit report ("Audit Reports") it receives from its hosting service provider as follows: (a) the Audit Reports will include a 180 day (six month) testing period; and (b) the Audit Reports will be available to City no later than 30 days after they are received by Contractor. Upon City's written request, Contractor will provide a so-called "negative assurance opinion" to City as soon as said opinion is received from Contractor's hosting service provider. Contractor shall on a semi-annual basis, and otherwise as reasonably requested by City: (i) provide the foregoing Audit Reports to City and (ii) request such "negative assurance opinions" on City's behalf. Contractor shall implement reasonably required safeguards as identified by City or by any audit of Contractor's data privacy and information security program.

**31. Termination; Disposition of Content.**

a. City shall have the right, without further obligation or liability to Contractor: (i) to immediately terminate this Agreement if Contractor commits any breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by City of such breach, in which event, Contractor shall reimburse City in the same manner as if City ceased to use SaaS Application due to infringement under Section 13(b); or (ii) to terminate this Agreement upon thirty (30) days prior written notice for City's convenience and without cause, provided that except for termination due to an uncured breach as set forth in this Section and in the event of Infringement, City shall not be entitled to a refund of any amounts previously paid under this Agreement.

b. **Transition Services and Disposition of Content.** Upon expiration or termination of the SaaS Services under this Agreement:

i. Contractor may immediately discontinue the SaaS Services and City shall immediately cease accessing the SaaS Application and Services. Contractor shall within forty-eight (48) hours of the expiration or termination of the SaaS Services return City's Data in an agreed-upon machine readable format. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within thirty (30) days purge all City Data from its hosted servers and provide City with written certification within five (5) days that such purge occurred. Such data transfer shall be done at no cost to the City.

ii. Contractor shall provide to City and/or Successor Service Provider assistance requested by City to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider. Such Transition Services shall be provided on a time and materials basis if the City opts to return to its own servers or City chooses a Successor Service Provider. Transition costs may include: (a) developing a plan for the orderly transition of the terminated SaaS Services from Contractor to Successor Service Provider; (b) if required,



transferring the City Data to Successor Service Provider; (c) using commercially reasonable efforts to assist City in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Contractor in connection with the Services; (d) using commercially reasonable efforts to make available to City, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Contractor in connection with the SaaS Services; and, (e) such other activities upon which the Parties may agree. Notwithstanding the foregoing, should City terminate this Agreement due to Contractor's material breach, City may elect to use the Services for a period of no greater than six (6) months from the date of termination at a reduced rate of twenty (20%) percent off of the then-current Services Fees for the terminated Services. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.

**32. Survival.** This section and the following sections of this Agreement shall survive termination or expiration of this Agreement:

- |                                                                 |                                                        |
|-----------------------------------------------------------------|--------------------------------------------------------|
| 13. Indemnification                                             | 28. Proprietary or Confidential Information of City    |
| 16. Submitting False Claims; Monetary Penalties                 | 29. Protection of Private Information.                 |
| 17. Taxes                                                       | 37. Audit and Inspection of Records                    |
| 18. Payment Does Not Imply Acceptance of Work                   | 43. Non-Waiver of Rights                               |
| 20. Responsibility for Equipment                                | 44. Modification of Agreement                          |
| 21. Independent Contractor; Payment of Taxes and Other Expenses | 45. Administrative Remedy for Agreement Interpretation |
| 23. Insurance                                                   | 46. Agreement Made in California; Venue                |
| 24. Incidental and Consequential Damages                        | 47. Construction                                       |
| 25. Liability of City                                           | 48. Entire Agreement                                   |
| 27. Nondisclosure                                               | 53. Notification of Legal Requests                     |
|                                                                 | 59. Ownership of Results                               |

Exhibit 7 Business Associate Agreement

**33. Notice to the Parties.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the Parties may be by U.S. mail, and e-mail, and shall be addressed as follows:

To City: Margarita Rodriguez  
Director of the Bureau of Delinquent Revenue/Investigations  
Office of the Treasurer & Tax Collector  
PO Box 7027  
San Francisco, Ca 94120-7027  
[Margarita.Rodriguez@sfgov.org](mailto:Margarita.Rodriguez@sfgov.org)

To Contractor: Carl A. Briganti  
President  
5950 Canoga Ave Suite 120  
Woodland Hills, Ca 91367  
[carlb@impact.com](mailto:carlb@impact.com)

Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

**34. Bankruptcy.** In the event that either Party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other Party this Agreement shall terminate and be of no further force and effect. Upon termination of this Agreement pursuant to this Section, Contractor shall within forty-eight (48) hours return City's Data in an agreed-upon machine readable format. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within thirty (30) days purge all City Data from its hosted servers and provide City with written certification that such purge occurred. Such data transfer shall be done at no cost to the City.

**35. Subcontracting.** Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither Party shall, on the basis of this 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.

**36. 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. Contractor agrees that any violation of this prohibition by the Contractor, its employees, agents or assigns shall be deemed a material breach of the Agreement.



**37. Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

**38. Assignment.** The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

**39. 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 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 Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement. Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. Sec. 1201 et seq.) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d).

**40. Sunshine Ordinance.** In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals 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 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.

**41. Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar 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. 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. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

**42. Conflict of Interest.** Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

**43. Non-Waiver of Rights.** The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

**44. Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

**45. Administrative Remedy for Agreement Interpretation.**

a. **Negotiation; Alternative Dispute Resolution.** The parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement by negotiation. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. If agreed by both parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither party will be entitled to legal fees or costs for matters resolved under this section.

b. **Government Code Claims.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the Government Code Claim requirements set forth in Administrative Code Chapter 10 and Government Code Section 900, et seq.

**46. Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation



relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**47. Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**48 Entire Agreement.** This Agreement sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision. Contractor further agrees that in the event of conflicting language between this Agreement and Contractor's printed form attached as Exhibit XX, the provisions of this Agreement shall take precedence.

**49. Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws.

**50. Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**51. 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. 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 years. The Controller will not consider Contractor's use of profit as a violation of this section.

**52. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this 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 Agreement.

**53. Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to City's Data under this Agreement, or which in any way might reasonably require access to City's Data. Contractor shall not respond to subpoenas, service of process and other legal requests related to City without first notifying City.

**54. Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [www.sfgov.org](http://www.sfgov.org) under "Government."

**a. Consideration of Criminal History in Hiring and Employment Decisions.**

i. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

ii. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**b. Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

**c. Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

**d. First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**55. Public Access to Meetings and Records.** If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the



Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

**56. PCI Requirements.** Contractors providing services and products that handle, transmit or store cardholder data, are subject to the following requirements:

a. Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Contractor whose application has achieved PA-DSS certification must then be listed on the PCI Councils list of PA-DSS approved and validated payment applications.

b. Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers (<https://www.pcisecuritystandards.org/index.shtml>). Compliance with the PCI DSS shall be achieved through a third party audit process. The Contractor shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

c. For any Contractor that processes PIN Debit Cards, payment card devices supplied by Contractor shall be validated against the PCI Council Pin Transaction Security (PTS) program.

d. For items 10.17.1 to 10.17.3 above, Contractor shall provide a letter from their qualified security assessor (QSA) affirming their compliance and current PCI or PTS compliance certificate.

e. Contractor shall be responsible for furnishing City with an updated PCI compliance certificate 30 days prior to its expiration.

f. Bank Accounts. Collections that represent funds belonging to the City and County of San Francisco shall be deposited, without detour to a third party's bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

**57. Services Provided by Attorneys.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

**58. MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

**59. Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors, shall become the property of and will be transmitted to City. All models

developed by the Contracting Team, LBE Subcontractor Team, or Second Subcontractor Team shall be property of the City at the conclusion of the project, and may not be re-used without written permission from the City. To allow the City to utilize written materials in City-prepared reports, the Contractor shall submit all written materials in machine-readable form using templates provided by the City. All presentations and reports prepared by the Contractor become City property and may not be re-used without written permission from the City.

**60. Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

**61. Additional Attachments, Appendices and Exhibits.** The following attachment(s), appendices and exhibits are hereby attached and incorporated into this Agreement as though fully set forth herein and together form the complete Agreement between the Parties:

#### **Exhibits**

- 1: SaaS Implementation and Training Services
- 2: SaaS Application & Hosting Services
- 3: Calculation of Charges
- 4: Service Level Obligations
- 5: Disaster Recovery Plan
- 6: Third Party Software-Included in this Agreement
7. Business Associate Agreement
8. Commercial Automobile Liability Insurance Waiver



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

**CITY**

Recommended by:



Pauline Marx  
Chief Assistant Treasurer  
Office of the Treasurer & Tax Collector

**CONTRACTOR**

**Collection Solutions Software, Inc.**



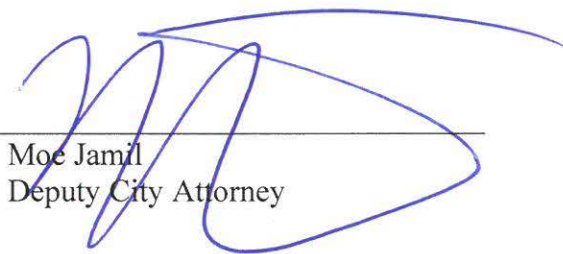
Carl A. Briganti  
President  
5950 Canoga Ave Suite 120  
Woodland Hills, Ca 91367

City vendor number: 98449

Approved as to Form:

Dennis J. Herrera  
City Attorney

By:



Moe Jamil  
Deputy City Attorney

Approved:



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

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## **Exhibit 1**

### **SaaS Implementation and Training Services**

**Scope of Work.** The Office of the Treasurer & Tax Collector (TTX) implementation, training and professional services and Statement of Work (SOW) procurement of the IMPACT HD 2.0 (HD2.0) software system from CSS, Inc. will serve as the system of records platform for all of TTX's delinquent collection work handled by the Bureau of Delinquent Revenue (BDR).

This SOW sets forth the understanding between Collection Solutions Software, Inc. (CSS) and TTX regarding responsibilities and deliverables related to the project implementation, as well as to define the Acceptance Criteria for each milestone listed within the SOW. The expected outcome upon completion of this SOW is that CSS's HD 2.0 is capable of day-to-day operations and fully integrated into the business life of the debt collections cycle of TTX.

Once all clinics and deliverables described in this SOW are successfully completed, the scope of this project will end. Requirements not detailed in this SOW or not resolved through the Bank of Hours (Exhibit 1C) will be considered out-of-scope and managed as a Change Order. TTX anticipates that additional phases will be required to fully meet the needs of the City & County of San Francisco.

To achieve the desired outcome by the completion date in the baseline project schedule, timely communication is the responsibility of every involved member using all protocols defined in this Agreement. In addition, when the dates in the timeline change, an estimated duration shall be used as a guide to manage expectations. It is incumbent on all parties to monitor the project schedule. All parties will work to meet the schedule or agree to modify so that it accurately reflects the state of the project over the life of this SOW.

It is the role of the TTX Project Manager and the CSS's Project Manager to work together to maintain this SOW. Both parties will identify resources required to sufficiently staff the project at the appropriate time for each milestone until Acceptance Criteria sign-off. Payment will be issued upon acceptance and sign-off on each deliverable.

- CSS personnel will have ample connectivity to the TTX relevant systems and resources once this project has started and through completion.
- Requirements for new processes, customizations, features, will be documented and provided prior to design commencement.

#### **MILESTONE DELIVERABLE # 1**

TTX and CSS accept:

1. Exhibit 1 (Implementation and Training Services)
2. Exhibit 3 (Calculation of Charges)
3. TTX and CSS agree on the Exhibit 3 Professional Services (3C) and Bank of Hours (3D)
4. TTX Approval and sign-off to confirm acceptance before issuance of payment

#### **PROJECT PLAN**

CSS will provide a proposed project schedule and estimated project staffing resource requirements. Once the schedule is agreed upon by the project team, through its project manager, that schedule will become the primary tool used to monitor the project. This schedule will be continuously updated to reflect actual progress and the current circumstances.



Project reporting and project status will be provided via the CSS's Project Portal. Status reports shall include information sufficient to fully inform TTX of the status and needs of the project. The CSS's Project Portal will include a list of completed tasks by owner, schedule of tasks to be completed, verification of milestone completion data issues, problems, concerns, and procedure changes. For Project start, TTX and CSS review and accept:

- a. Project Charter and Implementation Plan. Including but not limited to: project objectives; anticipated phases; high level methodology in relationship to migration of the various debt types and all related data fields, historical data, account notes and attachments, system workflow strategies, control records, customizations, special system menus, and interfaces (total of 12) into HD 2.0 and how this configuration builds upon it; and coordination with other professional service partners. The implementation plan also includes the CSS dialer system. CSS will provide the functionality specifications and requirements to configure and install the dialer into the TTX/BDR collection process.
- b. Baseline Project Schedule.
- c. Access and location for library of project documentation.
- d. For Project kickoff, TTX and CSS have established the following documents in a prior engagement. The below documents shall be updated to reflect any revisions:

1. Project schedule
2. Detailed data migration plans, which must include but is not limited to the data field mappings, creation of additional fields and screen views as needed, data archiving
3. Implementation Plans
4. Resource Plan – roles and responsibilities matrix

## **MILESTONE DELIVERABLE # 2**

TTX and CSS accept:

1. Project Management Plan
2. Project Charter
3. Revised documentation
4. TTX approval and sign-off to confirm acceptance before issuance of payment

## **DISCOVERY**

To assist the teams with the configuration of the BDR debt collection process CSS will allot up to two weeks to conduct discovery sessions for the TTX and CSS project team resources. It is beneficial for team members to have a base knowledge of specific TTX data, operational workflows, and processes. The discovery clinics will include a review of the collections process, interfaces data mappings, interfaces, and integrations and how it will affect all deliverables outlined in this SOW.

This includes product configuration, data review, migration components, workflows, and training.

Following the discovery session, CSS will deliver a draft business requirements document summarizing findings of the discovery. Part of this deliverable will include follow up meetings via GoToMeetings to review the technical designs to ensure that the CSS approach meets the expectations of TTX.

At the end of the Discovery Phase of this project, an adjustment to the scope, cost and duration of this SOW may be needed. A period of 2 weeks has been included in the project plan and to keep on schedule the City must provide CSS with a decision regarding the scope of the project and resources to accomplish project goals within two weeks of the completion of the Discovery Phase.

### **MILESTONE DELIVERABLES #3**

TTX and CSS accept:

1. CSS completes the discover workshops, allotting up to two weeks, at TTX facilities or online via GoToMeetings.
  - a. Workshop 1 - requirements gathering and fact finding
  - b. Workshop 2 - technical validation and review
2. CSS draft business requirements documentation
  - a. Data Requirements
  - b. HD2.0 Product/Engineering Requirements
  - c. Configuration Requirements
  - d. Conversion requirements
3. CSS and TTX complete a meeting to clarify requirements and identify technical approach as needed
4. CSS and TTX complete a meeting to review the final technical documentation
5. CSS and TTX complete a scope review meeting to verify that the SOW meets the needs of the project
6. Project Schedule based on the results the discovery workshops
7. TTX approval and sign-off to confirm acceptance before issuance of payment

### **INFRASTRUCTURE / SAAS ENVIRONMENT INSTALLATION**

CSS will conduct interactive working sessions for implementation of CSS's HD 2.0 platform in TTX facilities or CSS's Data Center facilities if TTX decides to venture into a cloud SaaS (Software as a Service) model for the purposes to:

1. One instance of the application servers
2. One instance of the Database repository servers.

These sessions shall result in a documented CSS configuration checklist TTX shall sign off upon prior to implementation. Both parties understand that if TTX determines customization is required during the testing phase, such customization will be reviewed according to Change Order process.

### **MILESTONE DELIVERABLES # 4**

TTX and CSS accept:

1. CSS completes two four day discover workshops at TTX facilities
  - a. Workshop 1 - requirements gathering and fact finding
  - b. Workshop 2 - technical validation and review
2. CSS draft business requirements documentation
  - a. Data Requirements
  - b. HD2.0 Product/Engineering Requirements
  - c. Configuration Requirements
  - d. Conversion requirements
3. CSS and TTX complete a meeting to clarify requirements and identify technical approach as needed
4. TTX approval and sign-off to confirm acceptance before issuance of payment



## PRODUCT CONFIGURATION

CSS will conduct interactive working sessions on CSS's HD 2.0 platform in TTX facilities or online via GoToMeetings for the purposes to:

1. Identify the product configurations necessary to enable functionality to meet the City's requirements to perform BDR's debt collection work
2. Identify the business process (work flow) changes required by TTX to properly use the system
3. Develop TTX admin users to configure and analyze workflow set-ups in H.D 2.0

These sessions will be an opportunity to discuss workflow requirements. When HD 2.0 capabilities and TTX desires are in conflict, TTX's preference is to analyze various configurations of the software that may be supplemented with external procedures and tools rather than customizations. These sessions shall result in a documented CSS configuration checklist TTX shall sign off upon prior to implementation. Both parties understand that if TTX determines customization is required during the testing phase, such customization will be reviewed according to Change Order process if it falls outside the scope of the Bank of Hours (Exhibit 3 - 3D).

## MILESTONE DELIVERABLES # 5

TTX and CSS accept:

1. CSS completes four days of interactive Workshops
2. Configuration checklist documenting the HD 2.0 implementation per TTX requirements
3. Each configuration and workflow must be tested and approved
4. TTX approval and sign-off to confirm acceptance before issuance of payment

## PLATFORM MIGRATION

### A. Data Conversion Requirements

The engineering team will analyze the data requirements and data schema of the legacy system and conduct data mapping and conversion scripts structures to support the new platform. Account level validation and adjustments to data by end users will be accomplished after installation and procurement through CSS HD 2.0. CSS will craft a plan to manage up to 4 comprehensive passes on the conversion and/or migration of data, including refreshing the data for the final push at "go live"

### B. Business Process Requirements

The discovery phase will result in both parties agreeing to specific set of Business Process Requirements for the TTX business unit for:

1. Business Workflow Inventory (APPENDIX F)
2. Department and Unit List (APPENDIX G)
3. Letter Inventory Form (APPENDIX H)
4. Reports Inventory Form (APPENDIX I)
5. Interfaces Inventory Form (APPENDIX J)
6. Inventory of archived records to be migrated to the IMPACT HD 2.0 archive

## MILESTONE DELIVERABLE # 6

TTX and CSS accept:

1. CSS completes Data Migration Mapping
2. Configuration checklist documentation for:
  - a. Business Workflow Inventory (APPENDIX F)
  - b. Department and Unit List (APPENDIX G)

- c. Letter Inventory Form (APPENDIX H)
  - d. Reports Inventory Form (APPENDIX I)
  - e. Interfaces Inventory Form (APPENDIX J)
  - f. Action plan to transition archived BDR records over to the IMPACT HD 2.0 archive
3. TTX approval and sign-off to confirm acceptance before issuance of payment

### SUPER USER TRAINING

Super User Training will be hands-on combining classroom lectures with electronic materials such as User Manuals and Tips/Techniques. Data and Configuration for the training shall be in accordance to the specified TTX requirements using actual TTX data. Super User training is designed to teach the collections process functionality within HD 2.0 since HD 2.0 shall be the primary software for TTX's debt collection administration system. TTX Super Users shall attend two five-day session designed to train Super Users to train other City users. At TTX's request CSS will provide additional Super User training sessions within 6 months of the initial training.

The materials and systems used during Super User training shall remain in an environment such that the session can be reproduced by TTX after this Project. For example, when the Production environment is copied to the test environment training database shall not be impacted or recreated. All trainings will be conducted in TTX facilities or online. Attendees shall include all TTX staff as well as key users from other CCSF departments and TTX's business process consultant. CSS will conduct interactive working sessions on CSS's HD 2.0 platform in TTX facilities or in CSS's Cloud SaaS data center for the purposes to:

### MILESTONE DELIVERABLE # 7

TTX and CSS accept:

1. CSS conducts two five-day sessions with curriculum specified in training plan to Super Users identified by TTX. If needed TTX can request additional training.
2. CSS provides training materials used in Super User sessions such that a vendor specified by TTX shall be able to make the materials available in a format that TTX may maintain for future uses, and CSS agrees to provide all training and user manual documents in an electronic format
3. TTX approval and sign-off to confirm acceptance before issuance of payment

### ACCEPTANCE FOR PRODUCTION

As part of the discovery phase TTX will provide a list of all letters, workflows, interfaces and reports to be included in this project and testing.

Prior to the acceptance phase:

1. TTX shall create test cases for all required business scenarios
2. TTX shall create a test environment with HD 2.0 and all interfaces connected to CSS
3. TTX and/or its vendor will provide a test input and desired output for each letter, workflow, interface and report to be tested as part of this project
  - a. TTX shall develop cases/scenarios/scripts to verify all features and functionality as defined in the requirements documentation developed in the discovery phase.
  - b. TTX shall confirm that the software environment is configured as specified for test, development and production.
  - c. CSS shall provide testing assistance for all letters, workflows, interfaces and reports



- from HD 2.0 that are developed for TTX.
- d. After CSS completes preliminary testing in accordance with the testing parameters provided by BDR TTX shall execute all test cases/scenarios/scripts and report the outcome of each condition tested on the project portal. (pass/fail/other)
  - e. TTX shall provide a prioritized list of all identified faults to CSS for validation. For those faults identified by TTX as critical, a correction must be made and planned prior to sign off of this deliverable.

#### **MILESTONE DELIVERABLE # 8**

TTX and CSS accept:

1. Defined in the approved Test Plan two iterations of the complete business cycle have passed testing. The complete business cycle shall include but is not limited to taking a subset of accounts through the business process from account creation, import, production floor distribution, financial transaction processing (both posting and reversals), automation of reports, dialer functionality and related reporting, and progression through all applicable debt collection process workflows.
2. CSS has documented a plan to address reported faults, both data and software.
3. TTX approval and sign-off to confirm acceptance before issuance of payment

#### **DEFINITION OF GO LIVE DATE**

CSS shall spend a minimum of four days in TTX facilities installing the "go live" configuration of HD 2.0. At TTX request CSS can spend additional time in the TTX facilities to assist with the "go live" configuration if needed. The "go live" configuration of HD 2.0 shall satisfy all requirements and TTX personnel shall manage the installation. The system will then be put into production while running parallel with the current collection software used by BDR (CUBS), and shall successfully serve as the system of record for BDR's debt collection process for a period of up to sixty consecutive days. Acceptance is reached thirty days after the sixty-day parallel system production period has completed.

#### **MILESTONE DELIVERABLE # 9**

TTX and CSS accept:

1. The software configuration satisfies all requirements and TTX personnel are able to manage the installation.
2. CSS has successfully served as the system of record for BDR's debt collection process for sixty (60) consecutive days.
3. CSS completes up to four days in TTX facilities of "go live" installation.
4. TTX approval and sign-off to confirm acceptance before issuance of payment thirty days after the sixty-day period has completed.

#### **DEPARTMENT LIAISON**

In performing the services provided for in this Agreement, Contractor's liaison with TTX will be Jeff Smejkal Assistant Director, Bureau of Delinquent Revenue CCSF Office of the Treasurer & Tax Collector.



**Exhibit 2**  
**SaaS Application & Hosting Services Description**

- I. Description of the SaaS Application and Hosted Services**
- II. SaaS Data Centers**
- III. SaaS Maintenance Services.**
- IV. Subscriber Responsibilities**
- V. Technical Support & Training**

**I. Description of the SaaS Application and Hosted Services:** “SaaS Application and Hosted Services” include the following services:

“SaaS Application and Hosted Services Commencing on the Effective Date, or such later date as the parties may agree in writing, Host shall host, maintain, and manage the Hosted Software, including access thereto, and install and maintain the equipment by which the Hosted Software is being operated, all as more fully described as follows:

- I. Content Upload. Host shall upload all software and other content (including without limitation the Customer Content) provided to Host for upload to the Hosted Software, as well as any updates, enhancements, and modifications thereto, within two (2) days after receipt thereof by Host.
- II. Internet Access. Host shall be solely responsible, at Host’s expense, for acquiring, handling, maintaining, and executing any agreements for Internet access necessary to make the Hosted Software available on the Internet for access by Customer and the Hosted Software users in accordance with this Agreement and the SLA.
- III. Host Facility. The Host Facility (including, but not limited to, the equipment used hereunder to perform the Hosting Services) shall be secured, operated, and maintained at all times by Host in accordance with the warranties and performance standards set forth in this Agreement and in the SLA. Host shall be solely responsible, at Host’s expense, for acquiring, handling, maintaining, and executing any agreements for all equipment, third party services and third party software necessary to host the Hosted Software and perform all related services hereunder. Host shall configure and operate the Host Facility so that, on receipt of a communication from an Authorized User, the Hosted Software can respond to such Authorized User in the most efficient and expeditious manner, but in no event in less than the response time set out in the SLA.
- IV. Technology Refreshing. Host shall, at no additional cost to Customer, ensure that the Hosted Software and the Host Facility are maintained so as to be compatible with and accessible to Customer and the Authorized Users, using the then-current developments, versions, and updates of Internet-related technology, within a reasonable time after such technology becomes generally available. In addition, to the extent that any generally available developments, versions, and updates of Internet-related technology make available any new or enhanced features or functionality that can be incorporated into the Hosted Software, Host shall provide Customer the choice to take advantage of such technical developments.

**A. Software:** Use of Contractor's Software operating on hosted equipment located at Contractor's facility and/or any Data Center as further outlined under Section II (SaaS Data Centers) of this Exhibit 2 and Exhibit 6.

**B. Third Party Software:**

1. Providing certain third party software required to operate the SaaS Software, including and other bundled third-party software packages required to support the operation of the SaaS Software as outlined under Exhibit 6.
2. Inclusion of regular Software and Contractor-supplied third-party software updates, patches and fixes as scheduled by Contractor.

**C. Remote Software:** Contractor shall provide access to and use of a remote software tool for City management of Authorized Users, access rights and other similar role-based controls as they pertain to the SaaS Services. Method will be published through Contractor portal and be made available to Authorized Users with elevated privileges.

**D. Back-Up of Subscriber Data:**

1. Contractor shall provide up to thirty-six (36) months of on-line hourly data retention for SaaS Software operation and functionality.
2. Contractor shall provide incremental Subscriber Data backups at a minimum of every four (4) hours to an off-site location other than the primary hosting center.
3. Contractor shall provide weekly, off-site backups not to exceed thirty-six (36) months of City Data to a location other than the primary hosting center. Off-site backups to include previous eight (8) weeks.

**E. SaaS Environments:** The SaaS Application and Hosted Services shall be hosted in a certified and secure Tier-3 data hosting center.

1. A single Backup Environment available as needed to serve as the backup or "failover" environment for the SaaS and Hosted Services
2. A single Test Environment available to the Subscriber and Service Provider for the evaluation and eventual promotion of SaaS Software updates, patches, fixes or otherwise deemed tests. Test Environment shall perform at the same capacity as the Production Environment.

**F. Reporting:** Contractor shall provide electronic notification within 2 hours of discovery and subsequent monthly reporting of any incidents or breaches that had occurred within the environment or to the hosted application. In the event of a breach, Contractor shall follow the procedures set forth in Section 9(e) of the Agreement.

**G. Availability of SaaS Services:** Contractor (or its Hosting Service contractor) shall host the **SaaS Services** on computers owned or controlled by the Contractor (or its contractor) and shall provide the City with access to both a Production Environment with SaaS Application and data and a Test Environment with SaaS Application via Internet-access to use according to the terms herein.

**1. Hosted System Uptime:** Other than Scheduled SaaS Maintenance Services as outlined in Section III, emergency maintenance described below, Force Majeure as described in the Agreement and lack of internet availability as described below, Contractor shall provide uptime to the SaaS Application and Hosted Service to achieve a 99.9% Service Level Availability.

**2. Scheduled SaaS Maintenance**

A. Scheduled SaaS Maintenance will be conducted during the following hours: Monday – Friday 10PM (Pacific Time) – 4AM (Pacific Time), Saturdays between 12 AM (Pacific Time) and 8 AM (Pacific Time). With the same exclusions as noted above.

B. Scheduled SaaS Maintenance shall not exceed an average of 4 hours per month over a twelve (12) month period except for major upgrades.

**3. Unscheduled SaaS Maintenance.** Contractor will use commercially reasonable efforts to prevent more than one (1) hour of continuous down time during Business Hours in any month for which Unscheduled SaaS Maintenance is required. In the event Contractor fails to meet this obligation for a period of three successive calendar months, City shall be due a Performance Credit in the amount of 5% of the Services Fees (as calculated on a monthly basis for the reporting month).

**4. Emergency Maintenance.** In the event that Force Majeure or emergencies arise or continue, Contractor shall be entitled to take any actions that Contractor, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the SaaS systems or the SaaS Software. Such emergency maintenance may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the SaaS Software by City is made available. Contractor shall endeavor to provide advance written notice of such emergency maintenance to City as soon as is reasonably possible.

**5. Notice of Unavailability:** In the event there will be more than thirty (30) minutes down time of any SaaS or Hosted Service components for any reason, including but not limited to Scheduled SaaS Maintenance or emergency maintenance, Contractor will provide notice to users by posting a web page that indicates that the site is temporarily unavailable and to please come back later. Contractor will also provide e-mail notice to [tx.helpdesk@sfgov.org](mailto:tx.helpdesk@sfgov.org) which will include at least a brief description of the reason for the down time and an estimate of the time when City can expect the site to be up and available.



**H. Changes in Functionality.** During the term of this Agreement, Contractor shall not reduce or eliminate functionality in SaaS Services. Where Contractor has reduced or eliminated functionality in SaaS Services, City, at City's sole election and in City's sole determination, shall: (a) have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees; or, (b) determine the value of the reduced or eliminated functionality and Contractor will immediately adjust the Services Fees accordingly on a prospective basis. Where Contractor has introduced like functionality in other services, where Contractor increases functionality in the SaaS Services, such functionality shall be provided to City without any increase in the Services Fees.

## **II. SaaS Data Centers**

**A. Control:** The method and means of providing the Services shall be under the exclusive control, management, and supervision of Contractor, giving due consideration to the requests of City. The Services (including data storage), shall be provided solely from within the continental United States and on computing and data storage devices residing therein.

**B. Location:** The location of the data center that will be used to host the SaaS Application is as follows:

**Primary Tier 3 data center:**

Key Information Systems  
30077 Agoura Ct, Agoura Hills, CA 91301

**Back-up Tier 3 data center:**

CSS CO Data Center DR Facility  
9180 Commerce Center Circle / DN1  
Highland Ranch, Colorado 80219

**Primary Tier 2 data center:**

CSS GA Data Center DR Facility  
375 Riverside Pkwy  
Lithia Springs, GA 30122

**Back-up Tier 2 data center:**

CenturyLink  
3015 Winona Ave, Burbank, CA 91504

**C. Replacement Hosted Provider:** In the event Contractor changes the foregoing Hosted Provider, Contractor shall provide City with prior written notice of said change and disclose the name and location of the replacement Hosted Provider. The replacement Hosted Provider shall be a reputable Hosted Provider comparable to Contractor's current Hosted Provider, and said replacement Hosted Provider shall be located within the United States. The replacement Hosted Provider shall perform a SSAE 16, SOC 1 and/or 2 Audit Report at least annually and said audit shall be provided to City in accordance with this Agreement.

**D. Notice of Change:** In the event that the location of the data center used to host the SaaS Application is changed, Contractor shall provide City with prior written notice of said change and disclose the address of the new facility. Notification shall be provided to City by Contractor within sixty (60) days of any such change taking place. Any such new primary facility shall be located within the United States. The data centers referenced above are subcontractors that are approved by City.

**E. Subcontractors.** Contractor shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Agreement, without City's prior written consent and any attempt to do so shall be void and without further effect and shall be a material breach of this Agreement. Contractor's use of subcontractors shall not relieve Contractor of any of its duties or obligations under this Agreement.

### **III. SaaS Maintenance Services.**

**A.** The SaaS Software maintained under this Agreement shall be the SaaS Software set forth in Exhibit 2 to this Agreement.

**B.** The following SaaS Maintenance Services are included as part of this Agreement:

**1. Contractor Software Version Upgrades, Software Revisions and Patches.** Contractor shall provide and implement ALL SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches to ensure: (a) the functionality of the SaaS Software and SaaS Services, as described in the Documentation, is available to Authorized Users; (b) the functionality of the SaaS Software and SaaS Services in accordance with the representations and warranties set forth herein, including but not limited to, the SaaS Software and SaaS Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the Documentation; (c) the Service Level Standards can be achieved; and, (d) the SaaS Software and SaaS Services work with the non-hosted browser version.

i. Deployment of these revisions will be mutually agreed upon between Contractor and City.

ii. Release of software revisions as defined will be conducted on a schedule as determined by Contractor. Contractor shall provide no less than a thirty (30) calendar day prior written notice of when any such revision is scheduled to be released. City will be granted a fifteen (15) calendar day evaluation window to review release documentation regarding software modules being impacted and general revision changes.

iii. After the evaluation period, Contractor will conduct a deployment of the revision to the Subscriber Test Environment. The software deployment will be scheduled in writing five (5) calendar days prior to actual deployment activities. As part of the upgrade activities within the Test Environment, Contractor may provide nominal testing to ensure all systems are functional and the revision deployment was successful. Post deployment activities include an e-mail or portal post to serve as written notification that this service has been completed. City will be allowed a forty-five (45) calendar day test window in which City has ability to test and raise issues with Contractor. Issue resolution will be managed per the process as described here within. Test Environment deployment activities will be conducted during a mutual agreed to time window and may not necessarily align with the production maintenance windows as described within this document.

iv. In the event a SaaS Severity Level 1 or Severity Level 2 Issue has been identified and appropriately triaged and classified by both Contractor and City during the Test



Environment deployment test window, Contractor will be required to correct the SaaS Issue. If the SaaS Issue can be corrected and can be redeployed within the remainder of the deployment test window, City will have an additional five (5) testing days in which to evaluate and further test for the SaaS Issue resolution. If the SaaS Issue cannot be corrected within the remainder of the test window, Contractor will deploy immediately upon availability with as much notice as practicable. City will be allowed an additional five (5) testing days to evaluate the correction post the test window if desired.

v. If at any time during the testing window City identifies the presence of multiple SaaS Severity Level 1 or Severity Level 2 Issues that can be shown to materially impact City ability to continue testing, City may in writing elect to suspend testing until corrections for the SaaS Issues can be provided. Contractor will deploy corrections immediately upon availability with as much notice as practicable. Upon release of corrections, City will have five (5) calendar days to commence the testing within the then available remaining testing window.

vi. Unless exists outstanding circumstances as described here within, Contractor will promote revision from Test Environment to Production and Back-up environments after the provided test window has elapsed. The software promotion will be scheduled in writing five (5) calendar days prior to actual deployment activities. As part of the promotion activities within the Production and Back-up environment, Contractor may provide nominal testing to ensure all systems are functional and the revision promotion was successful. Post promotion activities include an e-mail or portal post to serve as written notification that this service has been completed. At the point of e-mail or portal posting, the new revision will be considered "in production" and supported under the maintenance service terms described here within.

vii. In support of such SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches, Contractor shall provide updated user technical documentation reflecting the SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches as soon as reasonably practical after the SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches have been released. Updated user technical documentation that corrects Errors or other minor discrepancies will be provided to Subscribers when available.

**2. Third Party Software Revisions** At the option of Contractor, periodic software revisions of Third Party Software included with the SaaS Software will be provided by Contractor at its discretion without further charge provided the following conditions are met: (i) the Third Party Software revision corrects a malfunction or significant publicly disclosed security threat in the Third Party Software that affects the operation or ability to provide secure use of the SaaS Software; and (ii) the Third Party Software Revision has, in the opinion of Contractor, corrected malfunctions or significant security threat identified in the Contractor Technology System and has not created any additional malfunctions; and (iii) the Third Party Software revision is available to Contractor. City is responsible for obtaining and installing or requesting install of the Third Party Software revision if the Third Party Software was not licensed to City by or through Contractor. Contractor Software revisions provided by Contractor are specifically limited to the Third Party Software identified and set forth in [Exhibit 6](#) to this Agreement.



**C. Response to SaaS Issues.** Contractor will provide verbal or written responses to SaaS Issues identified by City in an expeditious manner. Such responses shall be provided in accordance with the Target Response Times as defined under Section VI.

**D. SaaS Software Maintenance Acceptance Period.** Unless as otherwise agreed to by City on a case-by-case basis, for non-emergency maintenance City shall have a twenty (20) business day period to test any maintenance changes prior to Contractor introducing such maintenance changes into production. In the event that City rejects, for good cause, any maintenance changes during the SaaS Software Maintenance Acceptance Period, Contractor shall not introduce such rejected maintenance changes into production. At the end of the Maintenance Acceptance Period, if City has not rejected the maintenance changes, the maintenance changes shall be deemed to be accepted by City and Contractor shall be entitled to introduce the maintenance changes into production.

**E. SaaS Hardware:** Contractor will use commercially reasonable efforts to ensure that all hardware (including servers, routers, and other related equipment) on which the applications are deployed are attached to backup power systems sufficient to maintain the site's availability for so long as any power outage could reasonably be expected to occur, based on the experience of Contractor at its deployment location and consistent with the Tier rating of the datacenter.

#### **IV. Subscriber Responsibilities**

**A.** Contractor shall provide technical support for SaaS Severity Level 1 and Severity Level 2 Issues, 24 hours per day; seven (7) days per week; 365 days per year.

**B.** City shall provide Contractor with timely notification of any SaaS Issues by either of these methods:

1. **Contacting Service Provider Customer Support at 1-877-277-4621.**

2. **By entering the problem on the Contractor Service Portal**  
Notifications can be submitted through the City Portal. This is the preferred method by which to contact Service Provider.

3. If City cannot readily access the Contractor Portal, City may contact Contractor at the "800" number listed above.

**C. Support for Problem Investigation.** City shall support all reasonable requests by Contractor as may be required in problem investigation and resolution.

**D. Designation of Point of Contact.** City shall assign an individual or individuals to serve as the designated contact(s) for all communication with Contractor during SaaS Issue investigation and resolution.

**E. Discovery of Errors.** Upon discovery of an Error, City agrees, if requested by Contractor, to submit to Contractor a listing of output and any other data that Contractor may

require in order to reproduce the Error and the operating conditions under which the Error occurred or was discovered.

## V. Technical Support

**A. 24x7 Technical Support:** Authorized Users will make Technical Support requests by calling or emailing Contractor's Technical Support staff or by submitting a request via Contractor's customer service web portal. The Technical Support staff shall assign to the request the SaaS Severity Level (as defined herein) indicated by the requestor. SaaS Severity Level 1 and 2 items will be addressed 24/7. SaaS Severity Level 3 and 4 items will be addressed during the standard business hours of 6:00am-6:00pm US Pacific Time.

1. **Business Hours:** Technical Support is available between the business hours of 6:00am to 6:00 pm US Pacific Time by accessing the [Service Provider Subscriber Portal](#) (or Toll-free at [877-277-4621](#), or by emailing [support@cssimpact.com](mailto:support@cssimpact.com) if access to the [Service Provider Subscriber Portal](#) is not readily available to City).

2. **After hours:** On-call technical support is available after 6pm and before 6:00am Pacific Time 24-hours a day/7 days a week/365 days a year, including Service Provider Holidays and weekends by accessing the [Service Provider Subscriber Portal](#) or calling Contractor's Toll –free number [877-277-4621](#).

SaaS Severity Level	Target Response Time
<b>SaaS Severity Level 1:</b> <i>Requires immediate attention—Critical production functionality is not available or a large number of users cannot access the SaaS Application. Causes a major business impact where service is lost or degraded and no workaround is available, therefore preventing operation of the business.</i>	Request Response Time: 30 minutes. Request Resolution Time Target: < 2 hours. Maximum Permitted Request Resolution Time: < 24 hours
<b>SaaS Severity Level 2:</b> <i>Requires priority attention - Some important production functionality is not available, or a small number of users cannot access the system. Causes significant business impact where service is lost or degraded and no workaround is available, however the business can continue to operate in a limited fashion.</i>	Request Response Time: 1 hr. Request Resolution Time Target: < 4 hours Maximum Permitted Request Resolution Time: < 48 hours
<b>SaaS Severity Level 3:</b> <i>Requires attention –There is a problem or inconvenience. Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.</i>	Request Response Time: 1 hr. Request Resolution Time Target: < 6 hours Maximum Permitted Request Resolution Time: < 7 days
<b>SaaS Severity Level 4:</b> <i>There is a problem or issue with no loss of service and no business impact.</i>	Request Response Time: 1 hr. Request Resolution Time Target: < 24 hours Maximum Permitted Request Resolution Time: < 7 days



### Exhibit 3 Calculation of Charges

#### 3A. Implementation and Training Services

1.	Statement of work and Calculation of Charges	\$4,950
2.	Project Management Plan Cost	\$91,093
3.	Discovery Cost	\$171,400
4.	SaaS / Software Environment Installation	\$35,762
5.	Product Configuration Cost	\$276,800
6.	Platform Migration Cost	\$123,200
7.	Training Cost	\$180,000
8.	Acceptance for Production Cost	\$151,360
9.	Go Live Date Final Staging Cost	\$38,400
TOTAL		\$1,072,965.00

#### 3B. SaaS Application and Hosted Services

1.	HD™ 2.0   Hosted 100 Users Licenses	\$20,990/mo. (for 60 months)
2.	HD™ 2.0   Hosted 100 Additional Users Licenses	
3.	HD™ 2.0   30 Dialer users (10 users already included)	
4.	HD™ 2.0   Dialer license rate above 30 users \$149/mo.	
5.	HD™ 2.0   Dialer talk time 2.4c/minute for dialer usage fee	
6.	HD™ 2.0   Portfolio Platform Plug-in	
7.	HD™ 2.0   Legal Platform Plug-In	
8.	HD™ 2.0   Financial Compliance on Demand	
9.	HD™ 2.0   Analytics & Dashboard 20 users	
10.	HD™ 2.0   Ad-hoc DB Report Writer 20 users	
11.	HD™ 2.0   User Defined Data Grids	
12.	HD™ 2.0   SOD Workflow Manager (Adv. Version)	
13.	HD™ 2.0   DJD (Dynamic Job Distributor)	
TOTAL		\$1,259,400.00

Plus 2.4c/minute for dialer usage fee not to exceed \$15,000.00

**3C. Professional Services Agreement.** Contractor to make available to the City an additional 370 hours of professional services to be used only if requested by the City for the purposes of configuration changes, data improvements, reporting, modifications, enhancements and other professional services required in connection with the Agreement. The Contractor shall charge the City \$185 per hour (not exceed \$68,450) for such services. The City shall only be liable for payment for the hours requested and used by the City.

**3D. Bank of Hours Agreement.** If essential changes occur during the course of this implementation project, including but not limited to existing business workflow or operational process changes, unforeseen or unaccounted for changes, or functionality that requires a modification, reconfiguration, or implementation of new functionality the amount of forty-nine thousand nine hundred fifty dollars (\$49,950.00) will be held in contingency to account for these circumstances. These change needs will be considered as part of the Scope of Work in Exhibit 1 and included within the scope of this implementation project. Use of these funds will be agreed upon by both parties as part of the change order process and based on standard hourly rates that are included in Exhibit 3C (Professional Services) and Exhibit 3 calculation of Charges).

**In no event shall the amount of this contract exceed two million four hundred sixty-five thousand seven hundred sixty-five dollars and zero cents (\$2,465,765.00).**



## **Exhibit 4**

### **Service Level Obligations**

**A. Time is of the Essence.** For the term of this Agreement, Contractor shall provide SaaS Services, Force Majeure events excepted, during the applicable Service Windows and in accordance with the applicable Service Levels as described herein, time being of the essence.

**B. Service Levels.**

**1. “Availability” Service Level:**

**i. Definitions:**

**a. “Actual Uptime”:** The total minutes in the reporting month that the Services were actually available to Authorized Users for normal use.

**b. “Scheduled Downtime”:** The total minutes in the reporting month during which Scheduled SaaS Maintenance was performed.

**c. “Scheduled Uptime”:** The total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.

**ii. Service Level Standard.** Services will be available to Authorized Users for normal use 100% of the Scheduled Uptime.

**a. Calculation:**  $(\text{Actual Uptime} / \text{Scheduled Uptime}) * 100 =$  Percentage Uptime (as calculated by rounding to the second decimal point)

**b. Performance Credit.**

**1) Where Percentage Uptime is greater than 99.9%:** No Performance Credit will be due to City.

**2) Where Percentage Uptime is equal to or less than 99.8%:** City shall be due a Performance Credit in the amount of 10% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Uptime.

**2. “Response Time” Service Level.**

**i. Definition(s).**

**a. “Response Time”:** The interval of time from when an Authorized User requests, via the Services, a Transaction to when visual confirmation of Transaction completion is received by the Authorized User. For example, Response Time includes the period of time representing the point at which an Authorized User enters and submits data to the Services and the Services display a message to the Authorized User that the data has been saved.

b. **“Total Transactions”**: The total of Transactions occurring in the reporting month.

c. **“Transaction” or “Transactions”**: Services web page loads, Services web page displays, and Authorized User Services requests.

ii. **Service Level Standard**. Transactions will have a Response Time of two (2) seconds or less 95% of the time each reporting month during the periods for which the Services are available.

a. **Calculation**.  $((\text{Total Transactions} - \text{Total Transactions failing Standard}) / \text{Total Transactions}) * 100 = \text{Percentage Response Time}$  (as calculated by rounding to the second decimal point).

b. **Performance Credit**.

1) **Where Percentage Response Time is greater than 95.00%**: No Performance Credit will be due to City.

2) **Where Percentage Response Time is equal to or less than 95.00%**: City shall be due a Performance Credit in the amount of 1% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Response Time.

### 3. **“Technical Support Problem Response” Service Level.**

i. **Definition**.

a. **“Total Problems”**: The total number of problems occurring in the reporting month.

ii. **Service Level Standard**. Problems shall be confirmed as received by Contractor 100% of the time each reporting month, in accordance with the Request Response Time associated with the SaaS Severity Level.

a. **Calculation**.  $((\text{Total Problems} - \text{Total Problems failing Standard}) / \text{Total Problems}) * 100 = \text{Percentage Problem Response}$  (as calculated by rounding to the second decimal point). Note: This Calculation must be completed for each SaaS Severity Level.

b. **Performance Credit**.

1) **SaaS Severity Level 1 – 2.**

i) **Where Percentage Problem Response is greater than 99.00%**: No Performance Credit will be due to City.

ii) **Where Percentage Problem Response is equal to or less than 99.00%**: City shall be due a Performance Credit in the amount of 1% of the

Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.

**2) SaaS Severity Level 3 – 4.**

**i) Where Percentage Problem Response is greater than 90.00%:** No Performance Credit will be due to City.

**ii) Where Percentage Problem Response is equal to or less than 90.00%:** City shall be due a Performance Credit in the amount of .5% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.

**C. Service Level Reporting.** On a monthly basis, in arrears and no later than the fifteenth (15<sup>th</sup>) calendar day of the subsequent month following the reporting month, Contractor shall provide reports to City describing the performance of the SaaS Services and of Contractor as compared to the service level standards described herein. The reports shall be in a form agreed-to by City, and, in no case, contain no less than the following information: (a) actual performance compared to the Service Level Standard; (b) the cause or basis for not meeting the service level standards described herein; (c) the specific remedial actions Contractor has undertaken or will undertake to ensure that the service level standards described herein will be subsequently achieved; and, (d) any Performance Credit due to City. Contractor and City will meet as often as shall be reasonably requested by City, but no less than monthly, to review the performance of Contractor as it relates to the service level standards described herein. Where Contractor fails to provide a report for a service level standard described herein in the applicable timeframe, the service level standard shall be deemed to be completely failed for the purposes of calculating a Performance Credit. Contractor shall, without charge, make City's historical service level standard reports to City upon request.

**D. Failure to Meet Service Level Standards.** In the event Contractor does not meet a service level standard described herein, Contractor shall: (a) owe to City any applicable Performance Credit, as liquidated damages and not as a penalty; and, (b) use its best efforts to ensure that any unmet service level standard described herein is subsequently met. Notwithstanding the foregoing, Contractor will use its best efforts to minimize the impact or duration of any outage, interruption, or degradation of Service. In no case shall City be required to notify Contractor that a Performance Credit is due as a condition of payment of the same.

**E. Termination for Material and Repeated Failures.** City shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees where Contractor fails to meet any service level standards described herein: (a) to such an extent that the City's ability, as solely determined by City, to use the SaaS Services is materially disrupted, Force Majeure events excepted; or, (b) for four (4) months out of any twelve (12) month period.

**F. Audit of Service Levels.** No more than quarterly, City shall have the right to audit Contractor's books, records, and measurement and auditing tools to verify service level



obligations achievement and to determine correct payment of any Performance Credit. Where it is determined that any Performance Credit was due to City but not paid, Contractor shall immediately owe to City the applicable Performance Credit.

## **Exhibit 5**

### **Disaster Recovery Plan**

In the event of catastrophic failure at the hosting primary site, services will be redirected to process from an alternate datacenter. Within the alternate datacenter, infrastructure has already been provisioned (networking, server, database) to assume the function of processing requests for identified services. Due to the design of the application and infrastructure, redirecting services to an alternate datacenter is performed by a series of DNS updates. From the onset of a catastrophic failure, services will be restored in the alternate datacenter within 60 minutes and has the ability to handle the same capacity as the primary site.

The mutually agreed upon **Recovery Time Objective (RTO)** for this application is: 60 minutes

The mutually agreed upon **Recovery Point Objective (RPO)** for this application is: set for 15 minutes recovery point roll-back upon data failure

**Exhibit 6**  
**Third Party Software-Included in this Agreement**

- I. Oracle Enterprise Database Repository**
- II. Adhoc-Report Writer Engine**

- I. Description of the Oracle Database Repository:** “Oracle Enterprise Database” includes application and data storage technology for the HD 2.0 SaaS platform.
- II. Description of the Adhoc-Report Writer Engine:** “Adhoc-Report Writer Engine” includes application and data reporting technology for the HD 2.0 SaaS platform



**Exhibit 7**  
**Business Associate Agreement**

This Business Associate Agreement (“BAA”) supplements and is made a part of the contract (“Contract”)] by and between the City and County of San Francisco, the Covered Entity (“CE”), and Collection Solutions Software, Inc. (“Contractor”), the Business Associate (“BA”), dated

/ /2016 (CMS # \_\_\_\_). To the extent that the terms of the Contract are inconsistent with the terms of this BAA, the terms of this BAA shall control.

**RECITALS**

A. CE, by and through the Office of the Treasurer & Tax Collector (“TTC”) wishes to disclose certain information to BA pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).

B. For purposes of the Contract, TTC requires Contractor, even if Contractor is also a covered entity under HIPAA, to comply with the terms and conditions of this BAA as a BA of CE.

C. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated there under by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws, including, but not limited to, California Civil Code §§ 56, et seq., California Health and Safety Code § 1280.15, California Civil Code §§ 1798, et seq., California Welfare & Institutions Code §§5328, et seq., and the regulations promulgated there under (the “California Regulations”).

D. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this BAA.

E. BA enters into agreements with CE that require the CE to disclose certain identifiable health information to BA. The parties desire to enter into this BAA to permit BA to have access to such information and comply with the BA requirements of HIPAA, the HITECH Act, and the HIPAA Regulations.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

## 1. Definitions.

**a. Breach** means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information, and shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402], as well as California Civil Code Sections 1798.29 and 1798.82.

**b. Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.

**c. Business Associate** is a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information received from a covered entity, but other than in the capacity of a member of the workforce of such covered entity or arrangement, and shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.

**d. Covered Entity** means a health plan, a health care clearinghouse, or a health care provider who transmits any information in electronic form in connection with a transaction covered under HIPAA Regulations, and shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

**e. Data Aggregation** means the combining of Protected Information by the BA with the Protected Information received by the BA in its capacity as a BA of another CE, to permit data analyses that relate to the health care operations of the respective covered entities, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**f. Designated Record Set** means a group of records maintained by or for a CE, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**g. Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103. For the purposes of this BAA, Electronic PHI includes all computerized data, as defined in California Civil Code Sections 1798.29 and 1798.82.

**h. Electronic Health Record** means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given to such term under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

**i. Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**j. Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

**k. Protected Health Information or PHI** means any information, including electronic PHI, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Sections 160.103 and 164.501. For the purposes of this BAA, PHI includes all medical information and health insurance information as defined in California Civil Code Sections 56.05 and 1798.82.

**l. Protected Information** shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.

**m. Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, and shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.

**n. Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

**o. Unsecured PHI** means PHI that is not secured by a technology standard that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute, and shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

## **2. Obligations of Business Associate.**

**a. Permitted Uses.** BA may use, access, and/or disclose PHI only for the purpose of performing BA's obligations for or on behalf of the City and as permitted or required under the Contract and BAA, or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.502, 164.504(e)(2). and 164.504(e)(4)(i)].



**b. Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations for or on behalf of the City and as permitted or required under the Contract and BAA, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2 (m) of this BAA, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)]. BA may disclose PHI to a BA that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Information on its behalf, if the BA obtains satisfactory assurances, in accordance with 45 C.F.R. Section 164.504(e)(1), that the subcontractor will appropriately safeguard the information [45 C.F.R. Section 164.502(e)(1)(ii)].

**c. Prohibited Uses and Disclosures.** BA shall not use or disclose PHI other than as permitted or required by the Contract and BAA, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(1)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.

**d. Appropriate Safeguards.** BA shall take the appropriate security measures to protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the CE, and shall prevent any use or disclosure of PHI other than as permitted by the Contract or this BAA, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.306, 164.308, 164.310, 164.312, 164.314, 164.316, and 164.504(e)(2)(ii)(B). BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316, and 42 U.S.C. Section

17931. BA is responsible for any civil penalties assessed due to an audit or investigation of BA, in accordance with 42 U.S.C. Section 17934(c).

**e. Business Associate's Subcontractors and Agents.** BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph 2.d. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2) through (e)(5); 45 C.F.R. Section 164.308(b)]. BA shall mitigate the effects of any such violation.

**f. Accounting of Disclosures.** Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure [45 C.F.R. 164.528(b)(2)]. If an individual or an individual's representative submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five (5) calendar days.

**g. Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within (5) days of request by CE to enable CE to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains Protected Information in electronic format, BA shall provide such information in electronic format as necessary to enable CE to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. 164.524.

**h. Amendment of Protected Information.** Within ten (10) days of a request by CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA and its agents and subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment or other documentation to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

**i. Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.

**j. Minimum Necessary.** BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the intended purpose of such use, disclosure, or request. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)]. BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary" to accomplish the intended purpose in accordance with HIPAA and HIPAA Regulations.

**k. Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.

**l. Notification of Breach.** BA shall notify CE within 5 calendar days of any breach of Protected Information; any use or disclosure of Protected Information not permitted by the BAA; any Security Incident (except as otherwise provided below) related to Protected Information, and any use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BA to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure



any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 42 U.S.C. Section 17932; 45 C.F.R. 164.410; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

**m. Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(iii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or this BAA, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contractual arrangement with its subcontractor or agent, if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or this BAA within five (5) calendar days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

### **3. Termination.**

**a. Material Breach.** A breach by BA of any provision of this BAA, as determined by CE, shall constitute a material breach of the Contract and this BAA and shall provide grounds for immediate termination of the Contract and this BAA, any provision in the CONTRACT to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

**b. Judicial or Administrative Proceedings.** CE may terminate the Contract and this BAA, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

**c. Effect of Termination.** Upon termination of the Contract and this BAA for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this BAA to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(2)(ii)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

**d. Civil and Criminal Penalties.** BA understands and agrees that it is subject to civil or criminal penalties applicable to BA for unauthorized use, access or disclosure or

Protected Information in accordance with the HIPAA Regulations and the HITECH Act including, but not limited to, 42 U.S.C. 17934 (c).

**e. Disclaimer.** CE makes no warranty or representation that compliance by BA with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations or corresponding California law provisions will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

#### **4. Amendment to Comply with Law.**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the updated standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable state or federal laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract or this BAA when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Contract or this BAA providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

#### **5. Reimbursement for Fines or Penalties.**

In the event that CE pays a fine to a state or federal regulatory agency, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine or penalties or damages within thirty (30) calendar days.

November 17, 2016

Elizabeth Fitzgerald - Risk Management Division  
City & County of San Francisco  
25 Van Ness Ave Suite 750  
San Francisco, Ca. 94102

Re: Waiver of \$1 Million Commercial Automobile Liability Insurance

Dear Ms. Fitzgerald:

Collection Solutions Software, Inc (CSS), has been selected through an RFP process to provide software as a service for the San Francisco Office of the Treasurer and Tax Collector (TTX). Our software solution, IMPACT HD 2.0, will serve as the system of records platform for all of the delinquent collections performed by TTX's Bureau of Delinquent Revenue. Accordingly, the City and County of San Francisco and my company, CSS Inc., have negotiated a service agreement that includes certain insurance obligations on my part, as the Contractor in the service agreement, outlined in section 23. Insurance:


23.3 Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

I am formally requesting a waiver of the above insurance requirement. The services CSS Inc. provides through this contract will be completed virtually through online. No vehicles are used at any time and CSS Inc. does not own any vehicles.

Thanks for your assistance with this matter. Please contact me at carlb@cssimpact.com with any questions.

Sincerely,

DocuSigned by:



BD2BDBC28E2C4E6...

Carl A. Briganti  
President

5950 Canoga Ave. Suite 120 | Woodland Hills, CA 91367  
office: 877.277.4621 x 100 | mobile: 818.652.7530

We will waive the auto liability requirements of the contract based on the fact that no vehicles will be used throughout the course of this contract as well as the fact that CSS, Inc. does not own any vehicles.

Kelly Hernandez  
Risk Management

